

FAST ACT SECTION 1312 FUNDING
MEMORANDUM OF AGREEMENT

among

UNITED STATES ARMY CORPS OF ENGINEERS, Baltimore District,
2 Hopkins Plaza
Baltimore, Maryland 21201

and

UNITED STATES ARMY CORPS OF ENGINEERS, Philadelphia District,
100 Penn Square East
Philadelphia, Pennsylvania 19107-3390

and

UNITED STATES ARMY CORPS OF ENGINEERS, Pittsburgh District,
1000 Liberty Avenue
Pittsburgh, Pennsylvania 15222-4186

and

PENNSYLVANIA DEPARTMENT OF TRANSPORTATION
Commonwealth Keystone Building
400 North Street 7th Floor West
Harrisburg, Pennsylvania 17120

and

FEDERAL HIGHWAY ADMINISTRATION, Pennsylvania Division Office
228 Walnut Street, Room 508
Harrisburg, Pennsylvania 17101-1720

WHEREAS, this Memorandum is entered into under the authority of Fixing America's Surface Transportation Act, Public Law 114-94 (FAST Act), signed in to law December 4, 2015; and,

WHEREAS, Section 1312 of the FAST Act, 49 U.S.C Section 307 permits a public entity receiving financial assistance from the Department of Transportation for one or more projects, or for a program of projects, for a public purpose to request that the Secretary of Transportation allow

the public entity to provide funds to Federal and State agencies, and Indian tribes participating in the environmental planning and review process for the project, projects, or program for the purpose of expediting and improving permitting and review processes, including planning, approval, and consultation processes for the project, projects, or program; and ,

WHEREAS, the U.S. Army Corps of Engineers (Corps) currently reviews Pennsylvania Department of Transportation (PENNDOT) projects in regard to aquatic resource impact evaluation pursuant to the Clean Water Act (Section 404), and the Rivers and Harbors Act of 1899 (Section 10) assure that the planning and design of these projects is environmentally acceptable by law; and,

WHEREAS, PENNDOT desires advance coordination with the Corps on transportation related projects during the planning, programming, and preliminary-engineering phases of transportation projects in accordance with FAST Act, Section 1312, et. seq, and in more particular, 23 U.S.C. §134(i)(2)(B) and (D), and 23 U.S.C §135(f)(4) leading to an expedited Corps review of permit application as part of the lead district initiative, and,

WHEREAS, PENNDOT desires statewide consistency and predictability of transportation related project permit applications and expedited Corps review of these permit applications in accordance with the Corps' lead district initiative, and

WHEREAS, all parties have determined that it would be mutually beneficial to have dedicated Corps staff in Baltimore, Philadelphia, and Pittsburgh Districts to provide PENNDOT with the “advance coordination” and/or “statewide consistency and predictability of transportation related project permit applications and expedited Corps review of these permit applications” previously stated, and thereby allow the transportation program to be planned, designed, and implemented promptly, to meet the changing transportation and environmental quality needs of the Commonwealth, in a manner that meets all obligations of the law and exhibits sensitivity to aquatic resources and the public interest; and,

WHEREAS, PENNDOT is willing to reimburse the Corps for dedicated staff required to provide such advance coordination, while ensuring statewide consistency and predictability of

transportation related project permit applications and expedited Corps review of these permit applications; and,

WHEREAS, the U. S. Department of Transportation (USDOT) and the Federal Highway Administration (FHWA) would be able to approve a request by PENNDOT to provide funds made available under Chapter 1 of Title 23, U.S.C., to the Commonwealth for those programs subject to a coordinated environmental review process, allowing the Commonwealth to fund the Corps to provide the resources necessary for it to meet or exceed the Corps' national regulatory program performance standards which are, for the purposes of this Memorandum of Agreement (Agreement), to be considered enhanced and expedited service by the Corps on the Federal-aid highway and the transportation programs; and,

WHEREAS, the Corps has determined that (1) it is authorized pursuant to the Intergovernmental Cooperation Act of 1968 (P.L. 90-577) 31 U.S.C. §6501-6508; 33 U.S.C. S2352, as amended, and Section 1312 of the FAST Act to accept and expend funds contributed by a non-Federal public entity to expedite the evaluation of a permit of that entity, related to a project or activity for a public purpose under the jurisdiction of the Department of the Army, and (2) the service provides a prioritized level of review attention to such Federal-aid highway and transportation programs; and,

WHEREAS, the parties hereto desire to enter into this Agreement to facilitate the enhanced and expedited review of the PENNDOT transportation program and provide for the personnel and funds to obtain this goal.

NOW, THEREFORE, for and in consideration of the foregoing premises and of the mutual promises set forth below, the parties hereto agree, with the intention of being legally bound, to the following:

Article I. Statement of Work

A. The Corps shall be responsible for providing the following: Sufficient staff to expedite review of PennDOT permit applications, to generally include the following: one full time equivalent (FTE) Liaison at the Baltimore District (NAB); one FTE project manager at the Philadelphia District (NAP); and one FTE project manager at the Pittsburgh District (LRP).

Corps Districts may dedicate additional staff to PennDOT permit application review as workload dictates and funding allows.

The Corps will, subject to the continued authority to accept such funds, use the funds provided under this Agreement to defray its costs associated with enhanced and expedited services; said funds may be used by the Corps for salaries, training as approved by PENNDOT, associated benefits, and to pay reasonable travel expenses in accordance with the Joint Travel Regulations, 41 CFR Chapter 301, which is hereby incorporated by reference as if physically attached hereto.

B. Corps staff shall provide expedited document review, technical assistance, consultation, and program and project coordination.

C. The Corps shall strive to attend PENNDOT meetings, and review permit applications within the established timeframes and performance measures listed in Attachment B as Performance Metrics. When competing priorities exist, PENNDOT will establish the ranking of priorities. It is recognized that multiple, overlapping requirements will occur; in such event, PENNDOT and the Corps will mutually determine priorities based on negotiated timeframes and performance measures.

D. The Corps-provided Liaison shall act as the primary point of contact (POC) through which PENNDOT communicates with the Corps and who acts on behalf of the lead district to facilitate interaction between the Corps and PENNDOT by referring and coordinating PENNDOT's issues/questions/concerns about Corps procedures, specific projects, etc. with the appropriate Corps personnel. The Corps' designated lead district (NAB), through the Liaison, will be responsible for the development and implementation of programmatic recommendations and documentation as per the November 22, 2004 Memorandum for Commanders, Major Subordinate Commands and District Commands, Signed by Major General USA, Don L. Riley, Director of Civil Works, Subject: *Lead District Initiative*. Each Corps District will continue to develop permit decisions according to the appropriate regulations, the National Environmental Policy Act (NEPA)/404 program, and the lead District guidance. Lead District guidance will be disseminated as necessary.

E. The Corps will provide PENNDOT with a quarterly statement that details the cost of the enhanced and expedited services. To support the documentation of those efforts, Corps regulatory personnel assigned to PENNDOT-funded projects shall keep daily time and other necessary records to identify the number of hours spent, or other costs incurred, working on PENNDOT programs. Work hours will be kept in accordance with PENNDOT's timesheet format, a sample of which may be found at Appendix E. Timesheets will be provided to PennDOT on a monthly basis within five (5) working days after the end of the previous month, and shall detail monthly project review activity pursuant to this agreement. Attachment A provides general recommendations for potential tasks that are suitable for billing and is not a worksheet for required billing. The total number of hours or other services or costs billable during each year of this Agreement shall not exceed the funding set aside at Article II.A of this Agreement or the maximum available funds. In addition, the Corps shall keep accurate and separate accounting records of all receipts and disbursements of all funds received pursuant to this Agreement and produce such records for examination as required by PENNDOT and/or the Federal Highway Administration, and will permit extracts and copies to be made by PENNDOT, the Federal Highway Administration, or their duly authorized representatives. The Corps shall keep records substantiating hours and costs billed pursuant to this agreement for a period of at least four (4) years after the final billing is submitted.

F. The Corps Regulatory Branch/Division Chiefs and PENNDOT's Chief, Environmental Policy & Development Section or his/her duly appointed representative will meet annually or more often if needed, to review the implementation of the provisions of this Memorandum, assist in the development and subsequent assessment of Agency Performance Review Standards and participate in a performance evaluation of the program. Additionally, the Corps will complete, on forms provided, and submit to PENNDOT an Annual Summary Report highlighting the accomplishments of the program positions.

G. PENNDOT and the Corps shall conduct business according to the established timeframes and performance measures, whereby statewide standardization is demonstrated and implemented. The Lead District (NAB) shall be responsible for coordinating these timeframes and performance

measures and shall coordinate revisions and updates with each Corps District and PENNDOT. Please direct your attention to Attachment C for the list of Army Corps of Engineers Standard Operating Procedures.

H. The parties to this Agreement act in independent capacity in the performance of their respective functions under this Agreement; and neither party shall be construed as the officer, agent, or employee of the other.

I. In no way shall it be construed or implied that either PENNDOT or the Corps is by this Agreement intending to abrogate its obligation and duty to comply with Sections 9, 10, 11, 13, 14 of the Rivers and Harbors Act of 1899 (33 CFR 401, 403, 407, 408), Section 301 and 404 of the Clean Water Act of 1977 (as amended) (33 U.S.C. 1344), or the NEPA (42 U.S.C. 4321-4347), the regulations promulgated thereunder, or any other applicable law or regulation

Article II. Financial Administration

Subject to the billing provisions of Paragraph II.B. below, and for a period of up to five (5) years (extending through June 30, 2027) PENNDOT shall pay the Corps in the amounts shown below which reflect a maximum total amount of \$650,000.00 per year

A. The billing period shall be July 1 through June 30.

July 1, 2022 through June 30, 2023 - \$650,000.00

July 1, 2023 through June 30, 2024 - \$650,000.00

July 1, 2024 through June 30, 2025 - \$650,000.00

July 1, 2025 through June 30, 2026 - \$650,000.00

July 1, 2026 through June 30, 2027 - \$650,000.00

B. If the cost for services under this agreement increases beyond the amounts set forth in Paragraph II-A above, causing the overall Agreement cost to increase, the parties must execute a letter of amendment. A letter of amendment is not effective until duly authorized representative of PENNDOT (including representatives of its Office of Chief Counsel and the Office of

Comptroller) and of the Corps District Commanders or their delegates, sign and date the letter of amendment

C. PENNDOT shall advance funding for the anticipated costs of all enhanced and expedited assistance provided under this agreement.

D. Upon implementation of this agreement, the Baltimore District shall submit an invoice for the estimated services through June 30, 2023. PENNDOT will strive to provide payment within 30 days of receipt of the invoice.

E. On or before July 1 of each year through July 1, 2026, the Baltimore District shall provide an invoice for estimated services through June 30 of the following Calendar year. PENNDOT will strive to provide payment within 30 days.

F. All checks to the Corps shall be made payable to "F&AO, USAED Baltimore (Finance and Accounting Office, U.S. Army Engineer District Baltimore) and shall be sent to the following address:

U.S. Army Corps of Engineers, Baltimore District
Attn. Mr. Christopher Higgins
Operations Division
2 Hopkins Plaza, 2nd Floor
Baltimore, MD 21201

G. The Corps shall draw upon these monies as needed throughout the year to fund the activities performed for PENNDOT under this Agreement, and reflected in quarterly statements provided to PENNDOT.

H. The Baltimore District shall receive all funds associated with the enhanced and expedited processing and programmatic development positions. Funds will be dispersed to each of the Corps Districts as appropriate (as determined by workload assessments) via provided Corps billable cost codes. The Baltimore District shall be responsible for the maintenance and balancing of all expenses billable to PENNDOT provided funding.

I. The Corps shall utilize funds issued by PENNDOT to cover all Baltimore District, Philadelphia District, and Pittsburgh District expenses for the Corps staff working under the Agreement to defray the costs of salaries, associated benefits, and training as approved by PENNDOT, and to reimburse reasonable travel expenses in accordance with the Federal Travel Regulations, 41 CFR Chapter 301, which is hereby incorporated by reference as if physically attached hereto. Established Corps accounting procedures will be used for recording costs.

J. The Corps may continue to utilize all deposited funds until exhausted to fund performance for the period after the end of the state fiscal year and prior to receiving the next annual cycle of funding from PennDOT. Unused funds from the state fiscal year 2021-2022 may be retained and used by the Corps until exhausted or until the first payment under this agreement is received. All unused funds from state fiscal year 2021-2022 shall be refunded within 90 days of receipt of the first payment under this agreement. Unused funds from state fiscal year 2026-2027 may be retained and used by the Corps until exhausted or until the first payment under a subsequent agreement is received, if a subsequent agreement is warranted. All unused funds from state fiscal year 2026-2027 shall be refunded within 90 days of receipt of the first payment under a subsequent agreement. If a refund of unused funding is required, it shall be returned to PENNDOT by check payable to "PENNDOT" within 90 days of receipt of the next annual funding cycle of funding, along with the reconciliation report and sent to the following:

Pennsylvania Department of Transportation
Attn: Chief, Environmental Policy and Development Division
Bureau of Project Delivery
P.O. Box 3790
Harrisburg, PA 17105-3790

Article III. Period of Performance

A. This Agreement shall run for a period of five (5) years from the effective date of July 1, 2022 through June 30, 2027, unless terminated in accordance with Paragraph B below.

B. If either party wishes to terminate this Agreement because of deficient performance, the party wishing to terminate shall provide written notice to the other party, detailing the reasons for this request. The parties shall allow a ninety (90) calendar day cure period during which the performing party may remedy the deficiencies identified in the written notice. During the cure period, the party wishing to terminate shall provide a monthly progress evaluation to the other party. If the party wishing to terminate determines that satisfactory progress has not been made at the end of the cure period and wishes to continue to pursue the termination of this Agreement, that party shall provide written notice to the other party, addressed to the Program Officer listed in Article IV, indicating the intent to terminate this Agreement thirty (30) calendar days from the date of the written notice, unless both parties agree to an alternate date. If either party wishes to terminate this Agreement for any reason other than deficient performance, the party wishing to terminate shall provide written notice to the other party, indicating the intent to terminate the Agreement ninety (90) calendar days from the date of the written notice, unless both parties agree to an alternate date.

C. Within thirty (30) calendar days of terminating the Agreement, the Corps shall provide PENNDOT with a final accounting of the actual cost incurred in that billing period. The Baltimore District shall return to PENNDOT any funds advanced in excess of the actual costs as then known, or PENNDOT shall provide any additional funds necessary to cover the actual costs as then known. Such an accounting shall in no way limit PENNDOT's duty in accordance with Article III to pay for any costs which may become known after the final accounting.

Article IV. Program Officers

A. For U.S. Army Corps of Engineers, Baltimore District (Lead District):

Chief, Regulatory Branch

U.S. Army Corps of Engineers, Baltimore District

2 Hopkins Plaza

Baltimore, MD 21201

Phone: (410) 962-3670

Fax: (410) 962-6024

B. For Pennsylvania Department of Transportation:
Chief, Environmental Policy & Development Division
Pennsylvania Department of Transportation
Bureau of Project Delivery
P.O. Box 3790
Harrisburg, Pennsylvania 17105-3790
Phone: (717) 787-1024
Fax: (717) 772-0834

C. For Federal Highway Administration, Pennsylvania Division Office
Environmental Program Manager
Federal Highway Administration
228 Walnut Street, Room 508
Harrisburg, PA 17101-1720
Phone: (717) 221-2276
Fax: (717) 221-4553

Article V. Required Clauses

A. During the performance of this Agreement, the parties agree to abide by the terms of Executive Order 11246 as amended on nondiscrimination and will not discriminate against any person because of race, color, religion, sex, national origin, handicap, age, sexual orientation, or gender identity. The participants will ensure that applicants are employed without regard to their race, color, religion, sex, national origin, handicap, age, sexual orientation or gender identity.

B. No member of, or delegate to, Congress, or resident Commissioner, shall be admitted to any share or part of this Agreement of any benefit that may arise therefrom.

C. The parties agree that any hiring pursuant to this Agreement shall, at all times, conform to the applicable Federal and State laws, rules, regulations, orders and approvals, including, specifically, procedures and requirements relating to labor standards, equal employment opportunity,

nondiscrimination, compliance with the Americans with Disabilities Act, anti-solicitation, information, auditing, and reporting provisions.

Article VI. Modification

All amendments, changes, corrections or additions to this MOA shall be in the form of a letter describing the amendment(s), change(s), correction(s) or addition(s) with signature lines on which each party's authorized representative or representatives will sign. Other than the authorized representatives of each party, such other required signatories for the parties shall sign this letter, which in the case of PennDOT shall include its Office of Chief Counsel and the Office of Comptroller Operations. Modifications to this agreement shall be mutually agreed upon by the Corps, PENNDOT, and FHWA prior to implementation and shall occur only when the Program Officers determine such changes are necessary.

Article VII. Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement the date first above written

Baltimore District Corps

UNITED STATES ARMY CORPS OF ENGINEERS

ATTEST

PINCHASIN.ESTHER. SARAH.1020943676 Digitally signed by PINCHASIN.ESTHER.SARAH.1020943676 Date: 2022.06.13 15:58:41 -04'00'

Title: Regulatory Branch Chief DATE

BY _____
Title: District Commander DATE

Philadelphia District Corps

UNITED STATES ARMY CORPS OF ENGINEERS

ATTEST

Title: Regulatory Branch Chief DATE

BY _____
Title: District Commander DATE

Pittsburgh District Corps

UNITED STATES ARMY CORPS OF ENGINEERS

ATTEST

Title: Regulatory Division Chief DATE

BY _____
Title: District Commander DATE

DO NOT WRITE BELOW THIS LINE—FOR COMMONWEALTH USE ONLY

IN WITNESS WHEREOF, the parties have executed this Agreement the date first above written

Baltimore District Corps

UNITED STATES ARMY CORPS OF ENGINEERS

ATTEST

Title: Regulatory Branch Chief DATE

BY _____
Title: District Commander DATE

Philadelphia District Corps

ATTEST

**Todd A.
Schaible**

Digitally signed by
Todd A. Schaible
Date: 2022.05.18
08:30:24 -04'00'

Title: Regulatory Branch Chief DATE

UNITED STATES ARMY CORPS OF ENGINEERS

BRIGANTTI.RAMON.1181985263
BY **ON.1181985263**

Digitally signed by
BRIGANTTI.RAMON.1181985263
Date: 2022.05.18 09:58:45
-04'00'

Title: District Commander DATE

Pittsburgh District Corps

ATTEST

Title: Regulatory Division Chief DATE

UNITED STATES ARMY CORPS OF ENGINEERS

BY _____
Title: District Commander DATE

DO NOT WRITE BELOW THIS LINE—FOR COMMONWEALTH USE ONLY

IN WITNESS WHEREOF, the parties have executed this Agreement the date first above written

Baltimore District Corps

UNITED STATES ARMY CORPS OF ENGINEERS

ATTEST

Title: Regulatory Branch Chief DATE

BY _____
Title: District Commander DATE

Philadelphia District Corps

UNITED STATES ARMY CORPS OF ENGINEERS

ATTEST

Title: Regulatory Branch Chief DATE

BY _____
Title: District Commander DATE

Pittsburgh District Corps

UNITED STATES ARMY CORPS OF ENGINEERS

ATTEST

Scott A. Hans 24 May 202

Title: Regulatory Division Chief DATE

BY *[Signature]* *6/24/22*

Title: District Commander DATE

DO NOT WRITE BELOW THIS LINE—FOR COMMONWEALTH USE ONLY


DO NOT WRITE BELOW THIS LINE—FOR COMMONWEALTH USE ONLY


COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF TRANSPORTATION

APPROVED AS TO LEGALITY AND
FORM

BY Michael C. Keiser, P.E. 5/18/22
Acting Deputy Secretary DATE

BY  5/18/2022
for Chief Counsel DATE

BY  Digitally signed by David E. Stover,
Senior Deputy Attorney General
Date: 2022.06.14 16:48:50 -04'00'
Deputy Attorney General DATE

BY  2022.05.25 10:02:04
Deputy General Counsel -04'00' DATE

BY Rick Zettlemoyer Digitally signed by Rick
Zettlemoyer
Date: 2022.07.11 08:40:20 -04'00'
Comptroller Operations DATE

FEDERAL HIGHWAY ADMINISTRATION (FHWA)

BY _____
Director of Planning, Environment, DATE
and Finance

This Agreement is split 80% expenditure for Federal funds and 20% expenditure for State funds.
The related Federal assistance program name and number is State Transportation Program (STP);
33D.
The state assistance program same and number is Highway and Safety Improvements;
Appropriation 581.

ATTACHMENT A
CORPS ROLES & RESPONSIBILITIES

The Corps Liaison shall strive to accomplish the following *common tasks* for PENNDOT, as appropriate, in order to enhance, expedite, implement, and coordinate the transportation program development process and meet the PENNDOT's needs for compliance with applicable Federal statutes:

- Facilitate the interaction of the Corps and PENNDOT,
- Provide an intermediary to the Corps and PENNDOT,
- Serve as the single Point of Contact (POC) between the Corps and PENNDOT, as appropriate,
- Participate in the planning and programming phase of a transportation related project,
- Oversee inter- and intra-agency programs and agreements,
- Participate in the development and implementation of written PENNDOT and Corps programmatic recommendations,
- Manage and facilitate the Section 404, Section 10 and Section 103 permitting processes,
- Provide a medium for conflict/dispute resolution to resolve problems at the request of the Corps, other agencies, or PENNDOT,
- Attend inter- and intra-agency meetings as appropriate,
- Represent the Corps at meetings (team meetings, and task forces) with the authority to make routine programmatic decisions,
- Perform other duties as requested by PENNDOT and agreed to by the Corps,
- Coordinate and provide training, as necessary, on natural and aquatic resource issues,
- Coordinate the completion of Annual Summary Reports
- Participate in transportation project development process-related training agreed to in advance by both parties and,
- Submit monthly timesheet, documenting the work performed on each project.

PROGRAM GOALS

The Corps Districts, when funded under this agreement shall strive to accomplish the following *common tasks* for PENNDOT, as appropriate, in order to expedite, implement, and coordinate the transportation project development process and meet the PENNDOT's needs for compliance with applicable State and Federal statutes:

- Render a decision on greater than 80% of Corps Regional General Permit (PASPGP) and Nationwide Permit verifications within 60 calendar days of the Corps' determination of completeness,
- Render a decision on greater than 50% of individual permit reviews within 120 days of a complete application, SUGGESTION TO LEAVE PERFORMANCE STANDARDS AS IS.
- Render a decision on greater than 80% of permit modification requests within 60 days of receipt of a complete request.
- Participate in the planning and programming phase of a transportation-related project,
- Review transportation plans and programs,
- Participate in Agency scoping processes,
- Provide preliminary environmental analysis recommendation and review,
- Provide preliminary and detailed alternatives analyses recommendation and review,
- Represent the Corps at meetings (including public hearings, public meetings, team meetings, task forces, and the Interagency Review Team),
- Participate in the development and implementation of written PENNDOT and Corps programmatic recommendations,
- Ensure internal Corps coordination, as needed, on document and permit application reviews,
- Attend inter- and intra-agency meetings as appropriate,
- Organize and/or facilitate meetings or conference calls to resolve problems at the request of the Corps, other agencies, or PENNDOT and,
- Perform other duties within statutory authority as requested by PENNDOT and agreed to by the Corps,

The funded Corps permit evaluators shall strive to accomplish the following *specific tasks* for PENNDOT, as appropriate, in order to expedite, implement, and coordinate the transportation project development process and meet the PENNDOT's needs for compliance with applicable State and Federal statutes:

- Participate in meetings and site visits on Purpose and Need documentation and development of mitigation bank sites.
- Participate in impact assessment activities/field work
- Verify wetland delineations and assist with functional assessments
- Participate in site visits to identify/refine alternatives
- Participate in field reviews of potential mitigation sites and constructed mitigation
- Conduct compliance inspections at construction sites before, during, and after construction as directed by Corps District policy
- Conduct regular inspections of PENNDOT mitigation sites
- Conduct coordination with resource agencies and environmental groups to resolve objections to proposed permit issuance
- Conduct document reviews and prepare agency comments for (not inclusive):
 - Wetland delineation reports
 - Wetland functional analysis reports
 - Habitat evaluation reports, including biological assessments
 - Purpose and Need
 - Preliminary Alternates
 - Alternates Retained for Detailed Study
 - Preferred Alternative and Conceptual Mitigation
 - Environmental Assessments (draft and final)
 - Environmental Impact Statements (draft and final)
 - Environmental Impact Statement comment resolution packages
 - Categorical Exclusions
 - Findings of No Significant Impact
 - Records of Decisions
 - Mitigation site reports and plans, including mitigation banks
 - Mitigation Bank Instrument Modifications

- Environmental Evaluation/Reevaluation Reports
- Section 404/Section 10 Permit Applications in Streamlined Process
- Policies and Procedures
- Coordinate and provide training, as necessary, on natural and aquatic resource issues
- Prepare Corps permit decision documents
- Assist in completing Annual Summary Reports, and
- Submit monthly timesheets documenting the work performed on each project.

ATTACHMENT B
METRICS

Metric ID	001
Definition	This metric will help to evaluate the level of involvement our funded positions have with PENNDOT projects. The goal is to have the funded positions attend the necessary PENNDOT Agency Coordination Meetings, Special Agency Coordination Meetings, Field Views, and pre-application meetings when provided ample notice and when appropriate. Reasons for not attending will need to be furnished to the appropriate District.
Suggested Thresholds	<ul style="list-style-type: none"> • Unsatisfactory: < 80% • Satisfactory: ≥80% and < 90% • Exceed: ≥90%
Business Owner	USACE
Selection Criteria	All PENNDOT meetings that the funded positions are asked to attend.
Formula	(The number of meetings attended / the total number of invitations) x 100
Component list	n/a
Metric Source Summary	USACE funded positions.

Metric ID	002
Definition	This metric will measure the percentage of decisions on Corps General Permits, including Nationwide Permits and Pennsylvania State Programmatic General Permit 5 (PASPGP- 5) Reporting verifications. The goal is to have greater than 80% of decisions within 60 calendar days of administratively complete application determination.
Suggested Thresholds	<ul style="list-style-type: none"> • Unsatisfactory: ≤80% • Satisfactory: >80% and <90% • Exceed: ≥90%
Business Owner	USACE
Selection Criteria	All PENNDOT PASPGP- 5 Reporting authorizations and Nationwide Permit verifications submitted to USACE.
Formula	(Total number of applications / number of administratively complete within timeframe) x 100.

Component list	n/a
Metric Source Summary	USACE Tracking System
Metric ID	003
Definition	This metric will measure the percentage of decisions on individual permit review. The goal is to have greater than 50% of individual permit reviews within 120 days of a complete application.
Suggested Thresholds	<ul style="list-style-type: none"> • Unsatisfactory: $\leq 50\%$ • Satisfactory: >50 and $<65\%$ • Exceed: $\geq 65\%$
Business Owner	USACE
Selection Criteria	All PENNDOT permit applications submitted to USACE.
Formula	(Total number of permit review / number conducted within timeframe) x 100.
Component list	n/a
Metric Source Summary	USACE Tracking System

Metric ID	004
Definition	This metric will measure the percent of permit modifications issued within an acceptable time frame. The goal is to issue greater than 80% of permit modifications within 60 calendar days of complete request.
Suggested Thresholds	<ul style="list-style-type: none"> • Unsatisfactory: $\leq 80\%$ • Satisfactory: $>80\%$ and $< 90\%$ • Exceed: $\geq 90\%$
Business Owner	USACE
Selection Criteria	All PENNDOT requests to modify a Corps SPGP, Nationwide permit verification or standard permit.
Formula	(Total number of permit modification / number of determinations reached within timeframe) x 100.
Component list	n/a

Metric Source Summary	USACE Tracking System
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ATTACHMENT C

STANDARD OPERATING PROCEDURES

In Support Of

THE INTERPERSONNEL MEMORANDUM OF AGREEMENT

Among

UNITED STATES ARMY CORPS OF ENGINEERS

PHILADELPHIA, BALTIMORE & PITTSBURGH DISTRICTS

And

THE PENNSYLVANIA DEPARTMENT OF TRANSPORTATION

And

THE FEDERAL HIGHWAY ADMINISTRATION

I. Overview of the Standard Operating Procedures:

It is the goal of the U.S. Army Corps of Engineers (Corps) and the Pennsylvania Department of Transportation (PENNDOT) to establish and maintain a working partnership in support of the referenced Memorandum of Agreement (MOA). To achieve this goal, the parties have developed these Standard Operating Procedures (SOP) to facilitate cooperation and communication. This SOP incorporates current Corps permit processing and will facilitate consistency across the Commonwealth of Pennsylvania in applying such procedures to transportation projects. Certain PENNDOT procedures are also incorporated into the SOP. The SOP may be updated, amended, or otherwise revised as the process of cooperation develops.

II. Corps Liaison:

The Corps Liaison is a Corps employee, funded by the referenced MOA by PENNDOT and the Federal Highway Administration (FHWA). The Corps Liaison serves as the primary point of contact to PENNDOT. The Liaison will facilitate Corps/PENNDOT interactions and shall represent the Corps program and agenda at interagency meetings, forums, and discussions. Specifically, the Liaison's duties include, but are not limited to the following:

- A. Serve as the primary point of contact for PENNDOT with the three Corps Districts on programmatic issues;
- B. Oversee interagency and intra-agency programs and agreements;
- C. Manage the terms and conditions of the MOA;
- D. Participate in the development and execution of PENNDOT training programs related to aquatic resources and/or Corps regulations, programs, and policies;
- E. Manage specific PENNDOT permit applications or actions;
- F. Represent the Corps at meetings with the authority to make routine programmatic decisions; and
- G. Facilitate project-specific and programmatic issues with strict adherence to the Lead District Initiative.

III. Funded Positions:

Corps employees, funded by the MOA, will address project-specific and programmatic issues forwarded by PENNDOT. The funded positions will not necessarily replace existing Corps project manager support for transportation project review, but rather augment existing Corps structure to provide expedient and priority review of products related to the project development and planning process, processing of jurisdictional determinations, evaluation of permit applications, conflict resolution, in accordance with applicable Federal regulations.

IV. Staffing:

- A. Corps districts will take into consideration feedback from PENNDOT's annual performance review including the customer service survey to ensure appropriate

staffing of funded positions. All Corps Districts will consider input from PENNDOT on qualifications needed to staff funded positions. Appendix A contains PENNDOT suggested qualifications for Corps staff assigned to expedite permit review.

- B. The Lead Corps District shall maintain a Corps Liaison as the primary point of contact between the Corps and PENNDOT. The Corps Liaison will be selected by the Regulatory Branch Chief, Lead Corps district with input from the other two Corps Districts.
- C. The Corps shall be responsible for providing sufficient staff to expedite review of PennDOT permit applications, to generally include the following: one FTE Liaison at the Baltimore District (NAB); one FTE project manager at the Philadelphia District (NAP); and one FTE project manager at the Pittsburgh District (LRP). Corps Districts may dedicate additional staff to PennDOT permit application review as workload dictates and funding allows.
- D. Regulatory branch structure, personnel decisions, and charges for operational support, engineering review, or resource management are made by the respective Regulatory Branch and Corps District Commander
- E. Performance: All funded positions are subject to performance review by current Department of the Army procedures. PENNDOT performance and customer service review and comments from PENNDOT Bureau of Project Delivery, Environmental Policy & Development Section (EPDS) will be considered by Corps management. The Corps Liaison may provide additional comments on staff performance to the Corps reviewing official.

V. District Boundaries:

Generally, all tasks assigned to funded positions will be addressed in accordance with existing Corps District Areas of Responsibility (Appendix B) and PENNDOT District Boundaries (Appendix C). Flexibility is endorsed in assigning project-specific items. With the approval of the PENNDOT Chief of the Environmental Policy and Development Section, Corps Districts may assign project-specific and programmatic work to additional Corps employees to address PENNDOT workload concerns. Such additional employee time may be charged against the PENNDOT funding provided through the MOA. In addition, if workload in one Corps District becomes excessive due to regional transportation demands, disaster, or emergency conditions, and/or attrition of assigned personnel, employees from other Corps Districts may be assigned to address workload in another Corps District; only with the agreement of both Corps Regulatory Branch Chiefs and the PENNDOT Chief of the Environmental Policy and Development Section. Such flexibility is not to be utilized to alter determinations or actions of one Corps District by another Corps District. Any determinations in a Corps District are subject to the review and approval of the Regulatory Branch Chief or designee of that respective Corps District.

VI. Project Review and Processing:

A. Project Development and Preapplication Process: As described in the MOA, Corps personnel shall make all reasonable efforts to attend and participate in the preapplication and the project development and planning phases of a project provided sufficient notice and materials are submitted in accordance with VI.A.a below. The preapplication phase of a project is seen as a critical time in which to focus on opportunities to avoid and minimize the proposed project's impacts to the aquatic ecosystem. PENNDOT personnel shall make all reasonable efforts to provide relevant information to the Corps and other resource agencies during the preapplication process. The Corps shall engage in the process and provide feedback to PENNDOT or their contractors, as appropriate. When conflicting priorities exist, mutual agreement regarding the prioritization of projects shall be reached.

- a. PENNDOT staff and contractors shall notify Corps staff at least 15 working days prior to the scheduled, coordinated date of a preapplication or project development meeting or site inspection. All relevant information shall be forwarded by hard copy or electronic copy at least 5 working days prior to the meeting.
- b. Attendance at Agency Coordination Meetings (ACM) is required of Corps Project Managers and/or the Liaison when agenda items include relative project specific discussions or presentations from Regional or Metropolitan Planning Organizations (RPOs and MPOs).

B. Permit Processing:

- a. In accordance with Joint Permit Application procedures and the Standard Operating Procedures for the Pennsylvania State Programmatic General Permit (PASPGP), as well as the (DEP permit) concerning submission of electronic permit applications; applications for Department of the Army permits and permit authorizations shall be submitted electronically. Some applications (PADEP GP-11 authorizations, emergency permit application, requests for modification) may be submitted via hard copies. The Corps may request complex permit applications be submitted as hard copies. The Corps may also request additional information in hard copy when more detail is required than can be obtained from the electronic submission. In accordance with SPN-10-02 electronic copies of all final plans are required to be submitted for all actions within the Philadelphia Corps District.
- b. PASPGP
 - i. Non-reporting applications may receive Federal authorization via PASPGP (or subsequent iterations of PASPGP) without direct Corps review. The Federal authorization for such projects may be attached by PADEP or a delegated County Conservation District to the Chapter 105 authorization. In accordance with PASPGP,

the Corps may request Non-reporting applications be reported to the Corps for separate review as Reporting applications. Work may be determined to be ineligible for PASPGP based on thresholds or agency comments. The Corps shall notify PENNDOT when a project is elevated.

- ii. Reporting applications require Corps review. The date of application for Reporting projects or PASPGP eligible projects shall be the first business day after eFacts posting from the Keystone Environmental E-permitting System (KEES) or the date that a hard copy is received by the Corps. Any requests for additional information shall be dated within 15 days of the date of application. The Corps goal is to make a decision on greater than 80% of such authorizations within 60 calendar days of receipt of a complete application. The Corps has 15 days to conduct a completeness review. In cases where review is delayed due to agency coordination concerns (e.g. Section 106, ESA, etc.), the Corps will consider an application incomplete for decision-making until issues are resolved. Corps verifications of PASPGP may be issued in several ways. The Corps may advise PADEP to issue a PASPGP verification with the Chapter 105 authorization (through a letter, email, or KEES comments). The Corps may issue a letter to PENNDOT, usually in cases where special conditions are applied.
- c. Nationwide Permit Authorizations: Activities that are not eligible for PASPGP authorization, may be eligible for authorization under Nationwide Permit that have not been suspended in Pennsylvania. The Corps goal is to issue greater than 80% of Nationwide Permit authorizations within 60 calendar days from receipt of a complete application. The Corps has 15 days from receipt to determine completeness.
- d. Individual Permits:
 - i. The PASPGP authorizes many activities that would otherwise require an Individual Permit. It is recognized that use of PASPGP is an expedited service. Further, those actions that are PASPGP ineligible are generally very complex, representing a subset of only the most complex Individual Permit workload of other Corps Districts.
 - ii. Within 15 days of the date received, the Corps will conduct a completeness review of applications. Based on this review, the Corps will issue a Public Notice or a deficiency letter.
 - iii. The Corps generally will issue public notices with a comment period of 15 days (complex or controversial projects may necessitate a 30-day public notice comment period). Within 15

days after the close of the public notice, the Corps will notify PENNDOT of the comments received and provide a summary of those comments which must be addressed.

- iv. The Regulatory portion of a project may be part of a larger process of Federal involvement by numerous agencies. The Corps will generally accept the review of the Lead Federal agency in determining an application's compliance with Federal laws. If State or other Federal agencies have already undertaken compliance work that is acceptable to cover other Federal requirements (e.g., Section 106), copies of compliance letters from the consulting agencies may be all that is necessary to document compliance.
- v. Upon receipt of all information necessary to process an individual permit, including responses to deficiencies, agency concerns, and public notice comments, the Corps will strive to render a decision on greater than 50% of individual permit applications within 120 days of receipt of a complete application.
- vi. NEPA/404 Joint Review: The Corps, PENNDOT, and other affected Federal and State agencies are developing a revised joint review process. The Corps will provide comments as required by project milestones.

VII. Dispute Resolution and Elevation Procedures: This process is only valid prior to finalization of a Standard Individual Permit (IP), Regional General Permit (PASPGP), Nationwide (NWP) Verifications, or Jurisdictional Determination (JD).

- A. Level I Resolution: When an issue arises that cannot be resolved between PENNDOT and a Corps District project manager, either PENNDOT or the Corps District may request discussion of such issue at a Level I resolution meeting. Level I resolution will generally include the respective project managers, supervisors, the FHWA environmental specialist or transportation engineer, the PENNDOT District environmental manager or permit manager, and/or other affected agency personnel. The purpose of the designated Level I resolution meeting shall be to resolve identified issues. Meeting minutes and participants shall be documented by the Corps project manager with concurrence by PENNDOT for accuracy. If the issue(s) cannot be resolved within 15 days of the Level I resolution meeting, the issue may be elevated for Level II resolution.
- B. Level II Resolution: If the Level I resolution process does not resolve the concern, Level II resolution procedures shall be employed. The Corps Liaison will review the minutes of the Level I resolution meeting and determine if the issues are project specific or programmatic, and inform the appropriate Corps and PENNDOT Districts within 15 calendar days of this determination. If the issue is project specific, the Corps Liaison may

prescribe an informal and non-binding resolution to all parties to facilitate resolution. However, project-specific disputes are subject to Corps District resolutions through the appropriate District chain of command (i.e., the Regulatory Branch Chief, Operations Division Chief, and then the District Commander). For project specific concerns, PENNDOT may appeal IPs and JDs in accordance with current Corps Administrative Appeals Procedures at 33 CFR Part 331. If the dispute is programmatic in nature affecting statewide consistency in Corps program implementation, the Corps Liaison will again render a non-binding, informal resolution to all parties. If any party does not agree with the Corps Liaison's resolution, that party may request additional consideration (Level III resolution) from the Regulatory Branch Chief of the lead Corps District. .

- C. Level III Resolution/Lead District Initiative: Where the dispute is determined by the Corps Liaison to affect consistent implementation across the three Corps Districts, a Level III resolution will be initiated by a request from any party mentioned above to the Lead District. Level III resolution will occur at a meeting including the affected Regulatory Branch Chief, the Lead District Regulatory Branch Chief, the PENNDOT Chief of the Bureau of Design, and FHWA Director of Operations. If a decision cannot be reached within 15 days of the date of the meeting, with concurrence by attendees documented in a letter from the Lead District Regulatory Branch Chief, the issue will be elevated to the respective Corps Division office.
- D. A flow chart describing these elevation procedures is attached as Appendix D.

VIII. General Operation and Management:

- A. The purpose of these Standard Operating Procedures is to provide consistent permit application review of PENNDOT projects by the Corps in Pennsylvania. Continuance of the funding program is directly related to expedited service herein defined.
- B. In no instance does acceptance of funding obligate the Corps to abrogate any Federal law, regulation, or guidance related to the permit application and review process, including, but not limited to NEPA, Section 10, Section 404, Section 103 or the PASPGP. The Corps does assure PENNDOT and FHWA of express service related to application of Federal regulations at a level consistent with the general public interest including application of permit conditions, alternatives review, and jurisdiction.

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APPENDICES:

Appendix A: PENNDOT-Suggested Qualifications for Funded Staff

Appendix B: Corps District Boundaries

Appendix C: PENNDOT District Boundaries

Appendix D: Informal Dispute Resolution Flow Chart

Appendix E: Sample Timesheet

APPENDIX A
PENNDOT Suggested Qualifications for Funded Corps Staff

The following are general requirements of knowledge, skills, and achievements for filling the referenced funded positions with the Corps Districts.

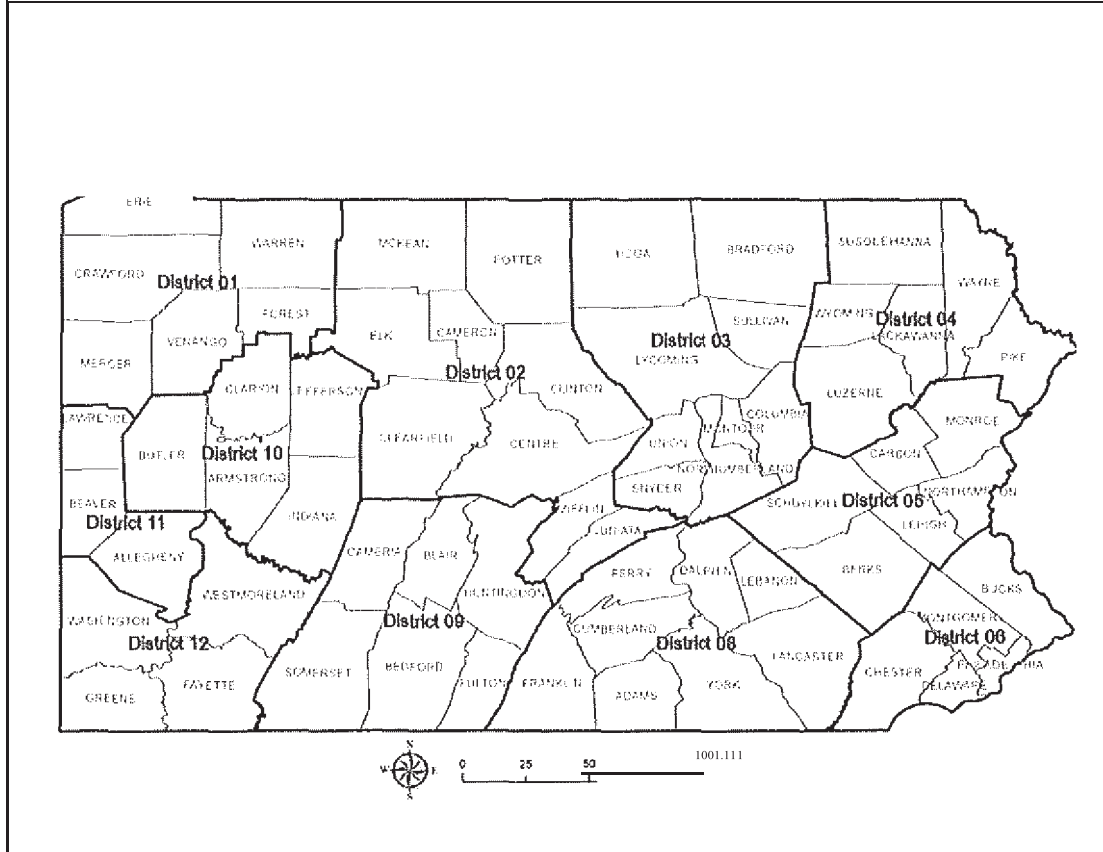
Corps Liaison Program Manager

- At least five years experience in environmental project management.
- A bachelor's degree in Environmental Conservation, Engineering, Biology, Cartography, History, Archaeology or other relevant field is required; a master's degree or equivalent work experience is preferred.
- Documented management experience is desirable.
- A comprehensive knowledge of the Corps Wetland Delineation Manual and current jurisdictional practices is required.
- A comprehensive knowledge of the Corps Regulatory Program, PADEP Chapter 105 regulations, and NEPA is required.
- A demonstrated ability to resolve complex issues across Corps District and Division boundaries, as well as across agency boundaries with consideration for local, regional, and national concerns, is desired.
- Experience with the review of transportation planning and project development processes, plans and construction sequencing, is highly desirable.

Transportation Project Manager Positions

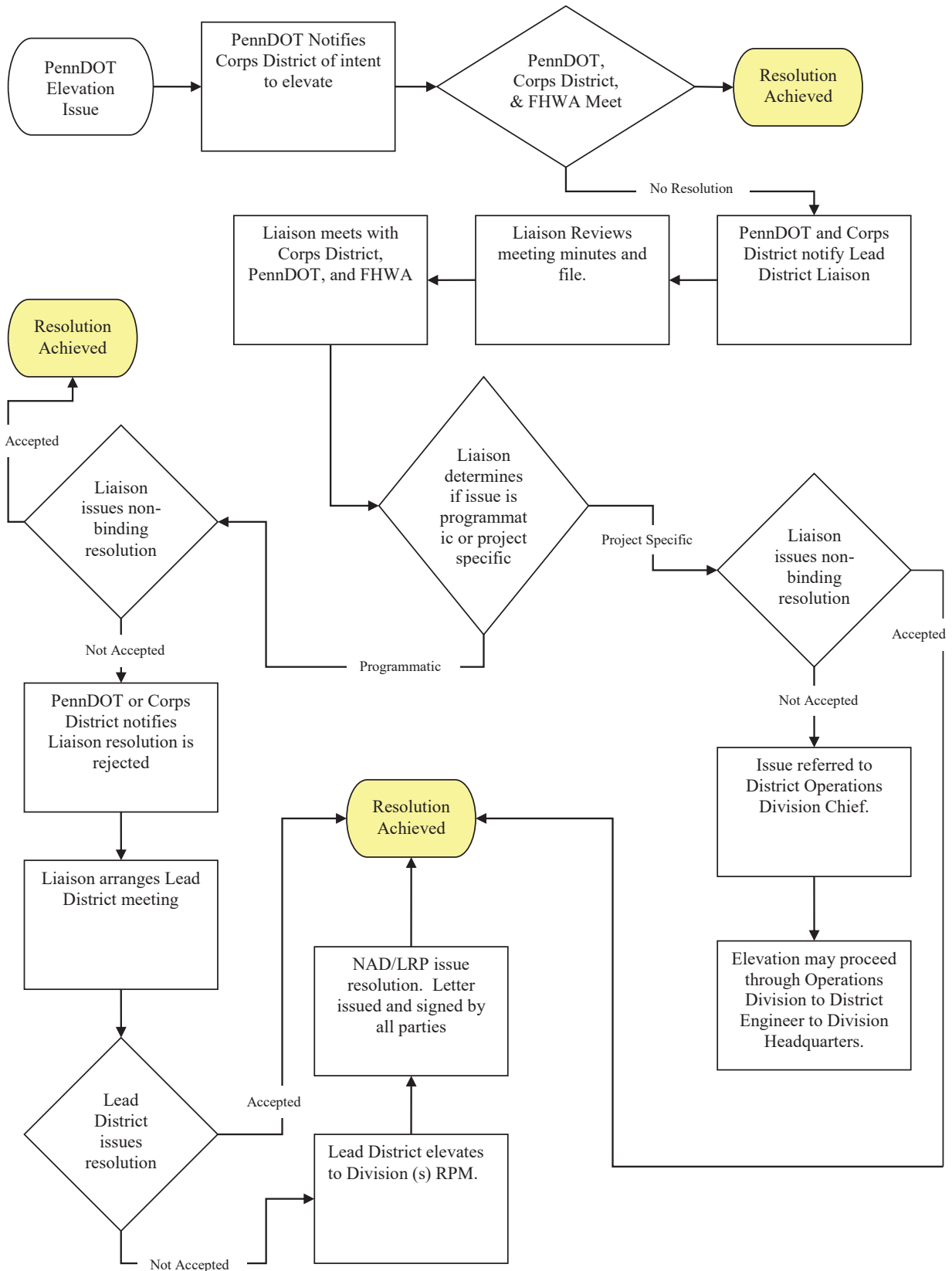
- Appropriate experience in environmental project management is required.
- A working knowledge of NEPA, and the Corps and PADEP regulatory programs is required. More than five years experience is highly desirable.
- A bachelor's degree is required.
- A demonstrated ability to resolve complex issues with regard to the environment, and an established record of compliance within HQUSACE time frames for processing permit applications and jurisdictional determinations is required.
- A demonstrated ability to manage multiple projects and priorities simultaneously is required.

APPENDIX C
PENNDOT District Boundaries




Appendix D

Informal Dispute Resolution Flowchart



Appendix E

Sample Timesheet

 INTERAGENCY FUNDING AGREEMENT MONTHLY TIMESHEET - JUNE 2016													
Funded Agency	Last Name	First Name	Title	Email			Phone						
Date	Project Numbers: SR/Sec and County	Comments	Field Views	Meetings	Reviews	Consultation	Presenta-tion/Train	Statewide Programs	Other	Non-PennDOT	Total		
6/1/2017											0		
6/2/2017											0		
6/3/2017											0		
6/4/2017											0		
6/5/2017											0		
6/6/2017											0		
6/7/2017											0		
6/8/2017											0		
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6/25/2017											0		
6/26/2017											0		
6/27/2017											0		
6/28/2017											0		
6/29/2017											0		
6/30/2017											0		
Total											0		
Comments - Please provide additional comments or notes in the space provided below. For extensive comments, please use Sheet's 1, 2, and 3 of this workbook.													