

PROGRAMMATIC AGREEMENT
AMONG
THE FEDERAL AVIATION ADMINISTRATION,
THE ILLINOIS DEPARTMENT OF TRANSPORTATION, AND
THE ILLINOIS STATE HISTORIC PRESERVATION OFFICER
FOR THE PROPOSED SOUTH SUBURBAN AIRPORT, ILLINOIS

WHEREAS, the Federal Aviation Administration (FAA) is considering site-approval for a potential, future air carrier airport in the south suburban Chicago area as described in the Tier 1 Environmental Impact Statement (EIS) dated April 2002; and

WHEREAS, the need for site-approval as described in the Tier 1 EIS is to protect the airspace and to preserve a technically feasible site from encroachment by suburban development; and

WHEREAS, the Tier 1 EIS does not contemplate the use of Federal funds, or approval of an airport layout plan or construction, rather it will be determined at a later date if a new air carrier airport is needed to address regional aviation capacity needs; and

WHEREAS, the Tier 1 EIS considered the potential significant environmental impacts of two alternative sites, Will County and Kankakee, including potential effects to historic properties; and

WHEREAS, the FAA and the Illinois Department of Transportation (State) have conducted, in consultation with the Illinois State Historic Preservation Officer (SHPO) (Illinois Historic Preservation Agency), archaeological and historic architectural investigations of the Will County site and have determined that the site may contain archaeological and historic architectural resources that are eligible for listing in the National Register of Historic Places; and

WHEREAS, the results of the Will County archaeological and historic architectural investigations were extrapolated to the Kankakee site in terms of the types of historic properties present in the study area; and

WHEREAS, the FAA, the State and the Illinois SHPO have concurred that the level of investigation conducted to date is sufficient to evaluate the alternatives studied in detail in the Tier 1 EIS and that no further archaeological or historic architectural investigations are warranted for the Tier 1 EIS; and

WHEREAS, Native American groups historically tied to the Will County site area have been contacted and provided a reasonable and good faith opportunity to consult about the undertaking; and

WHEREAS, the FAA has determined that the proposed actions described in the Tier 1 EIS will not directly affect historic properties included in or eligible for inclusion in the National Register of Historic Places; and

WHEREAS, if, in the future, it is determined that the regional aviation capacity needs in the greater Chicago region will be met by construction of a new air carrier airport, and such a proposal is presented to the FAA, a Tier 2 environmental review process will be conducted to analyze potential significant impacts of the proposed action, including potential effects to historic properties; and

WHEREAS, the FAA has chosen to proactively provide for a phased process to comply with Section 106 of the National Historic Preservation Act as authorized by 36 CFR 800.4(b)(2) and 800.14(b), and has negotiated and executed this Agreement to govern Tier 2 or other future environmental documentation so that an agreed-upon process will be in place if needed in the future; and

WHEREAS, the FAA has made no commitment or obligation to prepare a subsequent Tier 2 or other environmental documentation; and

WHEREAS, the FAA will not prepare such documentation unless it is determined that an air carrier airport is necessary and appropriate to meet future aviation capacity needs in the greater Chicago region; and

WHEREAS, the FAA has consulted with the Illinois SHPO on this undertaking, pursuant to 36 CFR 800.14(b) of the regulations implementing Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470f); and

WHEREAS, the State has participated in this consultation and is to be a signatory to this Agreement; and

WHEREAS, the Advisory Council on Historic Preservation pursuant to 36 CFR 800.6(a)(1)(iii) has concluded that Appendix A, *Criteria for Council Involvement in Reviewing Individual Section 106 Cases*, of their regulations does not apply to this undertaking and therefore will not participate in the consultation;

NOW THEREFORE, the FAA, the State and the Illinois SHPO agree that execution and implementation of this Agreement will complete Section 106 consultations for the Tier 1 EIS; and, establish an agreed upon consultation procedure for subsequent Tier 2 or other environmental documentation should it be determined that an air carrier airport at the preferred site is necessary and appropriate to meet future aviation capacity needs in the greater Chicago region and such a proposal is presented to the FAA by a project sponsor.

STIPULATIONS

The FAA will ensure that the following measures are carried out.

I. INTERIM MAINTENANCE AND PRESERVATION

If and when properties are acquired by the State within the Will County site, the State shall ensure that all structures and archaeological sites eligible for listing in the National Register within these properties are maintained and protected against damage. If the survey and evaluation of structures or archaeological sites within these acquired properties have not been completed, and State activities within these acquired properties would result in surface or subsurface disturbance or the removal, demolition, deterioration, or abandonment of structures, the State will complete the survey and evaluation following the procedures presented in Stipulations II, III.A. and IV.A prior to any such activities. If the State cannot maintain or protect all structures and archaeological sites eligible for listing in the National Register within the acquired properties, the State will follow the procedures described under Stipulations III.B and C and IV.B, C and D.

II. PROPERTIES OF TRADITIONAL CULTURAL SIGNIFICANCE

Native American tribes with historical ties to the area have been contacted and offered the opportunity to consult on the Tier 1 EIS. Inquiries concerning places of traditional religious or cultural significance within the area did not yield any information on such properties or indications that such properties exist within the two alternative sites evaluated for the Tier 1 EIS. Should a Tier 2 or other environmental documentation, Section 106 identification and evaluation efforts become necessary, FAA will contact these tribes again and offer them the opportunity to consult about the Tier 2 or other environmental documentation activities and potential effects to properties of religious and cultural significance to them. Native American tribes will also be consulted

concerning the eligibility of and effects on archaeological sites to which they ascribe religious or cultural significance as provided in Stipulation III.

III. ARCHAEOLOGY

Should future aviation capacity needs require development of a regional airport:

A. Survey and Evaluation

1. The State will conduct an archaeological reconnaissance survey (Phase I) of all areas within the Tier 1 preferred alternative not previously surveyed; including existing cemeteries within the boundary of the preferred alternative, or, the State will conduct the survey within areas not previously surveyed when and if the areas are both acquired for the airport and will be the location of proposed airport infrastructure development that will result in ground disturbance. The State will consult with the Illinois SHPO on the schedule and approach of the archaeological reconnaissance survey. The State shall submit a report of the survey(s) to the Illinois SHPO, and to any Native American tribes requesting a copy of the report, for review and comment. An archaeological intensive survey (Phase II) will be performed at all archaeological sites within the project area, that may be eligible for listing in the National Register, in order to fully evaluate their National Register eligibility. Phase II intensive survey methodologies shall be formulated in consultation with the Illinois SHPO. A report of the Phase II findings shall be submitted by the State to the Illinois SHPO, and to any Native American tribes requesting a copy of the report, for review and comment.
2. The Phase I and II surveys will be conducted in a manner consistent with the Secretary of the Interior's Standards and Guidelines for Identification (48 FR 44720-23) and taking into account the National Park Service publication "The Archaeological Survey: Methods and Uses" (1978) and the Illinois State Historic Preservation Office's "Guidelines for Archaeological Reconnaissance Surveys/Reports." The Phase I and II surveys will be implemented by the State and monitored by the Illinois SHPO. The State will also adhere to the tenets of the Human Skeletal Remains Protection Act 20 ILCS 3440.
3. In consultation with the Illinois SHPO and taking into account any comments received from Native American tribes, the State shall evaluate properties identified through the Phase II intensive survey against the National Register Criteria (36 CFR Part 60.4).
 - a. For those properties which the State and the Illinois SHPO agree are not eligible for inclusion in the National Register, no further archaeological investigations will be required, and the proposed project may proceed in those areas.
 - b. If the State and the Illinois SHPO do not agree on National Register eligibility, the State shall request a determination of eligibility from the FAA. If the FAA and the Illinois SHPO do not agree on National Register eligibility, the FAA shall request a formal determination of eligibility from the Keeper of the National Register, National Park Service, whose determination shall be final.
 - c. The results of the determinations of eligibility shall be transmitted by the State to any Native American tribes that comment on the survey reports.

- d. If the survey results in the identification of properties that the State and the Illinois SHPO agree are eligible for the National Register, preservation in place is the preferred treatment; however, such properties shall be treated in accordance with Part B below if preservation in place is not an option.

B. Data Recovery (Phase III)

1. Those sites which the State and the Illinois SHPO agree are eligible for the National Register and cannot be preserved in place, will be treated in the following manner:
 - a. The State shall develop, in consultation with the Illinois SHPO, a data recovery plan addressing substantive research questions for the recovery of relevant archaeological data. The plan shall be consistent with the Secretary of the Interior's Standards and Guidelines for Archaeological Documentation (48 FR 44734-37) and take into account the Council's publication, "Treatment of Archaeological Properties". It shall specify, at a minimum, the following:
 - 1) the property, properties, or portions of properties where data recovery is carried out;
 - 2) the research questions to be addressed through the data recovery, with an explanation of their relevance and importance;
 - 3) the methods to be used, with an explanation of their relevance to the research questions;
 - 4) proposed methods of disseminating results of the work to the interest of the public; and
 - 5) a proposed schedule for the submission of reports to the Illinois SHPO.
 - b. The data recovery plan shall be submitted by the State to the Illinois SHPO and to any Native American tribes that request a copy of the data recovery plan, for thirty (30) days review and comment. The State shall take into account comments from the Illinois SHPO and Native American tribes and shall ensure that the data recovery plan is implemented. The Illinois SHPO shall monitor this implementation.
2. The State shall ensure that the data recovery plan is carried out by or under the direct supervision of an archaeologist who meets, at a minimum, the Secretary of the Interior's Professional Qualifications Standards (48 FR 44738-9).
3. The State shall ensure that adequate laboratory time and space are available for analysis of osteological, cultural, and biological materials recovered from the excavations.
4. To the best of the FAA's and the State's knowledge and belief, no Native American human remains, associated funerary objects or sacred objects, or objects of Native American cultural patrimony are expected to be encountered during the archaeological work, but should such remains be encountered, the State will also adhere to the tenets of the Human Skeletal Remains Protection Act 20 ILCS 3440.

5. The State shall ensure that an adequate program of site security from vandalism during data recovery is developed in consultation with the Illinois SHPO, and then implemented by the State.

C. Curation And Dissemination Of Information

1. In consultation with the Illinois SHPO, the State shall ensure that all materials and records resulting from archaeological survey and data recovery conducted for the South Suburban Airport project are curated at the University of Illinois and in accordance with 36 CFR Part 79. If human remains are recovered, the signatories to this Agreement shall consult further to determine the appropriate disposition of the remains.
2. The State shall ensure that all final archaeological reports resulting from actions pursuant to this agreement are provided in a format acceptable to the Illinois SHPO and the National Park Service for possible peer review and submission to the National Technical Information Service (NTIS). The agency official shall ensure that all such reports are responsive to contemporary standards, and to the Department of the Interior's Format Standards for Final Reports of Data Recovery Program (42 FR 5377-79). Precise locational data may be provided only in a separate appendix if it appears that its release could jeopardize archaeological data. The State shall provide copies of all reports of archaeological excavations to all Native American tribes that request copies of these reports.

D. Discovery Of Archaeological Resources

In accordance with 36 CFR Section 800.13(a)(1), if previously undetected archaeological resources are discovered during project activities, the State will cease, or cause to stop, any activity having an effect on the resource and consult with the Illinois SHPO to determine if additional investigation is required. If the discovered resources would potentially be of religious or cultural significance to Native American tribes, the State shall contact those tribes and ask them to provide their views. The State may request comments on an expedited schedule if necessary. If, after reviewing the comments of the tribes, the State and SHPO find that further archaeological investigations are required any data recovery will be performed in accordance with Stipulations III.B and III.C of this Agreement. If the State and the Illinois SHPO determine that further investigation is not necessary, activities may resume with no further action required. Any disagreement between the State and the Illinois SHPO concerning the need for further investigations will be handled in accordance with Stipulation VII.

IV. HISTORIC STRUCTURES

Should future aviation capacity needs require development of a regional airport:

A. Evaluation of Structures

1. The State will prepare additional documentation regarding the history and significance of structures located within the project area to assist in evaluating whether any of the properties are eligible for listing on the National Register of Historic Places. This information will be provided to the Illinois SHPO for review and concurrence.
2. If the State and the Illinois SHPO do not agree on National Register eligibility, the State shall request a determination of eligibility from the

FAA. If the FAA and the Illinois SHPO do not agree on National Register eligibility, the FAA shall request a formal determination of eligibility from the Keeper of the National Register, National Park Service, whose determination shall be final.

B. Treatment

1. Should the State and the Illinois SHPO determine that any of the properties are eligible for listing in the National Register, and the properties will be adversely affected by an action covered by this Agreement, the State, in consultation with the SHPO, will identify measures to avoid, minimize, or mitigate the adverse effect. Measures to minimize or mitigate the adverse effect may include, but will not be limited to, retaining the structure for use within the proposed airport, relocation of the structure outside of the area to be impacted by the action, and/or recordation followed by demolition. If preservation in place is not possible, the State will prepare a report on the property that evaluates its structural integrity and the feasibility of relocating the structure to another location, if moving the structure is warranted.
2. The State will forward a copy of the report(s) and its recommendations for the treatment of the properties to the Illinois SHPO for review and approval. Any disagreement between the State and the Illinois SHPO concerning treatment will be handled in accordance to Stipulation VII.

C. Marketing Plan

1. If the State determines that any of the structures determined eligible for the National Register can be relocated, the State will consult with the Illinois SHPO to develop a marketing plan for the relocation and rehabilitation of the properties. The Illinois SHPO shall approve the marketing plan prior to its implementation by the State. This plan will, at a minimum, include the following information:
 - a. Photographs of the property, a parcel map and information on the property's historic significance;
 - b. Information on the property's purchase price, if any; a good faith estimate of the cost of properly moving the structure to another site; and a statement regarding which party will be responsible for the various costs associated with the move;
 - c. Information on the possible financial assistance, including Federal tax benefits, for the rehabilitation of historic buildings;
 - d. Notification that the recipient will be required to move the building in accordance with the recommended approaches to moving outlined in the Department of the Interior's Moving Historic Buildings, and utilizing the services of a professional mover who has the capability to move historic buildings properly;
 - e. Notification that the recipient will be required to rehabilitate and maintain the property in accordance with the recommended approaches in The Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings; and,

- f. Notification of the requirement to include a preservation covenant or easement in the transfer documents that will be recorded in the County's official property records.
2. Prior to the acceptance of any offer, the State shall review all offers in consultation with the Illinois SHPO and shall identify a preferred offer. The Illinois SHPO shall be afforded 30 days to review and comment on the preferred offer, and, if appropriate, the new site proposed for relocation of the property.
3. If the State receives no acceptable offers to the marketing plan, the State may, after written notice to the Illinois SHPO and the Advisory Council, demolish the properties once they are recorded in accordance with Stipulation IV.D.

D. Recordation and Salvage

1. Prior to the relocation or demolition of any of the structures determined eligible for listing on the National Register, the State shall contact the Illinois Historic American Building Surveys (ILHABS) at the Illinois Historic Preservation Agency, 500 East Madison Street, Springfield, Illinois 62701-1028, to determine what level and kind of recordation is required for the property. Unless otherwise agreed to by the National Park Service, the State shall ensure that all documentation is completed and accepted by ILHABS prior to the relocation or demolition of the properties, and copies of this documentation are made available to the Illinois SHPO and any appropriate local archives designated by the Illinois SHPO.
2. Prior to the demolition of any historic structure determined eligible for the National Register, the State shall consult with the Illinois SHPO to determine if the building contains architectural elements which could be salvaged for curation or reuse in new construction. The State shall ensure that the selected items are removed in a manner that minimizes damages and delivered to the Will County Historic Commission.

V. PUBLIC PARTICIPATION

The FAA and the State have provided the public with opportunities to participate in the identification, evaluation, and treatment of historic properties during information meetings, workshops, and public hearings associated with the Tier 1 EIS public involvement process. For Tier 2 or other future environmental documentation, the FAA and the State shall, through the National Environmental Policy Act (NEPA) public involvement process associated with this future documentation, continue to seek information from the public on historic properties within the project area and provide the public an opportunity to express their views on the effects of the undertaking on historic properties.

VI. ADDITIONAL CONSULTING PARTIES

Should future aviation capacity needs require development of a regional airport, additional consulting parties may ask or be requested by FAA to join consultations concerning Tier 2 or other environmental documentation. FAA may invite such parties to become signatories to this agreement subject to approval of existing signatory parties.

VII. DISPUTE RESOLUTION

The State and the Illinois SHPO shall attempt to resolve any disagreement arising from implementation of this Agreement. If the State determines that the disagreement cannot be

resolved, the State and Illinois SHPO shall consult with the FAA to resolve the disagreement. If the disagreement cannot be resolved, then the, FAA shall request the further comments of the Council in accordance with 36 CFR Part 800.7. FAA in accordance with 36 CFR Part 800.7 will take any Council comment provided in response into account, with reference only to the subject of the dispute. FAA's responsibility to carry out all other actions under the terms of this Agreement that are not the subject of the dispute will remain unchanged.

VIII. AMENDMENT AND TERMINATION

Any signatory to this agreement, including additional consulting parties who join the consultations and become signatories as provided in Stipulation VI, may request that the agreement be amended, whereupon the signatories will consult to reach a consensus on the proposed amendment. Where no consensus can be reached, the agreement will not be amended.

Any signatory to this agreement may terminate it by providing thirty (30) days notice to the other parties, provided that the signatories and concurring parties will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination.

In the event of termination, FAA shall comply with 36 CFR part 800 for all remaining phases of the undertaking.

Execution and implementation of this Agreement evidence that the FAA has satisfied its Section 106 responsibilities for the Tier 1 EIS; and, for subsequent environmental documentation, if and when FAA determines other environmental documentation is warranted.

FEDERAL AVIATION ADMINISTRATION

By: Jeri Allen
Jeri Allen, Manager, Great Lakes Region Airports Division

Date: July 11, '02

ILLINOIS HISTORIC PRESERVATION AGENCY

By: Anne E. Haaker
Anne Haaker, Deputy State Historic Preservation Officer

Date: 7/10/02

ILLINOIS DEPARTMENT OF TRANSPORTATION

By: Kirk Brown
Kirk Brown, Secretary

Date: JUL 10 2002