

Beyond Basics: Opportunities for more effective cultural resource mitigation in Pennsylvania

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About this white paper

This document is the product of an effort to research and analyze the ways in which cultural resource mitigation is currently practiced in Pennsylvania, and to propose alternative management solutions to improve its effectiveness and efficiency. This project began as a partnership between the State Historic Preservation Office and the Delaware Valley Regional Planning Commission and many of the concepts, conclusions, and proposals were developed collaboratively by Cory Kegerise (SHPO) and Alison Hastings (DVRPC). This work was supported by PennDOT and the Federal Highway Administration As part of their efforts to more closely align project consultation and planning.

This project also benefited from the input of a group of local and county planners, citizens, and elected officials from Delaware County who served in an advisory capacity during the early phases of research and concept testing. The proposal reflects many of the concerns and issues raised by the group during that process.

The questions that this paper seeks to explore are whether mitigation, as it has been defined, determined, and implemented over time is adequate to compensate for resources lost and is there a better system for managing mitigation projects? Because of the different identification and investigation techniques associated with archaeological resources, along with ethical issues surrounding mitigation, this discussion is focused on mitigation for projects affecting buildings, structures, and other above ground resources.

PART ONE: Understanding and Defining Mitigation

Introduction

Mitigation is a concept that has been at the core of modern preservation practice and cultural resource management since the passage of the National Historic Preservation Act in 1966. Then, as now, cultural resources, and those who sought their protection were not infrequently characterized as impediments to progress, obstacles in the path of projects that were necessary and beneficial to the public. The consultation process developed to implement Section 106 of the Act helped enshrine a tiered system of possible outcomes for historic properties, starting with avoidance and ending with mitigation for loss or significant harm. This approach has influenced how preservationists have assessed and managed impacts to cultural resources from projects of all types and sources for more than 50 years. Conceptually and practically, the system developed as part of the 106 process is ethically sound and reflects a “middle ground” approach to balancing publicly supported undertakings with irreplaceable cultural resources.

What is consultation and how do we get to mitigation?

Consultation is the term used to describe the process that public agencies, their grantees and project sponsors go through in order to comply with Federal and (most) state cultural resource laws. The very name of the process describes its nature and purpose and distinguishes it from regulatory review processes used in environmental management. This process is not prescriptive in its outcome, but rather defines a series of steps a project sponsor is required to follow in order to determine whether significant cultural resources will be impacted by the proposed project, evaluate and articulate what those effects will be, and then make a good faith effort to either avoid, minimize, or mitigate those effects. These decisions must be made in consultation with a variety of stakeholders, including State Historic Preservation Offices (SHPO), local governments, community organizations, and affected property owners. In the end, however, the decision to proceed (or not) with the project is left to the agency supporting the undertaking, along with the responsibility to implement any agreed upon avoidance, minimization, or mitigation measures.

In all consultations, the first and preferred alternative is to avoid the resource, be it a building or archaeological site, altogether. If full avoidance is not possible, then efforts to minimize the effects are the next prudent alternative. In situations where neither of these approaches is feasible and cultural resources must be impacted to accommodate the project, sponsors are required to compensate for the loss of the resource through projects that will, in some way, compensate for the impact to or loss of the resource. While the description of this process

captures how the consultation process is intended to, and frequently does work, it doesn't address efficacy and outcomes. This approach leaves a great deal to chance and leaves open the questions of whether mitigation projects adequately compensate for impacts to affected resources and whether there are unrealized opportunities to connect mitigation to other preservation needs, both geographically and topically.

Important Terms, Concepts, and Definitions

A literature review of articles, presentations, and manuals related to cultural resource management revealed that these documents use the terms "creative", "alternative", and "advanced" interchangeably when referring to mitigation strategies that are meant to differ from the norm. These terms are not used consistently, however, meaning that one author may use the term "creative" while a different author will use "alternative" to describe the same approach or strategy. It is also clear from reading these documents that there are a variety of concepts that should be articulated, albeit with standardized definitions. Related to defining these terms is distinguishing how they are distinct from "standard" approaches as well as from each other. The following definitions are offered for purposes of clarity and discussion.

Standard Mitigation

Standard Mitigation is one or more traditional preservation activities, typically recordation, interpretation, and design modification, intended to compensate for the loss of or adverse effect to the historic resource.

PennDOT's Cultural Resources Handbook¹ lists a suite of standard mitigation treatments, some of which would be considered "creative" or "alternative" by other agencies or states. Some standard mitigation options for historic structures include:

1. **Save the historic resource**

When on-site mitigation is possible, preserve the resource in place without major alteration, or incorporate the resource into a larger proposed project. When the resource has to be demolished or removed, there is an opportunity to market the building, object, or bridge to find a new owner, then moving it to a new location. Often, marketing and real estate transactions are not the forte of the regulated agency.

¹ Pennsylvania Department of Transportation. "Publication #689 – The Transportation Project Development Process: Cultural Resources Handbook." March 2013. Available: <ftp://ftp.dot.state.pa.us/public/PubsForms/Publications/PUB%20689.pdf>

Additionally, moving the resource to a new location does not guarantee that the resource will be fully rehabilitated and adequately maintained.

2. Recordation and Scholarly Research

This may also be known as documentation before demolition. However, documentation unto itself is not enough to mitigate for the loss of a resource. It should be done in addition to other mitigation activities.

3. Public Education Components

These materials often include the creation of brochures, booklets, websites, exhibits and museum displays, interpretive signs, and school curricula. This mitigation activity can often require more coordination than is often assumed, such as working with educators to make sure curricula meets state standards or distributing the brochure to its intended audience.

While these mitigation strategies are often necessary and worthwhile, standard mitigation can be limited. Standard mitigation focuses mostly on the adversely affected resource and may produce limited public benefit. Resulting projects, such as public education components, may become outdated quickly. It does not encourage support for preservation or planning in a given community.

Context sensitive design and incorporating design elements that reflect or reference history and identity are currently considered standard mitigation activities. Context sensitive design is becoming more standard practice among DOTs as agency staff become more collaborative, working with communities and other stakeholders on design. For the purposes of this white paper, design is not considered a standard mitigation activity, but rather a standard project approach.

Creative Mitigation

Creative Mitigation is an activity that goes *beyond* standard mitigation and may happen on or off-site. Creative Mitigation provides a benefit beyond the immediately affected resource while benefiting the affected community, promotes and supports preservation, and involves the public in recognizing the special history and culture of a location.

Activities can include:

1. Development of community preservation tools

Communities are often made aware of their historic resources during the Section 106 review process. Unfortunately, at time when there are many activities, concerns, and pastimes competing for one's attention, many people are not concerned about a historic resource until it is threatened. The development of preservation tools can be as worthwhile to the community as the future usefulness of the tool itself. Such tools may include preservation plans, preservation ordinances, historic resource surveys, design guidelines, historic context narratives, or feasibility studies. These tools further historic preservation in a specific community.

2. Financial contribution to a local preservation group, such as a museum or historical society, or effort.

Financial contribution should not be a general operating support, but rather in support of standard mitigation activities, such as distributing a brochure or maintaining a museum display or contributing funds to an already existing capital project.

3. Financial contribution to a local economic development project that benefits historic resources

Historic preservation is a cornerstone of many local economic development activities. For instance, the renowned and successful Main Street® Program was created and administered by the National Trust for Historic Preservation. Many downtown improvement projects, such as installing new streetlights or running a façade improvement program, embrace a place's history and incorporate historic design elements. Financial contribution could support part of these

Creative Mitigation is in addition to, not a substitute for, standard mitigation.

Alternative Mitigation

Alternative Mitigation can be similar to Creative Mitigation except that the larger community, such as a group of municipalities, a county, a region, or the entire state could benefit from the mitigation activity. In many instances, one single project will not fund the entire alternative mitigation activity. The entire alternative mitigation is funded through the aggregation of adverse effects and impacts.

1. Establishment of a new fund or grant program to benefit preservation projects
2. Restoration, preservation or protection of one important resource in exchange for the alteration or loss of another.

3. Development of preservation tools
4. Contribution to Scholarly Research

Advance Mitigation

Advance Mitigation, sometimes referred incorrectly to as “advanced mitigation,” is a funding process rather than a type of mitigation activity. Advance Mitigation is the completion of a mitigation activity *now* expressly for the purpose of providing compensatory mitigation in advance of impacts to similar resources in the future.

Advance mitigation is used in exceptional circumstances and could allow for the commission or completion of creative or alternative mitigation activities well before a regulated activity begins its review process. Completed mitigation activities are considered “credits” that are “banked.” As compensatory mitigation is required, the sponsor could apply to a bank or administrative body to receive a “debit,” thus fulfilling its compensatory requirement.

Advance mitigation now be viewed as an accounting process rather than a set of activity options.

Insufficient Mitigation

Any proposal that seeks to improve mitigation must necessarily identify and respond to the real or perceived shortcomings of the existing process or standards of practice. For purposes of this paper and proposal, insufficient mitigation includes projects or activities that are inefficient, redundant, or where the scope or financial commitment are not commensurate with the level of impact to the resources(s).

Current Practices in Cultural Resources Mitigation

When consultation on a project has progressed to the point where the parties agree that there will be an adverse effect, the next task is to determine the appropriate mitigation. There is no standard approach to determining what constitutes appropriate and adequate mitigation and what the monetary value of those actions should be. Those decisions are typically made through negotiations with the project sponsor, supporting agencies, and interested stakeholders, with the outcomes being a combination of the creativity of the group, identifiable needs and opportunities, and the financial commitment of the sponsor. The agreed upon

actions are memorialized in a memorandum of understanding, which is signed by the participating parties and typically monitored by the SHPO and the responsible agencies.

The scope, nature, cost, and efficacy of mitigation projects varies greatly based on the project and the consulting parties. Anecdotally, experienced participants in consultation and mitigation negotiations report that these factors are a function of “who’s at the table”, rather than the implementation of a plan or application of a specific strategy. In projects where there is robust public interest and active consulting parties, mitigation projects are often more robust and diverse. For projects where there is little public engagement, mitigation projects tend to be more standard in their scope. In most cases, however, mitigation tends to be resource oriented, and not necessarily responsive to other community needs. There are recent examples where this has not been the case and these projects provide useful guidance for the development of other management mitigation models.

Philadelphia Schools Survey

In 2010, PennDOT acquired the then-closed Henry Longfellow School in the Fishtown neighborhood of Philadelphia in conjunction with reconstruction of an interchange along I-95. The school was listed in the National Register of Historic Places as part of a thematic resource nomination of pre-1938 public schools in 1986 and PennDOT proposed demolition to accommodate the reconfiguration of exit ramps. In consultation with the Federal Highway Administration (FHWA), PennDOT and SHPO developed a mitigation scope that included the resurvey of all schools included in the 1980s thematic nominations, the survey of schools built after 1938, and the development of a historic context for post-1938 public schools. The parties agreed that SHPO would implement the mitigation and FHWA and PennDOT provided SHPO with \$25,000 for this project.

While developing work plans for the project, SHPO determined that the funds provided were insufficient to execute the agreed upon scope of work, and staff began developing alternative plans that would meet the allotted budget. During this process another NR listed school, Thomas Edison High School in North Philadelphia, burned, leaving only portion of the exterior walls intact. The City used CDBG funds to demolish the remaining portion and prep the site for private development. Because the school was listed, the use of Federal funds to demolish the building was considered an adverse effect that required mitigation.

The SHPO staff involved in the consultation for the Edison School had been actively involved in the scoping discussions for the Longfellow mitigation and suggested that rather than develop a different set of projects for Edison, that the mitigation should be the same as for Longfellow,

and the project sponsor should contribute funds to help fully execute the scope as originally conceived. The Edison MOA was drafted to include the same tasks as Longfellow and the developer provide \$20,000 to the SHPO to be pooled with the Longfellow funds. This provided sufficient funding for all tasks and the survey and all related projects were completed in 2017.

There are several important takeaways from this project. First, the mitigation projects were responsive to an identified need that was related to the affected resources. Second, the mitigation benefited resources and communities beyond the immediate project area. Third, the funds committed for mitigation from the individual projects were, for a variety of reasons, not enough to fully cover the cost of the mitigation projects. However, the pooling of the funds, allowed each project to leverage the other to achieve an impact that neither could have realized on their own. Finally, and perhaps most importantly, the convergence of these two projects and associated mitigation was largely accidental. The involvement of the same SHPO staff member in discussions about both projects was the critical link that allowed for the scopes to be synchronized.

Beaver County Ethane Cracker

In 2013, Shell Chemical proposed the construction of a large petrochemical processing facility along the banks of the Ohio River in Beaver County, northwest of Pittsburgh. The chosen site included several cultural resources that were either listed in or eligible for the National Register, including the former Beaver County Home, the St. Joseph's zinc smelter, a canal lock, and the prehistoric East Dock archaeological site. Construction of the complex resulted in the complete destruction of all of the identified resources on the property, which triggered a lengthy negotiation process to determine the appropriate mitigation measures. Because the affected resources had varying levels of significance, ranging from local, to regional, to statewide, the mitigation projects were selected to benefit other resources at each of those levels.

The finalized MOA provided in excess of \$7.5 million to SHPO and the Seneca Nation of Indians for the implementation of numerous projects across southwestern Pennsylvania. These projects included the survey of historic resources and development of preservation guidelines, and a preservation plan for Beaver Borough, a cultural resources management plan for Point State Park, oral history collection, a market study for deindustrialized cities, curation of archaeological artifacts at the State Museum of Pennsylvania, cultural heritage projects for the Seneca, and the development of a new statewide management system for data about cultural resources.

Important lessons from this project include the formulation of mitigation projects that benefitted resources beyond the immediate project area and financial commitments that reflects the significance level of the affected resources.

Mitigation in Environmental Resource Management

Mitigation, or taking compensatory action to offset a destructive or negative impact, is a practice common in natural resource management, especially for wetlands and threatened and endangered species. Natural resources tend to lend themselves to other forms of mitigation, including advance mitigation, that may not be appropriate or available for cultural resources. These differences stem largely from the inherent nature of the resources involved, the scale of the impacts, and the ability to replicate and monetize their management.

Wetland Mitigation

Wetland mitigation is the likely the most widely practiced and well understood form of natural resource mitigation practiced today. Wetlands may be impacted by transportation projects, commercial and residential construction, and other forms of land development activities. To compensate for these impacts, project sponsors will often construct an equally-sized area of man-made wetlands in prescribed locations to compensate for the loss of the natural wetland. These constructed wetlands are designed and engineered to perform certain biological functions, such as water retention and filtration, as well as provide habitat for certain plant and animal species. Because the design characteristics that produce these attributes can be studied, predicted, and replicated, it is possible to construct an acre of “artificial” wetlands that performs the same biological functions as an acre of naturally-occurring wetlands in a variety of locations, including far from naturally-occurring areas.

While wetlands can be constructed in a variety of locations, they are considered necessary and valuable to ecosystems at a local scale. Thus, it would not be ecologically beneficial to construct hundreds of acres of wetlands in a single location to offset the loss of small acreages scattered throughout the state. To manage this distribution, environmental mitigation managers divide geographic areas into smaller management zones and direct mitigation activities to the same areas where the impacts occurred.

The predictability and replicability of wetlands allows construction costs to be anticipated and to occur in advance of an impact from a specific project. For example, land acquisition costs in a particular region can be generally predicted based on historical sales information. The type of

construction and the cost of plant materials and other supplies can be generalized to a degree of certainty that allows for environmental engineers to develop an average per acre cost for wetlands in a particular location. This allows agencies and project sponsors who may be required to mitigate adverse impacts to natural wetlands to calculate the impacted acreage and include construction costs for an equally-sized area in project budgets during the planning phase for individual projects.

Predictability and monetization also allow for “banking” using a system of credits and debits, as well as coordination with other natural resource management plans. Transportation agencies, for example, tend to plan on long time horizons and thus are able to anticipate the impacts of multiple projects over the course of years or decades. If that agency anticipates impacting 10 acres of wetlands in a region over the course of a decade, it can provide funding for the construction of 10 acres of new wetlands in one shot or at regular intervals before any of the projects begin construction, thus earning a number of “credits” that can be “debited” when projects are permitted and get underway. It also allows for those new acres to be constructed in locations that meet larger planning needs. If a state forest has identified the need for more wetlands within its boundaries, the transportation agency can direct its funding to the state forest agency, thereby advancing multiple goals simultaneously.

A final facet of wetlands mitigation is the management of mitigation projects. In some circumstances, the agency responsible for the mitigation both finances and manages the mitigation project directly. In others, they provide funding to a different agency or management entity with specialized experience and expertise in the construction and management of wetlands. Pre-established agreements allow the project sponsor to claim completion of the mitigation at the time the funds are transferred, thus allowing resource agencies (i.e. Fish and Boat Commission, DCNR, Army Corps) to construct the wetlands according to their specifications.

Species Habitat Management and Mitigation

Another set of relevant mitigation practices comes from the management of threatened and endangered species. Like wetlands, mitigation usually arises from the destruction of habitat where certain species are known, or are likely to exist. When a project impairs or destroys such habitat, a project sponsor may be required to mitigate that impact through the construction or enhancement of habitat in other locations. Also, similar to wetlands, species habitat mitigation can be coordinated with broader habitat restoration and management plans developed by resource management agencies so that the funding provided by project sponsors can be leveraged to achieve broader goals and projects are managed by wildlife management experts.

In Pennsylvania, this approach has been employed for fresh water mussels and brown-nosed bats.

Other Mitigation Models

While wetlands and wildlife management are the most well-known and time-tested approaches to mitigation in the natural resources realm, there are other programs and projects that offer valuable insight for new cultural resource models.

- Schuylkill River Restoration Fund - The Schuylkill River Restoration Fund, managed by the Schuylkill River Greenways National Heritage Area (SRGNHA), is a grant fund for watershed restoration and water quality improvement projects funded in part by mitigation funds from Exelon. The Restoration Fund originated with a request by Exelon to the Delaware River Basin Commission (DRBC) to increase water intake from the Schuylkill River at the Limerick Nuclear Generating Station in Montgomery County. Because the change in water consumption and discharge would result in a change to the water temperature and habitat quality, Exelon was required to undertake mitigation projects to improve the quality and quantity of water in the river in other ways. Rather than undertake such projects directly, the company worked with SRGNHA to develop a grant program to support projects throughout the Schuylkill River watershed. Exelon provided funding to SRGNHA commensurate with their impact according to amounts established and approved by DRBC, which fulfilled their mitigation obligations. SRGNHA developed grant guidelines and an application process for projects and then distributed the money to nonprofit organizations and local governments. Over time, SRGNHA solicited contributions from other funders, increasing the amount of funding available for eligible projects each year and leveraging the initial contribution.
- Philadelphia Water Department Aquatic Resources Registry – The Aquatic Resources Registry is a list of projects related to stream restoration, wetland restoration, tidal wetlands, and fish passage identified as opportunities for partnership by the Philadelphia Water Department. In situations where other agencies or private entities are required to undertake water quality mitigation projects within the PWD service area, the registry serves as a guide for fundable and beneficial projects those agencies could select for mitigation.

Lessons learned and applicability for cultural resources

None of the mitigation programs used in allied resource management fields appear to provide a completely transferable model for cultural resources. However, these approaches and practices do offer valuable insight and important concepts that could be modified for

development of a new approach to mitigation for historic preservation projects. Some of the significant concepts, along with the benefits or limitations for cultural resources are described below.

- Monetization of impacts and mitigation obligations
 - BENEFITS: The success and large-scale application of wetlands mitigation programs came about when resource agencies were able to ascribe a dollar value to the construction of new wetlands. Assigning a predictable dollar value to a unit of wetland allowed project agencies to more accurately forecast the impacts of their projects and include mitigation funds in project budgets or as annualized expenditures. It also eliminated the need for lengthy negotiations over the value of individual impacts and mitigation activities.
 - CHALLENGES: Unlike wetlands, cultural resources do not lend themselves to standardized “pricing.”
- Credits and debits
 - BENEFITS: A system of credits and debits would facilitate advance mitigation, perhaps allowing agencies to contribute proactively to preservation projects and facilitating timely responses to urgent or pressing needs.
 - CHALLENGES: It would be extremely difficult to develop a standard contribution and cost structure or identify which mitigation projects will be appropriate for yet-to-be-determined resources and impacts.
- Assignment of responsibility
 - BENEFITS: Natural resource mitigation programs generally allow project sponsors and agencies to contribute funds to a resource management agency who then assumes responsibility for completing the mitigation task. Agreement documents allow the project sponsor to fulfill their mitigation obligation at the time of the transfer. This allows entities who have specialized knowledge and expertise in the mitigation activity to lead the project and creates opportunities to coordinate mitigation projects with larger plans.
 - CHALLENGES: Agencies that assume responsibility for fulfilling mitigation obligations should not be expected to absorb administrative costs for projects, especially if the mitigation funding is intended to be spent on outside expenses, such as consultants or construction costs.
- Coordination and planning

- BENEFITS: Coordinating mitigation projects and funding with the plans of other agencies and partners can help to leverage resources and maximize project impact.
- CHALLENGES: Effective coordination requires negotiation and agreement documents in advance of implementation, meaning significant lead time before coordination can occur.

Conclusions

Research into the best practices, models from allied industries, and input from stakeholders suggest that developing a new approach to managing mitigation for cultural resources in Pennsylvania is possible and would yield numerous benefits for project sponsors, public agencies, mitigation project sponsors, and the resources themselves. The structure of this new system and is important and should reflect a number of values and achieve some specific outcomes in order to be effective and efficient. A new approach should:

- Aggregate and leverage financial resources intentionally, rather than accidentally
- Provide professional oversight and management of mitigation projects and funds
- Function independently of any one agency or organization
- Create access points for locally-sponsored projects to benefit from mitigation funds
- Coordinate and facilitate the implementation of planning goals at a number of scales
- Vest responsibility for implementation of mitigation projects in entities with relevant experience and expertise
- Make calculation of the mitigation obligation more transparent, predictable, commensurate with impact, and consistent amongst agencies and locations
- Allow agencies and project sponsors to move forward with projects upon commitment of mitigation funds
- Encourage good project planning

PART TWO: Preservation Mitigation Bank Proposal

The Preservation Mitigation Bank (Bank) is a management program designed to facilitate meaningful mitigation projects resulting from adverse effects to cultural resources in conjunction with Federal and State assisted projects. The goal of the Bank is to help agencies and project sponsors identify meaningful projects that will benefit the affected resource and surrounding communities while meeting their mitigation obligations in a timely and predictable manner. The Bank will:

- Encourage local governments and community organizations to identify and prioritize projects that will benefit historic resources through proactive planning;
- Link mitigation obligations to high priority preservation projects by directing funding to community sponsors;
- Allow funds dedicated to mitigation projects to be aggregated and leveraged;
- Provide external oversight and management systems for mitigation projects so that project sponsors can satisfy their obligations and complete their projects in a timely manner;
- Ensure high-quality and enduring preservation outcomes and products from mitigation projects.

The Bank is comprised of two separate, but interrelated components – the Project Registry (Registry) and the Mitigation Fund (Fund).

- The Registry is a list of preservation projects, both capital and non-capital, to be consulted during the selection of appropriate mitigation measures.
- The Fund is a fiscal vehicle to receive, hold, and disburse funds contributed by project sponsors and other sources for mitigation projects.

In its simplest form, the agency and consulting parties working to determine the most appropriate mitigation measures for a given project will select one or more activities/projects from the Registry that satisfy the mitigation objectives and geographic requirements. Simultaneously, the agency and consulting parties will determine the monetary value of the mitigation obligation for the project in question. If the cost of completing the selected mitigation project exceeds the mitigation obligation, the project sponsor may contribute the obligated amount to the Fund, which will satisfy the mitigation obligation by the agency/sponsor and allow the project to proceed. The Fund will hold the contribution in reserve until sufficient additional monies become available to complete the selected project. When enough money to complete the project becomes available, the Registry project sponsor will apply to the Fund for withdrawal of the accumulated monies and complete the project.

Management of the Preservation Mitigation Bank

The Bank will be an independent nonprofit organization overseen by a Board of Trustees with day-to-day management by a professional staff. This could be achieved through the establishment of a stand-alone management entity or through a contractual arrangement with an existing organization with expertise related to the Bank's mission and purposes.

The Board will be self-perpetuating and comprised of both ex-officio and at-large members.

Ex-officio members should include:

- a representative of the State Historic Preservation Office
- representatives from participating agencies

At-Large members should include:

- a representative from a Metropolitan or Regional Planning Organization
- a County Commissioner selected by the County Commissioners Association of Pennsylvania
- a representative from a City selected by the Pennsylvania Municipal League
- a representative from a Borough selected by the Pennsylvania State Association of Boroughs
- a Township Supervisor selected by the Pennsylvania State Association of Township Supervisors
- a representative of the American Planning Association – Pennsylvania Chapter
- 3-5 individuals with a demonstrated interest in or knowledge of historic preservation

[NOTE – this proposal assumes that the Bank will be statewide in its scope and applicability, but these roles could be filled by representatives from a smaller geographic area, if that is the desired course of action]

The Board's roles and duties will be:

- Establish policies and procedures for developing and maintaining the Project Registry
- Provide fiscal oversight for the funds under the Bank's management, including development of investment and accounting policies
- Approve projects selected for management by the Bank
- Approve the expenditure of funds for projects on the Registry
- Establish policies and procedures necessary for governance and the conduct of the Board's business

How the Bank Works

Project Registry

The Registry is a list of projects that preserve and protect historic and cultural resources in the Commonwealth by implementing one or more of the goals and objectives articulated in the Statewide Historic Preservation Plan. The goal and purpose of the Registry is to compile, in one location, a dynamic list of preservation-related projects within a given geographic area to ensure that decision-makers, funders, local leaders, and advocates have ready access to reliable information about local preservation needs and priorities.

The Registry may include documentation, education and interpretation, repair/rehabilitation, design and development, community revitalization, and related projects that improve the public's understanding and appreciation of historic places and/or the physical condition of these resources.

Populating the Registry

The Registry will be populated through consultation with the State Historic Preservation Office, statewide, regional, and local nonprofit organizations, Regional, County, and local planning agencies, municipalities, and other state and Federal agencies. Projects may be drawn from locally-adopted comprehensive, preservation, or revitalization plans, master or strategic plans developed by nonprofit community organizations and historic sites, or survey and documentation needs identified by PHMC or another state agency, among other sources. While specific project eligibility guidelines for the Registry will need to be crafted prior to implementation, there are a few threshold criteria that should be considered:

- Is the project sponsor committed to and capable of implementing the project?
- Is there a realistic and achievable plan for the project?
- Is the projected cost reasonable and accurate?
- Is the timeline reasonable and achievable?

Prior to the launch of the Bank, the Registry will need to be populated with projects from existing plans and previously identified and anticipated needs that meet the selection criteria. The Bank should establish procedures for adding projects to the Registry periodically through an open submission process that encourages maximum participation from a wide variety of locations, organizations, and resource types. The success of the Bank depends upon having a broad portfolio of preservation projects and resource types to match to mitigation obligations.

Projects submitted during the open call process should be evaluated against the selection to determine their suitability, as not all suggested projects will be appropriate or realistic for the Registry.

Registry Project Prioritization and Selection

Project Location

The questions of scale and geographic extent will be among the most significant issues driving the eligibility criteria for the Registry. For example, if the Bank is established for the purpose of managing mitigation activities along a particular road corridor, it may be appropriate to limit Registry projects to areas adjacent to that corridor. If the Bank is established to address all mitigation activities within a county or multi-county region, then the Registry may be limited to projects within those counties. Regardless of the chosen scale, it will be necessary to associate meaningful geographic identifiers with each project to assist in sorting and selection during the consultation process. At a minimum, Registry projects should be sortable by municipality, though it may be necessary to layer in additional geographic qualifiers such as:

- zip code
- neighborhood
- planning area
- watershed
- Heritage Area

The application of more targeted geographic filters may be especially necessary in large municipalities, especially urban centers like Philadelphia. These geographies would be considered separate from the resource-specific geographies, such as historic district boundaries, when evaluating suitability for mitigation activities.

Project Urgency, Need, and Prioritization

The Registry may include both short and long term projects from whatever geographic scale is appropriate to its purpose. To ensure that mitigation funds are used in a manner that achieves the most effective outcomes, projects on the Registry will be evaluated and prioritized at the time they are added to the list and then regularly throughout their lifecycle. Projects with a higher priority ranking should be considered first, as they have the greatest likelihood of being completed in the near future, are of the greatest urgency, and will have the greatest cumulative effect on preservation activities in that community.

The Registry should accommodate short, medium, and long-range projects, as well as phased projects that may be implemented in smaller, more discreet phases undertaken over time. However, due to the sometimes extended duration of consultation, the Registry is unlikely to be suitable for projects of an extremely urgent or time-critical nature. It is conceivable, however, that establishment of a separately-administered emergency fund would be considered as a Registry project under the right circumstances.

The prioritization of Registry projects should account for a number of factors. In some instances there may be cumulative benefits to be realized from implementing projects in a strategic manner. Other projects may be time-sensitive. Other projects may have previously committed or available funding and a higher priority may help close the gap and move the project to implementation.

While a target completion date identified by the project sponsor should be considered in establishing urgency, it should not be the only factor. Urgency and need can be articulated in multiple ways in the Registry, but a preliminary structure may be to use a ranked scale of 1 to 5, where 1 is the most urgent/greatest immediate need and 5 is the least urgent/least immediate need. Other factors to be considered when determining urgency and need could include:

- The extent to which completing a given project will enable other projects on the Registry or in the geographic area to be completed more efficiently or effectively
- The extent to which a resource is threatened by deterioration or neglect
- The likelihood that information gathered/generated during the course of the project will benefit other historic resources or Registry projects
- The commitment of other funds to the project

EXAMPLE: Township X submits a proposal to conduct a municipality-wide reconnaissance level survey of historic resources. The goal is to complete the survey within 5 years at an estimated cost of \$50,000. The project is not time-sensitive, but when complete the survey will assist in future planning efforts and facilitate consultation for anticipated Section 106 or State History Code projects. The Township has not yet budgeted any of its own funds to support the project. Thus, when the project is added to the Registry it is assigned a priority ranking of 3. The following year a Section 106 consultation for a transportation project results in an adverse effect and PennDOT commits \$25,000 to the survey project as mitigation. The mitigation funds are deposited in the Bank and because some funds are now available for the survey, its priority is changed from 3 to 2. That same year the Township commits \$10,000 of its own funds to the survey project, narrowing the funding gap and moving the project closer to implementation. The priority ranking is now changed to 1, meaning that it should be considered first in future

consultation processes. The project may remain on the Registry for up to 5 years before it must be renewed and have the scope and budget adjusted. In this example the Township may decide to deposit its portion of the funding in the Bank or hold the funds in escrow until the balance becomes available.

Project Goals

Each project entered in the Registry must demonstrate a clear relationship to one or more of the goals, objectives, and actions in the Pennsylvania Statewide Historic Preservation Plan in place at the time of its initial entry. The goal attributions will be the unifying factor between Registry projects and mitigation goals when Registry projects are evaluated for mitigation suitability. This relationship is important because many of the statutes, regulations, and guiding principles governing mitigation expenditures require that the mitigation action have a rational nexus with the impact. The Statewide Plan is prepared on a 5 year cycle under the leadership of the State Historic Preservation Office. The Plan identifies strategic goals for identifying, preserving, and enhancing historic resources in the Commonwealth and is intended to guide the work of the SHPO, partner agencies, community organizations, local governments, and the public.

Using the Statewide Plan framework will allow agencies and project sponsors to identify the ways in which they are implementing the Plan and help ensure that public expenditures on mitigation activities are contributing to the implementation of a larger vision for cultural resources in the Commonwealth. It also helps establish clear relationships between local planning efforts and the Statewide Plan.

EXAMPLE: The following list of hypothetical activities illustrates the range of possible projects that might be entered into the Registry and how they relate to the 2012-2017 Statewide Historic Preservation Plan.

<u>Municipality</u>	<u>Sponsor</u>	<u>Project</u>	<u>State Plan Goals</u>
Smithville	Borough of Smithville	Historic Preservation Plan	1.6 – develop planning tools for local governments
Smithville	Smithville Historical Society	New roof for museum	

Project Planning

Projects entered into the Registry must demonstrate a reasonable level of viability that it is achievable within a five year timeframe. Viability is demonstrated through proper scoping and planning by the Project Sponsor. The amount and type of planning necessary for each project will vary based on the nature of the project and projects that are further along in their planning at the time of registration should be assigned a higher priority ranking. All capital projects should be based upon the findings and recommendations of a Historic Structure Report or preservation plan and must meet the Secretary of the Interior's Standards for the Treatment of Historic Properties to be eligible for funding. Final determination of conformance with the standards will be made prior to the release of funds from the Bank. All planning and non-construction projects must conform to the applicable guidelines issued by the Pennsylvania State Historic Preservation Office and the Secretary's Standards.

Releasing money from the Fund

After a project sponsor has transferred the agreed upon amount to the Fund, the Bank manager will notify the Registry project contact and inform them of the availability of funds for their project. The sponsoring organization will then submit an application to the Fund containing an updated budget, schedule, and project plans/scopes of work. If the amount of funding is sufficient to cover the full cost of the project, the Fund and sponsor will execute a funding agreement and the sponsor can proceed with the project. The Fund will either disburse funds up front or reimburse the sponsor, based on policies determined by the Board. If the available amount is not sufficient to cover the full project cost, the sponsor can submit evidence that they have the remaining balance available or may raise funds from outside entities to secure the balance. The project will also be given a higher priority on the registry, so that if additional mitigation obligations are committed to the Fund before the sponsor raises the balance, the project will be considered before others on the list. The Fund will act as a grant manager, reviewing project plans, collecting progress reports, and certifying completion of the project.

Recapturing and repurposing mitigation funds

Projects on the Registry should be reviewed, affirmed, and updated periodically, ideally every 3 to 5 years. This process will determine whether the need still exists, whether the budget remains the same, and whether the sponsor retains the capacity to implement the project. In the event that the need no longer exists, which may occur because the sponsor secured the money from other sources, the property has been destroyed, or organizational priorities have

changed, the project may be removed from the Registry. If funds have been committed for that project, but have not been disbursed, the Board may approve reassigning those funds to a different project that meets that same goals and geographic considerations as the original project. This may also occur if the project is completed underbudget and there are unspent funds, or if the project sponsor is no longer able to implement the project as originally proposed. The renewal/update process also serves the purpose of updating the project scope and budget to reflect the passage of time and changes in labor and material costs.

The sponsor of the project that initiated the mitigation and the related agencies would not need to approve the reassignment of funds, provided that the new projects meet the same mitigation goals. Through pre-signed participation agreements, the obligations for those parties would have satisfied when the money was transferred to the Fund. They should, however, be notified of the change, as well as upon project completion.

PART THREE: Using the Mitigation Bank During Consultation

When is the Mitigation Bank Appropriate and Applicable?

The Mitigation Bank and the advantages it may offer to both project sponsors and mitigation beneficiaries should not be seen as a substitution for meaningful consultation and the pursuit of alternatives to adverse effects. The implementing regulations for Section 106 and the SHPO's practice of following similar procedures for State assisted projects require that project sponsors make good faith efforts to avoid or minimize effects on cultural resources before mitigation is considered. Thus, it is important to have clear policies and procedures to clarify the circumstances under which the Mitigation Bank, notably the financial contribution aspects, is appropriate and advantageous. As a planning tool, the Registry will be useful for recording and identifying preservation priorities for a variety of purposes, independent of the Fund.

Before a project can be eligible for participation in the Mitigation Bank, the following conditions must be met:

The project sponsors must have taken all reasonable and appropriate steps to either avoid or minimize the effects of the project on cultural resources; and one or more of the following:

- Standard mitigation treatments (recordation, relocation, design, education) are insufficient to adequately compensate for the adverse effect; or
- The affected resource is sufficiently documented, rendering recordation unnecessary, but mitigation is still required; or
- Multiple projects will affect the same resource within a reasonably short time period; or
- Projects affecting multiple resources of a similar type within a reasonably close geographic area are planned to be undertaken within a reasonably short time period

Using the Bank During Consultation

When project circumstances suggest that the scope or duration of the mitigation projects would be better managed by a third party or the mitigation obligation is not sufficient to support a meaningful project, the Mitigation Bank may be an appropriate management tool. To use the Bank effectively, the consulting parties will need to determine the mitigation goals for the project and the dollar value of the mitigation obligation.

Determining the Goals of Mitigation

To match the impacting project with the appropriate mitigation project on the Registry, the two tasks need to use a common vocabulary. The suggested approach is for these goals to be correlated with the goals and actions items in the Statewide Historic Preservation Plan. Participants in the consultation process would use a worksheet to document relevant findings and conclusions and select the appropriate Plan goals that would mitigate the effects of the project. Those goals would then be cross-referenced with the Registry to identify projects within the selected geographic area that would also satisfy those goals. When a short list of potential projects has been identified, the consulting parties would select one or more from the list and proceed to drafting an MOU to memorialize the commitments and initiate the projects.

EXAMPLE 1: A transportation project with a total budget of \$1,000,000, including soft and hard costs, will result in the partial demolition of a locally significant farm complex, individually listed on the National Register. The project will also introduce new noise and visual elements. The farm is not scarce or uncommon, but the increased travel capacity of the widened roadway will have long-lasting effects on the setting and other farms and resources in the vicinity. Given the project purpose, need and the environmental constraints of the project location, it was determined that no other opportunities to avoid or minimize this impact were available.

During consultation, the goals of the mitigation were determined to be (from Statewide Historic Preservation Plan, 2012-2017):

- Goal 1, Identify: Identify and document locally important resources and issues
- Goal 1, Plan: Encourage preservation planning practices that benefit local community character, quality of life, environment, and economy
- Goal 2, Educate, Action 2.17: Broaden the definition of preservation to encompass open space, cultural and historic resources, working lands, environmental quality, viewshed aesthetics, and community character protection

Determining the Geographic Scale of Mitigation Projects

In addition to identifying the goals of the mitigation, consulting parties must determine the geographic scope of the mitigation should be. In some communities there will be ample projects and opportunities to choose from, while in others there may only be one or two options on the Registry. The dollar value of the mitigation obligation and the significance of the affected resources also influence this issue. In order to meet the spirit and intent of the mitigation process, the presumption should always be that mitigation that is local to the project area and impacted resources is the appropriate starting point. Whenever possible, projects that benefit the project vicinity, local community, nearby resources should be prioritized. This approach was supported by community stakeholders consulted during the research phase of

this project, who voiced concern about ensuring that the communities feeling the project impacts also benefit from the mitigation.

In some circumstances, selecting mitigation projects local to the project area may not be possible or desirable, however. These circumstances may include a lack of identified mitigation needs in the project area, because the affected resource is of a type or significance that warrants broader impact, or because the mitigation obligation exceeds the needs of previously identified projects.

The suggested policies for determining when mitigation funds should be directed to projects outside of the immediate project area include:

- All mitigation agreements should include at least one mitigation task that is resource-specific or located in/beneficial to the project area.
- Weighing the level of significance of the affected resource
 - Mitigation for resources that are of local significance should be directed toward projects in the immediate vicinity of the project area or benefit other resources of local significance.
 - Mitigation for resources that are of state or national significance, or for projects that impact resources that are unique, rare, or the last surviving example of a particular type may consider mitigation projects that are further from the project area.
- If the mitigation obligation exceeds the financial need of relevant, known projects in the project vicinity, then projects that meet the same mitigation goals or impact similar resources located elsewhere may be considered in addition to the local projects. Preference should be given to mitigation projects that are within the same county or region first.

EXAMPLE 1: A transportation project is proposing to replace a contributing bridge in a National Register-listed historic district of local significance. The project will have an adverse effect on the district and will require mitigation. The consulting parties have determined the goals of the mitigation and the appropriate financial obligation. The Registry has one relevant project in the same municipality as the impact and one in an adjacent municipality that meet the mitigation goals. The mitigation obligation exceeds the need for each of these projects individually but would not fund both entirely. The consulting parties agree to fund the project in the same municipality fully and will transmit the remaining amount of the obligation to the other project via the Fund.

EXAMPLE 2: A commercial development project will result in the demolition of a house designed by a well-known architect; the house has been determined eligible for the National Register and is considered significant at the State level. The consulting parties have agreed on a mitigation task that will benefit the local community, but also agree that the mitigation should benefit other resources by the same architect. The only other mitigation project on the Registry for a building by this architect is in a different part of the state. Because the affected resource is of state-level significance, the consulting parties agree to commit part of the mitigation funds to the project in the other location.

Determining the Financial Obligation of Mitigation Projects

Developing a coherent and realistic process for determining the dollar value of a mitigation obligation may be the most challenging task associated with implementation of the Mitigation Bank. Similar efforts in the natural resources realm have relied on standardized per acre valuations for impacted land, but the unique and irreplaceable nature of cultural resources make such an approach impracticable. Rather, calculating the value of mitigation obligations for impacts to cultural resources will need to account for a variety of factors that result in a financial commitment that is commensurate with the impact and the affected resources.

Among the factors to be considered in such a calculation are:

- Nature of the impact (environmental/indirect, alteration, relocation, partial demolition, total demolition)
- Number of resources affected
- Significance of the resource (local, state, national)
- Scarcity/rarity of the resource
- Cumulative effects
- Opportunities to avoid or minimize effects not pursued

This value may be calculated using a formula that takes into account the project budget and allows for a minimum obligation with additional multipliers for each of the factors identified above. The table below provides a suggested model for assigning values to these factors that can be summed to reach a dollar amount. The mitigation obligation of a project would be determined by aggregating the multipliers for the applicable considerations and multiplying the project budget by that factor.

Consideration	Percentage of Project Budget
Base contribution	.5
Noise	.1
Visual	.1
Multiple resources affected	1
Physical alteration of character defining features	.2
Partial demolition	.3
Total demolition	.5
Local significance	.25
State significance	.5
National significance	1
Scarce or uncommon resource	.5
Project will have cumulative or long-lasting effects on other resources in the vicinity	1
Opportunities to avoid or minimize adverse effects existed but were not pursued	1

EXAMPLE 1: A transportation project with a total budget of \$1,000,000, including soft and hard costs, will result in the partial demolition of a locally significant farm complex, listed on the National Register as a single resource. The project will also introduce new noise and visual elements. The farm is not scarce or uncommon, but the increased travel capacity of the widened roadway will have long-lasting effects on the setting and other farms and resources in the vicinity. Given the project needs and purpose and environmental constraints of the project location, it was determined that no other opportunities to avoid or minimize this impact were available.

Consideration	Percentage of Project Budget
Base contribution	.5
Noise	.1
Visual	.1
Partial demolition	.3
Local significance	.25
Project will have cumulative or long-lasting effects on other resources in the vicinity	1
TOTAL	2.25%

Project Budget				Mitigation Obligation
\$1,000,000	X	2.25%	=	\$22,500

EXAMPLE 2: A \$25,000,000 commercial development that requires various environmental permits will result in the total demolition of 4 National Register eligible resources of local significance and 1 listed resource of national significance. This resource is recognized as one of the few remaining examples of its type/style in the region. The project is in an area that is already developed, so there will not be long-lasting or cumulative effects, but during the consultation process the applicant declined to consider alternative site plans that would have resulted in retention of the resources.

Consideration	Percentage of Project Budget
Base contribution	.5
Multiple resources affected	1
Total demolition	.5
Local significance	.25
National significance	1
Scarce or uncommon resource	.5
Opportunities to avoid or minimize adverse effects existed but were not pursued	1
TOTAL	4.75%

Project Budget				Mitigation Obligation
\$25,000,000	X	4.75%	=	\$1,187,500