

**MEMORANDUM OF AGREEMENT
BETWEEN THE FEDERAL HIGHWAY ADMINISTRATION AND
THE INDIANA STATE HISTORIC PRESERVATION OFFICER
SUBMITTED TO THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
PURSUANT TO 36 C.F.R. 800.6(b)(iv)
REGARDING THE REPLACEMENT OF WELLS COUNTY BRIDGE NO. 59
LOCATED IN CHESTER TOWNSHIP, WELLS COUNTY, INDIANA**

WHEREAS the Federal Highway Administration (FHWA) proposes to fund the replacement of Wells County Bridge No. 59 which carries CR 900S over the Salamonie River in Chester Township, Wells County, Indiana; and

WHEREAS the FHWA, in consultation with the Indiana State Historic Preservation Officer (SHPO), has defined the Wells County Bridge No. 59 replacement project's area of potential effects, as the term defined in 36 C.F.R. 800.16(d), to be the existing and proposed CR 900S and CR 510W rights-of-way within the project area, and land adjacent to the rights-of-way; and

WHEREAS the FHWA, in consultation with the Indiana SHPO, has found that Wells County Bridge No. 59 is within the area of potential effects; and

WHEREAS the FHWA, in consultation with the Indiana SHPO, has determined, pursuant to 36 C.F.R. 800.4(c), that Wells County Bridge No. 59 is eligible for inclusion in the National Register of Historic Places; and

WHEREAS the FHWA, in consultation with the Indiana SHPO, has determined pursuant to 36 C.F.R. 800.5(a) that the replacement of Wells County Bridge No. 59 will have an adverse effect on Wells County Bridge No. 59; and

WHEREAS the FHWA has consulted with the Indiana SHPO in accordance with Section 106 of the National Historic Preservation Act (16 U.S.C. 470f) and its implementing regulations (36 C.F.R. Part 800) to resolve the adverse effect on Wells County Bridge No. 59; and

WHEREAS the public was given an opportunity to comment on the undertaking's adverse effect in a notice published on February 29, 2008 in the Bluffton News-Banner, and

WHEREAS the FHWA has notified the Advisory Council on Historic Preservation of the adverse effect and invited the Council's participation in the project, pursuant to 36 CFR 800.6(a)(1), in a letter dated January 8, 2009; and

WHEREAS the Advisory Council on Historic Preservation declined in a letter dated January 22, 2009 to participate in consultation; and

WHEREAS the FHWA, in consultation with the Indiana SHPO, has invited INDOT and the Wells County Commissioners to participate in the consultation and to become signatories to this memorandum of agreement; and

NOW, THEREFORE, the FHWA and the Indiana SHPO agree that, upon the submission of a copy of this executed memorandum of agreement, as well as the documentation specified in 36 C.F.R. Section 800.11(e) and (f) to the Advisory Council on Historic Preservation ("Council" pursuant to 36 C.F.R. 800.6[b][1][iv]) and upon the FHWA's approval of the replacement of Wells County Bridge No. 59, the FHWA shall ensure that the following stipulations are implemented in order to take into account the effect of the replacement of Wells County Bridge No. 59 on historic properties.

Stipulations

- I. FHWA shall ensure the following stipulations are implemented.
 - A. Before construction activities begin for the replacement of Wells County Bridge No. 59, Wells County will undertake photographic documentation of the structure. This documentation shall be in accordance with the current National Park Service or Indiana State Level Equivalent documentation standards. Wells County shall contact the SHPO and INDOT in writing to determine the appropriate standards to utilize before undertaking photographic documentation. Wells County will submit the completed photographic documentation to the SHPO for review and approval before construction activities begin. The SHPO will reply within 30 calendar days.
 - B. Before construction activities begin for the replacement of Wells County Bridge No. 59, the bridge's availability to interested parties for adaptive re-use shall be advertised in local and state newspapers, for a period not less than 60 days.
 - C. Wells County Bridge No. 59 will be removed from its existing location and placed on a bypassed portion of the existing CR 510W roadbed, in a manner that minimizes damage to the extent practicable.
 - D. Wells County Bridge No. 59 will be oriented generally north-south, following the alignment of the bypassed section of CR 510W roadbed. The bridge will be placed upon concrete or other durable moisture-resistant supports in a raised position such that the bridge's lower chord and deck beams will not contact the pavement or the ground.
 - E. Wells County Bridge No 59 will be stored as specified in stipulation D for a period not less than fifteen years, during which time the bridge will continue to be made available on INDOT's Historic Bridge Program web-page for adaptive re-use by parties meeting INDOT requirements, or, until which time the bridge is incorporated into a trail along the Salamonie River.

II. OBJECTION RESOLUTION PROVISION

Disagreement and misunderstanding about how this memorandum of agreement is or is not being implemented shall be resolved in the following manner:

- A. If the Indiana SHPO or any invited signatory to this memorandum of agreement should object in writing to the FHWA regarding any action carried out or

proposed with respect to the replacement of Wells County Bridge No. 59 or implementation of this memorandum of agreement, then the FHWA shall consult with the objecting party to resolve this objection. If after such consultation the FHWA determines that the objection cannot be resolved through consultation, then the FHWA shall forward all documentation relevant to the objection to the Council, including the FHWA's proposed response to the objection. Within 45 days after receipt of all pertinent documentation, the Council shall exercise one of the following options:

- i. Provide the FHWA with a staff-level recommendation, which the FHWA shall take into account in reaching a final decision regarding its response to the objection; or
 - ii. Notify the FHWA that the objection will be referred for formal comment pursuant to 36 C.F.R. 800.7(c), and proceed to refer the objection and comment. The FHWA shall take into account the Council's comments in reaching a final decision regarding its response to the objection.
- B. If comments or recommendations from the Council are provided in accordance with this stipulation, then the FHWA shall take into account any Council comment or recommendations provided in accordance with this stipulation with reference only to the subject of the objection. The FHWA's responsibility to carry out all actions under the memorandum of agreement that are not the subjects of the objection shall remain unchanged.

III. POST REVIEW DISCOVERY

In the event that one or more historic properties--other than Wells County Bridge No. 59 -- are discovered or that unanticipated effects on historic properties are found during the implementation of this memorandum of agreement, the FHWA shall follow the procedure specified in 36 C.F.R. 800.13

IV. AMENDMENT

Any signatory to this memorandum of agreement may request that it be amended, whereupon the parties shall consult to consider the proposed amendment. 36 C.F.R. 800.6(c)(7) shall govern the execution of any such amendment.

V. TERMINATION

- A. If the terms of this memorandum of agreement have not been implemented by December 31, 2015 then this memorandum of agreement shall be considered null and void. In such an event, the FHWA shall so notify the parties to this memorandum of agreement and, if it chooses to continue with the replacement of Wells County Bridge No. 59, then it shall reinitiate review of the replacement of Wells County Bridge No. 59 in accordance with 36 C.F.R. 800.3 through 800.7.
- B. Any signatory to the memorandum of agreement may terminate it by providing thirty (30) days notice to the other parties, provided that the parties shall consult

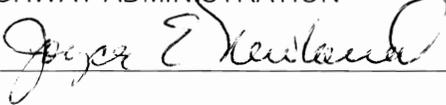
during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, the FHWA shall comply with 36 C.F.R. 800.3 through 800.7 with regard to the review of the replacement of Wells County Bridge No. 59.

- C. In the event that the FHWA does not carry out the terms of this memorandum of agreement, the FHWA shall comply with 36 C.F.R. 800.3 through 800.7 with regard to the review of the replacement of Wells County Bridge No. 59.

The execution of this memorandum of agreement by the FWHA, INDOT and the Wells County Commissioners, and the Indiana SHPO, the submission of it to the Council with the appropriate documentation specified in 36 C.F.R. 800.11(e) and (f), and the implementation of its terms evidence that the FHWA has afforded the Council an opportunity to comment on the replacement of Wells County Bridge No. 59 and its effect on historic properties and that the FHWA has taken into account the effects of the replacement of Wells County Bridge No. 59 on historic properties.

SIGNATORIES (required):

FEDERAL HIGHWAY ADMINISTRATION

Signed by:  Date: March 23, 2009

Name and Title: Robert F. Tally, Jr., P.E., Division Administrator

SIGNATORIES (required):

INDIANA STATE HISTORIC PRESERVATION OFFICER

Signed by: James A. Harris Date: 3/5/2009
Deputy SHPO

Name and Title: Robert E. Carter Jr., Indiana State Historic Preservation Officer

INVITED SIGNATORIES

INDIANA DEPARTMENT OF TRANSPORTATION

Signed by: James M. Paturalski Date: 2/13/09

for Name and Title: Karl B. Browning, Commissioner

James M. Paturalski, Deputy Commissioner

INVITED SIGNATORIES

WELLS COUNTY COMMISSIONERS

Signed by: Paul I. Bonham Date: 2/17/09

Name and Title: Paul I. Bonham, Commission President

Signed by: Kevin J. Woodward Date: 2/17/09

Name and Title: Kevin Woodward, Commission Vice President

Signed by: C. Scott Mossburg Date: 2/17/09

Name and Title: C. Scott Mossburg, Commissioner