

**MEMORANDUM OF AGREEMENT
AMONG
THE FEDERAL HIGHWAY ADMINISTRATION,
THE ILLINOIS DEPARTMENT OF TRANSPORTATION,
AND THE ILLINOIS STATE HISTORIC PRESERVATION OFFICER,
REGARDING THE
CONSTRUCTION OF ADDITIONAL LANES TO THE ILLINOIS ROUTE 3
WATERLOO BYPASS, MONROE COUNTY, ILLINOIS**

WHEREAS, the Illinois Department of Transportation (IDOT) plans to add lanes to the existing Route 3 Waterloo Bypass in Monroe County, Illinois (Project), IDOT Sequence #11869A & 11869B; and

WHEREAS, the Federal Highway Administration (FHWA) may fund the Project thereby making the Project an undertaking subject to review under Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. Section 470f, and its implementing regulations, 36 C.F.R. Part 800; and

WHEREAS, the FHWA has defined the undertaking's area of potential effect (APE) as the proposed project area (as shown in Exhibit A); and

WHEREAS, FHWA in consultation with the Illinois State Historic Preservation Officer (SHPO) has determined that no standing structures that are eligible for listing on the National Register of Historic Places are within the Project's APE (Exhibit B); and

WHEREAS, FHWA invited the following Tribes to enter consultation; the Osage, Peoria, Kaw, Ponca, and Miami and one Tribe, the Osage, expressed an interest in consultation; and

WHEREAS, FHWA has invited the IDOT to participate in consultation and to become a signatory to this MOA;

WHEREAS, FHWA has invited the Osage Nation to be a concurring party to this MOA;

WHEREAS, FHWA and IDOT, in consultation with SHPO, have identified three late prehistoric (Late Woodland and Mississippian cultural tradition) archaeological habitation sites (Sites), 11MO716, 11MO717, and 11MO718 that have been previously determined eligible for the National Register of Historic Places under Criterion D and one late prehistoric habitation site (11MO712) that appears to be eligible for the National Register of Historic Places under Criterion D and these Sites will be adversely effected by the Project (Exhibit C); and

WHEREAS, the Sites have no affiliation with historic Indian Tribes and are important for the scientific data they likely contain and do not require preservation in place; and

WHEREAS, in accordance with 36 CFR Part 800, the FHWA acknowledges and accepts the advice and conditions outlined in the Council's "Recommended Approach for Consultation on

the Recovery of Significant Information from Archaeological Sites,” published in the Federal Register on June 17, 1999; and

WHEREAS, FHWA notified the Advisory Council on Historic Preservation (ACHP) of the preparation of this Memorandum of Agreement (MOA) and in a letter dated May 4, 2012, the ACHP declined to participate in the consultation for the Project;

WHEREAS, execution and implementation of this MOA evidences that FHWA has satisfied its Section 106 responsibilities for the Project; and

NOW, THEREFORE, FHWA, IDOT, and SHPO agree that the Project shall be implemented in accordance with the following stipulations to ensure that potential effects on historic properties are taken into account.

STIPULATIONS

FHWA, IDOT, and SHPO agree that the following steps will be undertaken for the Project:

I. ARCHAEOLOGICAL MITIGATION (PHASE III)

- A.** IDOT will prepare a data recovery plan with a research design for the affected Sites in consultation with the SHPO that is consistent with the Secretary of the Interior’s Standards for the Treatment of Historic Properties, the Secretary of the Interior’s Standards and Guidelines for Archaeological and Historic Preservation, and the Advisory Council on Historic Preservation’s Treatment of Archaeological Properties: A Handbook. A generalized data recovery plan (DRP) for prehistoric sites may be used and an example is attached to this agreement (Appendix A). The generalized DRP will apply primarily to small archaeological habitation sites and IDOT’s Cultural Resources Unit professional personnel will make the final determination on whether to use the generalized DRP or to develop a project specific DRP. Factors in the making of this determination will include, but not be limited to, site type, location, project type, and project schedule.

- B.** Human remains are not expected to be found during the investigations covered by this MOA. However, if encountered, required notifications of the discovery will be made to the county coroner and the SHPO, then after authorization under Illinois Human Skeletal Remains Protection Act (20 ILCS 3440, 17 IAC 4170) and its rules (the Act), the remains along with any associated artifacts will be removed following procedures for recording and reporting established under the ACT. No excavation of human remains will be performed except under the direction of a Certified Skeletal Analyst (17 IAC 4170.300(f)). Disposition of the remains and associated artifacts will be accomplished as determined under the ACT.

II. PROFESSIONAL STANDARDS

For the purpose of implementing this MOA, IDOT shall continue to employ departmental staff with qualifications that meet the requirements of 36 CFR Part 61, Appendix A. At a minimum, the professional staff required to carry out the terms of this MOA shall consist of one permanent, full time, archaeologist. In the event of a prolonged absence of the IDOT archaeologist, IDOT will, in consultation with SHPO, appoint an archaeologist that meets the requirements of 36 CFR Part 61, Appendix A.

III. DURATION

This MOA will be null and void if its stipulations are not carried out within ten years from the date of its execution. In such an event, the FHWA shall so notify the parties to this MOA and, if it chooses to continue with the Project, then it shall reinstate review of the Project in accordance with 36 CFR Part 800.

IV. POST REVIEW DISCOVERIES

A. *Procedures for an Unanticipated Discovery of Human Remains and Burials:* In the case of an unanticipated discovery of human remains or burials on Federal land, IDOT will follow the procedures outlined by the Native American Graves Protection and Repatriation Act, as amended (43 CFR 10, Subpart B), and pursuant to the Archaeological Resources Protection Act of 1979 (43 CFR 7). In the event of an unanticipated discovery of human remains or burials on non-Federal lands during IDOT construction activities, IDOT will comply with 20 Illinois Compiled Statutes 3440/0.01, et seq. (Human Skeletal Remains Protection Act) and follow these procedures:

(a) Upon encountering human remains or an unmarked human burial during ground disturbing construction activities, IDOT will ensure that the construction contractor immediately stops work within a one-hundred-fifty (150) foot radius from the point of discovery. The IDOT will ensure that the construction contractor implements interim measures to protect the discovery from vandalism and looting, but must not remove or otherwise disturb any human remains or other items in the immediate vicinity of the discovery.

(b) Immediately following receipt of such notification, the IDOT will ensure that construction activities have halted within a one-hundred-fifty (150) foot radius from the point of discovery and assume responsibility for implementing additional measures, as appropriate, to protect the discovery

from looting and vandalism until the requirements of state law have been completed.

(c) IDOT will determine if the skeletal remains are human, the degree to which they were disturbed, and, if possible, assess their potential age and cultural affiliation without any further disturbance.

(d) IDOT will notify the county coroner, Illinois Historic Preservation Agency (IHPA) and SHPO, and other interested parties within forty-eight (48) hours of the discovery.

(e) Within seventy-two (72) hours after notification the county coroner will determine jurisdiction. If the remains are older than 100 years, the county coroner will notify the IHPA and SHPO.

(f) The IHPA is responsible for notifying FHWA, IDOT, and other interested parties within twenty-four (24) hours of its findings.

(g) If it is determined that intact or fragmented human remains are present IDOT will consult with the IHPA, SHPO, FHWA, and other interested parties regarding additional measures to avoid and protect or mitigate the adverse effect of the Project on the human remains and burial site. These measures may include:

- i. formal archaeological evaluation of the site;
- ii. if the remains are determined to be Native American, consultation with appropriate Tribes will be required;
- iii. visits to the site by the SHPO and other interested parties;
- iv. exploration of potential alternatives to avoid the human remains or burial;
- v. for Native American remains, implementation of a mitigation plan by IDOT in consultation with appropriate Tribes, including procedures for disinterment and re-interment;
- vi. implementation of the mitigation plan; and
- vii. FHWA approval to resume construction following completion of the fieldwork component of the mitigation plan.

B. *Procedures for an Unanticipated Discovery of Historic Properties:* In the event of an unanticipated discovery of historic properties during IDOT construction activities, IDOT will follow these procedures:

(a) The construction contractor must immediately stop all construction activity within a three-hundred (300) foot radius of the discovery, notify IDOT of the discovery and implement interim

Execution of this MOA by the FHWA, SHPO, and IDOT and implementation of its terms evidence that FHWA has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment

FEDERAL HIGHWAY ADMINISTRATION

By: Mark Tull Date: 6/19/2012

ILLINOIS STATE HISTORIC PRESERVATION OFFICER

By: Ann Haas Date: 6/19/12

INVITED SIGNATORY

ILLINOIS DEPARTMENT OF TRANSPORTATION

By: James J. J... Date: 6/7/12

CONSULTING PARTY

OSAGE NATION

By: Jim R. R... Date: 7/9/12

APPENDIX A: STANDARD DATA RECOVERY PLAN FOR PREHISTORIC SITES

Introduction

The Illinois State Archaeological Survey (ISAS), a joint program of the University of Illinois at Urbana-Champaign (UIUC) and the Illinois Department of Transportation (IDOT), prepared this data recovery plan for the archaeological mitigation of prehistoric habitation sites. This plan was developed in accordance with the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation (48 FR 44716), and "The Treatment of Archaeological Properties" published in 1980 by the Advisory Council on Historic Preservation. All procedures outlined in this plan are implemented using standard ISAS techniques, which are outlined in ISAS Field Manual 2012: Standard ISAS Field Procedures for Phase I, II and III Archaeological Investigations.

The IDOT and the Illinois State Historic Preservation Officer have jointly determined that the prehistoric sites to be investigated with this recovery plan are eligible for the National Register of Historic Places under Criterion D, cannot be avoided by the project impacts, and do not warrant preservation in-place.

Natural Setting

The natural setting for archaeological sites excavated under this data recovery plan will be examined (prior to conducting further excavation) in the appropriate existing documentation (such as the Geological Survey Soil Survey) and in the field. A verbal description of the natural setting will accompany maps and photographs in the final reporting of the site.

Summary of Previous Investigations

In general, sites to be investigated under this data recovery plan were recorded by ISAS personnel during the Phase I survey of the proposed project area. When necessary, existing archaeological and historical property lists will be consulted and oral histories conducted to fully develop a site's history and aid in locating possible features and an understanding of a site's stratigraphy and distribution across the landscape. Phase I testing at the site will have revealed the presence of intact cultural material and the site's potential to significantly contribute to our understanding of the prehistory of this area in order to warrant additional investigation.

Research Design

The data generated by excavations at the prehistoric site(s) will be used to examine at least three topics: (1) chronology; (2) technology; and (3) subsistence practices. Insights into changing patterns of community organization may also be granted, as may insights into changes in social organization. The data recovered will then be compared to data from other regional sites.

1. Chronology. It is expected that the recovered artifact assemblage at the prehistoric site(s) will suggest the presence of at least one cultural component (such as the

All archaeological reports resulting from the project will comply with contemporary standards, including the Secretary of the Interior's "Standards for Final Reports of Data Recovery Programs" (42 FR 5377-79). The ISAS will also insure that all final archaeological reports are presented in a format acceptable to the Illinois State historic Preservation Officer (SHPO) following Illinois SHPO guidelines on report preparation, and that all such reports are presented in a format acceptable to the National Park Service for possible peer review and submission to the National Technical Information Service (NTIS). This report will be submitted to the Illinois DOT and IHPA in a timely manner after the completion of all field and laboratory investigations.

Curation

All artifactual materials, records, photographs and other data associated with this project will be curated at the University of Illinois at Urbana-Champaign and managed by ISAS in accordance with federal standards as outlined in 36 CFR Part 79.