

**Mahoning Project (FERC No. 12555)
License Application for Major Project—Existing Dam**

APPENDIX D

HISTORIC PROPERTIES MANAGEMENT PLAN

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MAHONING CREEK HYDROELECTRIC COMPANY, LLC

FAIRLAWN, OHIO

MAHONING HYDROELECTRIC PROJECT

FERC NO. 12555

***PROPOSED* HISTORIC PROPERTIES MANAGEMENT PLAN**

JULY 2009

Prepared by:

Kleinschmidt
Energy & Water Resource Consultants

MAHONING CREEK HYDROELECTRIC COMPANY, LLC
FAIRLAWN, OHIO

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FAIRLAWN, OHIO**

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PROPOSED HISTORIC PROPERTIES MANAGEMENT PLAN

1.0 OVERVIEW

1.1 Introduction

This Historic Properties Management Plan (HPMP) was developed to address the identification and management of historic properties found within the Area of Potential Effect (APE) for the proposed Mahoning Hydroelectric Project, which is being licensed by the Mahoning Creek Hydroelectric Company, LLC (MCHC or Applicant). This plan addresses the management of historic properties for the term of the project's Federal Energy Regulatory Commission (FERC) license.

1.2 Purpose

The purpose of this HPMP is to establish procedures and guidelines for the management of historic properties within the Project's APE. More specifically, this HPMP:

- Establishes a process for identifying the nature and significance of historic properties that may be affected by project construction, maintenance and operation, proposed improvements to project facilities, and/or public access;
- Establishes a decision-making process for considering potential effects on historic properties;

- Defines goals for the preservation of historic properties;
- Establishes guidelines for routine maintenance and operation activities as they relate to historic properties; and
- Establishes procedures for consulting with the Pennsylvania State Historic Preservation Office (SHPO), Federally-recognized Indian tribes, historic preservation experts, and the interested public concerning the potential effects of the Project on historic properties.

For the purposes of this HPMP, the definition of historic properties is consistent with the definition presented in 36 CFR § 800.16(l)(1) and (2):

Historic property means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian Tribe and those that meet the National Register criteria. The term eligible for listing in the National Register includes both properties formally determined as such, in accordance with regulations of the Secretary of the Interior, and all other properties that meet the National Register criteria.

1.3 Regulatory Context

On December 23, 2005, MCHC filed with the FERC its Notice of Intent (NOI) for licensing of the proposed Mahoning Hydroelectric Project (FERC Project No. 12555). Included within the licensing process is a consideration of the effects of this action, and any potential actions that MCHC may carry out during the term of its license, on historic properties. In 2002, FERC issued guidelines regarding the development of Historic Properties Management Plans for hydroelectric projects and the role that

they should play in the management of historic properties at hydroelectric projects. This HPMP, by providing guidance to MCHC in its management of historic properties, is intended to fulfill the Commission's obligations under Section 106.

1.4 Preparation and Implementation

This HPMP was prepared by Kleinschmidt for consultation with the SHPO. The Applicant foresees continued involvement of the SHPO throughout the implementation of this HPMP.

1.5 Overview

This HPMP was prepared in accordance with the guidelines set forth by the FERC for the development of Historic Properties Management Plans, and includes the following sections:

Section 1 – Introduction

Section 2 – Background Information

Section 3 – Project Management and Preservation Goals

Section 4 – Project Effects and Mitigation/Management Measures

Section 5 – Implementation Procedures

2.0 BACKGROUND INFORMATION

2.1 Project Information

The Applicant proposes to construct a new powerhouse 1200 feet down from the existing US Army Corps of Engineers (ACOE) Mahoning Creek Dam to accommodate a turbine generating system with a gross head which varies from 75 to 96 feet and withholds an installed capacity of 6.0 MW. The expected gross annual energy generation of the Project is approximately 20,000 MWh.

2.2 Area of Potential Effect (APE)

The APE for the Mahoning Hydroelectric Project includes the area within the Project boundary. See Appendix B for a map defining the APE.

2.3 Cultural Context

2.3.1 Prehistoric Cultural Setting

The prehistoric occupation of Pennsylvania is generally divided into three broad periods: Paleo-Indian, Archaic, and Woodland. The Paleo-Indian Period encompasses the cultural remains of the earliest recorded occupations of the region, after about 14,000 years before present (B.P.), during early postglacial times. The Archaic Period is identified by archaeologists as the period where more localized seasonal settlement and subsistence patterns replaced the seasonal migration patterns of the Paleo-Indian Period. Broad exchange patterns, the innovation of ceramic technology, the emergence of agriculture, and an increasing shift toward sedentism generally identify the transition to the Woodland Period. Some researchers recognize a separate fourth period, the late Prehistoric or Proto-historic Period, marked by continued population growth, large villages, and

subsurface storage pits resulting from an increased reliance on maize agriculture.

2.3.2 Historic Cultural Setting

For the majority of the mid-seventeenth to the mid-eighteenth century, the region in an around modern-day Armstrong County was defined by increased interaction between multiple Native groups and European settlers, each seeking to secure their position in the region. Conflict and instability through the mid-eighteenth century was the primary barrier to European settlement in the area. The Delaware established a settlement near the present community of Kittanning sometime before 1730 (J.H. Beers & Co. 1914). Following Braddock's defeat in 1755, this village served as a central location for organizing Native action against the English in this part of Pennsylvania. In response to repeated incursions, Governor Robert Hunter Morris sent Lt. Colonel John Armstrong to lead a military party against the settlement at Kittanning. Armstrong defeated the Native contingent and destroyed the village on September 8, 1756, essentially eliminating Native resistance to settlement of the county that would eventually bear his name.

Armstrong purchased 556.5 acres of land, including the site of the village at Kittanning in 1775, and named the parcel "Victory" *ld.*. In March 1800, the Pennsylvania Legislature set off Armstrong County from portions of Allegheny, Westmoreland, and Lycoming Counties. Later that year the State government passed an act establishing a county seat to be located within five miles of the former Indian village *ld.* Armstrong's descendants provided 150 acres for the town site in return for half the money generated

from the sale of the lots *Id.* The town of Kittanning was officially platted in 1803.

2.3.2.1 Armstrong County

Euro-American settlement came slowly to Armstrong County due in part to the long tradition of Native resistance followed by complex and often conflicting land purchase laws that frequently resulted in multiple claims on the same parcel. These early barriers finally began to yield by the end of the eighteenth century. Andrew Sharp, along with his wife and child, arrived in 1784 as the first settlers in present-day Armstrong County. Sharp left the region in 1794 because of residual instability to return to Kentucky, but was killed by a raid on his party during the trip. Armstrong's widow, however, eventually remarried and returned her home in Armstrong County.

The majority of the early Euro-American settlers consisted of Scotch-Irish and German groups moving in from eastern parts of the state *Id.* The early settlers found that the rugged terrain presented both unique challenges and advantages. The climate and soil was well suited for agriculture, which quickly became the primary industry in the region. Mahoning Creek, along with several other large drainages, provided ideal settings for constructing saw and grist mills. The rivers also served as transportation routes for keelboats and steamboats to ship the surplus goods to larger markets. These waterways provided the only reliable transportation avenues until they were replaced by railroads.

Abundant natural resources, in the form of iron and coal deposits, led to the growth of a significant industrial economy. The first blast furnace in the county was built on Roaring Run by James Biddle on December 25, 1825. At least 15 other furnaces were in operation during the first half of the nineteenth century, including the Olney (McCrea) Furnace located roughly 915 m (3,000 feet) west of the project area (J.H. Beers & Co. 1914; Brown and DiCiccio 1997). These early blast furnaces soon depleted the wood resources necessary to maintain the supply of charcoal fuel and were replaced by hot-blast furnaces fueled by coke and coal during the second half of the 1800s.

When settlers first arrived in the region, coal deposits were so common that individuals often mined a daily supply from a local hillside (J.H. Beers & Co. 1914). Coal mining, however, soon grew from an individual effort to a major economic enterprise. By 1910 over 3.5 million tons of coal was produced in Armstrong County (J. H. Beers & Co. 1914). The coal industry reached peak production in the early part of the twentieth century and began to decline by the 1950s. Other significant industries in the region included salt mining, brick making and other fired clay products, glass manufacturing, natural gas and oil drilling, and timber harvesting.

2.3.2.2 History of the Project Area

The rivers and other drainages of Armstrong County have been utilized by the residents of Armstrong County for transportation and generating power since the earliest settlers arrived in the late eighteenth century. Early efforts to improve and manage these

resources included simple dams and dikes to aid navigation and facilitate travel for the keelboat and steamboat traffic. Large-scale improvement began with the construction of the Pennsylvania Canal in 1828 (Brown and DiCiccio 1997). The U.S. government became involved in the improvement efforts as early as the 1870s by establishing programs to aid waterborne commerce on the Allegheny River. The Federal government also created disaster response programs to assist the local communities. Following heavy flooding on the Allegheny in 1913 the government established a system of relief boats to rescue stranded residents and deliver supplies following floods (J.H. Beers & Co. 1914). The flood-control programs continued with the creation of the Flood Control Acts of 1936 and 1938. These laws authorized the USACE to install 16 flood-control projects in the Pittsburgh District, including the Mahoning Creek Dam. This dam has provided flood protection for the lower Allegheny River and the Upper Ohio River since its construction in 1941.

2.4 Previous Evaluations

The previous hydroelectric licensing identified two cultural resource sites of interest in the vicinity of the Project Area. In 1987, the previous licensee surveyed the proposed Project and two study corridors for constructing the two alternative transmission line routes from the proposed facility. The 1987 survey was limited because property owners denied access to researchers to three properties on the routes (FERC, 1990). One corridor was about 40 feet wide and extended to Belknap about 2.2 miles southwest of Mahoning Dam. The other corridor extended for about 6.2 miles from the dam to Corbettown. The research also

included the existing, abandoned access road along the southern bank of Mahoning Creek. Researchers reviewed secondary historical literature and historic period maps, and published archeological research in Armstrong and Jefferson Counties, as well as files of the Pennsylvania Archaeological Site Survey. The archeological study identified the T. Smith Historic Archeological Site (designated 36 Je 93) and a small cemetery containing twelve headstones north of the Mahoning Creek Dam—beyond the current Project’s area of proposed impact.

The 1989 Environmental Assessment for the previous project concluded that Mahoning Dam is eligible for listing on the National Register. Additionally, the removal of one of the two concrete plugs and installation of buried penstock, intake structure, construction of a powerhouse and tailrace, and refurbishment of an existing access road may affect the characteristics of the dam that make it eligible for listing on the National Register. However, State Historic Preservation Office (SHPO) and the Advisory Council on Historic Preservation agreed that although the characteristics that make the dam eligible for listing would be affected by developing the project as it was proposed, the dam would not be adversely affected relative to eligibility (FERC, 1989).

In August 2007, Mahoning Creek Hydroelectric Company (MCHC) completed a Phase I Archaeological Survey for the proposed hydroelectric improvements to the Mahoning Creek Dam (MSG, 2007). The Phase I Survey relocated the historic service road that the previous licensee surveyed during the 1989 Environmental Assessment. In addition, the MCHC survey found a historic concrete foundation that ACOE staff identified as the headquarters for the construction camp for the Mahoning Creek Dam. This foundation was included in the Mahoning Creek Dam historic site. The Phase I Survey also included a literature review. The literature review found one open site and three rock shelters

with multiple prehistoric archaeological components within 2 kilometers of the Project Area. One historic archaeological site with an industrial component has also been found near the Project Area. Archival and historic records indicate that agricultural and industrial activities once dominated the Project Area.

2.5 Known Historic Properties within the APE

In a February 2006 letter, the SHPO restated the opinion that the proposed hydroelectric improvements would not constitute an effect on cultural resources, including the Mahoning Creek Dam. Since the historic foundation lies outside the Project Area, and the elements associated with the Mahoning Creek Dam have not changed, **it does not appear that the proposed improvement will have an effect on cultural resources.**

3.0 PROJECT MANAGEMENT, PRESERVATION GOALS, AND PRIORITIES

With regard to management of historic properties located within the APE of the Mahoning Hydroelectric Project, MCHC's project management and preservation goals consist of managing such properties in accordance with the Project license, the PA, applicable State and Federal regulations, as well as the applicable Department of Interior Standards and Guidelines. These Standards and Guidelines include:

- Section 106 of the National Historic Preservation Act, Implementing Regulations, Federal Register, May 18, 1999, Volume 64, No. 95, Part 800, pp. 27071-27087;
- Archeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines, Federal Register, September 29, 1983, Vol. 48, No. 190, Part IV, pp. 44716-44740;
- U. S. Department of the Interior, 1990, *The Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings*;
- U.S. Department of the Interior, 1995, *National Register Bulletin, How to Apply the National Register Criteria for Evaluation*;
- U.S. Department of the Interior, 1997, *National Register Bulletin, How to Complete the National Register Registration Form*;
- U.S. Department of the Interior, 1991, *National Register Bulletin 16B, How to Complete the National Register Multiple Property Documentation Form*;
- U.S. Department of the Interior, 2000, *National Register Bulletin, Guidelines for Evaluating and Registering Historical Archaeological sites and Districts*;

- U.S. Department of the Interior, 1994, National Register Bulletin 38, Guidelines for Evaluating and Documenting Traditional Cultural Properties;
- Pennsylvania Law: 9 P.S. §202 through §215, "Historic Burial Places Preservation Act"; PA Consolidated Stat. 37, §104, et seq., "Pennsylvania Historical and Museum Commission Policy on the Treatment of Human Remains".

4.0 PROJECT EFFECTS AND MITIGATION/MANAGEMENT MEASURES

4.1 Identified Potential Effects

There are no currently identified potential effects due to construction or operation of the project. In addition, the Applicant proposes no protection, mitigation, and enhancement (PM&E) measures that have the potential to affect historic properties.

4.2 Mitigation Measures

Since there are no proposals to carry out activities that have the potential to affect historic properties, no mitigation measures are required.

4.3 Future Effects

If during the term of the Project's license, additional ground-disturbing activities are proposed (e.g., activities, such as recreational developments that may require ground disturbance or new construction, demolition, or significant rehabilitation activities), or activities that will affect known or expected historic properties within the Project's APE, the Applicant will consult with the SHPO regarding the activity and determine if further investigation is required. In support of consultation, the Applicant will submit a description of the proposed project to the SHPO. Consulting parties will have 30 days to review and comment on the project. Prior to initiating the activity, the Applicant shall obtain concurrence from the SHPO regarding the investigation and associated mitigation measures. If, however, the parties cannot reach agreement, the matter will be resolved in accordance with Section 5.7 of this Plan (Dispute Resolution).

4.4 Routine Maintenance Activities

The Applicant will perform routine maintenance activities in accordance with the list of activities identified in Appendix D. This list, which identifies operation and maintenance activities that have been determined to not have an effect on historic properties, is a dynamic document developed in consultation with the SHPO. Activities addressed within this list will not require consultation as described in Section 4.3. The Applicant will consult with the SHPO prior to performing activities not covered in the list on historic properties located within the Project's APE.

5.0 IMPLEMENTATION PROCEDURES

5.1 HPMP Coordinator

The Operations Manager for the Mahoning Hydroelectric Project will be responsible for coordinating activities under this HPMP. Such activities include HPMP updates, notifications and reporting, and training. As coordinator, the Operations Manager will maintain a copy of this HPMP and will approve the Applicant's proposed ground disturbing activities prior to commencement of such activities.

5.2 Training

Supervisors responsible for construction activities resulting in ground disturbance or renovations to historical properties, as well as personnel involved with general maintenance activities associated with identified historic properties, will be trained on principles and procedures of this HPMP. The Operations Manager for the Mahoning Hydroelectric Project will be responsible for providing the training. Applicable personnel will be briefed on updates to the HPMP.

5.3 Unidentified Historic Properties

Upon inadvertent discovery of a potential historic property during ground disturbing activities (in an area previously cleared by an archaeological survey), the Operations Manager for the Mahoning Hydroelectric Project shall perform the following:

1. Stop work in the area of concern and, as necessary, stabilize the area.
2. Notify the SHPO within three days of discovery.

3. Following consultation with the SHPO, the following activities shall occur in coordination with the SHPO and a qualified professional:
 - a) Identify and confirm the potential significance of the historic property.
 - b) Plan for and perform any subsequent field investigation and analysis (e.g., Phase II Testing or Phase III Data Recovery) in accordance with *The Secretary of the Interior's Standards for Identification*.
 - c) Document the investigations and analysis in a report to be submitted to the SHPO and the FERC.
 - d) Manage any artifacts that are collected in accordance with the SHPO standards.

5.4 Protection of Discovered Human Remains

Should human remains be unexpectedly unearthed in the conduct of work (e.g., construction activities), work will be halted in the immediate area. Treatment and disposition of any human remains that may be discovered will be managed in a manner consistent with the Native American Graves Protection and Repatriation Act and the Advisory Council on Historic Preservation's "Policy Statement Regarding Treatment of Human Remains and Grave Goods" (September 27, 1988, Gallup, NM) and with the "Pennsylvania Historical and Museum Commission Policy on the Treatment of Human Remains" (9 P.S. §202 through §215, "Historic Burial Places Preservation Act"; PA Consolidated Stat. 37, § 104, et seq.).

5.5 Annual Reporting

In accordance with the PA and upon approval of this HPMP, on every anniversary of the issuance of the license, the Applicant will file an annual report with the FERC and the SHPO. The annual report will summarize ground-disturbing activities performed in accordance with this HPMP. An annual report shall be filed for the term of the Project license.

5.6 Amendments to the HPMP

Signatories to the Programmatic Agreement (PA) may recommend modifications to this HPMP; however, only the FERC may require such modifications. If requested by the Applicant, the SHPO, or the Advisory Council on Historic Preservation, the FERC will consider requiring modifications to this HPMP. Before requiring any modifications to this HPMP, the FERC will consult the Applicant, the SHPO, and the Advisory Council in an effort to reach an agreement on an appropriate modification. If the parties can reach agreement then the FERC will require the HPMP to be modified accordingly. If, however, the parties cannot reach agreement, the matter will be resolved in accordance with Section 5.7 of this Plan (Dispute Resolution). As a general rule, this HPMP will be modified only in response to changes in legislation, regulation, Project operations, or the license.

5.7 Dispute Resolution

Dispute resolution for this HPMP is consistent with the dispute resolution provisions provided in the PA. These provisions consist of the following.

1. If at any time during the implementation of this HPMP, the SHPO, the Advisory Council, the Applicant, or other consulting party, as defined in 36 CFR § 800.2, objects to any action or any failure to

act pursuant to this HPMP, they may file written objection with the FERC.

- a) The FERC will consult with the objecting party, and other parties as appropriate, to resolve the objection.
- b) The FERC may initiate on its own such consultation to remove any of its objections.

2. If the FERC determines that the objection cannot be resolved, the FERC will forward all documentation relevant to the dispute to the Advisory Council and request that the Advisory Council comment. Within thirty (30) days after receipt of all pertinent documentation, the Advisory Council will either:

- a) Provide the FERC with recommendations, which the FERC will take into account in reaching a final decision regarding the dispute;
- or
- b) Notify the FERC that it will comment pursuant to 36 CFR § 800.7(c) and Section 110(1) of the National Historic Preservation Act, and proceed to comment.

3. The FERC will take into account any Advisory Council comment provided in response to such a request, with reference to the subject of the dispute, and will issue a decision on the matter. The Applicant's responsibility to carry out all actions as defined by this HPMP that are not subject of dispute will remain unchanged.

APPENDIX A
PROGRAMMATIC AGREEMENT

Proposed

**PROGRAMMATIC AGREEMENT
AMONG
THE FEDERAL ENERGY REGULATORY COMMISSION
AND THE
PENNSYLVANIA STATE HISTORIC PRESERVATION OFFICER
FOR
MANAGING HISTORIC PROPERTIES
THAT MAY BE AFFECTED BY A LICENSE ISSUING
TO MAHONING CREEK HYDROELECTRIC COMPANY, LLC
FOR THE CONSTRUCTION AND OPERATION
OF THE MAHONING HYDROELECTRIC PROJECT
IN ARMSTRONG COUNTY, PENNSYLVANIA**

WHEREAS, the Federal Energy Regulatory Commission or its staff (hereinafter, "Commission" proposes to issue a new license to Mahoning Creek Hydroelectric Company (hereinafter, "MCHC" or "Applicant") to construct and operate the Mahoning Hydroelectric Project (hereinafter, "Project") as authorized by Part I of the Federal Power Act, 16 U.S.C. Sections 791 (a) through 825 (r) *as amended*;

WHEREAS, the Commission has determined that issuing such a license may affect properties included in or eligible for inclusion in the National Register of Historic Places (hereinafter, "Historic Properties"); and

WHEREAS, Appendix A of this Programmatic Agreement provides a description of MCHC's proposal for continued operation of the Project, managing historic properties, and the anticipated effects identified as of the date of this Programmatic Agreement; and

WHEREAS, the Commission has consulted with the Pennsylvania State Historic Preservation Officer (SHPO) pursuant to 36 C.F.R. Section 800.14 (b) of the Advisory Council on Historic Preservation's (Council) regulations (36 C.F.R. Part 800), implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f; hereinafter, "Section 106); and

WHEREAS, the Commission has consulted with the Tonawanda Band of Senecas pursuant to 36 C.F.R. Section 800.14 (b) of the Advisory Council on Historic Preservation's (Council) regulations (36 C.F.R. Part 800), implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f; hereinafter, "Section 106); and

WHEREAS, the Commission has consulted with the Seneca Nation of Indians pursuant to 36 C.F.R. Section 800.14 (b) of the Advisory Council on Historic Preservation's (Council) regulations (36 C.F.R. Part 800), implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f; hereinafter, "Section 106"); and

WHEREAS, the Commission has consulted with the Eastern Shawnee Tribe of Oklahoma pursuant to 36 C.F.R. Section 800.14 (b) of the Advisory Council on Historic Preservation's (Council) regulations (36 C.F.R. Part 800), implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f; hereinafter, "Section 106"); and

WHEREAS, the Applicant has participated in the consultations and has been invited to concur in this Programmatic Agreement; and

WHEREAS, the Commission will require the Applicant to implement the provisions of the Programmatic Agreement as a condition of issuing a new license for the Project.

NOW THEREFORE, the Commission, and the SHPO agree that the Project will be administered in accordance with the following stipulations that will satisfy the Commission's Section 106 responsibilities during the term of the Project's license.

STIPULATIONS

The Commission will ensure that, upon a license issuance for this Project, the Applicant implements the following stipulations. All stipulations that apply to the Applicant will similarly apply to any and all of the Applicant's successors. Compliance with any of the following stipulations does not relieve the Applicant of any other obligations it has under the Federal Power Act, the Commission's regulations, or its license.

I. HISTORIC PROPERTIES MANAGEMENT PLAN

- A. Simultaneously with its License Application, the Applicant will file for the Commission's approval a Historic Properties Management Plan (hereinafter, "HPMP") specifying how historic properties will be managed in the Project's area of potential effects (APE), as defined in 36 C.F.R. Section 800.16 (d), during the term of this license. During development of the HPMP, the Applicant will consult with the SHPO and the Tribe as defined in 36 C.F.R. Section 800.2.¹ The Applicant will seek concurrence of the SHPO and the Tribe in the HPMP.

¹ All consulting parties need to respond within 30 days of receipt of a request for review of a finding or determination involving the HPMP and during the interim period prior to completion and implementation of the HPMP.

- B. Archaeology and Historic Preservation: The Secretary of the Interior's Standards and Guidelines" (*Federal Register*, September 29, 1983, Vol. 48, No. 190, Part IV, pp. 44716-44740; hereinafter, "Secretary's Standards") and the Council and Commission's "Guidelines for the Development of Historic Properties Management Plans for FERC Hydroelectric Projects" (issued May 20, 2002) will be taken into account in developing the HPMP. The HPMP will be developed by or developed under the supervision of a person or persons who meet, at a minimum, the professional qualifications standards for architectural history and archeology in the Secretary's Standards (48 *Federal Register* 44738-39).
- C. The HPMP will, at a minimum, address the tasks listed below. The HPMP will also specify how each task will be carried out and when it will be completed.
1. Completion, if needed, of identification of historic properties within the project's APE. The APE includes the following: (a) lands enclosed by the Project's boundary; (b) attached or associated buildings and structures extending beyond the Project boundary, which contribute to the National Register of Historic Places eligibility of the hydroelectric generating facilities; and (c) lands or properties outside the Project boundary where the Project may cause changes in the character or use of Historic Properties, if any Historic Properties exist;
 2. Protection and preservation of historic properties threatened by shoreline erosion, water conveyance breaches, other project-related ground-disturbing activities, looting, vandalism, and any project related activity;
 3. Consideration and, where appropriate, adoption of prudent and feasible alternative measures that would avoid adverse effects on historic properties;
 4. Consideration and implementation of appropriate treatments that would mitigate any unavoidable adverse effects;
 5. Consultation with the SHPO regarding identification and evaluation of historic properties, determination of effects, and ways to avoid, minimize or mitigate adverse effects;
 6. An action plan for unanticipated discoveries during project-related construction activities and operations;
 7. Measures for the treatment and disposition of any human remains that may be discovered, taking into account applicable state laws and the Native American Graves Protection and Repatriation Act (NAGPRA; Section 3001 of the 25 U.S.C.) on federal land;

8. Identification and proposed treatment, avoidance, or mitigation of effects to properties of traditional religious and cultural significance to Indian tribes through the development and implantation of a treatment plan for properties of traditional religious and cultural significance to Indian tribes;
9. Procedures for training MCHC staff in their responsibility to protect historic properties and the requirements of the HPMP;
10. Identification of activities and routine maintenance not requiring consultation with the SHPO;
11. Coordination with the SHPO during implementation of the HPMP; and
12. Procedures for consulting with the Tribe on any future changes or discoveries

II. HPMP REVIEW AND IMPLEMENTATION

- A. The Applicant will submit the HPMP, along with documentation of consultation with the SHPO, to the Commission for review and approval.
- B. If the SHPO concurs with the HPMP, and the Commission determines that the HPMP is adequate, the Commission will forward a copy of the HPMP, along with the view of the concurring parties to the Council for filing.
- C. If the SHPO has not concurred with the HPMP, or the Commission finds the HPMP inadequate, the Commission will consult with the Applicant and the SHPO to see agreement on the HPMP. If concurrence is not reached within 45 days, the Commission will request that the Council enter into the consultation to seek agreement on the HPMP.
 1. If agreement is reached on the HPMP, the Commission will forward a copy of the revised HPMP to the Council for filing.
 2. If agreement on the HPMP cannot be reached among the Commission, the SHPO, the Applicant, and the Council the Commission will request that the Council comment pursuant to Stipulation IV, Part B f this Programmatic Agreement.

- D. The Applicant will, within 30 days of every anniversary of the license issuance, file a report with the Commission and the SHPO of activities conducted under the implemented HPMP. The report will contain a detailed summary of any cultural resources work conducted during the preceding year. If no work was completed, a letter from the Applicant will be prepared to that effect, and will satisfy the intent of this stipulation.

III. INTERIM TREATMENT OF HISTORIC PROPERTIES

- A. All consultation under this stipulation will be in accordance with 36 C.F.R. Sections 800.4 and 800.5 with the Applicant acting as the Agency Official.
- B. If applicable, after a license for the project has been issued, but before the HPMP has been approved by the Commission (hereinafter, "the interim"), the Applicant will consult with the SHPO regarding the effect on historic properties of the following actions related to this license that may be implemented in the interim: (a) all activities, including recreational developments, that require ground disturbance; (b) new construction, demolition, repairs, or rehabilitation of project facilities; or (c) any other procedure or activity that may affect any historic property. The Applicant will consult with the SHPO and apply the criteria of adverse effect, pursuant to 36 C.F.R. Section 800.5(a)(1).
 - 1. If the Applicant and the SHPO agree that the activity will not adversely affect historic properties, the Applicant may proceed in accordance with any agreed-upon treatment measures or conditions. If the Applicant and the SHPO do not agree, the matter will be resolved in accordance with Stipulation IV of this Programmatic Agreement.
 - 2. If either the Applicant or the SHPO determines that the activity may have an adverse effect, they will consult to develop a strategy for avoiding, minimizing, or mitigating adverse effects. If the Applicant and the SHPO reach agreement, the Applicant will implement the agreed-upon strategy. If they disagree, the Applicant will submit the matter to the Commission in accordance with Stipulation IV of this Programmatic Agreement.
 - 3. If either the Applicant or the SHPO determines that the activity may have an adverse effect, and the affected property is a National Historic Landmark, the Applicant will submit the matter to the Commission, which will solicit and consider the views of the consulting parties, and apply the criteria of adverse effect, pursuant to 36 C.F.R. Section 800.1(a)(1).
 - 4. If the Commission or the SHPO finds that the activity may have an adverse effect, the Commission will initiate the process set forth at 36 CFR Sections 800.6 and 800.7(a) through (c)(3).

IV. DISPUTE RESOLUTION

- A. If at any time during implementation of this Programmatic Agreement and the resulting HPMP, the SHPO, or the Council object to any action or any failure to act pursuant to this Programmatic Agreement or the HPMP, they may file written objections with the Commission.
 - 1. The Commission will consult with the objecting party, and with other parties as appropriate, to resolve the objection. The Commission may initiate on its own such consultation to remove any of the Commission's objections.
- B. If the Commission determines that the objection cannot be resolved, the Commission will forward all documentation relevant to the dispute to the Council and request that the Council comment. Within 30 days after receiving all pertinent documentation, the Council will either:
 - 1. Provide the Commission with recommendations, which the Commission will take into account in reaching a final decision regarding the dispute; or
 - 2. Notify the Commission that it will comment pursuant to 36 C.F.R. Section 800.7(c)(1) through (c)(3) and Section 110(a)(1) of the National Historic Preservation Act, and proceed to comment.
- C. The Commission will take into account any Council comment provided in response to such a request, with reference to the subject of the dispute, and will issue a decision on the matter. The Commission's responsibility to carry out all actions under this Programmatic Agreement that are not the subject of dispute will remain unchanged.

V. AMENDMENT AND TERMINATION OF THIS PROGRAMMATIC AGREEMENT

- A. The Commission, SHPO, or the Applicant may request that this Programmatic Agreement be amended, whereupon these parties will consult in accordance with 36 C.F.R. Section 800.14(b) to consider such amendment.
- B. The Commission or the SHPO may terminate this Programmatic Agreement by providing 30 days written notice to the other parties, provided that the Commission and the SHPO consult during the 30-day notice period in order to seek agreement on amendments or other actions that would avoid termination. In the event of termination, the Commission will comply with 36 C.F.R. Sections 3 through 800.7(c)(3), with regard to individual actions covered by this Programmatic Agreement.

Execution of this Programmatic Agreement evidences that the Commission has satisfied its responsibilities pursuant to Section 106 of the National Historic Preservation Act, *as amended*, for all individual actions carried out under the license. Provided, however, that unless and until the Commission issues a license for the Project and this Programmatic Agreement is incorporated by reference therein, this Programmatic Agreement has no independent legal effect for any specific licensee or Project.

**PROGRAMMATIC AGREEMENT
AMONG
THE FEDERAL ENERGY REGULATORY COMMISSION
AND THE
PENNSYLVANIA STATE HISTORIC PRESERVATION OFFICER
FOR
MANAGING HISTORIC PROPERTIES
THAT MAY BE AFFECTED BY A LICENSE ISSUING
TO MAHONING CREEK HYDROELECTRIC COMPANY, LLC
FOR THE CONSTRUCTION AND OPERATION
OF THE MAHONING HYDROELECTRIC PROJECT
IN ARMSTRONG COUNTY, PENNSYLVANIA**

FEDERAL ENERGY REGULATORY COMMISSION

By: _____

Date: _____

Director, Division of Hydropower Licensing

**PROGRAMMATIC AGREEMENT
AMONG
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PENNSYLVANIA STATE HISTORIC PRESERVATION OFFICER
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OF THE MAHONING HYDROELECTRIC PROJECT
IN ARMSTRONG COUNTY, PENNSYLVANIA**

PENNSYLVANIA STATE HISTORIC PRESERVATION OFFICER

By: _____

Date: _____

Pennsylvania State Historic Preservation Officer

**PROGRAMMATIC AGREEMENT
AMONG
THE FEDERAL ENERGY REGULATORY COMMISSION
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PENNSYLVANIA STATE HISTORIC PRESERVATION OFFICER
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TO MAHONING CREEK HYDROELECTRIC COMPANY, LLC
FOR THE CONSTRUCTION AND OPERATION
OF THE MAHONING HYDROELECTRIC PROJECT
IN ARMSTRONG COUNTY, PENNSYLVANIA**

CONCUR: MAHONING CREEK HYDROELECTRIC COMPANY, LLC

By: _____

Date: _____

M. Clifford Phillips
Vice President

**PROGRAMMATIC AGREEMENT
AMONG
THE FEDERAL ENERGY REGULATORY COMMISSION
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FOR THE CONSTRUCTION AND OPERATION
OF THE MAHONING HYDROELECTRIC PROJECT
IN ARMSTRONG COUNTY, PENNSYLVANIA**

CONCUR: TONAWANDA BAND OF SENECA

By: _____

Date: _____

**PROGRAMMATIC AGREEMENT
AMONG
THE FEDERAL ENERGY REGULATORY COMMISSION
AND THE
PENNSYLVANIA STATE HISTORIC PRESERVATION OFFICER
FOR
MANAGING HISTORIC PROPERTIES
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TO MAHONING CREEK HYDROELECTRIC COMPANY, LLC
FOR THE CONSTRUCTION AND OPERATION
OF THE MAHONING HYDROELECTRIC PROJECT
IN ARMSTRONG COUNTY, PENNSYLVANIA**

CONCUR: SENECA NATION OF INDIANS

By: _____

Date: _____

**PROGRAMMATIC AGREEMENT
AMONG
THE FEDERAL ENERGY REGULATORY COMMISSION
AND THE
PENNSYLVANIA STATE HISTORIC PRESERVATION OFFICER
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MANAGING HISTORIC PROPERTIES
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TO MAHONING CREEK HYDROELECTRIC COMPANY, LLC
FOR THE CONSTRUCTION AND OPERATION
OF THE MAHONING HYDROELECTRIC PROJECT
IN ARMSTRONG COUNTY, PENNSYLVANIA**

CONCUR: EASTERN SHAWNEE TRIBE OF OKLAHOMA

By: _____

Date: _____

Appendix A to:

PROGRAMMATIC AGREEMENT AMONG THE FEDERAL ENERGY REGULATORY COMMISSION AND THE PENNSYLVANIA STATE HISTORIC PRESERVATION OFFICER, FOR MANAGING HISTORIC PROPERTIES THAT MAY BE AFFECTED BY A LICENSE ISSUING TO MAHONING CREEK HYDROELECTRIC COMPANY, LLC FOR THE CONSTRUCTION AND OPERATION OF THE MAHONING HYDROELECTRIC PROJECT IN ARMSTRONG COUNTY, PENNSYLVANIA (FERC NO. 12555).

PROJECT, HISTORIC PROPERTIES, AND ANTICIPATED EFFECTS

The purpose of this Appendix is to specify the factual basis of the Programmatic Agreement. Herein, relevant facts concerning the Mahoning Hydroelectric Project (Project) proposed by the Applicant under the Commission's licensing procedures are reviewed, Historic Properties subject to the Programmatic Agreement are identified, and the anticipated effects of the license issuing are disclosed.

Mahoning Creek Hydroelectric Company, LLC (hereafter, "MCHC" or "Applicant") proposes to construct and operate the project which is located on Mahoning Creek in Armstrong County in northwestern Pennsylvania. The Commission and the Pennsylvania State Historic Preservation Officer (SHPO) have jointly determined that the Project could affect Historic Properties.

The Project will be constructed on lands of the United States and will utilize an existing dam owned by the United States and administered by the U.S. Army Corps of Engineers, Pittsburgh District. The total land area within the FERC project boundary is approximately 4 acres.

I. HISTORIC PROPERTIES MANAGEMENT PLAN

A. Project Facilities:

The proposed hydroelectric project facilities include the following:

- Steel intake structure attached to the upstream face of the dam, with removable trashracks and dewatering bulkhead panels;
- Vertical slide gate attached to the upstream face of the dam to isolate the penstock of the upstream pool;
- Steel lining of the existing plugged 108-inch-diameter penetration through the dam monolith 15;

- Steel penstock expansion from 108-inch to 120-inch, and 1,200-foot-long, 120-inch-diameter, buried steel penstock running from the dam to the proposed powerhouse on the left (south) bank, with vent and access manholes;
- Bifurcation of the 120-inch-diameter penstock to two 96-inch-diameter penstocks, with turbine shut-off valves;
- Reinforced concrete powerhouse containing two vertical generating units on the left (south) bank, approximately 100 feet downstream of the stilling basin weir;
- 2.2-mile-long, 25-kilovolt (kV) transmission line within the existing Allegheny Power 12.5-kV right-of-way;
- Refurbished 0.5-mile-long access road;
- Install a new 70 ft-long bridge or a ford to span a small stream on the entrance of the access road.

B. Operating Regime:

The proposed operating regime is not expected to affect historical properties.

C. Proposed Enhancements:

The Applicant proposes no protection, mitigation, and enhancement (PM&E) measures that have the potential to affect historic properties.

II. HISTORIC PROPERTIES IDENTIFIED

No archaeological sites are known to exist within the APE, and the lands within the Project APE have a low potential for intact archaeological resources.

III. ANTICIPATED EFFECTS

No impacts to historic architectural resources or to archaeological sites are expected under the proposed actions.

APPENDIX B

AREA OF POTENTIAL EFFECT FOR MAHONING PROJECT

(To Be Completed Following Consultation)

APPENDIX C

CONSULTATION CORRESPONDENCE

(To Be Completed Following Consultation)

APPENDIX D

**LIST OF ACTIVITIES THAT DO NOT
ADVERSELY AFFECT HISTORIC PROPERTIES**

LIST OF ACTIVITIES THAT DO NOT ADVERSELY AFFECT HISTORIC PROPERTIES

The following is a list of routine operations, maintenance, and enhancement activities that may be required to maintain the Mahoning Hydroelectric Project, operate the Project, or implement the Applicant's Required Actions outlined in the License. These activities will have no adverse effect on historic properties at the Project, and therefore are not subject to review by SHPO.

General Activities, including:

Roads and Existing Disturbed Areas

- Repaving, grading, or repair of existing roads.
- Work in areas that have previously been excavated or dredged provided that the activities do not extend into undisturbed areas.
- Repair or in-situ replacement of water, communications, gas, air, storm and sewer lines.
- Shoreline modifications that do not involve ground disturbing construction, or construction in areas that have been previously disturbed, such as geo-thermal heat and air piping, anchoring systems, boat ramps that do not require cutting, re-shaping of shoreline contours, etc.
- Any ground disturbing activities up to nominal depth of 6 inches.

Security Measures

- Installation of security fences and cautionary signs.
- Placement of cameras, lights, motion detectors, and alarms on buildings or structures.
- Placement and maintenance of public safety devices and signs.

APPENDIX E
BIBLIOGRAPHY

BIBLIOGRAPHY

Brown, E.S. and C.P. DiCiccio, *Armstrong County Iron and Steel Survey* (October 1997) available at <http://www.riversofsteel.com/uploads/files/armstrong-final-report.pdf>

FERC, 1989.

FERC 1990.

MSG, 2007.

Native American Graves Protection and Repatriation Act and the Advisory Council on Historic Preservation's "Policy Statement Regarding Treatment of Human Remains and Grave Goods" (September 27, 1988, Gallup, NM).

"Pennsylvania Historical and Museum Commission Policy on the Treatment of Human Remains" (9 P.S. §202 through §215, "Historic Burial Places Preservation Act"; PA Consolidated Stat. 37, § 104, et seq.).

1 J.H. Beers & Co, Armstrong Co., PA, Her People, Past and Present (1914).

48, No. 190 *Federal Register*, Part IV, 44716-44740 (September 29, 1983).