



U.S. Department
of Transportation
**Federal Highway
Administration**

Illinois Division

November 17, 2021

3250 Executive Park Dr.
Springfield, IL 62703
(217) 492-4640
www.fhwa.dot.gov/ildiv

In Reply Refer To:
HPER-IL

To Tribes That Have Expressed Interest in Illinois

Subject: Illinois Tribal Consultation Memorandum of Understanding
2021 Information and Annual Evaluations

Dear Primary Tribal Contact:

The Federal Highway Administration (FHWA), the Illinois Department of Transportation (IDOT), and the Illinois State Historic Preservation Officer, in collaboration with federally recognized Tribes known to have an interest in Illinois lands, developed a Memorandum of Understanding (MOU) for Tribal Consultation, ratified August 31, 2011. The purpose of the MOU is to establish the notification and consultation process for federally funded transportation projects in Illinois, and to establish procedures for unanticipated discoveries and discoveries of human remains. To date, six Tribes have signed the MOU: the Iowa Tribe of Kansas and Nebraska, Ponca Tribe of Nebraska, the Osage Nation, the Peoria Tribe of Indians in Oklahoma, the Forest County Potawatomi Community, and the Kaw Nation.

Stipulation IV.G. of the MOU, "Evaluation of MOU Implementation", requires the signatories discuss MOU issues. We are reaching out to all Tribes who have expressed an interest in Illinois lands, including those that have not signed the MOU, to seek your input on the current notification and consultation process. We are also in the planning process for a Tribal Workshop, which is anticipated to be held in the early part of calendar year 2022, during which we will discuss the MOU and other issues.

Per MOU Stipulation III.A., the following is a link to IDOT's Fiscal Year 2022-2027 Proposed Highway Improvement Program: <http://idot.illinois.gov/transportation-system/transportation-management/transportation-improvement-programs-/multi-modal-transportation-improvement-program/index>. This includes the most current list of all projects IDOT anticipates implementing, regardless of size or scope.

IDOT's electronic Project Notification System (PNS) notifies Tribes by email when minor projects are sent for archaeological survey, inviting Tribes to notify IDOT if they have an interest in the projects. For projects of larger scopes, FHWA also sends individual letters of notification. Currently 13 Tribes utilize the PNS. Any federally recognized Tribe with an interest in Illinois may request and have password access to the PNS.

Enclosed with this letter are the following:

- Contact list of Federally Recognized Tribes who have expressed an interest in Illinois lands, including a list of Tribes who have expressed interest in Illinois by IDOT district and county
- IDOT MOU annual report for State Fiscal Year 2021

Please notify us of any changes needed to your contact information or your Tribe's interest in Illinois lands. If your Tribe is interested in signing the MOU and/or accessing the PNS, please contact Mr. Darien Siddall, Environmental Protection Specialist, of my staff at darien.siddall@dot.gov or (217) 492-4615. If you have comments or concerns about the implementation of the MOU, please provide written comments within 30 days of receipt of this letter.

We value the relationships that have been built with Tribes interested in Illinois lands, and look forward to continuing these relationships with you.

Sincerely,



Arlene K. Kocher
Division Administrator

Enclosure

ecc: Mr. Jack Elston, Bureau of Design and Environment
Mr. Brad Koldehoff, Bureau of Design and Environment
Ms. Carey Mayer, Illinois State Historic Preservation Office
Ms. CJ Wallace, Illinois State Historic Preservation Office
Mr. Jeff Krutchen, Illinois State Historic Preservation Office

**Illinois Transportation Archaeology and Tribal Consultation:
Memorandum of Understanding Annual Report for
Illinois Fiscal Year 2021 (July 1, 2020 to June 30, 2021)**

November 1, 2021

**Prepared by
Cultural Resources Unit
Bureau of Design & Environment
Illinois Department of Transportation
Springfield, Illinois**

Introduction

The Memorandum of Understanding (MOU) for Tribal Consultation among the Illinois Department of Transportation (IDOT), Illinois Division of the Federal Highway Administration (FHWA), Illinois State Historic Preservation Officer (SHPO), and federally recognized American Indian Tribes with an interest in Illinois was ratified August 31, 2011. To date, the MOU has been signed by six Tribes: Iowa Tribe of Kansas and Nebraska, Osage Nation, Peoria Tribe of Indians in Oklahoma, Ponca Tribe of Nebraska, Forest County Potawatomi Community, and Kaw Nation. The goal of this report is to provide information to Tribes and agencies so that the effectiveness of the MOU can be evaluated on an annual basis. This eleventh annual report covers Illinois fiscal year 2021.

Background and Report Organization

The National Historic Preservation Act of 1966 (NHPA), as amended (54 U.S.C. § 300101) and its implementing regulations (36 CFR 800) requires federal agencies to consult with federally recognized American Indian Tribes about undertakings that may affect sites of importance to Tribes. The IDOT and FHWA Illinois Division have a long history of consulting with Tribes about transportation projects in Illinois. The IDOT and FHWA also have a long history of collaboration in complying with Section 106 of the NHPA. The IDOT, FHWA, SHPO, and Advisory Council on Historic Preservation (ACHP) ratified a Section 106 Programmatic Agreement (PA) March 6, 2018. Tribes were provided the opportunity to comment on the PA before it was ratified, and the PA is implemented in accordance with the MOU.

In 2008 and 2009 the IDOT and FHWA co-sponsored tribal consultation workshops in Illinois that were well-attended by Tribes with an expressed interest in Illinois. Resulting from these workshops, the MOU was developed by the FHWA, IDOT, SHPO, and tribal representatives. The MOU outlines the principles and procedures for tribal consultation in Illinois for transportation projects. The centerpiece of the MOU is the adoption of the web-based Project Notification System (PNS) as the primary means by which IDOT/FHWA will notify Tribes of proposed projects that have the potential to affect archaeological resources.

In 2019 plans were underway to hold an in-person tribal consultation workshop in Illinois in June 2020. However, with the COVID-19 pandemic, those plans were placed on hold. Currently, IDOT and FHWA are consulting with Tribes to schedule a remote workshop in 2022.

The following pages represent the eleventh annual MOU report. The report is divided into four parts: (1) project notification and site investigation, (2) projects with discoveries of human remains, (3) tribal participation, and (4) evaluation.

Part 1: Project Notification and Site Investigation

The PNS is a web-based password-protected database and e-mail communication system that transmits notifications to Tribes with an interest in the project's county(ies) and the SHPO of projects that have potential to affect archaeological resources. In the PNS, Tribes can transmit project comments to the IDOT and FHWA. Even if they do not comment on the initial notification, Tribes are subsequently notified when archaeological survey reports and SHPO concurrence letters are posted on the PNS website. The PNS is maintained by the Illinois State Archaeological Survey (ISAS) in the Prairie Research Institute at the University of Illinois, Urbana-Champaign. Originally created by the IDOT and ISAS for the transmittal of information about highway projects, the effectiveness of the system has led to its adoption by the Federal Aviation Administration (FAA) and the Federal Railroad Administration (FRA) for Section 106 project notifications.

In FY21 the Cultural Resources Unit in the Bureau of Design and Environment at the IDOT received 628 Environmental Survey Requests for transportation projects: 620 for highways and related projects (bridges, bike trails, streetscapes, etc.), 5 for airport projects, and 3 railroad projects (Table 1). In accordance with the MOU and PA, 595 projects were reviewed for archaeological resources and cleared for construction by the IDOT's Chief Archaeologist. However, if unexpected discoveries of historic properties or human remains are made during construction, these projects are not exempt from tribal consultation.

Projects involving new ROW or easements in undisturbed ground are sent to the ISAS for archaeological survey concurrent with tribal notification via the PNS. In FY21 this process encompassed 33 projects: 31 for highways, none for airports, and two for railroads. When surveyed, 18 of these projects resulted in the identification of archaeological sites (Table 2). Eight projects involved sites that warranted further investigation. Test excavations were conducted, and if important archaeological features were identified, potential impacts were avoided and the sites were preserved in place. No project had an adverse impact in FY21 on archaeological sites eligible for or listed on the NRHP.

Part 2: Projects with Discoveries of Human Remains

In accordance with the MOU, the IDOT and FHWA will (1) follow the Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. 3001) when there is a discovery of human remains or burials on federal lands, and (2) comply with the Illinois State Human Skeletal Remains Protection Act (20 ILCS 3440) when there is a discovery of human remains or burials on non-federal lands. According to the state law, if impacts to the remains cannot be avoided, they are removed, the recovered remains are examined, a report is prepared, and the report and remains are delivered to the Illinois Department of National Resources (IDNR) for disposition. [Note: the Illinois Historic Preservation Agency (IHPA) was eliminated by Illinois state government in April 2017. State burial law oversight, Section 106 responsibilities, and the SHPO office were moved to IDNR.] When the remains are subsequently transferred to the Illinois State Museum (ISM), they become subject to NAGPRA. In FY21 no human remains were discovered.

Part 3: Tribal Participation

In total, 238 initial project notification emails were sent to the 15 Tribes participating in the PNS during FY21: Delaware Nation, Ho-Chunk Nation, Iowa Tribe of Kansas and Nebraska, Kaw

Nation, Kickapoo Tribe of Kansas, Miami Tribe of Oklahoma, Osage Nation, Peoria Tribe of Indians of Oklahoma, Forest County Band of the Potawatomi, Pokagon Band of the Potawatomi, Ponca Tribe of Nebraska, Sac and Fox Nation of Oklahoma, Seneca-Cayuga Nation, Quapaw of Oklahoma, and Winnebago Tribe of Nebraska. Participating Tribes replied with 97 separate PNS email comments (Table 2). Tribal comments in some cases resulted in further consultation in the form of emails and conference calls.

Part 4: Evaluation

The goal of this report is to provide information to Tribes and agencies so that the effectiveness of the MOU and its consultation procedures can be evaluated on an annual basis. From IDOT's perspective, the PNS is a key component of tribal consultation for projects. Implemented in 2009 and refined with comments from Tribes and FHWA, the PNS not only facilitates rapid communication and easy access to IDOT project information but also reduces the "environmental footprint" of the consultation process by eliminating the traditional use of paper correspondence and postal deliveries. While the PNS is an effective tool for notification and dissemination of information, the IDOT fully realizes the PNS does not replace consultation with Tribes. Tribes with an interest in Illinois land are welcome to visit transportation projects in coordination with IDOT and FHWA personnel.

The tribal consultation workshop to be held remotely in 2022 will be important not only for addressing issues of concern to the Tribes but also for renewing relationships and creating new ones. The workshop will provide an opportunity for Tribes to communicate to IDOT and FHWA about what works and does not work regarding the PA and the current consultation process.

Table 1. Transportation Projects Reviewed for Cultural Resources in Fiscal Year 2021

IDOT District	Total Projects	Highways (FHWA)		Airports (FAA)		Railroads (FRA)		Total	
		IDOT In-House* Clearance	ISAS Survey SHPO/Tribal Review	IDOT In-House Clearance	ISAS Survey SHPO/Tribal Review	IDOT In-House Clearance	ISAS Survey SHPO/Tribal Review	IDOT In-House Clearance	ISAS Survey SHPO/Tribal Review
1	160	144	13	2	0	1	0	147	13
2	66	61	3	0	0	0	2	61	5
3	88	84	3	1	0	0	0	85	3
4	24	24	0	0	0	0	0	24	0
5	40	38	2	0	0	0	0	38	2
6	52	50	2	0	0	0	0	50	2
7	80	78	1	1	0	0	0	79	1
8	50	45	4	1	0	0	0	46	4
9	68	65	3	0	0	0	0	65	3
Total	628	589	31	5	0	1	2	595	33

*Projects reviewed and cleared for construction by IDOT Chief Archaeologist in accordance with Tribal MOU.

Table 2: Projects Posted on PNS with SHPO/Tribal Review in Fiscal Year 2021

IDOT District	County	Projects with		Projects with Further Work	Tribal PNS Comments
		Projects	Sites		
District 1	Cook	5	4	2	8
	DuPage	1	0	0	2
	Kane	1	0	0	2
	Lake	2	1	0	5
	McHenry	1	1	0	4
	Will	3	2	1	7
	Total	13	8	3	28
District 2	Boone	0	0	0	1
	Carroll	0	0	0	0
	Henry	0	0	0	0
	Jo Daviess	1	1	1	3
	Lee	0	0	0	0
	Ogle	1	0	0	2
	Rock Island	0	0	0	3
	Rock Island, Henry, Bureau	2	0	0	3
	Stephenson	0	0	0	1
	Whiteside	0	0	0	0
	Winnebago	1	0	0	3
Total	5	1	1	16	
District 3	Bureau	0	0	0	0
	DeKalb	0	0	0	0
	Ford	0	0	0	0
	Grundy	0	0	0	0
	Iroquois	0	0	0	0
	Kankakee	1	0	0	3
	Kendall	0	0	0	2
	LaSalle	2	0	0	6
	Livingston	0	0	0	0
	Total	3	0	0	11
District 4	Fulton	0	0	0	2
	Henderson	0	0	0	0
	Knox	0	0	0	0
	McDonough	0	0	0	0
	Marshall	0	0	0	0
	Mercer	0	0	0	0
	Peoria	0	0	0	5
	Peoria, Tazewell	0	0	0	1
	Putnam	0	0	0	0
	Stark	0	0	0	0
	Tazewell	0	0	0	3
	Warren	0	0	0	0
	Woodford	0	0	0	0
Total	0	0	0	11	
District 5	Champaign	2	0	0	4
	Dewitt	0	0	0	0
	Douglas	0	0	0	0
	Edgar	0	0	0	0
	McLean	0	0	0	0
	Piatt	0	0	0	0
	Vermillion	0	0	0	0
Total	2	0	0	4	
District 6	Adams	1	1	0	2
	Brown	0	0	0	0
	Cass	0	0	0	0
	Christian	0	0	0	0
	Hancock	0	0	0	0
	Logan	0	0	0	0
	Macoupin	0	0	0	0
	Mason	0	0	0	0
	Menard	0	0	0	0
	Montgomery	0	0	0	0
	Morgan	0	0	0	0
	Pike	0	0	0	0
	Pike, Scott	0	0	0	1
	Sangamon	1	0	0	2
	Schuyler	0	0	0	4
	Schuyler, Cass	0	0	0	1
Scott	0	0	0	0	
Total	2	1	0	10	
District 7	Clark	0	0	0	0
	Clay	0	0	0	0
	Coles	1	1	1	2
	Crawford	0	0	0	0
	Cumberland	0	0	0	0
	Edwards	0	0	0	0
	Effingham	0	0	0	0
	Fayette	0	0	0	0
	Jasper	0	0	0	0
	Lawrence	0	0	0	0

Macon	0	0	0	0
Moultrie	0	0	0	0
Richland	0	0	0	0
Shelby	0	0	0	0
Wabash	0	0	0	0
Wayne	0	0	0	0
Total	1	1	1	2
District 8				
Bond	0	0	0	1
Calhoun	0	0	0	0
Clinton	0	0	0	0
Greene	1	1	0	0
Jersey	0	0	0	0
Madison	3	3	2	5
Marion	0	0	0	0
Monroe	0	0	0	0
Randolph	0	0	0	2
St. Clair	0	0	0	2
Washington	0	0	0	0
Total	4	4	2	10
District 9				
Alexander	0	0	0	0
Franklin	0	0	0	0
Gallatin	0	0	0	0
Hamilton	0	0	0	0
Hardin	1	1	0	2
Jackson	0	0	0	0
Jefferson	0	0	0	0
Johnson	1	1	0	1
Massac	0	0	0	0
Perry	0	0	0	0
Pope	0	0	0	0
Pulaski	0	0	0	0
Saline	0	0	0	0
Union	1	1	1	0
White	0	0	0	0
Williamson	0	0	0	2
Total	3	3	1	5
GRAND TOTAL	33	18	8	97