

**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 HENRY COUNTY BRIDGE #90
IN MT. LAWN, GREENSBORO TOWNSHIP, HENRY COUNTY, INDIANA**

WHEREAS the Henry County Commissioners propose to replace Henry County Bridge #90 using Federal Aid (FHWA) funding administered through the Indiana Department of Transportation; and

WHEREAS the FHWA, in consultation with the Indiana State Historic Preservation Officer ("SHPO"), has defined this bridge replacement project's area of potential effects, as the term defined in 36 C.F.R. 800.16(d), to be the area within 100 meters of each side of County Road 400 West in the project limits and within site of the project, and

WHEREAS the FHWA, in consultation with the Indiana SHPO, has determined that Henry County Bridge #90 carrying C.R. 400 West over Duck Creek and the Mt. Lawn Bridge that connects C.R. 400 West to the Mt. Lawn Speedway in Greensboro Township are 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 Henry County Bridge #90 and the Mt. Lawn Bridge are eligible for inclusion in the National Register of Historic Places; and

WHEREAS the FHWA in consultation with the Indiana SHPO, had determined, pursuant to 36 C.F.R. 800.5(a), that the replacement of Henry County Bridge #90 will have an adverse effect on Henry County Bridge #90; 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 Henry County Bridge #90; and

WHEREAS Henry County Bridge #90 was advertised on INDOT's "Historic Bridge Marketing" website; and

WHEREAS the FHWA, in consultation with the Indiana SHPO, has invited the Indiana Department of Transportation ("INDOT") and the Board of Commissioners of Henry County ("Commissioners") to participate in the consultation and become a signatories to this memorandum of agreement; and

NOW, THEREFORE, the FHWA and the Indiana SHPO agree that, upon 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 Henry County Bridge #90 project, the FHWA shall ensure that the following stipulations are implemented in order to take into account the effect of the Henry County Bridge #90 project on historic properties.

Stipulations

FHWA shall ensure that the following stipulations are implemented:

I. DISPOSITION OF HISTORIC BRIDGE

1. The Commissioners shall make available the existing steel truss to any eligible entity, defined as an Indiana State or Local Government, or a non-profit group within the State of Indiana. Bridge #90 will be advertised for 90 days in accordance with applicable federal regulations. In addition to agencies and organizations already contacted, the offer shall be made to the public through notices in The Indianapolis Star and a local newspaper covering that portion of the State.
2. The Henry County Commissioners will disassemble and store Henry County Bridge #90 at a county owned facility until an eligible entity steps forward to accept the bridge or until December 31, 2015. The methodology for disassembling the Henry County Bridge #90 will be submitted to FHWA, INDOT, and SHPO for review prior to proceeding with the disassembly. Each agency will have 30-days to comment of the proposed disassembly plan. The Henry County Bridge #90 will remain on INDOT's historic bridge marketing website until an eligible entity accepts ownership of the bridge.
3. Any potential eligible entities interested in Henry County Bridge #90 will be required to submit a written proposal to INDOT, FHWA and SHPO for review and approval. This submittal will include photographs of the proposed relocation site.
4. Eligible entities with approved proposals for relocating Henry County Bridge #90 will perform archaeology, as needed, for the proposed relocation site. The archaeological investigations shall be conducted in consultation with SHPO.
5. Eligible entities will be permitted to change relocation sites should archaeological findings block the possibility of relocating Henry County Bridge #90 to site originally chosen site.
6. Eligible entities with approved proposals and relocation sites will be eligible for reimbursement from the FHWA and INDOT, up to 80%, for costs associated with relocating, disassembling and rehabilitation of Henry County Bridge #90. Reimbursement will be made with Transportation Enhancement funds.
7. A plaque of the existing Henry County Bridge #90 will be placed at the project site subsequent to construction of the new bridge. The plaque will include a photograph of the bridge in its existing setting, along with a brief written description of the bridge.

II. DISPUTE RESOLUTION

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 Henry County Bridge #90 project or implementation of this memorandum of agreement, then the FHWA shall consult with the objecting party to resolve the objection. If after such

consultation in 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 recommendation 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 action 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 Henry County Bridge #90 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 the end of the year 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 Henry County Bridge #90 project, then it shall either execute a Memorandum of agreement with signatories or request the comments of the Council, pursuant to 36 C.F.R. 800.
- 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 with regard to the review of the replacement of Henry County Bridge #90.

- 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 with regard to the review of the replacement of Henry County Bridge #90.

The execution of the memorandum of agreement by the FHWA, INDOT, the Henry County Board of Commissioners and the Indiana SHPO, the submission of it to the Council with the appropriate documentation specified in 36 C.F.R. 800, and the implementation of its terms evidence that the FHWA has afforded the Council an opportunity to comment on the replacement of Henry County Bridge #90 and its effect on historic properties and that the FHWA has taken into account the effects of the replacement of Henry County Bridge #90 on historic properties.

SIGNATORIES (required):

FEDERAL HIGHWAY ADMINISTRATION

Signed by: Max Tuttle
John R. Baxter, Division Administrator

Date: March 18, 2003

INDIANA STATE HISTORIC PRESERVATION OFFICER

Signed by: _____
Jon C. Smith, Deputy State Historic Preservation Officer

Date: _____

INVITED SIGNATORIES

INDIANA DEPARTMENT OF TRANSPORTATION

Signed by: J. Bryan Nicol
J. Bryan Nicol, Commissioner

Date: 3/10/03

HENRY COUNTY BOARD OF COMMISSIONERS

Signed by: Philip J. Estridge
Philip J. Estridge, Commissioner

Date: 2-5-03

Signed by: Larry D. Hale
Larry D. Hale, Commissioner

Date: 2-5-03

Signed by: _____
Don L. Shaw, Commissioner

Date: _____