



U.S. Department  
of Transportation

**Federal Highway  
Administration**

**Illinois Division**

February 14, 2023

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

In Reply Refer To:  
HDA-IL

To Tribes That Have Expressed Interest in Illinois

Subject: Illinois Tribal Consultation Memorandum of Understanding  
2022 Information and Annual Evaluations

Dear Tribal Nation Representative:

I am writing you to provide information we submit to Tribal Nations annually as described in the Memorandum of Understanding (MOU) for Tribal Consultation, ratified August 31, 2011. In collaboration with federally recognized Tribes known to have an interest in Illinois lands, the Federal Highway Administration (FHWA), the Illinois Department of Transportation (IDOT), and the Illinois State Historic Preservation Officer, developed the MOU 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. Enclosed is a copy of the MOU.

### **IDOT's Fiscal Year 2023-2028 Proposed Highway Improvement Program**

Per Stipulation III.A. of the MOU, the following is a link to IDOT's Fiscal Year 2023-2028 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 Annual Report on Implementation of the MOU**

Per Stipulation IV.A. of the MOU, we are enclosing IDOT's annual report which describes projects processed under the MOU, including actions taken to comply with the MOU. We also invite you to provide any comments or suggestions regarding the effectiveness of the MOU. In addition, we are hosting a second Tribal Workshop, to be held virtually, which is scheduled for March 15, 2023, to discuss the MOU and other topics.

## **Points of Contact for Consultation**

Enclosed with this letter are the Tribal Consultation points of contact for IDOT, the Illinois State Archaeological Survey (ISAS), and the FHWA.

If you wish to receive project notifications for projects in Illinois, please send us a list of counties that are of interest to your Tribe and a primary point of contact (name and e-mail address) to whom the information should be sent. We will then ask IDOT and ISAS to work with you to setup access to IDOT's (PNS), which will provide electronic project notifications at key milestones in the Section 106 process.

If you have questions or comments regarding any of the above information, or wish to provide updated contact information or comments, please contact Mr. Darien Siddall, Environmental Protection Specialist, of my staff at [darien.siddall@dot.gov](mailto:darien.siddall@dot.gov) or (217) 492-4615. We value our relationship with Tribal Nations with an interest in Illinois lands and look forward to building upon this relationship in the future.

Sincerely,

David L. Snyder  
Division Administrator

### Enclosures

- 1) MOU
- 2) IDOT's Annual Report
- 3) POCs (FHWA, IDOT, ISAS)

dl: Absentee Tribe of Oklahoma - Devon Frazier  
 Muscogee Nation - Corain Lowe-Zepeda  
 Chippewa - Bad River Band of Lake Superior Tribe of Chippewa Indians - Edith Leoso  
 Chippewa - Bay Mills Indian Community – Paula Carrick  
 Chippewa - Bois Forte Band of Chippewa - Jaylen Strong  
 Chippewa - Chippewa Cree Tribe - Jonathan Windy Boy  
 Grand Traverse Band of Ottawa and Chippewa Indians - Sammie McClellan-Dyal  
 Chippewa - Fond Du Lac Band of Lake Superior Chippewa - Evan Shroeder  
 Chippewa - Grand Portage Band of Lake Superior Chippewa - Rob Hull  
 Keweenaw Bay Indian Community of the Lake Superior Band of Chippewa Indians -Alden Connor  
 Chippewa - Lac Courte Oreilles Band of Lake Superior Chippewa Indians - Brian Bisonette

Chippewa - Lac Du Flambeau Band of Lake Superior Chippewa Indians - Melinda Young  
 Chippewa - Leech Lake Band Ojibwe - Amy Burnette  
 Chippewa - Mille Lacs Band of Ojibwe - Terry Kemper  
 Chippewa - Red Cliff Band of Lake Superior Chippewa Indians - Marvin DeFoe  
 Chippewa - Red Lake Band of Chippewa Indians - Kade Ferris  
 Chippewa - Saginaw Chippewa Indian Tribe - Marcella Hayden  
 Chippewa - Sault Ste. Marie Tribe of Chippewa Indians - Marie Richards  
 Chippewa - Turtle Mountain Band of Chippewa Indians - Jeffrey Desjarlais, Jr. and  
 Larus Longie  
 Chippewa - Sokaogon Chippewa Community - Michael LaRonge  
 Chippewa - St. Croix Chippewa Indians of Wisconsin - Wanda McFaggen  
 Chippewa - White Earth Nation - Jaime Arsenault  
 Delaware Tribe of Indians – Larry Heady  
 Kickapoo Traditional Tribe of Oklahoma - Jlyn Jorgensen  
 Kickapoo Traditional Tribe of Texas - Juan Garza, Jr.  
 Omaha Tribe of Nebraska - Leander Merrick  
 Otoe Missouria Tribe of Oklahoma - Elsie Whitehorn  
 Ponca Tribe of Oklahoma - Liana Hesler  
 Little River Band of Ottawa Indians - Jonnie Jay Sam II  
 Little Traverse Bay Band of Odawa Indians - Melissa Wiatrolik  
 Ottawa Tribe of Oklahoma - Rhonda Hayworth  
 Potawatomi - Citizen Potawatomi Nation - Tracy Wind  
 Potawatomi - Hannahville Indian Community - Cory Sagataw  
 Potawatomi Nottawaseppi Huron Band of the Potawatomi - Douglas Taylor  
 Prairie Band Potawatomi Nation - Raphael J. Wahwassuck  
 Sac and Fox Tribe of the Mississippi in Iowa - Johnathon Buffalo  
 Sac and Fox Nation of the Missouri in Kansas and Nebraska - Gary Bahr  
 Shawnee Tribe - Tonya Tipton  
 Stockbridge-Munsee Community Band of Mohican Indians - Jeffery C. Bendremer  
 Eastern Shawnee Tribe of Oklahoma - Paul Barton  
 Wyandotte Nation Oklahoma - Sherri Clemons  
 Cherokee Nation - Elizabeth Toombs  
 Eastern Band of Cherokee Indians - Miranda Panther  
 United Keetowah Band of Cherokee Indians - Whitney Warriar  
 Menominee Indian Tribe of Wisconsin - David Grignon  
 Chippewa -Little Shell Tribe of Chippewa of Montana - Gerald Gray  
 Chippewa -Lac Vieux Desert Band of Lake Superior Chippewa Indians - Alina Shively

# **Illinois Transportation Archaeology and Tribal Consultation: Memorandum of Understanding Annual Report for Illinois Fiscal Year 2022 (July 1, 2021 to June 30, 2022)**

**December 16, 2022**

**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 twelfth annual report covers Illinois fiscal year 2022.

## **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.

On March 11, 2022, IDOT and FHWA held a remote Section 106 Tribal Consultation Workshop for Highway Projects in Illinois (Session I). The purpose of this workshop was to discuss and update Tribal coordination, the current Tribal Memorandum of Understanding, and other topics. Participants included the FHWA Resource Center, FHWA Illinois Field Office, Illinois Department of Transportation (IDOT), Illinois State Historic Preservation Office (SHPO), Illinois

State Archaeological Survey (ISAS), and the following affiliated Tribal Nations: Ho-Chunk Nation, Kaw Nation, Match-E-Be-Nash-She-Wish (Gun-Lake) Band of Potawatomi Indians, Miami Tribe of Oklahoma, Mille Lacs Band of Ojibwe, Osage Nation, Peoria Tribe of Indians of Oklahoma, and Pokagon Band of Potawatomi.

The first main point of discussion revolved around the Project Notification System (PNS). The second topic related to the type of agreement (MOU vs. Programmatic Agreement) that is most appropriate for Tribal consultation. Session II of the Section 106 Tribal Consultation Workshop will be held in calendar year 2023.

The following pages represent the twelfth 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, IDOT also uses PNS to send notifications to the Tribes for some Federal Railroad Administration (FRA) and Federal Aviation Administration (FAA) projects.

In FY22 the Cultural Resources Unit in the Bureau of Design and Environment at the IDOT received 655 Environmental Survey Requests for transportation projects: 648 for highways and related projects (bridges, bike trails, streetscapes, etc.), 6 for airport projects, and 1 railroad project (Table 1). In accordance with the MOU and PA, 563 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 FY22 this process encompassed 88 projects: 85 for highways, three for airports, and zero for railroads. When surveyed, 45 of these projects resulted in the identification of archaeological sites (Table 2). Thirteen 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 FY22 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 FY22 no human remains were discovered.

### **Part 3: Tribal Participation**

In total, 736 initial project notification emails were sent to the 17 Tribes participating in the PNS during FY22: Delaware Nation, Ho-Chunk Nation, Iowa Tribe of Kansas and Nebraska, Kaw Nation, Kickapoo Tribe in Kansas, Match-E-Be-Nash-She-Wish Band of Pottawatomis Indians - Gun Lake Tribe, Miami Nation, Osage Nation, Peoria Tribe of Indians of Oklahoma, Forest County Potawatomi, Pokagon Band of the Potawatomi, Ponca Tribe of Nebraska, Quapaw Nation, Sac and Fox Nation of Oklahoma, Seneca-Cayuga Nation, Quapaw Nation, and Winnebago Tribe of Nebraska. A total of 807 project update notifications were sent via PNS to the 17 Tribes. Participating Tribes replied with 449 separate comments (Table 2); 350 comments were sent directly via PNS and 99 were provided through other means. 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 held remotely in 2022 was important for addressing issues of concern to the Tribes but also for renewing relationships and creating new ones. The workshop provided an opportunity for Tribes to communicate to IDOT and FHWA about what works and does not work regarding the MOU and the current consultation process.

**Table 1. Transportation Projects Reviewed for Cultural Resources in Fiscal Year 2022**

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	171	155	14	1	0	1	0	157	14
2	78	62	15	1	0	0	0	63	15
3	74	67	6	0	1	0	0	67	7
4	33	24	8	0	1	0	0	24	9
5	36	34	2	0	0	0	0	34	2
6	69	62	7	0	0	0	0	62	7
7	66	53	12	1	0	0	0	54	12
8	74	56	17	0	1	0	0	56	18
9	54	50	4	0	0	0	0	50	4
<b>Total</b>	<b>655</b>	<b>563</b>	<b>85</b>	<b>3</b>	<b>3</b>	<b>1</b>	<b>0</b>	<b>567</b>	<b>88</b>

\*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 2022**

IDOT District	County	Projects	Projects with Sites	Projects with Further Work	Tribal PNS Comments
<b>District 1</b>	Cook	5	2	1	27
	DuPage	1	1	0	5
	Kane	1	1	0	5
	Lake	3	1	0	15
	McHenry	1	0	0	7
	Will	3	2	0	29
	<b>Total</b>	<b>14</b>	<b>7</b>	<b>1</b>	<b>88</b>
<b>District 2</b>	Boone	2	0	1	16
	Carroll	0	0	0	0
	Henry	1	0	0	4
	Jo Daviess	2	1	0	15
	Lee	1	0	0	2
	Ogle	0	0	0	0
	Rock Island	2	2	0	8
	Stephenson	2	0	0	6
	Whiteside	2	2	0	16
	Winnebago	3	2	0	22
	<b>Total</b>	<b>15</b>	<b>7</b>	<b>1</b>	<b>89</b>
<b>District 3</b>	Bureau	0	0	0	4
	DeKalb	2	2	0	9
	Ford	0	0	0	0
	Grundy	1	1	0	5
	Iroquois	0	0	0	0
	Kankakee	0	0	0	0
	Kendall	0	0	0	0
	LaSalle	4	1	0	21
	Livingston	0	0	0	0
		<b>Total</b>	<b>7</b>	<b>4</b>	<b>0</b>
<b>District 4</b>	Fulton	2	1	0	14
	Henderson	0	0	0	3
	Knox	1	0	0	1
	McDonough	1	0	0	7
	Marshall	2	1	0	17
	Mercer	0	0	0	0
	Peoria	1	0	0	7
	Putnam	0	0	0	0
	Stark	0	0	0	0
	Tazewell	1	1	0	5
	Warren	1	1	0	6
	Woodford	0	0	0	0
		<b>Total</b>	<b>9</b>	<b>4</b>	<b>0</b>
<b>District 5</b>	Champaign	1	1	0	4
	Dewitt	0	0	0	0
	Douglas	0	0	0	10
	Edgar	0	0	0	0
	McLean	1	0	0	5
	Piatt	0	0	0	0
	<b>Total</b>	<b>2</b>	<b>1</b>	<b>0</b>	<b>19</b>
<b>District 6</b>	Adams	1	0	0	10
	Brown	0	0	0	0
	Cass	0	0	0	0
	Christian	0	0	0	0
	Hancock	1	0	0	3
	Logan	0	0	0	0
	Macoupin	0	0	0	0
	Mason	0	0	0	0
	Menard	0	0	0	0
	Montgomery	1	0	0	3
	Morgan	0	0	0	0
	Pike	0	0	0	0
	Sangamon	1	1	1	4
	Schuyler	1	0	0	8
	Scott	2	1	0	7
	<b>Total</b>	<b>7</b>	<b>2</b>	<b>1</b>	<b>35</b>
<b>District 7</b>	Clark	0	0	0	0
	Clay	1	0	0	4
	Coles	0	0	0	1
	Crawford	0	0	0	0
	Cumberland	0	0	0	0
	Douglas	1	0	0	0
	Edwards	0	0	0	0
	Effingham	3	0	0	12
	Fayette	0	0	0	0
	Jasper	0	0	0	0
	Lawrence	5	4	1	9
	Macon	0	0	0	0
	Moultrie	1	1	0	4
	Richland	1	0	0	4



	Shelby	0	0	0	0
	Wabash	0	0	0	0
	Wayne	0	0	0	0
	<b>Total</b>	<b>12</b>	<b>5</b>	<b>1</b>	<b>34</b>
<b>District 8</b>	Bond	0	0	0	0
	Calhoun	0	0	0	0
	Clinton	1	1	0	3
	Greene	1	1	0	5
	Jersey	2	2	1	7
	Madison	5	3	3	20
	Marion	1	0	0	0
	Monroe	2	2	1	9
	Randolph	2	1	1	6
	St. Clair	3	1	1	13
	Washington	1	0	0	4
	<b>Total</b>	<b>18</b>	<b>11</b>	<b>7</b>	<b>67</b>
<b>District 9</b>	Alexander	0	0	0	0
	Franklin	0	0	0	0
	Gallatin	0	0	0	0
	Hamilton	0	0	0	0
	Hardin	0	0	0	3
	Jackson	0	0	0	0
	Jefferson	0	0	0	0
	Johnson	0	0	0	0
	Massac	1	1	0	4
	Perry	0	0	0	0
	Pope	0	0	0	0
	Pulaski	0	0	0	0
	Saline	0	0	0	0
	Union	0	0	0	1
	White	2	2	1	8
	Williamson	1	1	1	2
	<b>Total</b>	<b>4</b>	<b>4</b>	<b>2</b>	<b>18</b>
	<b>GRAND TOTAL</b>	<b>88</b>	<b>45</b>	<b>13</b>	<b>449</b>

**Points of Contact for Tribal Consultation/Coordination in Illinois**

ENTITY	PRIMARY CONTACT	SECONDARY CONTACT(S)
Federal Highway Administration	Darien Siddall <a href="mailto:Darien.Siddall@dot.gov">Darien.Siddall@dot.gov</a> 217-492-4615	Matt Fuller <a href="mailto:Matt.Fuller@dot.gov">Matt.Fuller@dot.gov</a> 217-492-4625
Illinois Department of Transportation	Joe Galloy <a href="mailto:Joseph.Galloy@illinois.gov">Joseph.Galloy@illinois.gov</a> 217-785-7833	Gary Quigg <a href="mailto:Gary.Quigg@Illinois.gov">Gary.Quigg@Illinois.gov</a> 317-334-6803
Illinois State Archaeological Survey	Tim Pauketat <a href="mailto:pauketat@illinois.edu">pauketat@illinois.edu</a> 217-244-4244	Elizabeth Watts Malouchos <a href="mailto:ewatts@illinois.edu">ewatts@illinois.edu</a> 618-855-9206  Thomas J. Loebel <a href="mailto:tjl2@illinois.edu">tjl2@illinois.edu</a> 217-244-4244  Michael Farkas <a href="mailto:mgfarkas@illinois.edu">mgfarkas@illinois.edu</a> 217-244-6706

**MEMORANDUM OF UNDERSTANDING  
AMONG**

**THE FEDERAL HIGHWAY ADMINISTRATION,  
ILLINOIS STATE HISTORIC PRESERVATION OFFICER,  
ILLINOIS DEPARTMENT OF TRANSPORTATION,**

**and**

**FEDERALLY RECOGNIZED TRIBES INTERESTED IN ILLINOIS LANDS**

**REGARDING TRIBAL CONSULTATION REQUIREMENTS  
FOR THE ILLINOIS FEDERAL TRANSPORTATION PROGRAM**

**PREFACE**

This document is the result of discussions among the Federal Highway Administration (FHWA), the Illinois Department of Transportation (IDOT), the Advisory Council on Historic Preservation (ACHP), the Illinois State Historic Preservation Officer (Illinois SHPO), and the Tribes who have expressed an interest in Illinois lands. This document is intended to define consultation, for compliance with the National Historic Preservation Act (NHPA) (16 U.S.C. § 470 et seq.), among the FHWA, IDOT and the Tribes interested in Illinois lands. As required under the terms of the NHPA and resulting regulations (36 CFR 800), consultation has revealed that many Tribes have aboriginal ties to what is now the State of Illinois. Those Tribes have expressed concern, and requested to be consulted on future transportation projects in Illinois.

The FHWA and IDOT understand that the Tribes have concerns regarding cultural resources, protection of burials, preservation of Traditional Cultural Properties (TCPs), continuing destruction of places and items of cultural value, and the effects of this destruction on their cultural identity today. Cultural resources are revered by the Tribes and are a connection to their past and important to their cultural identity, sense of self and future well-being. Cultural resources are tied to people's ancestors, some are related to important religious activities, and many have ongoing spiritual connections. The FHWA and IDOT recognize the importance of these remnants from the past to aboriginal people living today.

Modern development, including transportation construction, has the potential to destroy valuable cultural resources and adversely impact others. This agreement is intended to ensure all parties understand which cultural resources are important to the Tribes and work together to protect and preserve them. The FHWA and IDOT are committed to providing a transportation system that will benefit all people of Illinois. The FHWA and IDOT are committed to learning Tribal perspectives about cultural resources important to the Tribes. The Tribes are committed to understanding transportation issues and the perspectives of the FHWA and IDOT. Jointly we are committed to establishing a relationship of mutual trust and respect.

The FHWA and IDOT recognize that transportation projects have the potential to adversely affect cultural resources: burials, sacred sites, archaeological sites, traditional natural resources, and traditional landscapes of value to the Tribes. The FHWA and IDOT do not wish further destruction of these culturally valued places, and recognize the inherent rights of Tribes to preserve those places that they value.

It is the intention of the FHWA and IDOT to work with the Tribes to find appropriate ways to avoid effect to important cultural resources. The FHWA and IDOT pledge to always look for ways to avoid effect to these resources as the first option. When avoidance of effect is impossible or impractical, given other concerns of equal importance, the FHWA and IDOT will work with the Tribes for appropriate and respectful resolution of any unavoidable effects.

The IDOT will 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. In the event of an inadvertent discovery of human remains or burials on non-Federal lands during transportation construction activities, IDOT will comply with the Illinois Human Skeletal Remains Protection Act (20 ILCS 3440) (see III.C.3.)

**WHEREAS**, all signatory Tribes identified in Appendix A with the area in which they have expressed an interest are federally recognized sovereign Indian Nations with their own Tribal laws, with established government-to-government relationships with the United States and an interest in specific areas of Illinois, as shown in Appendix A: “COUNTY LISTING OF THE TRIBES’ ANCESTRAL HOMELANDS AND TERRITORY IN THE STATE OF ILLINOIS”, and have been consulted and agree to be signatories to this document; and

**WHEREAS**, the Illinois SHPO has been consulted and agrees to be a signatory to this document; and

**WHEREAS**, the FHWA and IDOT wish to affirm the government-to-government relationship with the Tribes for consultation and cooperation regarding Federal Acts and Orders including, but not limited to, Section 106 of the NHPA; the National Environmental Policy Act, 42 U.S.C. §§ 4321, 4331, 4332, the Archaeological Resource Protection Act, 16 U.S.C. § 470aa et seq. Presidential Executive Order 13007 (Indian Sacred Sites), Presidential Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. 3001) and the American Indian Religious Freedom Act, 42 U.S.C. § 1996; and

**WHEREAS**, the FHWA is the Federal agency with statutory responsibilities for administering the Federal-aid highway program under Title 23 U.S.C. 101 et seq, and IDOT is the applicant for Federal funds for highway construction projects in Illinois. The FHWA agrees to coordinate under a government-to-government relationship with federally recognized Tribal government officials or appointees with regard to Federal responsibilities under Section 106 of the NHPA through the terms of this Memorandum of Understanding (MOU). The IDOT will consult with representatives designated by the Tribal governments to manage or advise on matters pertaining to cultural resources; and

**WHEREAS**, the FHWA has determined that its undertakings may have an effect upon properties included in or eligible for inclusion in the National Register of Historic Places

(NRHP), that may be of interest to the Tribes, and through this agreement will consult with the Tribes pursuant to Section 106 of the NHPA (16 U.S.C. 470f); and

**WHEREAS**, the FHWA and IDOT are committed to the design and construction of a transportation system that: 1) safely moves people and goods; 2) avoids, minimizes and mitigates adverse effects on cultural resources; 3) recognizes that consideration of Tribal interest in preservation of significant cultural resources is important to Tribal well-being, growth and prosperity; and 4) responds to the needs of Illinois communities and the Tribes; and

**WHEREAS**, the IDOT will 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 MOU shall consist of one permanent, full time archaeologist; and

**WHEREAS**, the IDOT may contract archaeological field work to other qualified personnel provided they are managed by IDOT. At this time the Illinois State Archaeological Survey (ISAS) , through an intergovernmental agreement with the University of Illinois, performs all field work and develops technical reports to implement IDOT's cultural resources program; and

**WHEREAS**, the FHWA, IDOT, and the signatory Tribes aspire to engage in meaningful, long-term planning for the appropriate consideration of cultural resources important to the Tribes, and to include the following:

- develop a comprehensive and efficient Tribal consultation process for all Section 106 undertakings,
- streamline the process and procedural requirements,
- recognize that Tribes share the responsibility to engage in effective consultation,
- develop a consultation process based upon education and understanding,
- involve the Tribes' cultural experts to a greater extent and at an earlier point than before the implementation of this MOU,
- devote a percentage of time and energy to identify relevant transportation problems threatening cultural resources important to the Tribes,
- any additional goals identified through consultation;

**BE IT RESOLVED**, the FHWA, IDOT and the Tribes hereby agree that the implementation of Tribal consultation on highway projects shall be administered in accordance with the following stipulations in order to satisfy FHWA tribal consultation responsibilities under the NHPA.

## **STIPULATIONS**

### **I. GENERAL**

A. This MOU sets forth the process by which FHWA will meet its responsibilities with regard to consultation with the Tribes under Section 106 of the NHPA for highway projects within the State of Illinois of the Federal Aid Highway Program. This MOU establishes a protocol for consultation with the Tribes on individual highway projects.

B. Nothing in this MOU shall be interpreted to alter the requirements of the NHPA or its implementing regulations. In the event any portion of this MOU is deemed contradictory to law or regulation, only that contradictory portion becomes void. The sole contradictory issue does not negate the entire agreement. The parties should consult to resolve that contradictory issue with the intent to reform that portion to make it compliant with the applicable law or regulation, and the remaining portions of the MOU remain in full force and effect.

C. No portion of this MOU shall be interpreted to limit the rights, duties, or responsibilities as may be implemented under Federal statutes, regulations, policies, Executive Memoranda or Executive Orders, and related documents.

D. Consultation should begin early in the planning process and continue throughout a Section 106 undertaking. A letter or email of notification, in and of itself, from FHWA/IDOT to the Tribe is not considered consultation. Consultation is a mutual, meaningful dialogue between FHWA, IDOT, the Illinois SHPO, and the Tribe regarding historic properties that may be affected by an undertaking. Consultations may include face-to-face meetings, as well as communications by mail, electronic mail, facsimile, and telephone. Times and places of meetings, as well as agendas of meetings, will be developed with mutual acceptance. If there are historic properties that are of religious and cultural significance to the Tribe, then consultation may be extended to include future management, protection, and preservation of these properties.

E. The FHWA and IDOT shall consult each Tribe on a government-to-government basis in recognition of its sovereign status early in the planning process, and throughout Section 106 review, regarding any activity or undertaking that might affect historic or cultural properties. The FHWA will monitor and supervise any such consultations, and will be available for direct communication from any party. The FHWA will be a signatory on all project specific, or other formal Section 106 agreement documents.

F. The FHWA and IDOT shall ensure that the Tribe is consulted throughout a specific undertaking and that the Tribe is afforded, in accordance with applicable Federal, State, and local authorities and highway safety measures, the opportunity to conduct religious/traditional ceremonies within right-of-way owned by IDOT, with regard to a specific location or with regard to American Indian human remains and funerary objects as well as any other cultural items from sacred or religious contexts.

G. The FHWA and IDOT recognize that facilitating effective tribal consultation may require providing travel support for tribal officials. Future formal agreements may specify how this support may occur.

H. The FHWA and IDOT shall ensure that consultation with other consulting parties, including local governments, shall not include the dissemination, beyond those who have an official need to know, of confidential information except as mandated by Federal or State laws. Confidential information is defined as information that might risk harm to

1. TCPs,
2. archaeological sites that may contain burials or human remains and/or associated cultural items,

3. significant archaeological habitation sites in accordance with Section 304 of the NHPA and other applicable authorities,

I. As TCPs, burial sites, and/or associated cultural items are non-renewable resources, FHWA and IDOT shall make a reasonable and good faith effort to inform the public and private landowners regarding stewardship, site protection and preservation which may include but not be limited to tax incentives or related benefits, lectures, exhibits, site-specific consultation, brochures, and videos.

J. An interested Tribe may request to enter the process at any time. The interested Tribes will be contacted if human remains or burials are found during archaeological investigations conducted within IDOT rights-of-way and the human remains are determined to be associated with Tribes. If individual or scattered fragments of bone or teeth are found, further field investigations will be done to determine if they are isolated or part of additional human remains or burials.

## **II. NOTIFICATION FOR CONSULTATION PROCEDURES**

A. *Points of Contact:* The FHWA, IDOT, Illinois SHPO, and the Tribes, shall each designate a primary and secondary contact. The primary contact for the Tribes is the contact to whom all initial and formal correspondence goes, including the Illinois Proposed Highway Improvement Program (HIP) listing (see Stipulations II.C and III.A.) and electronic web-based Project Notification System (PNS) notifications (see Stipulation III.B.). If the individual designated as the primary point of contact is not available, communications should be directed to the secondary contact. The primary and secondary contacts within each Tribe are responsible for involving the appropriate Tribal individuals as they deem appropriate. Each party of this MOU shall provide the other parties with the phone numbers, email addresses, and mailing addresses for the primary and secondary contacts (see Appendix B “POINT OF CONTACT LIST”). Each party shall notify the other parties in writing (hardcopy or email) when either point of contact changes. Such changes shall not require the amendment of this agreement.

B. *Tribal Areas of Concern:* The Tribes have provided, or will provide, FHWA/IDOT with a map and listing of all Illinois counties that exist within their ancestral homeland and territory, in which they have an interest (see Appendix A). At the Tribes’ discretion, a Tribe or Tribe(s) may also be identified to review projects in other areas of Illinois. The FHWA/IDOT will maintain this list and will update as necessary when additional Tribal interests are made known.

C. *Illinois Program Documents:* The current Illinois Proposed HIP, which is a multi-year list of all proposed transportation projects with scopes and locations, is maintained on the IDOT website. The IDOT will email Tribal contacts the website address when these documents are updated on an annual basis, with an offer to send hard copies upon request. This information will give the Tribes the opportunity to review and comment on *all* projects in their counties of interest in advance of project development. (see Section III, Consultation Procedures)

D. *Delegation of Certain Responsibilities to IDOT:* The IDOT will send the Illinois Proposed HIP and the initial electronic PNS notification to Tribes for the applicable projects (see Stipulation II. F.), soliciting the Tribes’ input early in the project’s development, and providing them project information as necessary or requested. The IDOT may also carry out consultation

activities in accordance with Stipulation I.D., but FHWA will be involved in or monitor all such consultations, and will at all times be available for direct communication with any party. The FHWA will be a signatory on all project specific or other formal agreement documents.

*E. Projects Exempt from Initial PNS Notification:* Projects listed in Appendix C “PROJECTS EXEMPT FROM INITIAL NOTIFICATION”, provided they are not part of a larger undertaking, are by their nature and definition either: 1) types of projects that have no potential to affect historic properties, or 2) types that have no or limited potential to result in any effects to historic properties of concern to the Tribes. These projects are exempt from PNS notification. Exemption of projects from PNS *notification* does not exempt those projects from Tribal *consultation* opportunities. Upon agreement from FHWA, IDOT, Illinois SHPO, and all signatory Tribes, Appendix C may be modified without amendment to this MOU.

No Federal-aid projects are exempt from being listed in the Illinois Proposed HIP. Therefore, Tribes will see a listing of *all* Federal-aid projects in their counties of interest (see III.A).

*F. Transportation Projects to be Considered for PNS Notification to Tribes:* The IDOT will use the PNS to notify Tribes and the Illinois SHPO about minor projects (typically Categorical Exclusion (CE) classes of action under the National Environmental Policy Act (NEPA)) with potential to affect historic properties that may be of interest to the Tribes. The FHWA will normally notify by email Tribes and the Illinois SHPO directly about major projects (typically Environmental Assessment (EA) and Environmental Impact Statement (EIS) projects under NEPA) with the potential to affect historic properties that may be of interest to the Tribes. PNS notifications include:

1. Any minor IDOT project that is considered to be a Federal undertaking that is subject to Section 106 as described in 36 CFR Part 800.3(a) and Part 800.16(y). The IDOT will consult with the Tribes who claim association with that project’s county (see Appendix A). However, those projects that impact previously disturbed or surveyed ground are exempt from initial notification (see Appendix C).
2. Information about minor projects at the initiation of the archaeological resources survey for all projects that fall under Stipulation F.1 that are not EA or EIS projects. At a minimum this information will include a project description, location maps, and the location of known burial sites in the immediate area.
3. The FHWA/IDOT will consult with the Tribes regarding any properties in which the Tribes have an expressed interest as a result of their review of all project documentation provided by IDOT.

### **III. CONSULTATION PROCEDURES**

*A. Illinois Program Documents:* The current Illinois Proposed HIP, which is a multi-year list of all proposed transportation projects with scopes and locations, is maintained on the IDOT website. The IDOT will email Tribal contacts the website address when these documents are updated on an annual basis, with an offer to send hard copies upon request. This information will give the Tribes the opportunity to review and comment on projects in advance of project development.



If a Tribe expresses interest in any project(s) listed, they may request that detailed project information be sent to them via the PNS, and the procedures under Stipulation III. B. will be followed.

*B. Project Notification System (PNS):* In addition to the regular notification of all projects in the Illinois Proposed HIP, IDOT will notify the Tribal designated contacts (Appendix B) and the Illinois SHPO through the PNS by email when a proposed minor project has been requested for archaeological survey. These are projects that IDOT has determined may have potential to affect historic properties, in consultation with the interested Tribes. This notification will be done for projects identified in Stipulation II.F, *Transportation Projects to be Considered for PNS Notification to Tribes*.

For projects sent through the PNS, the Tribes, FHWA, the Illinois SHPO, and IDOT, mutually agree on the following consultation procedures for identifying and evaluating the effects of projects on cultural resources. These procedures shall comply with all applicable Federal, and State laws, statutes, and regulations.

1. The IDOT will use Appendix A, to identify and provide the interested Tribes with early notification through the PNS that a project is under study within a county of their area of concern. The PNS notification will provide a project description along with a 7.5 minute quadrangle map showing the proposed project location. The Tribe will notify IDOT in the PNS if there is a TCP within the project area, or if they have an interest in the undertaking. If IDOT does not receive a response from the Tribes within 45 days, they may assume the Tribes have no interest in the undertaking. The IDOT may proceed with archaeological investigations as soon as the notification is sent to the Tribes.
2. Tribes that responded within the 45-day period with an interest will be considered a consulting party for the project. The IDOT will notify FHWA of the Tribe's interest, who will, if appropriate, contact the Tribe. The interested Tribe may request additional project information, which IDOT will provide. The means of consultation will be negotiated on a project case-by-case basis as appropriate for the Tribe's interest and request.
3. If there is any disagreement among the agencies and the Tribes regarding eligibility of a TCP, all parties will have further discussions to attempt to reach agreement and will follow eligibility guidelines in National Park Service Bulletin 38. If Tribes disagree on preferred treatment of a TCP, the Tribes will negotiate among themselves and present one recommendation for IDOT/FHWA on which to base their actions.
4. The IDOT, in consultation with the Illinois SHPO and interested Tribes, shall conduct appropriate archaeological investigations and prepare the reports, which will be posted on the IDOT/ISAS PNS and a notification sent to the consulting party Tribes and the Illinois SHPO. Reports may also be sent by hardcopy to consulting party Tribes that have demonstrated technical difficulties accessing the reports via PNS.
5. Upon completion, IDOT will send the archaeological survey report to the Illinois SHPO via PNS for a 30-day review period, and also to consulting party Tribes via PNS for a 30-

day comment period that runs concurrent with the Illinois SHPO's 30-day review period. Any response received from consulting party Tribes during this period will be provided to the SHPO for consideration in the identification of historic properties. If IDOT does not receive a response within the 30-day period from a consulting party Tribe, IDOT may assume the Tribe has no comment regarding the outcome of the archaeological investigation and will request concurrence from the Illinois SHPO.

6. Based on the initial field surveys for those properties which FHWA, IDOT, and Illinois SHPO, in consultation with Tribes, agree are not eligible for inclusion in the NRHP, no further archaeological investigations will be required in those areas. The IDOT will send the eligibility determination documentation to the consulting party Tribes via PNS.
7. For those properties identified as eligible for the NRHP, consultation will continue with the Illinois SHPO and consulting party Tribes. If adverse impacts cannot be avoided, then IDOT, FHWA, the Tribes, and Illinois SHPO will consult to develop a Memorandum of Agreement.

C. *Unanticipated Discoveries During Construction:*

1. *Objectives:* The following procedures will be used in the event that previously unreported and unanticipated historic properties or human remains are found during IDOT construction activities. The procedures differ depending on whether unanticipated cultural materials (see Section C.2.) or human remains (see Section C.3.) are encountered. The plan is intended to ensure that the project is in compliance with all applicable Federal and State laws and regulations, including Section 106 of the NHPA of 1966 (36 CFR 800), the Illinois State Agency Historic Resources Preservation Act (20 ILCS 3420), the Illinois Archaeological and Paleontological Resources Protection Act (20 ILCS 3435), and the Illinois Human Skeletal Remains Protection Act (20 ILCS 3440).
2. *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 150 foot radius of the discovery, notify IDOT of the discovery, and implement interim measures to protect the discovery from looting and vandalism. Within 48 hours of receipt of this notification of the discovery, IDOT shall:

- i. inspect the work site to determine the extent of the discovery and ensure that construction activities have halted;
- ii. clearly mark the area of the discovery;
- iii. implement additional measures, as appropriate, to protect the discovery from looting and vandalism; and
- iv. notify the FHWA, the Illinois SHPO, and the Tribes who have identified the location as within their ancestral homelands, of the discovery.

(b) The IDOT/FHWA will have seven business days following notification to determine the NRHP eligibility of the discovery after considering the filed comments of the Illinois SHPO, interested Tribes, and other consulting parties. The IDOT/FHWA may assume the newly discovered property to be eligible for the NRHP for the purposes of Section 106 pursuant to 36 CFR§ 800.13(c)

(c) If the find is determined to be potentially significant, IDOT will consult with the Illinois SHPO, the Tribes, and other interested parties regarding appropriate measures for site treatment. For properties determined eligible for the NRHP, IDOT/FHWA will notify the Illinois SHPO, interested Tribes, and other consulting parties, of those actions for which it proposes to resolve adverse effects. Interested Tribes and other consulting parties will have seven business days to provide their views on the proposed actions. The IDOT/FHWA will ensure that the recommendations of interested Tribes and other consulting parties are taken into account prior to granting approval of the measures that will be implemented to resolve adverse effects. These measures may include:

- i. formal archaeological evaluation of the site;
- ii. visits to the site by the Illinois SHPO, the Tribes, and other interested parties;
- iii. exploration of potential alternatives to avoid the site;
- iv. preparation of a mitigation plan by IDOT in consultation with the Tribes for approval by the Illinois SHPO;
- v. implementation of a mitigation plan; and
- vi. FHWA approval to resume construction following completion of the fieldwork component of the mitigation plan.

(d) If the find is determined to be either isolated or completely disturbed by construction activities, IDOT will consult with the Illinois SHPO, the Tribes, and other interested parties prior to resuming construction.

(e) Dispute Resolution: The FHWA will seek and take into account the recommendations of the ACHP in resolving any disagreements that may arise regarding determination of effects.

3. *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, the IDOT will comply with the Illinois Human Skeletal Remains Protection Act (20 ILCS 3440) as administered by the Illinois Historic Preservation Agency (IHPA) and will 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 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) The IDOT will notify the County Coroner, IHPA, the Tribes, and other interested parties within 48 hours of the discovery. The IDOT/FHWA will contact by phone the point of contact for each interested Tribe of the discovery.

(c) Within 72 hours after notification the County Coroner will determine jurisdiction. If the remains are older than 100 years, the County Coroner will transfer jurisdiction to IHPA.

(d) In coordination with IHPA, 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.

(e) The IDOT/FHWA is responsible for notifying the Tribes within 24 hours of IHPA's findings.

(f) If it is determined by IHPA that intact or fragmented human remains are present and they are Native American, IDOT will consult with the IHPA, Illinois SHPO, FHWA, the Tribes, 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 the Tribes will be required;
- iii. visits to the site by the Illinois SHPO, the Tribes, and other interested parties; exploration of potential alternatives to avoid the human remains or burial;
- iv. for Native American remains, implementation of a mitigation plan by IDOT in consultation with IHPA and the Tribes, including procedures for disinterment and re-interment;
- v. implementation of the mitigation plan; and
- vi. IHPA and FHWA approval to resume construction following completion of the fieldwork component of the mitigation plan.

#### **IV. OTHER POINTS OF MUTUAL AGREEMENT**

*A. Execution and Implementation:* This agreement is effective as of the date of the last signature among FHWA, IDOT, and at least one Tribe with an interest in Illinois lands. Other Tribes may become signatory to this agreement after that date, without the need to amend this MOU. The successful implementation of this process shall constitute meaningful consultation between FHWA and the Signatory Tribes to fulfill tribal consultation requirements of Section 106 of the NHPA.

B. *Annual Report*: The IDOT will submit a report to FHWA, Illinois SHPO, and Tribes identifying projects processed under this MOU. The report should include a description of actions taken to comply with this agreement. Discussion needs to take place between the Tribes, Illinois SHPO, IDOT, and FHWA regarding effectiveness of the MOU and any changes. If necessary, the contact list in Appendix B will be updated annually when the report is submitted.

C. *Confidentiality*: The FHWA and IDOT acknowledge the need for confidentiality of certain Tribal spiritual and cultural information that may be provided by the Tribes during the course of consultations, and other aspects of Tribal consultation conducted on cultural resource issues. Information identified as sensitive by consulted Tribal members, and requested to remain confidential, will remain confidential to the extent permitted by State and Federal law [Section 304 of NHPA].

D. *Dispute Resolution*: Should any signatory object at a later date to the implementation of this agreement in whole or in part, the objecting party will consult with all signatories to resolve the objection. If all signatories are unable to satisfactorily resolve the issue, and the issue involves resolution of the Adverse Effect of an IDOT project on a site eligible for inclusion on the NRHP, the administrative process defined in 36 CFR Part 800.6 will be followed.

E. *Failure to Comply/Termination*: If any signatory determines that the terms of this MOU cannot be or are not being carried out, then the signatories shall consult regarding the reasons, and will seek amendment to the MOU, if appropriate. If the MOU is not amended, any signatory may terminate their participation in the MOU by providing 30 calendar days written notice to the other parties. In the event of termination by a Tribe, the FHWA and IDOT shall comply with 36 CFR 800 and continue with individual Tribal consultation with that Tribe. As long as the FHWA, IDOT, Illinois SHPO, and at least one Tribe continues to participate, the MOU will remain in effect, but the Tribes who have terminated their participation will no longer be held to the terms of this agreement.

F. *Amendment*: Any signatory to this MOU may request that it be amended, whereupon all signatories shall consult to consider such an amendment. Any resulting amendments shall be developed and executed among the signatories in the same manner as the original MOU. Any amendment to this agreement will go into effect only upon written agreement of all signatories.

G. *Evaluation of MOU Implementation*: At least once a year, the signatories will discuss issues defined in this MOU. Once every two years, to the extent feasible, FHWA will host a meeting and will reimburse travel/per diem expenses for one representative from each signatory Tribe to attend the meeting. The purpose of the meetings is to continue effective working relationships and evaluate the implementation of this agreement.

H. *Participation in Similar Activities*: This MOU in no way restricts the FHWA, IDOT, or the signatory Tribes from participating in similar activities with other public or private agencies, organizations, and individuals.

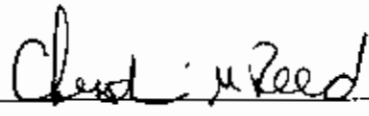
I. *Commencement/Termination Date*: This MOU is executed as of the date of last signature between FHWA, IDOT, Illinois SHPO, the ACHP, and at least one Tribe affiliated with land within the State of Illinois. Other Tribes may become signatory to this agreement after that date. This MOU is effective through December 31, 2030, at which time it will expire unless specifically extended by signatory resolution. One year prior to expiration, the signatories will discuss whether this agreement should be renewed, modified, or allowed to expire.

**SIGNATORIES**

By: 

Date: 8/31/2011

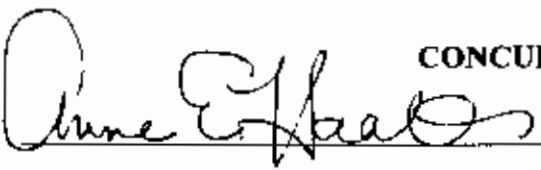
Norman R. Stoner, P.E.,  
Division Administrator  
Federal Highway Administration

By: 

Date: 8/31/11

Christine M. Reed,  
Director of Highways  
Chief Engineer  
Illinois Department of Transportation

**CONCURRING PARTIES**

By: 

Date: 8/31/11

Anne E. Haaker,  
Deputy State Historic Preservation Officer  
Illinois Historic Preservation Agency

RECEIVED  
SEP 26 2011  
ILLINOIS  
DIVISION

MEMORANDUM OF UNDERSTANDING  
AMONG

THE FEDERAL HIGHWAY ADMINISTRATION,  
ILLINOIS STATE HISTORIC PRESERVATION OFFICER,  
ILLINOIS DEPARTMENT OF TRANSPORTATION,

and

FEDERALLY RECOGNIZED TRIBES INTERESTED IN ILLINOIS LANDS

REGARDING TRIBAL CONSULTATION REQUIREMENTS  
FOR THE ILLINOIS FEDERAL TRANSPORTATION PROGRAM

Iowa Tribe of Kansas and Nebraska

Signature: Alan Kelley Date: 09-19-11

Please print name: Alan Kelley Title: Sec 106 Coordinator

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**MEMORANDUM OF UNDERSTANDING  
AMONG**

**THE FEDERAL HIGHWAY ADMINISTRATION,  
ILLINOIS STATE HISTORIC PRESERVATION OFFICER,  
ILLINOIS DEPARTMENT OF TRANSPORTATION,**

**and**

**FEDERALLY RECOGNIZED TRIBES INTERESTED IN ILLINOIS LANDS**

**REGARDING TRIBAL CONSULTATION REQUIREMENTS  
FOR THE ILLINOIS FEDERAL TRANSPORTATION PROGRAM**

**Ponca Tribe of Nebraska**

Signature: 

Date: December 13, 2011

Please print name: Gloria M. Hamilton

Title: Ponca Tribe of Nebraska  
THPO Coordinator



MEMORANDUM OF UNDERSTANDING  
AMONG

THE FEDERAL HIGHWAY ADMINISTRATION,  
ILLINOIS STATE HISTORIC PRESERVATION OFFICER,  
ILLINOIS DEPARTMENT OF TRANSPORTATION,

and

FEDERALLY RECOGNIZED TRIBES INTERESTED IN ILLINOIS LANDS

REGARDING TRIBAL CONSULTATION REQUIREMENTS  
FOR THE ILLINOIS FEDERAL TRANSPORTATION PROGRAM

Osage Nation

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Please print name: \_\_\_\_\_

Title: \_\_\_\_\_

*[Handwritten Signature]*

*12/13/12*

*JOHN D. Red Eagle*

*Principal Chief*

**MEMORANDUM OF UNDERSTANDING  
AMONG**

**THE FEDERAL HIGHWAY ADMINISTRATION,  
ILLINOIS STATE HISTORIC PRESERVATION OFFICER,  
ILLINOIS DEPARTMENT OF TRANSPORTATION,**

**and**

**FEDERALLY RECOGNIZED TRIBES INTERESTED IN ILLINOIS LANDS**

**REGARDING TRIBAL CONSULTATION REQUIREMENTS  
FOR THE ILLINOIS FEDERAL TRANSPORTATION PROGRAM**

**Peoria Tribe of Indians in Oklahoma**

Signature:  \_\_\_\_\_

Date: 12-20-12 \_\_\_\_\_

Please print name: \_\_\_\_\_

Title: \_\_\_\_\_

MEMORANDUM OF UNDERSTANDING  
AMONG

THE FEDERAL HIGHWAY ADMINISTRATION,  
ILLINOIS STATE HISTORIC PRESERVATION OFFICER,  
ILLINOIS DEPARTMENT OF TRANSPORTATION,

and

FEDERALLY RECOGNIZED TRIBES INTERESTED IN ILLINOIS LANDS

REGARDING TRIBAL CONSULTATION REQUIREMENTS  
FOR THE ILLINOIS FEDERAL TRANSPORTATION PROGRAM

Forest County Potawatomi Community

Signature: Harold Frank

Date: 8-7-17

Please print name: Harold Frank

Title: Chairman

MEMORANDUM OF UNDERSTANDING  
AMONG

THE FEDERAL HIGHWAY ADMINISTRATION,  
ILLINOIS STATE HISTORIC PRESERVATION OFFICER,  
ILLINOIS DEPARTMENT OF TRANSPORTATION,

and

FEDERALLY RECOGNIZED TRIBES INTERESTED IN ILLINOIS LANDS

REGARDING TRIBAL CONSULTATION REQUIREMENTS  
FOR THE ILLINOIS FEDERAL TRANSPORTATION PROGRAM

Kaw Nation

Signature: \_\_\_\_\_



Date: \_\_\_\_\_

5-22-18

Please print name: \_\_\_\_\_

Crystal Douglas

Title: \_\_\_\_\_

THPO KAW Nation

## APPENDIX A

### COUNTY LISTING OF THE TRIBES' ANCESTRAL HOMELANDS AND TERRITORY IN THE STATE OF ILLINOIS

#### IDOT DISTRICTS / COUNTIES

##### DISTRICT 1

<u>Counties</u>	<u>Tribes</u>
Cook	Ho-Chunk, Miami, Peoria, Potawatomi, Sac & Fox
Lake	Ho-Chunk, Miami, Peoria, Potawatomi, Sac & Fox
DuPage	Ho-Chunk, Miami, Peoria, Potawatomi, Sac & Fox
McHenry	Ho-Chunk, Miami, Peoria, Potawatomi, Sac & Fox
Kane	Ho-Chunk, Miami, Peoria, Potawatomi, Sac & Fox
Will	Ho-Chunk, Miami, Kickapoo, Peoria, Potawatomi, Sac & Fox

##### DISTRICT 2

<u>Counties</u>	<u>Tribes</u>
Boone	Ho-Chunk, Miami, Peoria, Potawatomi, Sac & Fox
Carroll	Ho-Chunk, Potawatomi, Sac & Fox, Iowa, Miami, Peoria
Henry	Ho-Chunk, Iowa, Miami, Peoria, Potawatomi, Sac & Fox
Jo Daviess	Ho-Chunk, Iowa, Miami, Peoria, Potawatomi, Sac & Fox
Lee	Ho-Chunk, Miami, Peoria, Potawatomi, Sac & Fox
Ogle	Ho-Chunk, Miami, Peoria, Potawatomi, Sac & Fox
Rock Island	Ho-Chunk, Miami, Peoria, Potawatomi, Sac & Fox
Stephenson	Ho-Chunk, Miami, Peoria, Potawatomi, Sac & Fox
Whiteside	Ho-Chunk, Iowa, Miami, Peoria, Potawatomi, Sac & Fox
Winnebago	Ho-Chunk, Miami, Peoria, Potawatomi, Sac & Fox

##### DISTRICT 3

<u>Counties</u>	<u>Tribes</u>
Bureau	Ho-Chunk, Miami, Peoria, Potawatomi, Sac & Fox
DeKalb	Ho-Chunk, Miami, Peoria, Potawatomi, Sac & Fox
Ford	Kickapoo, Miami, Peoria
Grundy	Ho-Chunk, Kickapoo, Miami, Peoria, Potawatomi, Sac & Fox
Iroquois	Kickapoo, Miami, Peoria
Kankakee	Kickapoo, Miami, Peoria, Potawatomi
Kendall	Ho-Chunk, Miami, Peoria, Potawatomi, Sac & Fox
La Salle	Ho-Chunk, Kickapoo, Miami, Peoria, Potawatomi, Sac & Fox
Livingston	Ho-Chunk, Kickapoo, Miami, Peoria, Potawatomi

DISTRICT 4

Counties

Tribes

Fulton	Ho-Chunk, Iowa, Miami, Peoria, Potawatomi, Sac & Fox
Henderson	Ho-Chunk, Iowa, Miami, Peoria, Sac & Fox
Knox	Ho-Chunk, Miami, Peoria, Potawatomi, Sac & Fox
Marshall	Ho-Chunk, Kickapoo, Miami, Peoria, Potawatomi, Sac & Fox
McDonough	Ho-Chunk, Miami, Peoria, Potawatomi, Sac & Fox
Mercer	Ho-Chunk, Iowa, Miami, Peoria, Sac & Fox,
Peoria	Ho-Chunk, Iowa, Miami, Peoria, Potawatomi, Sac & Fox
Putnam	Ho-Chunk, Kickapoo, Miami, Peoria, Potawatomi, Sac & Fox
Stark	Ho-Chunk, Miami, Peoria, Potawatomi, Sac & Fox
Tazewell	Peoria, Potawatomi, Kickapoo, Miami
Warren	Ho-Chunk, Miami, Peoria, Potawatomi, Sac & Fox
Woodford	Ho-Chunk, Kickapoo, Miami, Peoria, Potawatomi

DISTRICT 5

Counties

Tribes

Champaign	Kickapoo, Miami, Peoria
DeWitt	Kickapoo, Miami, Peoria
Douglas	Kickapoo, Miami, Peoria
Edgar	Kickapoo, Miami, Peoria
McLean	Iowa, Kickapoo, Miami, Peoria
Piatt	Kickapoo, Miami, Peoria
Vermilion	Kickapoo, Miami, Peoria

DISTRICT 6

Counties

Tribes

Adams	Ho-Chunk, Iowa, Miami, Peoria, Sac & Fox
Brown	Ho-Chunk, Iowa, Miami, Peoria, Potawatomi, Sac & Fox
Cass	Kickapoo, Miami, Peoria, Potawatomi,
Christian	Kickapoo, Miami, Peoria
Hancock	Ho-Chunk, Iowa, Miami, Peoria, Sac & Fox
Logan	Kickapoo, Miami, Peoria
Macoupin	Kaw, Kickapoo, Miami, Osage, Peoria
Mason	Kickapoo, Miami, Peoria, Potawatomi
Menard	Kickapoo, Miami, Peoria, Potawatomi
Montgomery	Kickapoo, Miami, Peoria, Potawatomi
Morgan	Kickapoo, Miami, Peoria, Potawatomi
Pike	Ho-Chunk, Iowa, Kaw, Miami, Osage, Peoria, Sac & Fox

Sangamon  
Scott  
Schuyler

Kickapoo, Miami, Peoria  
Kickapoo, Miami, Peoria, Potawatomi  
Ho-Chunk, Miami, Peoria, Potawatomi, Sac & Fox

DISTRICT 7

Counties

Tribes

Clark  
Clay  
Coles  
Crawford  
Cumberland  
Edwards  
Effingham  
Fayette  
Jasper  
Lawrence  
Macon  
Moultrie  
Richland  
Shelby  
Wabash  
Wayne  
White

Kickapoo, Miami, Peoria  
Kickapoo, Miami, Peoria  
Kickapoo, Miami, Peoria  
Kickapoo, Miami, Peoria  
Kickapoo, Miami, Peoria  
Kaw, Miami, Peoria, Ponca, Osage  
Kickapoo, Miami, Peoria  
Kickapoo, Miami, Peoria  
Kickapoo, Miami, Peoria  
Delaware, Kickapoo, Miami, Peoria  
Kickapoo, Miami, Peoria  
Kickapoo, Miami, Peoria  
Miami, Peoria  
Kickapoo, Miami  
Kaw, Kickapoo, Miami, Osage, Peoria, Ponca,  
Kaw, Miami, Osage, Peoria, Ponca,  
Kaw, Miami, Osage, Peoria, Ponca

DISTRICT 8

Counties

Tribes

Bond  
Calhoun  
Clinton  
Greene  
Jersey  
Madison  
Marion  
Monroe  
Randolph  
St. Clair  
Washington

Kaw, Kickapoo, Miami, Osage, Peoria, Ponca  
Ho-Chunk, Kaw, Miami, Osage, Peoria, Sac & Fox  
Kaw, Miami, Osage, Peoria, Ponca  
Kaw, Kickapoo, Miami, Osage, Peoria  
Kaw, Kickapoo, Miami, Osage, Peoria  
Kaw, Kickapoo, Miami, Osage, Peoria, Ponca  
Kaw, Miami, Osage, Peoria  
Kaw, Miami, Osage, Peoria, Ponca  
Delaware, Kaw, Miami, Osage, Peoria, Ponca,  
Kaw, Miami, Osage, Peoria, Ponca  
Kaw, Miami, Osage, Peoria, Ponca

DISTRICT 9

Counties

Tribes

Alexander	Delaware, Kaw, Miami, Osage, Peoria
Franklin	Kaw, Miami, Osage, Peoria, Ponca,
Gallatin	Delaware, Kaw, Miami, Osage, Peoria, Ponca,
Hamilton	Kaw, Kickapoo, Miami, Osage, Peoria, Ponca
Hardin	Kaw, Miami, Osage, Peoria, Ponca
Jackson	Kaw, Miami, Osage, Peoria, Ponca
Jefferson	Kaw, Miami, Osage, Peoria, Ponca
Johnson	Kaw, Miami, Osage, Peoria, Ponca
Massac	Kaw, Miami, Osage, Peoria, Ponca
Perry	Kaw, Miami, Osage, Peoria, Ponca
Pope	Kaw, Miami, Osage, Peoria, Ponca
Pulaski	Kaw, Miami, Osage, Peoria, Ponca
Saline	Kaw, Kickapoo, Miami, Osage, Peoria, Ponca
Union	Kaw, Miami, Osage, Peoria, Ponca
White	Kaw, Miami, Osage, Peoria, Ponca
Williamson	Kaw, Miami, Osage, Peoria, Ponca



## APPENDIX B

### POINT OF CONTACT LIST

#### **Federal Highway Administration**

*Primary Point of Contact:*

Norman R. Stoner, P.E.  
Division Administrator  
3250 Executive Park Drive, Springfield, IL 62703  
[norman.stoner@dot.gov](mailto:norman.stoner@dot.gov)  
217-492-4640

*Secondary Point of Contact:*

Janis P. Piland, P.E.  
Environmental Engineer  
3250 Executive Park Drive, Springfield, IL 62703  
[Janis.piland@dot.gov](mailto:Janis.piland@dot.gov)  
217-492-4989

#### **Illinois Department of Transportation**

*Primary Point of Contact:*

Dr. John Walthall  
Chief Archaeologist  
2300 S. Dirksen Parkway, Springfield, IL 62764  
[John.Walthall@illinois.gov](mailto:John.Walthall@illinois.gov)  
217-785-2831

*Secondary Point of Contact:*

Brad Koldehoff  
Cultural Resources Coordinator  
2300 S. Dirksen Parkway, Springfield, IL 62764  
[Brad.Koldehoff@illinois.gov](mailto:Brad.Koldehoff@illinois.gov)  
217-785-7833

#### **Absentee Shawnee Tribe of Oklahoma**

*Primary Point of Contact:*

Ms. Karen Kaniatobe  
NAGPRA Representative  
2025 Gordon Cooper Drive, Shawnee, OK 74801  
[kkaniatobe@astribe.com](mailto:kkaniatobe@astribe.com)  
405-275-4030 ext 199

*Secondary Point of Contact:*

none

#### **The Delaware Nation**

*Primary Point of Contact:*

Ms. Tamara Francis  
Cultural Preservation Director  
PO Box 825, Anadarko, OK 73005  
[tfrancis@delawarenation.com](mailto:tfrancis@delawarenation.com)  
405-247-2448 ext 1180

*Secondary Point of Contact:*

Mr. Jason Ross  
Museum/ Section 106 Assistant  
PO Box 825, Anadarko, OK 73005  
[jross@delawarenation.com](mailto:jross@delawarenation.com)

## **Ho-Chunk Nation**

*Primary Point of Contact:*

Mr. Bill Quackenbush  
Tribal Historic Preservation Officer  
PO Box 667, Black River Falls, WI 54815  
[bill.quackenbush@ho-chunk.com](mailto:bill.quackenbush@ho-chunk.com)  
715-284-7181

*Secondary Point of Contact:*

Mr. George Garvin  
NAGPRA Representative  
PO Box 667, Black River Falls, WI 54815  
[George.garvin@ho-chunk.com](mailto:George.garvin@ho-chunk.com)

## **Iowa Tribe of Kansas and Nebraska**

*Primary Point of Contact:*

Mr. Alan Kelley  
3345 Thrasher Road, White Cloud, KS 66094  
785-595-3258  
[akelley@iowas.org](mailto:akelley@iowas.org)

*Secondary Point of Contact:*

none

## **Iowa Tribe of Oklahoma**

*Primary Point of Contact:*

Dr. Robert Fields  
Rt. 1, Box 721, Perkins, OK 74059  
405-547-5433  
[rfields@iowanation.org](mailto:rfields@iowanation.org)

*Secondary Point of Contact:*

none

## **Kaw Nation**

*Primary Point of Contact:*

Ms. Crystal Douglas  
Drawer 50, Kaw City, OK 74641  
580-269-2552  
[cdouglas@kawnation.com](mailto:cdouglas@kawnation.com)

*Secondary Point of Contact:*

Mr. Guy Monroe  
CEO/ Chair  
Drawer 50, Kaw City, OK 74641  
580-269-2552  
[gmonroe@kawnation.com](mailto:gmonroe@kawnation.com)

### **Kickapoo Tribe in Kansas**

*Primary Point of Contact:*

Mr. Kenneth Jessepe  
Vice Chairman

1107 Goldfinch Road, Horton, KS 66439  
[Kenneth.jessepe@ktik-nsn.gov](mailto:Kenneth.jessepe@ktik-nsn.gov)  
877-864-2746

*Secondary Point of Contact:*

Ms. Nellie Cadue  
NAGPRA Director

1107 Goldfinch Road, Horton, KS 66439  
[Nellie.cadue@ktik-nsn.gov](mailto:Nellie.cadue@ktik-nsn.gov)

### **Kickapoo Traditional Tribe of Texas**

*Primary Point of Contact:*

Mr. Juan Garza, Jr.  
Chairman

HCR 1, Box 9700, Eagle Pass, TX 78852  
830-758-1936

*Secondary Point of Contact:*

Ms. Mary Jane Salgado

HCR 1, Box 9700, Eagle Pass, TX 78852  
[mjsalgado@kickapootrafitionaltribeof texas.com](mailto:mjsalgado@kickapootrafitionaltribeof texas.com)  
830-773-2105

### **Kickapoo Tribe of Oklahoma**

*Primary Point of Contact:*

Mr. Marlon Frye

PO Box 70, McCloud, OK 74851

*Secondary Point of Contact:*

Mr. Kent Collier

PO Box 70, McCloud, OK 74851  
[Kentcollier2000@yahoo.com](mailto:Kentcollier2000@yahoo.com)  
405-964-7418

### **Miami Tribe of Oklahoma**

*Primary Point of Contact:*

Mr. George Strack  
Tribal Historic Preservation Officer

202 S. Eight Tribes Trail, Miami, OK 74354  
[gstrack@miamination.com](mailto:gstrack@miamination.com)  
918-542-1445

*Secondary Point of Contact:*

None

### **Omaha Tribe of Nebraska**

*Primary Point of Contact:*

Mr. Amen Sheridan

PO Box 368, Macy, NE 68039  
[asheridan@omahatribe.com](mailto:asheridan@omahatribe.com)  
402-837-5391

*Secondary Point of Contact:*  
none

### **Osage Nation**

*Primary Point of Contact:*  
Dr. Andrea Hunter 627 Grandview, Pawhuska, OK 74056  
Tribal Historic Preservation Officer [ahunter@osage-tribe.org](mailto:ahunter@osage-tribe.org)  
918-287-5671

*Secondary Point of Contact:*  
Ms. June Carpenter 627 Grandview, Pawhuska, OK 74056  
NAGPRA Assistant [jcarperter@osage-tribe.org](mailto:jcarperter@osage-tribe.org)  
918-287-5520

### **Otoe-Missouria Tribe**

*Primary Point of Contact:*  
Mr. John Shotton 8151 Highway 177, Red Rock, OK 74651  
Chairman [jshotton@omtribe.org](mailto:jshotton@omtribe.org)  
580-723-4466

*Secondary Point of Contact:*  
none

### **Peoria Tribe of Indians of Oklahoma**

*Primary Point of Contact:*  
Mr. John P. Froman 118 S. Eight Tribes Trails, Miami, OK 74355  
Chief [jfroman@peoriatribe.com](mailto:jfroman@peoriatribe.com)  
918-540-2535

*Secondary Point of Contact:*  
Mr. Frank Hecksher 118 S. Eight Tribes Trails, Miami, OK 74355  
Special Projs Mgr/ NAGPRA [fhecksher@peoriatribe.com](mailto:fhecksher@peoriatribe.com)  
918-540-2535 ext 31

### **Ponca Tribe of Nebraska**

*Primary Point of Contact:*  
Mr. Gary Robinette PO Box 288, Niobrara, NE 68760  
Tribal Historic Preservation Officer [garyr@poncatribe-ne.org](mailto:garyr@poncatribe-ne.org)  
402-857-3519

*Secondary Point of Contact:*  
Mr. Larry Wright, Jr. PO Box 288, Niobrara, NE 68760  
Chairman [ldwrightjr@gmail.com](mailto:ldwrightjr@gmail.com)

## **Ponca Tribe of Oklahoma**

*Primary Point of Contact:*

Mr. Delbert Cole

20 White Eagle Drive, Ponca City, OK 74601

[Wanxe\\_sabe@hotmail.com](mailto:Wanxe_sabe@hotmail.com)

580-763-0120

*Secondary Point of Contact:*

Mr. Trey Howe

20 White Eagle Drive, Ponca City, OK 74601

[treyhowe@excite.com](mailto:treyhowe@excite.com)

## **Citizen Potawatomi Nation**

*Primary Point of Contact:*

Mr. John A. Barrett

Chairperson

1601 S. Gordon Cooper Drive, Shawnee, OK 74801

[rbarrett@potawatomi.org](mailto:rbarrett@potawatomi.org)

405-275-3121

*Secondary Point of Contact:*

Ms. Karen Phillips

1601 S. Gordon Cooper Drive, Shawnee, OK 74801

## **Forest County Potawatomi**

*Primary Point of Contact:*

Mr. Phillip Shopodock

Chairperson

PO Box 340, Crandon, WI 54520

*Secondary Point of Contact:*

Mr. Michael L. Alloway

Director

PO Box 340, Crandon, WI 54520

[mikea@fcpotawatomi.com](mailto:mikea@fcpotawatomi.com)

800-960-5479 ext 7474

## **Potawatomi Nation-Hannahville Indian Community**

*Primary Point of Contact:*

Mr. Kenneth Mechiguad

Chairperson

N14911 Hannahville Boulevard Road, Wilson, MI 49896

*Secondary Point of Contact:*

Mr. Earl Mechiguad

N14911 Hannahville Boulevard Road, Wilson, MI 49896

[earlmechiguad@hannahville.org](mailto:earlmechiguad@hannahville.org)

906-723-2271

## **Pokagon Band of Potawatomi Indians**

*Primary Point of Contact:*

Mr. Steve Winchester

58620 Sink Road, Dowagiac, MI 49047

269-782-6323

*Secondary Point of Contact:*

Mr. Mike Zimmerman, Jr. 58620 Sink Road, Dowagiac, MI 49047  
Tribal Historic Preservation Officer [michael.zimmerman@pokagonband-nsn.gov](mailto:michael.zimmerman@pokagonband-nsn.gov)  
800-517-0777

**Prairie Band Potawatomi Nation**

*Primary Point of Contact:*

Mr. Steve Ortiz 16281 Q Road, Mayetta, KS 66509  
[steveo@pbnation.org](mailto:steveo@pbnation.org)  
785-966-4000

*Secondary Point of Contact:*

Mr. Chago Hale 16281 Q Road, Mayetta, KS 66509  
NAGPRA Representative [chagoh@pbnation.org](mailto:chagoh@pbnation.org)  
785-966-4016

**Quapaw Tribe of Oklahoma**

*Primary Point of Contact:*

Mr. John Berrey PO Box 765, Quapaw, OK 74363  
Chairman [jberrey@ogahpah.com](mailto:jberrey@ogahpah.com)  
918-542-1853

*Secondary Point of Contact:*

None

**Sac and Fox Nation of Mississippi in Iowa**

*Primary Point of Contact:*

Mr. Homer Bear, Jr. 349 Meskwaki Road, Tama, IA 52339  
Chairman

*Secondary Point of Contact:*

Mr. Jonathan Buffalo 349 Meskwaki Road, Tama, IA 52339  
NAGPRA Representative [jbuffalo@meskwaki.org](mailto:jbuffalo@meskwaki.org)  
641-484-3185

**Sac and Fox Nation of Missouri**

*Primary Point of Contact:*

Ms. Twen Barton 305 N. Main Street, Reserve, KS 66465  
Chairperson [tbarton@sacandfoxcasino.com](mailto:tbarton@sacandfoxcasino.com)  
785-742-7471

*Secondary Point of Contact:*

Ms. Diana K. Weeks 305 N. Main Street, Reserve, KS 66465  
NAGPRA Representative [dweeks@sacandfoxcasino.com](mailto:dweeks@sacandfoxcasino.com)  
785-742-7471

**Sac and Fox Nation of Oklahoma**

*Primary Point of Contact:*

Ms. Sandra Massey  
Tribal Historic Preservation Officer

Route 2, Box 246, Stroud, OK 74079  
[smassey@sacandfoxnation-nsn.gov](mailto:smassey@sacandfoxnation-nsn.gov)  
918-968-3526 ext 1048

*Secondary Point of Contact:*

none

**Winnebago Tribe of Nebraska**

*Primary Point of Contact:*

Mr. John Blackhawk  
Chairperson

PO Box 687, Winnebago, NE 68071  
[jblackhawk@aol.com](mailto:jblackhawk@aol.com)  
402-878-3103

*Secondary Point of Contact:*

Mr. David Smith

PO Box 687, Winnebago, NE 68071  
[theking@huntel.net](mailto:theking@huntel.net)  
402-878-2380

## APPENDIX C

### PROJECTS EXEMPT FROM INITIAL NOTIFICATION

Projects limited to the following activities, provided the projects are not part of a larger undertaking, by their nature and definition and based on extensive previous experience within Illinois either: **1)** have no potential to affect historic properties [36 CFR 800.3(a)(1)], or **2)** have no or limited potential to result in any effects to historic properties of concern to the Tribes, and are therefore exempt from notification, but not consultation, if the need arises. Any project located adjacent to or within the viewshed of a NRHP listed or eligible property, including bridges and historic districts, will not be exempt. Project types listed below are exempt only if they do not impact previously undisturbed ground, i.e. soils that have been physically altered by any construction, utility trenching and related work.

1. Construction activities within interchanges and within medians of divided highways.
2. Replacement, repair, lining, or extension of culverts and other drainage structures which do not extend beyond or deeper than previous construction limits, and do not exhibit stone or brick structures or parts therein.
3. Roadway surface replacement, rehabilitation, resurfacing, or reconstruction, overlays, shoulder treatments, pavement repair, seal coating, pavement grinding, and pavement marking where replacement, repair, or installation of curbs or sidewalks will not be required.
4. Repair or replacement of existing lighting, signals, and other traffic control devices.
5. Repair or replacement of existing safety appurtenances such as guardrails, barriers, glares screens, and crash attenuators.
6. Installation of fencing and landscaping.
7. Railway crossing signs and signal installation, or modification and surface improvement.
8. Erosion control to prevent erosion of roadways, waterways and bridge piers.
9. Routine roadside maintenance activities necessary to preserve existing infrastructure and maintain roadway safety.
10. Rehabilitation of existing rest areas and truck weigh stations.
11. Hazardous waste removal and disposal constituting a public hazard and which require immediate removal.
12. Installation of parking lanes, bi-directional lanes, turning lanes or climbing lanes within existing right-of-way limits.



13. Approval of utility installations along a transportation facility within the State right-of-way.
14. Emergency repairs under 23 USC 125 which do not substantially change the design of the facility.
15. Bridge projects which consist of widening or replacement of bridges, not included in the Historic Bridge Survey that are on or adjacent to the existing alignment and require one acre or less of undeveloped rights of way.
16. Construction of bicycle and pedestrian lanes, paths, and facilities on previously disturbed rights of way
17. Replacement in kind within Historic Districts or adjacent to Historic Properties.

## APPENDIX D

### Illinois Human Skeletal Remains Protection Act (20 ILCS 3440)

**(20 ILCS 3440/0.01) (from Ch. 127, par. 2660)**

**Sec. 0.01.**

Short title. This Act may be cited as the Human Skeletal Remains Protection Act. (Source: P.A. 86-1324.)

**(20 ILCS 3440/1) (from Ch. 127, par. 2661)**

**Sec. 1.**

Definitions. For the purposes of this Act:

- (a) "Human skeletal remains" include the bones and decomposed fleshy parts of a deceased human body.
- (b) "Unregistered graves" are any graves or locations where a human body has been buried or deposited; is over 100 years old; and is not in a cemetery registered with the State Comptroller under the Cemetery Care Act.
- (c) "Grave artifacts" are any item of human manufacture or use that is associated with the human skeletal remains in an unregistered grave.
- (d) "Grave markers" are any tomb, monument, stone, ornament, mound, or other item of human manufacture that is associated with an unregistered grave.
- (e) "Person" means any natural individual, firm, trust, estate, partnership, association, joint stock company, joint venture, corporation or a receiver, trustee, guardian or other representatives appointed by order of any court, the Federal and State governments, including State Universities created by statute or any city, town, county or other political subdivision of this State.
- (f) "Disturb" includes excavating, removing, exposing, defacing, mutilating, destroying, molesting, or desecrating in any way human skeletal remains, unregistered graves, and grave markers. (Source: P.A. 86-151.)

**(20 ILCS 3440/2) (from Ch. 127, par. 2662)**

**Sec. 2.**

Legislative finding and intentions. The General Assembly finds that existing laws do not provide equal or adequate protection for all human graves. There is a real and growing threat to the safety and sanctity of unregistered and unmarked graves. Numerous incidents in Illinois have resulted in the desecration of human remains and vandalism to grave markers. Similar incidents have occurred in neighboring states and as a result those states have increased their criminal penalties for such conduct. There is a strong likelihood that persons engaged for personal or financial gain in the mining of prehistoric and historic Indian, pioneer, and Civil War veteran's graves will move their operations to Illinois to avoid the increased penalties being imposed in neighboring states. There is an immediate need for legislation to protect the graves of these earlier Illinoisans from such desecration. The General Assembly intends to assure with this Act that all human

burials be accorded equal treatment and respect for human dignity without reference to ethnic origins, cultural backgrounds or religious affiliations.

The General Assembly also finds that those persons engaged in the scientific study or collecting of artifacts which have not been acquired in violation of law are engaged in legitimate and worthy scientific, educational and recreational activities. This Act is not intended to interfere with the continued legitimate collecting activities or studies of such persons; nor is it intended to interfere with the normal enjoyment of private property owners, farmers, or those engaged in the development, mining or improvement of real property. (Source: P.A. 95-331, eff. 8-21-07.)

**(20 ILCS 3440/3) (from Ch. 127, par. 2663)**

**Sec. 3.**

Any person who discovers human skeletal remains subject to this Act shall promptly notify the coroner. Any person who knowingly fails to report such a discovery within 48 hours is guilty of a Class C misdemeanor, unless such person has reasonable cause to believe that the coroner had already been so notified. If the human skeletal remains appear to be from an unregistered grave, the coroner shall promptly notify the Historic Preservation Agency prior to their removal. Nothing in this Act shall be construed to apply to human skeletal remains subject to "An Act to revise the law in relation to coroners". (Source: P.A. 86-151.)

**(20 ILCS 3440/4) (from Ch. 127, par. 2664)**

**Sec. 4.**

It is unlawful for any person, either by himself or through an agent, to knowingly disturb human skeletal remains and grave artifacts in unregistered graves protected by this Act unless such person obtains a permit issued by the Historic Preservation Agency. (Source: P.A. 86-151.)

**(20 ILCS 3440/4.5)**

**Sec. 4.5.**

O'Hare Modernization. Nothing in this Act limits the authority of the City of Chicago to exercise its powers under the O'Hare Modernization Act or requires that City, or any person acting on behalf of that City, to obtain a permit under this Act when acquiring property or otherwise exercising its powers under the O'Hare Modernization Act. (Source: P.A. 93-450, eff. 8-6-03.)

**(20 ILCS 3440/5) (from Ch. 127, par. 2665)**

**Sec. 5.**

It is unlawful for any person, either by himself or through an agent, to knowingly disturb a grave marker protected by this Act unless such person obtains a permit issued by the Historic Preservation Agency. (Source: P.A. 86-151.)

**(20 ILCS 3440/6) (from Ch. 127, par. 2666)**

**Sec. 6.**

It is unlawful for any person, either by himself or through an agent, to offer any human skeletal remains, grave artifacts or grave markers for sale or exchange with the knowledge that they have been collected or excavated in violation of this Act. (Source: P.A. 86-151.)

**(20 ILCS 3440/7) (from Ch. 127, par. 2667)**

**Sec. 7.**

It is unlawful for any person, either by himself or through an agent, to knowingly allow the disturbance of human skeletal remains, unregistered graves, or grave markers on property controlled by that person unless such disturbance is authorized by a permit issued by the Historic Preservation Agency. (Source: P.A. 86-151.)

**(20 ILCS 3440/8) (from Ch. 127, par. 2668)**

**Sec. 8.**

The State's Attorney of the county in which a violation of Sections 4, 5, 6 or 7 of this Act is alleged to have occurred, or the Attorney General, may be requested by the Director of the Historic Preservation Agency to initiate criminal prosecutions or to seek civil damages, injunctive relief and any other appropriate relief. The Historic Preservation Agency shall cooperate with the State's Attorney or the Attorney General. Persons aware of any violations of this Act shall contact the Historic Preservation Agency. (Source: P.A. 86-151.)

**(20 ILCS 3440/9) (from Ch. 127, par. 2669)**

**Sec. 9.**

The Historic Preservation Agency is authorized to offer a reward of up to \$2000 for information leading to the arrest and conviction of persons who violate Sections 4, 5, 6 and 7 of this Act. (Source: P.A. 86-151.)

**(20 ILCS 3440/10) (from Ch. 127, par. 2670)**

**Sec. 10.**

Any violation of Sections 4, 6 or 7 of this Act is a Class A misdemeanor and the violator shall be subject to imprisonment for not more than 1 year and a fine not in excess of \$10,000; any subsequent violation is a Class 4 felony. Each disturbance of an unregistered grave constitutes a separate offense. (Source: P.A. 86-151.)

**(20 ILCS 3440/11) (from Ch. 127, par. 2671)**

**Sec. 11.**

Any violation of Section 5 of this Act is a Class B misdemeanor and the violator shall be subject to imprisonment for not more than 6 months and a fine not in excess of \$500; any subsequent violation is a Class A misdemeanor. Each disturbance of a grave marker constitutes a separate offense. (Source: P.A. 86-151.)

**(20 ILCS 3440/12) (from Ch. 127, par. 2672)**

**Sec. 12.**

Persons convicted of a violation of Section 4 or 5 of this Act shall also be liable for civil damages to be assessed by the Historic Preservation Agency. Civil damages may include:

- (a) forfeiture of any and all equipment used in disturbing the protected unregistered graves or grave markers;
- (b) any and all costs incurred in cleaning, restoring, analyzing, accessioning and curating the recovered materials;

(c) any and all costs associated with restoring the land to its original contour or the grave marker to its original condition;

(d) any and all costs associated with recovery of data, and analyzing, publishing, accessioning and curating materials when the prohibited activity is so extensive as to preclude the restoration of the unregistered burials or grave markers;

(e) any and all costs associated with the reinterment of the human skeletal remains;

(f) any and all costs associated with the determination and collection of the civil damages.

When civil damages are recovered through the Attorney General, the proceeds shall be deposited into the Historic Sites Fund; when civil damages are recovered through the State's Attorney, the proceeds shall be deposited into the county funds designated by the county board. (Source: P.A. 86-151.)

**(20 ILCS 3440/13) (from Ch. 127, par. 2673)**

**Sec. 13.**

(a) The Historic Preservation Agency shall develop regulations, in consultation with the Illinois State Museum, whereby permits may be issued for the removal of human skeletal remains and grave artifacts from unregistered graves or the removal of grave markers.

(b) Each permit shall specify all terms and conditions under which the removal of human skeletal remains, grave artifacts, or grave markers shall be carried out. All costs accrued in the removal of the aforementioned materials shall be borne by the permit applicant. Upon completion of the project, the permit holder shall submit a report of the results to the Historic Preservation Agency. (Source: P.A. 86-151.)

**(20 ILCS 3440/14) (from Ch. 127, par. 2674)**

**Sec. 14.**

All human skeletal remains and grave artifacts in unregistered graves are held in trust for the people of Illinois by the State and are under the jurisdiction of the Historic Preservation Agency. All materials collected under this Act shall be maintained, with dignity and respect, for the people of the State under the care of the Illinois State Museum. (Source: P.A. 86-151.)

**(20 ILCS 3440/15) (from Ch. 127, par. 2675)**

**Sec. 15.**

The Historic Preservation Agency shall promulgate such regulations as may be necessary to carry out the purposes of this Act. (Source: P.A. 86-151.)

**(20 ILCS 3440/16) (from Ch. 127, par. 2676)**

**Sec. 16.**

Activities reviewed by the Historic Preservation Agency pursuant to Section 106 of the National Historic Preservation Act (16 U.S.C. 470f) and activities permitted pursuant to the Federal Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87), or the rules and regulations promulgated thereunder or any law, rule or regulation adopted by the State of Illinois thereunder shall be exempt from these permitting requirements. (Source: P.A. 86-151.)

## APPENDIX E

### DEFINITIONS

Area of Potential Effect (A.P.E.) – The geographic area(s) within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties. The A.P.E. is influenced by the scale and nature of an undertaking.

Area of Interest - The particular Illinois County that a Tribe has identified to be of interest. The FHWA Illinois Division Office and IDOT maintain a current list of known Tribal areas of interest by county.

Consultation – The process of seeking, discussing, and considering the views of participants, and where feasible seeking agreement with them. Consultation involves listening, exchanging views, and having meaningful input from all parties into final decisions. (From 36 CFR 800.16(f) and “Tribal Consultation: Best Practices in Historic Preservation”, National Association of Tribal Historic Preservation Officers, May 2005).

Illinois State Archaeological Survey (ISAS) is a joint program of the University of Illinois and the IDOT created to ensure the preservation and protection of Illinois’ important archaeological resources in the context of transportation projects. The ISAS’s mission is:

1. To assist IDOT in the preservation and protection of Illinois’ historic and archaeological resources,
2. To carry out research activities that enhance the educational and public service mission of the U of I, and
3. To promote and ensure professional and public dissemination of information regarding the prehistory and history of Illinois.

Through an Intergovernmental Agreement, ISAS performs all archaeological surveys for IDOT projects when IDOT submits such a request.

Mitigation – 1) Avoiding, 2) Minimizing, 3) Rectifying (by repairing, rehabilitating, or restoring), 4) Reducing/ eliminating over time (by preservation and maintenance), and 5) Compensating (by replacing or providing substitute resources) for an impact. (From CEQ regulations part 1508.20). Mitigation steps are listed in priority order, i.e. practicable avoidance should first be attempted, then minimization, etc.

Notification – The initial contact FHWA makes with a Tribe regarding a specific project. This will be done through IDOT PNS for minor projects (CE classes of action under NEPA), and if requested by a Tribe because of demonstrated technical difficulties accessing the PNS, may also be via hardcopy correspondence. For projects processed as EA and EIS classes of action under NEPA, the FHWA will normally notify Tribes by email. Information will include a project description, a map showing the project location, a list of any known archaeological sites in the project area, and a request that the Tribe notify FHWA/IDOT if they have an interest in the project and would like to be a consulting party in the Section 106 process.

Previously Undisturbed Ground – Soil that has not been physically altered by previous activities, such as construction, utility trenching, drainage work, and other related activities.

Project Notification System (PNS) – An electronic web-based database developed by ISAS. The IDOT submits a request to ISAS to do an archaeological survey for a project, and when ISAS enters the project into the PNS, an email is automatically generated and sent to the Tribes that have expressed an interest in that county. The PNS is only accessed by approved users with a password, and each Tribe can only receive/view projects in the counties of their interest. The notification includes: project description and location, maps, archaeological and historical information, a box to check if the Tribe “does not have any present concerns about this project”, a comment field if “The Tribe has concerns or questions regarding this project” and would like to be contacted. Previous comments are also displayed. The purpose of the PNS is to provide interested Tribes with immediate access to project information, and to solicit their input as soon as possible in the project development process.

Sacred Sites - Defined in Executive Order No. 13007 as “any specific, discrete, narrowly delineated location on Federal land that is identified by an Indian tribe, or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion; provided that the tribe or appropriately authoritative representative of an Indian religion has informed the agency of the existence of such a site.”

Traditional Cultural Landscape – “Cultural landscape” is defined in National Park Service (NPS) Preservation Briefs No. 36 as “a geographic area, including both cultural and natural resources and the wildlife or domestic animals therein, associated with a historic event, activity, or person or exhibiting other cultural or aesthetic values.” There are four general types: historic sites, historic designed landscapes, historic vernacular landscapes, and ethnographic landscapes. “Traditional Cultural Landscapes” are associated with a Tribal historic event, activity, or person, or have other association with a particular Tribe.

Traditional Cultural Property - Prehistoric and historic districts, sites, buildings, structures, or objects on or eligible for the NRHP, that is associated with cultural practices or beliefs of a living community that a) are rooted in that community’s history, and b) are important in maintaining the continuing cultural identity of the community. (From NPS Bulletin 38 under “What are traditional cultural properties?”). Sacred Sites and Traditional Cultural Landscapes are examples of TCPs (see NPS Bulletin 38 and NPS CRM journal Volume 16, special issue on TCPs.)

Tribal Official – An individual designated by Tribal government to represent the Tribe.

**Illinois Transportation Archaeology and Tribal Consultation:  
Memorandum of Understanding Annual Report for  
Illinois Fiscal Year 2022 (July 1, 2021 to June 30, 2022)**

**December 16, 2022**

**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 twelfth annual report covers Illinois fiscal year 2022.

**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.

On March 11, 2022, IDOT and FHWA held a remote Section 106 Tribal Consultation Workshop for Highway Projects in Illinois (Session I). The purpose of this workshop was to discuss and update Tribal coordination, the current Tribal Memorandum of Understanding, and other topics. Participants included the FHWA Resource Center, FHWA Illinois Field Office, Illinois Department of Transportation (IDOT), Illinois State Historic Preservation Office (SHPO), Illinois



State Archaeological Survey (ISAS), and the following affiliated Tribal Nations: Ho-Chunk Nation, Kaw Nation, Match-E-Be-Nash-She-Wish (Gun-Lake) Band of Potawatomi Indians, Miami Tribe of Oklahoma, Mille Lacs Band of Ojibwe, Osage Nation, Peoria Tribe of Indians of Oklahoma, and Pokagon Band of Potawatomi.

The first main point of discussion revolved around the Project Notification System (PNS). The second topic related to the type of agreement (MOU vs. Programmatic Agreement) that is most appropriate for Tribal consultation. Session II of the Section 106 Tribal Consultation Workshop will be held in calendar year 2023.

The following pages represent the twelfth 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, IDOT also uses PNS to send notifications to the Tribes for some Federal Railroad Administration (FRA) and Federal Aviation Administration (FAA) projects.

In FY22 the Cultural Resources Unit in the Bureau of Design and Environment at the IDOT received 655 Environmental Survey Requests for transportation projects: 648 for highways and related projects (bridges, bike trails, streetscapes, etc.), 6 for airport projects, and 1 railroad project (Table 1). In accordance with the MOU and PA, 563 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 FY22 this process encompassed 88 projects: 85 for highways, three for airports, and zero for railroads. When surveyed, 45 of these projects resulted in the identification of archaeological sites (Table 2). Thirteen 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 FY22 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 FY22 no human remains were discovered.

### **Part 3: Tribal Participation**

In total, 736 initial project notification emails were sent to the 17 Tribes participating in the PNS during FY22: Delaware Nation, Ho-Chunk Nation, Iowa Tribe of Kansas and Nebraska, Kaw Nation, Kickapoo Tribe in Kansas, Match-E-Be-Nash-She-Wish Band of Pottawatomis Indians - Gun Lake Tribe, Miami Nation, Osage Nation, Peoria Tribe of Indians of Oklahoma, Forest County Potawatomi, Pokagon Band of the Potawatomi, Ponca Tribe of Nebraska, Quapaw Nation, Sac and Fox Nation of Oklahoma, Seneca-Cayuga Nation, Quapaw Nation, and Winnebago Tribe of Nebraska. A total of 807 project update notifications were sent via PNS to the 17 Tribes. Participating Tribes replied with 449 separate comments (Table 2); 350 comments were sent directly via PNS and 99 were provided through other means. 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 held remotely in 2022 was important for addressing issues of concern to the Tribes but also for renewing relationships and creating new ones. The workshop provided an opportunity for Tribes to communicate to IDOT and FHWA about what works and does not work regarding the MOU and the current consultation process.

**Table 1. Transportation Projects Reviewed for Cultural Resources in Fiscal Year 2022**

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	171	155	14	1	0	1	0	157	14
2	78	62	15	1	0	0	0	63	15
3	74	67	6	0	1	0	0	67	7
4	33	24	8	0	1	0	0	24	9
5	36	34	2	0	0	0	0	34	2
6	69	62	7	0	0	0	0	62	7
7	66	53	12	1	0	0	0	54	12
8	74	56	17	0	1	0	0	56	18
9	54	50	4	0	0	0	0	50	4
<b>Total</b>	<b>655</b>	<b>563</b>	<b>85</b>	<b>3</b>	<b>3</b>	<b>1</b>	<b>0</b>	<b>567</b>	<b>88</b>

\*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 2022**

IDOT District	County	Projects	Projects with Sites	Projects with Further Work	Tribal PNS Comments
<b>District 1</b>	Cook	5	2	1	27
	DuPage	1	1	0	5
	Kane	1	1	0	5
	Lake	3	1	0	15
	McHenry	1	0	0	7
	Will	3	2	0	29
	<b>Total</b>	<b>14</b>	<b>7</b>	<b>1</b>	<b>88</b>
<b>District 2</b>	Boone	2	0	1	16
	Carroll	0	0	0	0
	Henry	1	0	0	4
	Jo Daviess	2	1	0	15
	Lee	1	0	0	2
	Ogle	0	0	0	0
	Rock Island	2	2	0	8
	Stephenson	2	0	0	6
	Whiteside	2	2	0	16
	Winnebago	3	2	0	22
	<b>Total</b>	<b>15</b>	<b>7</b>	<b>1</b>	<b>89</b>
<b>District 3</b>	Bureau	0	0	0	4
	DeKalb	2	2	0	9
	Ford	0	0	0	0
	Grundy	1	1	0	5
	Iroquois	0	0	0	0
	Kankakee	0	0	0	0
	Kendall	0	0	0	0
	LaSalle	4	1	0	21
	Livingston	0	0	0	0
		<b>Total</b>	<b>7</b>	<b>4</b>	<b>0</b>
<b>District 4</b>	Fulton	2	1	0	14
	Henderson	0	0	0	3
	Knox	1	0	0	1
	McDonough	1	0	0	7
	Marshall	2	1	0	17
	Mercer	0	0	0	0
	Peoria	1	0	0	7
	Putnam	0	0	0	0
	Stark	0	0	0	0
	Tazewell	1	1	0	5
	Warren	1	1	0	6
	Woodford	0	0	0	0
		<b>Total</b>	<b>9</b>	<b>4</b>	<b>0</b>
<b>District 5</b>	Champaign	1	1	0	4
	Dewitt	0	0	0	0
	Douglas	0	0	0	10
	Edgar	0	0	0	0
	McLean	1	0	0	5
	Piatt	0	0	0	0
	<b>Total</b>	<b>2</b>	<b>1</b>	<b>0</b>	<b>19</b>
<b>District 6</b>	Adams	1	0	0	10
	Brown	0	0	0	0
	Cass	0	0	0	0
	Christian	0	0	0	0
	Hancock	1	0	0	3
	Logan	0	0	0	0
	Macoupin	0	0	0	0
	Mason	0	0	0	0
	Menard	0	0	0	0
	Montgomery	1	0	0	3
	Morgan	0	0	0	0
	Pike	0	0	0	0
	Sangamon	1	1	1	4
	Schuyler	1	0	0	8
Scott	2	1	0	7	
	<b>Total</b>	<b>7</b>	<b>2</b>	<b>1</b>	<b>35</b>
<b>District 7</b>	Clark	0	0	0	0
	Clay	1	0	0	4
	Coles	0	0	0	1
	Crawford	0	0	0	0
	Cumberland	0	0	0	0
	Douglas	1	0	0	0
	Edwards	0	0	0	0
	Effingham	3	0	0	12
	Fayette	0	0	0	0
	Jasper	0	0	0	0
	Lawrence	5	4	1	9
	Macon	0	0	0	0
	Moultrie	1	1	0	4
	Richland	1	0	0	4

	Shelby	0	0	0	0
	Wabash	0	0	0	0
	Wayne	0	0	0	0
	<b>Total</b>	<b>12</b>	<b>5</b>	<b>1</b>	<b>34</b>
<b>District 8</b>	Bond	0	0	0	0
	Calhoun	0	0	0	0
	Clinton	1	1	0	3
	Greene	1	1	0	5
	Jersey	2	2	1	7
	Madison	5	3	3	20
	Marion	1	0	0	0
	Monroe	2	2	1	9
	Randolph	2	1	1	6
	St. Clair	3	1	1	13
	Washington	1	0	0	4
	<b>Total</b>	<b>18</b>	<b>11</b>	<b>7</b>	<b>67</b>
<b>District 9</b>	Alexander	0	0	0	0
	Franklin	0	0	0	0
	Gallatin	0	0	0	0
	Hamilton	0	0	0	0
	Hardin	0	0	0	3
	Jackson	0	0	0	0
	Jefferson	0	0	0	0
	Johnson	0	0	0	0
	Massac	1	1	0	4
	Perry	0	0	0	0
	Pope	0	0	0	0
	Pulaski	0	0	0	0
	Saline	0	0	0	0
	Union	0	0	0	1
	White	2	2	1	8
	Williamson	1	1	1	2
	<b>Total</b>	<b>4</b>	<b>4</b>	<b>2</b>	<b>18</b>
	<b>GRAND TOTAL</b>	<b>88</b>	<b>45</b>	<b>13</b>	<b>449</b>

**Points of Contact for Tribal Consultation/Coordination in Illinois**

ENTITY	PRIMARY CONTACT	SECONDARY CONTACT(S)
Federal Highway Administration	Darien Siddall <a href="mailto:Darien.Siddall@dot.gov">Darien.Siddall@dot.gov</a> 217-492-4615	Matt Fuller <a href="mailto:Matt.Fuller@dot.gov">Matt.Fuller@dot.gov</a> 217-492-4625
Illinois Department of Transportation	Joe Galloy <a href="mailto:Joseph.Galloy@illinois.gov">Joseph.Galloy@illinois.gov</a> 217-785-7833	Gary Quigg <a href="mailto:Gary.Quigg@Illinois.gov">Gary.Quigg@Illinois.gov</a> 317-334-6803
Illinois State Archaeological Survey	Tim Pauketat <a href="mailto:pauketat@illinois.edu">pauketat@illinois.edu</a> 217-244-4244	Elizabeth Watts Malouchos <a href="mailto:ewatts@illinois.edu">ewatts@illinois.edu</a> 618-855-9206  Thomas J. Loebel <a href="mailto:tjl2@illinois.edu">tjl2@illinois.edu</a> 217-244-4244  Michael Farkas <a href="mailto:mgfarkas@illinois.edu">mgfarkas@illinois.edu</a> 217-244-6706

**MEMORANDUM OF UNDERSTANDING  
AMONG**

**THE FEDERAL HIGHWAY ADMINISTRATION,  
ILLINOIS STATE HISTORIC PRESERVATION OFFICER,  
ILLINOIS DEPARTMENT OF TRANSPORTATION,**

**and**

**FEDERALLY RECOGNIZED TRIBES INTERESTED IN ILLINOIS LANDS**

**REGARDING TRIBAL CONSULTATION REQUIREMENTS  
FOR THE ILLINOIS FEDERAL TRANSPORTATION PROGRAM**

**PREFACE**

This document is the result of discussions among the Federal Highway Administration (FHWA), the Illinois Department of Transportation (IDOT), the Advisory Council on Historic Preservation (ACHP), the Illinois State Historic Preservation Officer (Illinois SHPO), and the Tribes who have expressed an interest in Illinois lands. This document is intended to define consultation, for compliance with the National Historic Preservation Act (NHPA) (16 U.S.C. § 470 et seq.), among the FHWA, IDOT and the Tribes interested in Illinois lands. As required under the terms of the NHPA and resulting regulations (36 CFR 800), consultation has revealed that many Tribes have aboriginal ties to what is now the State of Illinois. Those Tribes have expressed concern, and requested to be consulted on future transportation projects in Illinois.

The FHWA and IDOT understand that the Tribes have concerns regarding cultural resources, protection of burials, preservation of Traditional Cultural Properties (TCPs), continuing destruction of places and items of cultural value, and the effects of this destruction on their cultural identity today. Cultural resources are revered by the Tribes and are a connection to their past and important to their cultural identity, sense of self and future well-being. Cultural resources are tied to people's ancestors, some are related to important religious activities, and many have ongoing spiritual connections. The FHWA and IDOT recognize the importance of these remnants from the past to aboriginal people living today.

Modern development, including transportation construction, has the potential to destroy valuable cultural resources and adversely impact others. This agreement is intended to ensure all parties understand which cultural resources are important to the Tribes and work together to protect and preserve them. The FHWA and IDOT are committed to providing a transportation system that will benefit all people of Illinois. The FHWA and IDOT are committed to learning Tribal perspectives about cultural resources important to the Tribes. The Tribes are committed to understanding transportation issues and the perspectives of the FHWA and IDOT. Jointly we are committed to establishing a relationship of mutual trust and respect.

The FHWA and IDOT recognize that transportation projects have the potential to adversely affect cultural resources: burials, sacred sites, archaeological sites, traditional natural resources, and traditional landscapes of value to the Tribes. The FHWA and IDOT do not wish further destruction of these culturally valued places, and recognize the inherent rights of Tribes to preserve those places that they value.

It is the intention of the FHWA and IDOT to work with the Tribes to find appropriate ways to avoid effect to important cultural resources. The FHWA and IDOT pledge to always look for ways to avoid effect to these resources as the first option. When avoidance of effect is impossible or impractical, given other concerns of equal importance, the FHWA and IDOT will work with the Tribes for appropriate and respectful resolution of any unavoidable effects.

The IDOT will 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. In the event of an inadvertent discovery of human remains or burials on non-Federal lands during transportation construction activities, IDOT will comply with the Illinois Human Skeletal Remains Protection Act (20 ILCS 3440) (see III.C.3.)

**WHEREAS**, all signatory Tribes identified in Appendix A with the area in which they have expressed an interest are federally recognized sovereign Indian Nations with their own Tribal laws, with established government-to-government relationships with the United States and an interest in specific areas of Illinois, as shown in Appendix A: “COUNTY LISTING OF THE TRIBES’ ANCESTRAL HOMELANDS AND TERRITORY IN THE STATE OF ILLINOIS”, and have been consulted and agree to be signatories to this document; and

**WHEREAS**, the Illinois SHPO has been consulted and agrees to be a signatory to this document; and

**WHEREAS**, the FHWA and IDOT wish to affirm the government-to-government relationship with the Tribes for consultation and cooperation regarding Federal Acts and Orders including, but not limited to, Section 106 of the NHPA; the National Environmental Policy Act, 42 U.S.C. §§ 4321, 4331, 4332 , the Archaeological Resource Protection Act, 16 U.S.C. § 470aa et seq. Presidential Executive Order 13007 (Indian Sacred Sites), Presidential Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. 3001) and the American Indian Religious Freedom Act, 42 U.S.C. § 1996; and

**WHEREAS**, the FHWA is the Federal agency with statutory responsibilities for administering the Federal-aid highway program under Title 23 U.S.C. 101 et seq, and IDOT is the applicant for Federal funds for highway construction projects in Illinois. The FHWA agrees to coordinate under a government-to-government relationship with federally recognized Tribal government officials or appointees with regard to Federal responsibilities under Section 106 of the NHPA through the terms of this Memorandum of Understanding (MOU). The IDOT will consult with representatives designated by the Tribal governments to manage or advise on matters pertaining to cultural resources; and

**WHEREAS**, the FHWA has determined that its undertakings may have an effect upon properties included in or eligible for inclusion in the National Register of Historic Places



(NRHP), that may be of interest to the Tribes, and through this agreement will consult with the Tribes pursuant to Section 106 of the NHPA (16 U.S.C. 470f); and

**WHEREAS**, the FHWA and IDOT are committed to the design and construction of a transportation system that: 1) safely moves people and goods; 2) avoids, minimizes and mitigates adverse effects on cultural resources; 3) recognizes that consideration of Tribal interest in preservation of significant cultural resources is important to Tribal well-being, growth and prosperity; and 4) responds to the needs of Illinois communities and the Tribes; and

**WHEREAS**, the IDOT will 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 MOU shall consist of one permanent, full time archaeologist; and

**WHEREAS**, the IDOT may contract archaeological field work to other qualified personnel provided they are managed by IDOT. At this time the Illinois State Archaeological Survey (ISAS) , through an intergovernmental agreement with the University of Illinois, performs all field work and develops technical reports to implement IDOT's cultural resources program; and

**WHEREAS**, the FHWA, IDOT, and the signatory Tribes aspire to engage in meaningful, long-term planning for the appropriate consideration of cultural resources important to the Tribes, and to include the following:

- develop a comprehensive and efficient Tribal consultation process for all Section 106 undertakings,
- streamline the process and procedural requirements,
- recognize that Tribes share the responsibility to engage in effective consultation,
- develop a consultation process based upon education and understanding,
- involve the Tribes' cultural experts to a greater extent and at an earlier point than before the implementation of this MOU,
- devote a percentage of time and energy to identify relevant transportation problems threatening cultural resources important to the Tribes,
- any additional goals identified through consultation;

**BE IT RESOLVED**, the FHWA, IDOT and the Tribes hereby agree that the implementation of Tribal consultation on highway projects shall be administered in accordance with the following stipulations in order to satisfy FHWA tribal consultation responsibilities under the NHPA.

## **STIPULATIONS**

### **I. GENERAL**

A. This MOU sets forth the process by which FHWA will meet its responsibilities with regard to consultation with the Tribes under Section 106 of the NHPA for highway projects within the State of Illinois of the Federal Aid Highway Program. This MOU establishes a protocol for consultation with the Tribes on individual highway projects.

B. Nothing in this MOU shall be interpreted to alter the requirements of the NHPA or its implementing regulations. In the event any portion of this MOU is deemed contradictory to law or regulation, only that contradictory portion becomes void. The sole contradictory issue does not negate the entire agreement. The parties should consult to resolve that contradictory issue with the intent to reform that portion to make it compliant with the applicable law or regulation, and the remaining portions of the MOU remain in full force and effect.

C. No portion of this MOU shall be interpreted to limit the rights, duties, or responsibilities as may be implemented under Federal statutes, regulations, policies, Executive Memoranda or Executive Orders, and related documents.

D. Consultation should begin early in the planning process and continue throughout a Section 106 undertaking. A letter or email of notification, in and of itself, from FHWA/IDOT to the Tribe is not considered consultation. Consultation is a mutual, meaningful dialogue between FHWA, IDOT, the Illinois SHPO, and the Tribe regarding historic properties that may be affected by an undertaking. Consultations may include face-to-face meetings, as well as communications by mail, electronic mail, facsimile, and telephone. Times and places of meetings, as well as agendas of meetings, will be developed with mutual acceptance. If there are historic properties that are of religious and cultural significance to the Tribe, then consultation may be extended to include future management, protection, and preservation of these properties.

E. The FHWA and IDOT shall consult each Tribe on a government-to-government basis in recognition of its sovereign status early in the planning process, and throughout Section 106 review, regarding any activity or undertaking that might affect historic or cultural properties. The FHWA will monitor and supervise any such consultations, and will be available for direct communication from any party. The FHWA will be a signatory on all project specific, or other formal Section 106 agreement documents.

F. The FHWA and IDOT shall ensure that the Tribe is consulted throughout a specific undertaking and that the Tribe is afforded, in accordance with applicable Federal, State, and local authorities and highway safety measures, the opportunity to conduct religious/traditional ceremonies within right-of-way owned by IDOT, with regard to a specific location or with regard to American Indian human remains and funerary objects as well as any other cultural items from sacred or religious contexts.

G. The FHWA and IDOT recognize that facilitating effective tribal consultation may require providing travel support for tribal officials. Future formal agreements may specify how this support may occur.

H. The FHWA and IDOT shall ensure that consultation with other consulting parties, including local governments, shall not include the dissemination, beyond those who have an official need to know, of confidential information except as mandated by Federal or State laws. Confidential information is defined as information that might risk harm to

1. TCPs,
2. archaeological sites that may contain burials or human remains and/or associated cultural items,

3. significant archaeological habitation sites in accordance with Section 304 of the NHPA and other applicable authorities,

I. As TCPs, burial sites, and/or associated cultural items are non-renewable resources, FHWA and IDOT shall make a reasonable and good faith effort to inform the public and private landowners regarding stewardship, site protection and preservation which may include but not be limited to tax incentives or related benefits, lectures, exhibits, site-specific consultation, brochures, and videos.

J. An interested Tribe may request to enter the process at any time. The interested Tribes will be contacted if human remains or burials are found during archaeological investigations conducted within IDOT rights-of-way and the human remains are determined to be associated with Tribes. If individual or scattered fragments of bone or teeth are found, further field investigations will be done to determine if they are isolated or part of additional human remains or burials.

## **II. NOTIFICATION FOR CONSULTATION PROCEDURES**

A. *Points of Contact:* The FHWA, IDOT, Illinois SHPO, and the Tribes, shall each designate a primary and secondary contact. The primary contact for the Tribes is the contact to whom all initial and formal correspondence goes, including the Illinois Proposed Highway Improvement Program (HIP) listing (see Stipulations II.C and III.A.) and electronic web-based Project Notification System (PNS) notifications (see Stipulation III.B.). If the individual designated as the primary point of contact is not available, communications should be directed to the secondary contact. The primary and secondary contacts within each Tribe are responsible for involving the appropriate Tribal individuals as they deem appropriate. Each party of this MOU shall provide the other parties with the phone numbers, email addresses, and mailing addresses for the primary and secondary contacts (see Appendix B “POINT OF CONTACT LIST”). Each party shall notify the other parties in writing (hardcopy or email) when either point of contact changes. Such changes shall not require the amendment of this agreement.

B. *Tribal Areas of Concern:* The Tribes have provided, or will provide, FHWA/IDOT with a map and listing of all Illinois counties that exist within their ancestral homeland and territory, in which they have an interest (see Appendix A). At the Tribes’ discretion, a Tribe or Tribe(s) may also be identified to review projects in other areas of Illinois. The FHWA/IDOT will maintain this list and will update as necessary when additional Tribal interests are made known.

C. *Illinois Program Documents:* The current Illinois Proposed HIP, which is a multi-year list of all proposed transportation projects with scopes and locations, is maintained on the IDOT website. The IDOT will email Tribal contacts the website address when these documents are updated on an annual basis, with an offer to send hard copies upon request. This information will give the Tribes the opportunity to review and comment on *all* projects in their counties of interest in advance of project development. (see Section III, Consultation Procedures)

D. *Delegation of Certain Responsibilities to IDOT:* The IDOT will send the Illinois Proposed HIP and the initial electronic PNS notification to Tribes for the applicable projects (see Stipulation II. F.), soliciting the Tribes’ input early in the project’s development, and providing them project information as necessary or requested. The IDOT may also carry out consultation

activities in accordance with Stipulation I.D., but FHWA will be involved in or monitor all such consultations, and will at all times be available for direct communication with any party. The FHWA will be a signatory on all project specific or other formal agreement documents.

*E. Projects Exempt from Initial PNS Notification:* Projects listed in Appendix C “PROJECTS EXEMPT FROM INITIAL NOTIFICATION”, provided they are not part of a larger undertaking, are by their nature and definition either: 1) types of projects that have no potential to affect historic properties, or 2) types that have no or limited potential to result in any effects to historic properties of concern to the Tribes. These projects are exempt from PNS notification. Exemption of projects from PNS *notification* does not exempt those projects from Tribal *consultation* opportunities. Upon agreement from FHWA, IDOT, Illinois SHPO, and all signatory Tribes, Appendix C may be modified without amendment to this MOU.

No Federal-aid projects are exempt from being listed in the Illinois Proposed HIP. Therefore, Tribes will see a listing of *all* Federal-aid projects in their counties of interest (see III.A).

*F. Transportation Projects to be Considered for PNS Notification to Tribes:* The IDOT will use the PNS to notify Tribes and the Illinois SHPO about minor projects (typically Categorical Exclusion (CE) classes of action under the National Environmental Policy Act (NEPA)) with potential to affect historic properties that may be of interest to the Tribes. The FHWA will normally notify by email Tribes and the Illinois SHPO directly about major projects (typically Environmental Assessment (EA) and Environmental Impact Statement (EIS) projects under NEPA) with the potential to affect historic properties that may be of interest to the Tribes. PNS notifications include:

1. Any minor IDOT project that is considered to be a Federal undertaking that is subject to Section 106 as described in 36 CFR Part 800.3(a) and Part 800.16(y). The IDOT will consult with the Tribes who claim association with that project’s county (see Appendix A). However, those projects that impact previously disturbed or surveyed ground are exempt from initial notification (see Appendix C).
2. Information about minor projects at the initiation of the archaeological resources survey for all projects that fall under Stipulation F.1 that are not EA or EIS projects. At a minimum this information will include a project description, location maps, and the location of known burial sites in the immediate area.
3. The FHWA/IDOT will consult with the Tribes regarding any properties in which the Tribes have an expressed interest as a result of their review of all project documentation provided by IDOT.

### **III. CONSULTATION PROCEDURES**

*A. Illinois Program Documents:* The current Illinois Proposed HIP, which is a multi-year list of all proposed transportation projects with scopes and locations, is maintained on the IDOT website. The IDOT will email Tribal contacts the website address when these documents are updated on an annual basis, with an offer to send hard copies upon request. This information will give the Tribes the opportunity to review and comment on projects in advance of project development.

If a Tribe expresses interest in any project(s) listed, they may request that detailed project information be sent to them via the PNS, and the procedures under Stipulation III. B. will be followed.

*B. Project Notification System (PNS):* In addition to the regular notification of all projects in the Illinois Proposed HIP, IDOT will notify the Tribal designated contacts (Appendix B) and the Illinois SHPO through the PNS by email when a proposed minor project has been requested for archaeological survey. These are projects that IDOT has determined may have potential to affect historic properties, in consultation with the interested Tribes. This notification will be done for projects identified in Stipulation II.F, *Transportation Projects to be Considered for PNS Notification to Tribes*.

For projects sent through the PNS, the Tribes, FHWA, the Illinois SHPO, and IDOT, mutually agree on the following consultation procedures for identifying and evaluating the effects of projects on cultural resources. These procedures shall comply with all applicable Federal, and State laws, statutes, and regulations.

1. The IDOT will use Appendix A, to identify and provide the interested Tribes with early notification through the PNS that a project is under study within a county of their area of concern. The PNS notification will provide a project description along with a 7.5 minute quadrangle map showing the proposed project location. The Tribe will notify IDOT in the PNS if there is a TCP within the project area, or if they have an interest in the undertaking. If IDOT does not receive a response from the Tribes within 45 days, they may assume the Tribes have no interest in the undertaking. The IDOT may proceed with archaeological investigations as soon as the notification is sent to the Tribes.
2. Tribes that responded within the 45-day period with an interest will be considered a consulting party for the project. The IDOT will notify FHWA of the Tribe's interest, who will, if appropriate, contact the Tribe. The interested Tribe may request additional project information, which IDOT will provide. The means of consultation will be negotiated on a project case-by-case basis as appropriate for the Tribe's interest and request.
3. If there is any disagreement among the agencies and the Tribes regarding eligibility of a TCP, all parties will have further discussions to attempt to reach agreement and will follow eligibility guidelines in National Park Service Bulletin 38. If Tribes disagree on preferred treatment of a TCP, the Tribes will negotiate among themselves and present one recommendation for IDOT/FHWA on which to base their actions.
4. The IDOT, in consultation with the Illinois SHPO and interested Tribes, shall conduct appropriate archaeological investigations and prepare the reports, which will be posted on the IDOT/ISAS PNS and a notification sent to the consulting party Tribes and the Illinois SHPO. Reports may also be sent by hardcopy to consulting party Tribes that have demonstrated technical difficulties accessing the reports via PNS.
5. Upon completion, IDOT will send the archaeological survey report to the Illinois SHPO via PNS for a 30-day review period, and also to consulting party Tribes via PNS for a 30-

day comment period that runs concurrent with the Illinois SHPO's 30-day review period. Any response received from consulting party Tribes during this period will be provided to the SHPO for consideration in the identification of historic properties. If IDOT does not receive a response within the 30-day period from a consulting party Tribe, IDOT may assume the Tribe has no comment regarding the outcome of the archaeological investigation and will request concurrence from the Illinois SHPO.

6. Based on the initial field surveys for those properties which FHWA, IDOT, and Illinois SHPO, in consultation with Tribes, agree are not eligible for inclusion in the NRHP, no further archaeological investigations will be required in those areas. The IDOT will send the eligibility determination documentation to the consulting party Tribes via PNS.
7. For those properties identified as eligible for the NRHP, consultation will continue with the Illinois SHPO and consulting party Tribes. If adverse impacts cannot be avoided, then IDOT, FHWA, the Tribes, and Illinois SHPO will consult to develop a Memorandum of Agreement.

C. *Unanticipated Discoveries During Construction:*

1. *Objectives:* The following procedures will be used in the event that previously unreported and unanticipated historic properties or human remains are found during IDOT construction activities. The procedures differ depending on whether unanticipated cultural materials (see Section C.2.) or human remains (see Section C.3.) are encountered. The plan is intended to ensure that the project is in compliance with all applicable Federal and State laws and regulations, including Section 106 of the NHPA of 1966 (36 CFR 800), the Illinois State Agency Historic Resources Preservation Act (20 ILCS 3420), the Illinois Archaeological and Paleontological Resources Protection Act (20 ILCS 3435), and the Illinois Human Skeletal Remains Protection Act (20 ILCS 3440).
2. *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 150 foot radius of the discovery, notify IDOT of the discovery, and implement interim measures to protect the discovery from looting and vandalism. Within 48 hours of receipt of this notification of the discovery, IDOT shall:

- i. inspect the work site to determine the extent of the discovery and ensure that construction activities have halted;
- ii. clearly mark the area of the discovery;
- iii. implement additional measures, as appropriate, to protect the discovery from looting and vandalism; and
- iv. notify the FHWA, the Illinois SHPO, and the Tribes who have identified the location as within their ancestral homelands, of the discovery.

(b) The IDOT/FHWA will have seven business days following notification to determine the NRHP eligibility of the discovery after considering the filed comments of the Illinois SHPO, interested Tribes, and other consulting parties. The IDOT/FHWA may assume the newly discovered property to be eligible for the NRHP for the purposes of Section 106 pursuant to 36 CFR§ 800.13(c)

(c) If the find is determined to be potentially significant, IDOT will consult with the Illinois SHPO, the Tribes, and other interested parties regarding appropriate measures for site treatment. For properties determined eligible for the NRHP, IDOT/FHWA will notify the Illinois SHPO, interested Tribes, and other consulting parties, of those actions for which it proposes to resolve adverse effects. Interested Tribes and other consulting parties will have seven business days to provide their views on the proposed actions. The IDOT/FHWA will ensure that the recommendations of interested Tribes and other consulting parties are taken into account prior to granting approval of the measures that will be implemented to resolve adverse effects. These measures may include:

- i. formal archaeological evaluation of the site;
- ii. visits to the site by the Illinois SHPO, the Tribes, and other interested parties;
- iii. exploration of potential alternatives to avoid the site;
- iv. preparation of a mitigation plan by IDOT in consultation with the Tribes for approval by the Illinois SHPO;
- v. implementation of a mitigation plan; and
- vi. FHWA approval to resume construction following completion of the fieldwork component of the mitigation plan.

(d) If the find is determined to be either isolated or completely disturbed by construction activities, IDOT will consult with the Illinois SHPO, the Tribes, and other interested parties prior to resuming construction.

(e) Dispute Resolution: The FHWA will seek and take into account the recommendations of the ACHP in resolving any disagreements that may arise regarding determination of effects.

3. *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, the IDOT will comply with the Illinois Human Skeletal Remains Protection Act (20 ILCS 3440) as administered by the Illinois Historic Preservation Agency (IHPA) and will 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 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) The IDOT will notify the County Coroner, IHPA, the Tribes, and other interested parties within 48 hours of the discovery. The IDOT/FHWA will contact by phone the point of contact for each interested Tribe of the discovery.

(c) Within 72 hours after notification the County Coroner will determine jurisdiction. If the remains are older than 100 years, the County Coroner will transfer jurisdiction to IHPA.

(d) In coordination with IHPA, 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.

(e) The IDOT/FHWA is responsible for notifying the Tribes within 24 hours of IHPA's findings.

(f) If it is determined by IHPA that intact or fragmented human remains are present and they are Native American, IDOT will consult with the IHPA, Illinois SHPO, FHWA, the Tribes, 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 the Tribes will be required;
- iii. visits to the site by the Illinois SHPO, the Tribes, and other interested parties; exploration of potential alternatives to avoid the human remains or burial;
- iv. for Native American remains, implementation of a mitigation plan by IDOT in consultation with IHPA and the Tribes, including procedures for disinterment and re-interment;
- v. implementation of the mitigation plan; and
- vi. IHPA and FHWA approval to resume construction following completion of the fieldwork component of the mitigation plan.

#### **IV. OTHER POINTS OF MUTUAL AGREEMENT**

*A. Execution and Implementation:* This agreement is effective as of the date of the last signature among FHWA, IDOT, and at least one Tribe with an interest in Illinois lands. Other Tribes may become signatory to this agreement after that date, without the need to amend this MOU. The successful implementation of this process shall constitute meaningful consultation between FHWA and the Signatory Tribes to fulfill tribal consultation requirements of Section 106 of the NHPA.



B. *Annual Report*: The IDOT will submit a report to FHWA, Illinois SHPO, and Tribes identifying projects processed under this MOU. The report should include a description of actions taken to comply with this agreement. Discussion needs to take place between the Tribes, Illinois SHPO, IDOT, and FHWA regarding effectiveness of the MOU and any changes. If necessary, the contact list in Appendix B will be updated annually when the report is submitted.

C. *Confidentiality*: The FHWA and IDOT acknowledge the need for confidentiality of certain Tribal spiritual and cultural information that may be provided by the Tribes during the course of consultations, and other aspects of Tribal consultation conducted on cultural resource issues. Information identified as sensitive by consulted Tribal members, and requested to remain confidential, will remain confidential to the extent permitted by State and Federal law [Section 304 of NHPA].

D. *Dispute Resolution*: Should any signatory object at a later date to the implementation of this agreement in whole or in part, the objecting party will consult with all signatories to resolve the objection. If all signatories are unable to satisfactorily resolve the issue, and the issue involves resolution of the Adverse Effect of an IDOT project on a site eligible for inclusion on the NRHP, the administrative process defined in 36 CFR Part 800.6 will be followed.

E. *Failure to Comply/Termination*: If any signatory determines that the terms of this MOU cannot be or are not being carried out, then the signatories shall consult regarding the reasons, and will seek amendment to the MOU, if appropriate. If the MOU is not amended, any signatory may terminate their participation in the MOU by providing 30 calendar days written notice to the other parties. In the event of termination by a Tribe, the FHWA and IDOT shall comply with 36 CFR 800 and continue with individual Tribal consultation with that Tribe. As long as the FHWA, IDOT, Illinois SHPO, and at least one Tribe continues to participate, the MOU will remain in effect, but the Tribes who have terminated their participation will no longer be held to the terms of this agreement.

F. *Amendment*: Any signatory to this MOU may request that it be amended, whereupon all signatories shall consult to consider such an amendment. Any resulting amendments shall be developed and executed among the signatories in the same manner as the original MOU. Any amendment to this agreement will go into effect only upon written agreement of all signatories.

G. *Evaluation of MOU Implementation*: At least once a year, the signatories will discuss issues defined in this MOU. Once every two years, to the extent feasible, FHWA will host a meeting and will reimburse travel/per diem expenses for one representative from each signatory Tribe to attend the meeting. The purpose of the meetings is to continue effective working relationships and evaluate the implementation of this agreement.

H. *Participation in Similar Activities*: This MOU in no way restricts the FHWA, IDOT, or the signatory Tribes from participating in similar activities with other public or private agencies, organizations, and individuals.

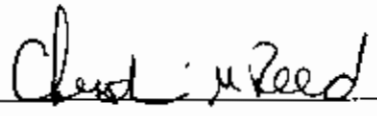
I. *Commencement/Termination Date*: This MOU is executed as of the date of last signature between FHWA, IDOT, Illinois SHPO, the ACHP, and at least one Tribe affiliated with land within the State of Illinois. Other Tribes may become signatory to this agreement after that date. This MOU is effective through December 31, 2030, at which time it will expire unless specifically extended by signatory resolution. One year prior to expiration, the signatories will discuss whether this agreement should be renewed, modified, or allowed to expire.

**SIGNATORIES**

By: 

Date: 8/31/2011


Norman R. Stoner, P.E.,  
Division Administrator  
Federal Highway Administration

By: 

Date: 8/31/11

Christine M. Reed,  
Director of Highways  
Chief Engineer  
Illinois Department of Transportation

**CONCURRING PARTIES**

By: 

Date: 8/31/11

Anne E. Haaker,  
Deputy State Historic Preservation Officer  
Illinois Historic Preservation Agency

RECEIVED  
SEP 26 2011  
ILLINOIS  
DIVISION

MEMORANDUM OF UNDERSTANDING  
AMONG

THE FEDERAL HIGHWAY ADMINISTRATION,  
ILLINOIS STATE HISTORIC PRESERVATION OFFICER,  
ILLINOIS DEPARTMENT OF TRANSPORTATION,

and

FEDERALLY RECOGNIZED TRIBES INTERESTED IN ILLINOIS LANDS

REGARDING TRIBAL CONSULTATION REQUIREMENTS  
FOR THE ILLINOIS FEDERAL TRANSPORTATION PROGRAM

Iowa Tribe of Kansas and Nebraska

Signature: Alan Kelley Date: 09-19-11

Please print name: Alan Kelley Title: Sec 106 Coordinator

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MEMORANDUM OF UNDERSTANDING  
AMONG

THE FEDERAL HIGHWAY ADMINISTRATION,  
ILLINOIS STATE HISTORIC PRESERVATION OFFICER,  
ILLINOIS DEPARTMENT OF TRANSPORTATION,

and

FEDERALLY RECOGNIZED TRIBES INTERESTED IN ILLINOIS LANDS

REGARDING TRIBAL CONSULTATION REQUIREMENTS  
FOR THE ILLINOIS FEDERAL TRANSPORTATION PROGRAM

Ponca Tribe of Nebraska

Signature: 

Date: December 13, 2011

Please print name: Gloria M. Hamilton

Title: Ponca Tribe of Nebraska  
THPO Coordinator

MEMORANDUM OF UNDERSTANDING  
AMONG

THE FEDERAL HIGHWAY ADMINISTRATION,  
ILLINOIS STATE HISTORIC PRESERVATION OFFICER,  
ILLINOIS DEPARTMENT OF TRANSPORTATION,

and

FEDERALLY RECOGNIZED TRIBES INTERESTED IN ILLINOIS LANDS

REGARDING TRIBAL CONSULTATION REQUIREMENTS  
FOR THE ILLINOIS FEDERAL TRANSPORTATION PROGRAM

Osage Nation

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Please print name: \_\_\_\_\_

Title: \_\_\_\_\_

*John D. Red Eagle*

*12/13/12*

*JOHN D. Red Eagle*

*Principal Chief*

**MEMORANDUM OF UNDERSTANDING  
AMONG**

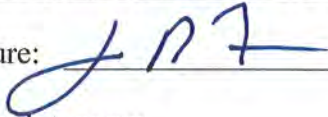
**THE FEDERAL HIGHWAY ADMINISTRATION,  
ILLINOIS STATE HISTORIC PRESERVATION OFFICER,  
ILLINOIS DEPARTMENT OF TRANSPORTATION,**

**and**

**FEDERALLY RECOGNIZED TRIBES INTERESTED IN ILLINOIS LANDS**

**REGARDING TRIBAL CONSULTATION REQUIREMENTS  
FOR THE ILLINOIS FEDERAL TRANSPORTATION PROGRAM**

**Peoria Tribe of Indians in Oklahoma**

Signature:  \_\_\_\_\_

Date: 12-20-12 \_\_\_\_\_

Please print name: \_\_\_\_\_

Title: \_\_\_\_\_

MEMORANDUM OF UNDERSTANDING  
AMONG

THE FEDERAL HIGHWAY ADMINISTRATION,  
ILLINOIS STATE HISTORIC PRESERVATION OFFICER,  
ILLINOIS DEPARTMENT OF TRANSPORTATION,

and

FEDERALLY RECOGNIZED TRIBES INTERESTED IN ILLINOIS LANDS

REGARDING TRIBAL CONSULTATION REQUIREMENTS  
FOR THE ILLINOIS FEDERAL TRANSPORTATION PROGRAM

Forest County Potawatomi Community

Signature: Harold Frank

Date: 8-7-17

Please print name: Harold Frank

Title: Chairman

MEMORANDUM OF UNDERSTANDING  
AMONG

THE FEDERAL HIGHWAY ADMINISTRATION,  
ILLINOIS STATE HISTORIC PRESERVATION OFFICER,  
ILLINOIS DEPARTMENT OF TRANSPORTATION,


and

FEDERALLY RECOGNIZED TRIBES INTERESTED IN ILLINOIS LANDS

REGARDING TRIBAL CONSULTATION REQUIREMENTS  
FOR THE ILLINOIS FEDERAL TRANSPORTATION PROGRAM

Kaw Nation

Signature: \_\_\_\_\_



Date: \_\_\_\_\_

5-22-18

Please print name: \_\_\_\_\_

Crystal Douglas

Title: \_\_\_\_\_

THPO KAW Nation



## APPENDIX A

### COUNTY LISTING OF THE TRIBES' ANCESTRAL HOMELANDS AND TERRITORY IN THE STATE OF ILLINOIS

#### IDOT DISTRICTS / COUNTIES

##### DISTRICT 1

<u>Counties</u>	<u>Tribes</u>
Cook	Ho-Chunk, Miami, Peoria, Potawatomi, Sac & Fox
Lake	Ho-Chunk, Miami, Peoria, Potawatomi, Sac & Fox
DuPage	Ho-Chunk, Miami, Peoria, Potawatomi, Sac & Fox
McHenry	Ho-Chunk, Miami, Peoria, Potawatomi, Sac & Fox
Kane	Ho-Chunk, Miami, Peoria, Potawatomi, Sac & Fox
Will	Ho-Chunk, Miami, Kickapoo, Peoria, Potawatomi, Sac & Fox

##### DISTRICT 2

<u>Counties</u>	<u>Tribes</u>
Boone	Ho-Chunk, Miami, Peoria, Potawatomi, Sac & Fox
Carroll	Ho-Chunk, Potawatomi, Sac & Fox, Iowa, Miami, Peoria
Henry	Ho-Chunk, Iowa, Miami, Peoria, Potawatomi, Sac & Fox
Jo Daviess	Ho-Chunk, Iowa, Miami, Peoria, Potawatomi, Sac & Fox
Lee	Ho-Chunk, Miami, Peoria, Potawatomi, Sac & Fox
Ogle	Ho-Chunk, Miami, Peoria, Potawatomi, Sac & Fox
Rock Island	Ho-Chunk, Miami, Peoria, Potawatomi, Sac & Fox
Stephenson	Ho-Chunk, Miami, Peoria, Potawatomi, Sac & Fox
Whiteside	Ho-Chunk, Iowa, Miami, Peoria, Potawatomi, Sac & Fox
Winnebago	Ho-Chunk, Miami, Peoria, Potawatomi, Sac & Fox

##### DISTRICT 3

<u>Counties</u>	<u>Tribes</u>
Bureau	Ho-Chunk, Miami, Peoria, Potawatomi, Sac & Fox
DeKalb	Ho-Chunk, Miami, Peoria, Potawatomi, Sac & Fox
Ford	Kickapoo, Miami, Peoria
Grundy	Ho-Chunk, Kickapoo, Miami, Peoria, Potawatomi, Sac & Fox
Iroquois	Kickapoo, Miami, Peoria
Kankakee	Kickapoo, Miami, Peoria, Potawatomi
Kendall	Ho-Chunk, Miami, Peoria, Potawatomi, Sac & Fox
La Salle	Ho-Chunk, Kickapoo, Miami, Peoria, Potawatomi, Sac & Fox
Livingston	Ho-Chunk, Kickapoo, Miami, Peoria, Potawatomi

DISTRICT 4

Counties

Tribes

Fulton	Ho-Chunk, Iowa, Miami, Peoria, Potawatomi, Sac & Fox
Henderson	Ho-Chunk, Iowa, Miami, Peoria, Sac & Fox
Knox	Ho-Chunk, Miami, Peoria, Potawatomi, Sac & Fox
Marshall	Ho-Chunk, Kickapoo, Miami, Peoria, Potawatomi, Sac & Fox
McDonough	Ho-Chunk, Miami, Peoria, Potawatomi, Sac & Fox
Mercer	Ho-Chunk, Iowa, Miami, Peoria, Sac & Fox,
Peoria	Ho-Chunk, Iowa, Miami, Peoria, Potawatomi, Sac & Fox
Putnam	Ho-Chunk, Kickapoo, Miami, Peoria, Potawatomi, Sac & Fox
Stark	Ho-Chunk, Miami, Peoria, Potawatomi, Sac & Fox
Tazewell	Peoria, Potawatomi, Kickapoo, Miami
Warren	Ho-Chunk, Miami, Peoria, Potawatomi, Sac & Fox
Woodford	Ho-Chunk, Kickapoo, Miami, Peoria, Potawatomi

DISTRICT 5

Counties

Tribes

Champaign	Kickapoo, Miami, Peoria
DeWitt	Kickapoo, Miami, Peoria
Douglas	Kickapoo, Miami, Peoria
Edgar	Kickapoo, Miami, Peoria
McLean	Iowa, Kickapoo, Miami, Peoria
Piatt	Kickapoo, Miami, Peoria
Vermilion	Kickapoo, Miami, Peoria

DISTRICT 6

Counties

Tribes

Adams	Ho-Chunk, Iowa, Miami, Peoria, Sac & Fox
Brown	Ho-Chunk, Iowa, Miami, Peoria, Potawatomi, Sac & Fox
Cass	Kickapoo, Miami, Peoria, Potawatomi,
Christian	Kickapoo, Miami, Peoria
Hancock	Ho-Chunk, Iowa, Miami, Peoria, Sac & Fox
Logan	Kickapoo, Miami, Peoria
Macoupin	Kaw, Kickapoo, Miami, Osage, Peoria
Mason	Kickapoo, Miami, Peoria, Potawatomi
Menard	Kickapoo, Miami, Peoria, Potawatomi
Montgomery	Kickapoo, Miami, Peoria, Potawatomi
Morgan	Kickapoo, Miami, Peoria, Potawatomi
Pike	Ho-Chunk, Iowa, Kaw, Miami, Osage, Peoria, Sac & Fox

Sangamon  
Scott  
Schuyler

Kickapoo, Miami, Peoria  
Kickapoo, Miami, Peoria, Potawatomi  
Ho-Chunk, Miami, Peoria, Potawatomi, Sac & Fox

DISTRICT 7

Counties

Tribes

Clark  
Clay  
Coles  
Crawford  
Cumberland  
Edwards  
Effingham  
Fayette  
Jasper  
Lawrence  
Macon  
Moultrie  
Richland  
Shelby  
Wabash  
Wayne  
White

Kickapoo, Miami, Peoria  
Kickapoo, Miami, Peoria  
Kickapoo, Miami, Peoria  
Kickapoo, Miami, Peoria  
Kickapoo, Miami, Peoria  
Kaw, Miami, Peoria, Ponca, Osage  
Kickapoo, Miami, Peoria  
Kickapoo, Miami, Peoria  
Kickapoo, Miami, Peoria  
Delaware, Kickapoo, Miami, Peoria  
Kickapoo, Miami, Peoria  
Kickapoo, Miami, Peoria  
Miami, Peoria  
Kickapoo, Miami  
Kaw, Kickapoo, Miami, Osage, Peoria, Ponca,  
Kaw, Miami, Osage, Peoria, Ponca,  
Kaw, Miami, Osage, Peoria, Ponca

DISTRICT 8

Counties

Tribes

Bond  
Calhoun  
Clinton  
Greene  
Jersey  
Madison  
Marion  
Monroe  
Randolph  
St. Clair  
Washington

Kaw, Kickapoo, Miami, Osage, Peoria, Ponca  
Ho-Chunk, Kaw, Miami, Osage, Peoria, Sac & Fox  
Kaw, Miami, Osage, Peoria, Ponca  
Kaw, Kickapoo, Miami, Osage, Peoria  
Kaw, Kickapoo, Miami, Osage, Peoria  
Kaw, Kickapoo, Miami, Osage, Peoria, Ponca  
Kaw, Miami, Osage, Peoria  
Kaw, Miami, Osage, Peoria, Ponca  
Delaware, Kaw, Miami, Osage, Peoria, Ponca,  
Kaw, Miami, Osage, Peoria, Ponca  
Kaw, Miami, Osage, Peoria, Ponca

DISTRICT 9

Counties

Tribes

Alexander	Delaware, Kaw, Miami, Osage, Peoria
Franklin	Kaw, Miami, Osage, Peoria, Ponca,
Gallatin	Delaware, Kaw, Miami, Osage, Peoria, Ponca,
Hamilton	Kaw, Kickapoo, Miami, Osage, Peoria, Ponca
Hardin	Kaw, Miami, Osage, Peoria, Ponca
Jackson	Kaw, Miami, Osage, Peoria, Ponca
Jefferson	Kaw, Miami, Osage, Peoria, Ponca
Johnson	Kaw, Miami, Osage, Peoria, Ponca
Massac	Kaw, Miami, Osage, Peoria, Ponca
Perry	Kaw, Miami, Osage, Peoria, Ponca
Pope	Kaw, Miami, Osage, Peoria, Ponca
Pulaski	Kaw, Miami, Osage, Peoria, Ponca
Saline	Kaw, Kickapoo, Miami, Osage, Peoria, Ponca
Union	Kaw, Miami, Osage, Peoria, Ponca
White	Kaw, Miami, Osage, Peoria, Ponca
Williamson	Kaw, Miami, Osage, Peoria, Ponca

## APPENDIX B

### POINT OF CONTACT LIST

#### **Federal Highway Administration**

*Primary Point of Contact:*

Norman R. Stoner, P.E.  
Division Administrator  
3250 Executive Park Drive, Springfield, IL 62703  
[norman.stoner@dot.gov](mailto:norman.stoner@dot.gov)  
217-492-4640

*Secondary Point of Contact:*

Janis P. Piland, P.E.  
Environmental Engineer  
3250 Executive Park Drive, Springfield, IL 62703  
[Janis.piland@dot.gov](mailto:Janis.piland@dot.gov)  
217-492-4989

#### **Illinois Department of Transportation**

*Primary Point of Contact:*

Dr. John Walthall  
Chief Archaeologist  
2300 S. Dirksen Parkway, Springfield, IL 62764  
[John.Walthall@illinois.gov](mailto:John.Walthall@illinois.gov)  
217-785-2831

*Secondary Point of Contact:*

Brad Koldehoff  
Cultural Resources Coordinator  
2300 S. Dirksen Parkway, Springfield, IL 62764  
[Brad.Koldehoff@illinois.gov](mailto:Brad.Koldehoff@illinois.gov)  
217-785-7833

#### **Absentee Shawnee Tribe of Oklahoma**

*Primary Point of Contact:*

Ms. Karen Kaniatobe  
NAGPRA Representative  
2025 Gordon Cooper Drive, Shawnee, OK 74801  
[kkaniatobe@astribe.com](mailto:kkaniatobe@astribe.com)  
405-275-4030 ext 199

*Secondary Point of Contact:*

none

#### **The Delaware Nation**

*Primary Point of Contact:*

Ms. Tamara Francis  
Cultural Preservation Director  
PO Box 825, Anadarko, OK 73005  
[tfrancis@delawarenation.com](mailto:tfrancis@delawarenation.com)  
405-247-2448 ext 1180

*Secondary Point of Contact:*

Mr. Jason Ross  
Museum/ Section 106 Assistant  
PO Box 825, Anadarko, OK 73005  
[jross@delawarenation.com](mailto:jross@delawarenation.com)

## **Ho-Chunk Nation**

*Primary Point of Contact:*

Mr. Bill Quackenbush  
Tribal Historic Preservation Officer  
PO Box 667, Black River Falls, WI 54815  
[bill.quackenbush@ho-chunk.com](mailto:bill.quackenbush@ho-chunk.com)  
715-284-7181

*Secondary Point of Contact:*

Mr. George Garvin  
NAGPRA Representative  
PO Box 667, Black River Falls, WI 54815  
[George.garvin@ho-chunk.com](mailto:George.garvin@ho-chunk.com)

## **Iowa Tribe of Kansas and Nebraska**

*Primary Point of Contact:*

Mr. Alan Kelley  
3345 Thrasher Road, White Cloud, KS 66094  
785-595-3258  
[akelley@iowas.org](mailto:akelley@iowas.org)

*Secondary Point of Contact:*

none

## **Iowa Tribe of Oklahoma**

*Primary Point of Contact:*

Dr. Robert Fields  
Rt. 1, Box 721, Perkins, OK 74059  
405-547-5433  
[rfields@iowanation.org](mailto:rfields@iowanation.org)

*Secondary Point of Contact:*

none

## **Kaw Nation**

*Primary Point of Contact:*

Ms. Crystal Douglas  
Drawer 50, Kaw City, OK 74641  
580-269-2552  
[cdouglas@kawnation.com](mailto:cdouglas@kawnation.com)

*Secondary Point of Contact:*

Mr. Guy Monroe  
CEO/ Chair  
Drawer 50, Kaw City, OK 74641  
580-269-2552  
[gmonroe@kawnation.com](mailto:gmonroe@kawnation.com)

### **Kickapoo Tribe in Kansas**

*Primary Point of Contact:*

Mr. Kenneth Jessepe  
Vice Chairman

1107 Goldfinch Road, Horton, KS 66439  
[Kenneth.jessepe@ktik-nsn.gov](mailto:Kenneth.jessepe@ktik-nsn.gov)  
877-864-2746

*Secondary Point of Contact:*

Ms. Nellie Cadue  
NAGPRA Director

1107 Goldfinch Road, Horton, KS 66439  
[Nellie.cadue@ktik-nsn.gov](mailto:Nellie.cadue@ktik-nsn.gov)

### **Kickapoo Traditional Tribe of Texas**

*Primary Point of Contact:*

Mr. Juan Garza, Jr.  
Chairman

HCR 1, Box 9700, Eagle Pass, TX 78852  
830-758-1936

*Secondary Point of Contact:*

Ms. Mary Jane Salgado

HCR 1, Box 9700, Eagle Pass, TX 78852  
[mjsalgado@kickapootrafitionaltribeof texas.com](mailto:mjsalgado@kickapootrafitionaltribeof texas.com)  
830-773-2105

### **Kickapoo Tribe of Oklahoma**

*Primary Point of Contact:*

Mr. Marlon Frye

PO Box 70, McCloud, OK 74851

*Secondary Point of Contact:*

Mr. Kent Collier

PO Box 70, McCloud, OK 74851  
[Kentcollier2000@yahoo.com](mailto:Kentcollier2000@yahoo.com)  
405-964-7418

### **Miami Tribe of Oklahoma**

*Primary Point of Contact:*

Mr. George Strack  
Tribal Historic Preservation Officer

202 S. Eight Tribes Trail, Miami, OK 74354  
[gstrack@miamination.com](mailto:gstrack@miamination.com)  
918-542-1445

*Secondary Point of Contact:*

None

### **Omaha Tribe of Nebraska**

*Primary Point of Contact:*

Mr. Amen Sheridan

PO Box 368, Macy, NE 68039  
[asheridan@omahatribe.com](mailto:asheridan@omahatribe.com)  
402-837-5391

*Secondary Point of Contact:*  
none

### **Osage Nation**

*Primary Point of Contact:*  
Dr. Andrea Hunter 627 Grandview, Pawhuska, OK 74056  
Tribal Historic Preservation Officer [ahunter@osage-tribe.org](mailto:ahunter@osage-tribe.org)  
918-287-5671

*Secondary Point of Contact:*  
Ms. June Carpenter 627 Grandview, Pawhuska, OK 74056  
NAGPRA Assistant [jcarperter@osage-tribe.org](mailto:jcarperter@osage-tribe.org)  
918-287-5520

### **Otoe-Missouria Tribe**

*Primary Point of Contact:*  
Mr. John Shotton 8151 Highway 177, Red Rock, OK 74651  
Chairman [jshotton@omtribe.org](mailto:jshotton@omtribe.org)  
580-723-4466

*Secondary Point of Contact:*  
none

### **Peoria Tribe of Indians of Oklahoma**

*Primary Point of Contact:*  
Mr. John P. Froman 118 S. Eight Tribes Trails, Miami, OK 74355  
Chief [jfroman@peoriatribe.com](mailto:jfroman@peoriatribe.com)  
918-540-2535

*Secondary Point of Contact:*  
Mr. Frank Hecksher 118 S. Eight Tribes Trails, Miami, OK 74355  
Special Projs Mgr/ NAGPRA [fhecksher@peoriatribe.com](mailto:fhecksher@peoriatribe.com)  
918-540-2535 ext 31

### **Ponca Tribe of Nebraska**

*Primary Point of Contact:*  
Mr. Gary Robinette PO Box 288, Niobrara, NE 68760  
Tribal Historic Preservation Officer [garyr@poncatribe-ne.org](mailto:garyr@poncatribe-ne.org)  
402-857-3519

*Secondary Point of Contact:*  
Mr. Larry Wright, Jr. PO Box 288, Niobrara, NE 68760  
Chairman [ldwrightjr@gmail.com](mailto:ldwrightjr@gmail.com)



## **Ponca Tribe of Oklahoma**

*Primary Point of Contact:*

Mr. Delbert Cole

20 White Eagle Drive, Ponca City, OK 74601

[Wanxe\\_sabe@hotmail.com](mailto:Wanxe_sabe@hotmail.com)

580-763-0120

*Secondary Point of Contact:*

Mr. Trey Howe

20 White Eagle Drive, Ponca City, OK 74601

[treyhowe@excite.com](mailto:treyhowe@excite.com)

## **Citizen Potawatomi Nation**

*Primary Point of Contact:*

Mr. John A. Barrett

Chairperson

1601 S. Gordon Cooper Drive, Shawnee, OK 74801

[rbarrett@potawatomi.org](mailto:rbarrett@potawatomi.org)

405-275-3121

*Secondary Point of Contact:*

Ms. Karen Phillips

1601 S. Gordon Cooper Drive, Shawnee, OK 74801

## **Forest County Potawatomi**

*Primary Point of Contact:*

Mr. Phillip Shopodock

Chairperson

PO Box 340, Crandon, WI 54520

*Secondary Point of Contact:*

Mr. Michael L. Alloway

Director

PO Box 340, Crandon, WI 54520

[mikea@fcpotawatomi.com](mailto:mikea@fcpotawatomi.com)

800-960-5479 ext 7474

## **Potawatomi Nation-Hannahville Indian Community**

*Primary Point of Contact:*

Mr. Kenneth Mechiguad

Chairperson

N14911 Hannahville Boulevard Road, Wilson, MI 49896

*Secondary Point of Contact:*

Mr. Earl Mechiguad

N14911 Hannahville Boulevard Road, Wilson, MI 49896

[earlmechiguad@hannahville.org](mailto:earlmechiguad@hannahville.org)

906-723-2271

## **Pokagon Band of Potawatomi Indians**

*Primary Point of Contact:*

Mr. Steve Winchester

58620 Sink Road, Dowagiac, MI 49047

269-782-6323

*Secondary Point of Contact:*

Mr. Mike Zimmerman, Jr. 58620 Sink Road, Dowagiac, MI 49047  
Tribal Historic Preservation Officer [michael.zimmerman@pokagonband-nsn.gov](mailto:michael.zimmerman@pokagonband-nsn.gov)  
800-517-0777

**Prairie Band Potawatomi Nation**

*Primary Point of Contact:*

Mr. Steve Ortiz 16281 Q Road, Mayetta, KS 66509  
[steveo@pbnation.org](mailto:steveo@pbnation.org)  
785-966-4000

*Secondary Point of Contact:*

Mr. Chago Hale 16281 Q Road, Mayetta, KS 66509  
NAGPRA Representative [chagoh@pbnation.org](mailto:chagoh@pbnation.org)  
785-966-4016

**Quapaw Tribe of Oklahoma**

*Primary Point of Contact:*

Mr. John Berrey PO Box 765, Quapaw, OK 74363  
Chairman [jberrey@ogahpah.com](mailto:jberrey@ogahpah.com)  
918-542-1853

*Secondary Point of Contact:*

None

**Sac and Fox Nation of Mississippi in Iowa**

*Primary Point of Contact:*

Mr. Homer Bear, Jr. 349 Meskwaki Road, Tama, IA 52339  
Chairman

*Secondary Point of Contact:*

Mr. Jonathan Buffalo 349 Meskwaki Road, Tama, IA 52339  
NAGPRA Representative [jbuffalo@meskwaki.org](mailto:jbuffalo@meskwaki.org)  
641-484-3185

**Sac and Fox Nation of Missouri**

*Primary Point of Contact:*

Ms. Twen Barton 305 N. Main Street, Reserve, KS 66465  
Chairperson [tbarton@sacandfoxcasino.com](mailto:tbarton@sacandfoxcasino.com)  
785-742-7471

*Secondary Point of Contact:*

Ms. Diana K. Weeks 305 N. Main Street, Reserve, KS 66465  
NAGPRA Representative [dweeks@sacandfoxcasino.com](mailto:dweeks@sacandfoxcasino.com)  
785-742-7471

**Sac and Fox Nation of Oklahoma**

*Primary Point of Contact:*

Ms. Sandra Massey  
Tribal Historic Preservation Officer

Route 2, Box 246, Stroud, OK 74079  
[smassey@sacandfoxnation-nsn.gov](mailto:smassey@sacandfoxnation-nsn.gov)  
918-968-3526 ext 1048

*Secondary Point of Contact:*

none

**Winnebago Tribe of Nebraska**

*Primary Point of Contact:*

Mr. John Blackhawk  
Chairperson

PO Box 687, Winnebago, NE 68071  
[jblackhawk@aol.com](mailto:jblackhawk@aol.com)  
402-878-3103

*Secondary Point of Contact:*

Mr. David Smith

PO Box 687, Winnebago, NE 68071  
[theking@huntel.net](mailto:theking@huntel.net)  
402-878-2380

## APPENDIX C

### PROJECTS EXEMPT FROM INITIAL NOTIFICATION

Projects limited to the following activities, provided the projects are not part of a larger undertaking, by their nature and definition and based on extensive previous experience within Illinois either: **1)** have no potential to affect historic properties [36 CFR 800.3(a)(1)], or **2)** have no or limited potential to result in any effects to historic properties of concern to the Tribes, and are therefore exempt from notification, but not consultation, if the need arises. Any project located adjacent to or within the viewshed of a NRHP listed or eligible property, including bridges and historic districts, will not be exempt. Project types listed below are exempt only if they do not impact previously undisturbed ground, i.e. soils that have been physically altered by any construction, utility trenching and related work.

1. Construction activities within interchanges and within medians of divided highways.
2. Replacement, repair, lining, or extension of culverts and other drainage structures which do not extend beyond or deeper than previous construction limits, and do not exhibit stone or brick structures or parts therein.
3. Roadway surface replacement, rehabilitation, resurfacing, or reconstruction, overlays, shoulder treatments, pavement repair, seal coating, pavement grinding, and pavement marking where replacement, repair, or installation of curbs or sidewalks will not be required.
4. Repair or replacement of existing lighting, signals, and other traffic control devices.
5. Repair or replacement of existing safety appurtenances such as guardrails, barriers, glares screens, and crash attenuators.
6. Installation of fencing and landscaping.
7. Railway crossing signs and signal installation, or modification and surface improvement.
8. Erosion control to prevent erosion of roadways, waterways and bridge piers.
9. Routine roadside maintenance activities necessary to preserve existing infrastructure and maintain roadway safety.
10. Rehabilitation of existing rest areas and truck weigh stations.
11. Hazardous waste removal and disposal constituting a public hazard and which require immediate removal.
12. Installation of parking lanes, bi-directional lanes, turning lanes or climbing lanes within existing right-of-way limits.

13. Approval of utility installations along a transportation facility within the State right-of-way.
14. Emergency repairs under 23 USC 125 which do not substantially change the design of the facility.
15. Bridge projects which consist of widening or replacement of bridges, not included in the Historic Bridge Survey that are on or adjacent to the existing alignment and require one acre or less of undeveloped rights of way.
16. Construction of bicycle and pedestrian lanes, paths, and facilities on previously disturbed rights of way
17. Replacement in kind within Historic Districts or adjacent to Historic Properties.

## APPENDIX D

### Illinois Human Skeletal Remains Protection Act (20 ILCS 3440)

**(20 ILCS 3440/0.01) (from Ch. 127, par. 2660)**

**Sec. 0.01.**

Short title. This Act may be cited as the Human Skeletal Remains Protection Act. (Source: P.A. 86-1324.)

**(20 ILCS 3440/1) (from Ch. 127, par. 2661)**

**Sec. 1.**

Definitions. For the purposes of this Act:

- (a) "Human skeletal remains" include the bones and decomposed fleshy parts of a deceased human body.
- (b) "Unregistered graves" are any graves or locations where a human body has been buried or deposited; is over 100 years old; and is not in a cemetery registered with the State Comptroller under the Cemetery Care Act.
- (c) "Grave artifacts" are any item of human manufacture or use that is associated with the human skeletal remains in an unregistered grave.
- (d) "Grave markers" are any tomb, monument, stone, ornament, mound, or other item of human manufacture that is associated with an unregistered grave.
- (e) "Person" means any natural individual, firm, trust, estate, partnership, association, joint stock company, joint venture, corporation or a receiver, trustee, guardian or other representatives appointed by order of any court, the Federal and State governments, including State Universities created by statute or any city, town, county or other political subdivision of this State.
- (f) "Disturb" includes excavating, removing, exposing, defacing, mutilating, destroying, molesting, or desecrating in any way human skeletal remains, unregistered graves, and grave markers. (Source: P.A. 86-151.)

**(20 ILCS 3440/2) (from Ch. 127, par. 2662)**

**Sec. 2.**

Legislative finding and intentions. The General Assembly finds that existing laws do not provide equal or adequate protection for all human graves. There is a real and growing threat to the safety and sanctity of unregistered and unmarked graves. Numerous incidents in Illinois have resulted in the desecration of human remains and vandalism to grave markers. Similar incidents have occurred in neighboring states and as a result those states have increased their criminal penalties for such conduct. There is a strong likelihood that persons engaged for personal or financial gain in the mining of prehistoric and historic Indian, pioneer, and Civil War veteran's graves will move their operations to Illinois to avoid the increased penalties being imposed in neighboring states. There is an immediate need for legislation to protect the graves of these earlier Illinoisans from such desecration. The General Assembly intends to assure with this Act that all human

burials be accorded equal treatment and respect for human dignity without reference to ethnic origins, cultural backgrounds or religious affiliations.

The General Assembly also finds that those persons engaged in the scientific study or collecting of artifacts which have not been acquired in violation of law are engaged in legitimate and worthy scientific, educational and recreational activities. This Act is not intended to interfere with the continued legitimate collecting activities or studies of such persons; nor is it intended to interfere with the normal enjoyment of private property owners, farmers, or those engaged in the development, mining or improvement of real property. (Source: P.A. 95-331, eff. 8-21-07.)

**(20 ILCS 3440/3) (from Ch. 127, par. 2663)**

**Sec. 3.**

Any person who discovers human skeletal remains subject to this Act shall promptly notify the coroner. Any person who knowingly fails to report such a discovery within 48 hours is guilty of a Class C misdemeanor, unless such person has reasonable cause to believe that the coroner had already been so notified. If the human skeletal remains appear to be from an unregistered grave, the coroner shall promptly notify the Historic Preservation Agency prior to their removal. Nothing in this Act shall be construed to apply to human skeletal remains subject to "An Act to revise the law in relation to coroners". (Source: P.A. 86-151.)

**(20 ILCS 3440/4) (from Ch. 127, par. 2664)**

**Sec. 4.**

It is unlawful for any person, either by himself or through an agent, to knowingly disturb human skeletal remains and grave artifacts in unregistered graves protected by this Act unless such person obtains a permit issued by the Historic Preservation Agency. (Source: P.A. 86-151.)

**(20 ILCS 3440/4.5)**

**Sec. 4.5.**

O'Hare Modernization. Nothing in this Act limits the authority of the City of Chicago to exercise its powers under the O'Hare Modernization Act or requires that City, or any person acting on behalf of that City, to obtain a permit under this Act when acquiring property or otherwise exercising its powers under the O'Hare Modernization Act. (Source: P.A. 93-450, eff. 8-6-03.)

**(20 ILCS 3440/5) (from Ch. 127, par. 2665)**

**Sec. 5.**

It is unlawful for any person, either by himself or through an agent, to knowingly disturb a grave marker protected by this Act unless such person obtains a permit issued by the Historic Preservation Agency. (Source: P.A. 86-151.)

**(20 ILCS 3440/6) (from Ch. 127, par. 2666)**

**Sec. 6.**

It is unlawful for any person, either by himself or through an agent, to offer any human skeletal remains, grave artifacts or grave markers for sale or exchange with the knowledge that they have been collected or excavated in violation of this Act. (Source: P.A. 86-151.)

**(20 ILCS 3440/7) (from Ch. 127, par. 2667)**

**Sec. 7.**

It is unlawful for any person, either by himself or through an agent, to knowingly allow the disturbance of human skeletal remains, unregistered graves, or grave markers on property controlled by that person unless such disturbance is authorized by a permit issued by the Historic Preservation Agency. (Source: P.A. 86-151.)

**(20 ILCS 3440/8) (from Ch. 127, par. 2668)**

**Sec. 8.**

The State's Attorney of the county in which a violation of Sections 4, 5, 6 or 7 of this Act is alleged to have occurred, or the Attorney General, may be requested by the Director of the Historic Preservation Agency to initiate criminal prosecutions or to seek civil damages, injunctive relief and any other appropriate relief. The Historic Preservation Agency shall cooperate with the State's Attorney or the Attorney General. Persons aware of any violations of this Act shall contact the Historic Preservation Agency. (Source: P.A. 86-151.)

**(20 ILCS 3440/9) (from Ch. 127, par. 2669)**

**Sec. 9.**

The Historic Preservation Agency is authorized to offer a reward of up to \$2000 for information leading to the arrest and conviction of persons who violate Sections 4, 5, 6 and 7 of this Act. (Source: P.A. 86-151.)

**(20 ILCS 3440/10) (from Ch. 127, par. 2670)**

**Sec. 10.**

Any violation of Sections 4, 6 or 7 of this Act is a Class A misdemeanor and the violator shall be subject to imprisonment for not more than 1 year and a fine not in excess of \$10,000; any subsequent violation is a Class 4 felony. Each disturbance of an unregistered grave constitutes a separate offense. (Source: P.A. 86-151.)

**(20 ILCS 3440/11) (from Ch. 127, par. 2671)**

**Sec. 11.**

Any violation of Section 5 of this Act is a Class B misdemeanor and the violator shall be subject to imprisonment for not more than 6 months and a fine not in excess of \$500; any subsequent violation is a Class A misdemeanor. Each disturbance of a grave marker constitutes a separate offense. (Source: P.A. 86-151.)

**(20 ILCS 3440/12) (from Ch. 127, par. 2672)**

**Sec. 12.**

Persons convicted of a violation of Section 4 or 5 of this Act shall also be liable for civil damages to be assessed by the Historic Preservation Agency. Civil damages may include:

- (a) forfeiture of any and all equipment used in disturbing the protected unregistered graves or grave markers;
- (b) any and all costs incurred in cleaning, restoring, analyzing, accessioning and curating the recovered materials;



(c) any and all costs associated with restoring the land to its original contour or the grave marker to its original condition;

(d) any and all costs associated with recovery of data, and analyzing, publishing, accessioning and curating materials when the prohibited activity is so extensive as to preclude the restoration of the unregistered burials or grave markers;

(e) any and all costs associated with the reinterment of the human skeletal remains;

(f) any and all costs associated with the determination and collection of the civil damages.

When civil damages are recovered through the Attorney General, the proceeds shall be deposited into the Historic Sites Fund; when civil damages are recovered through the State's Attorney, the proceeds shall be deposited into the county funds designated by the county board. (Source: P.A. 86-151.)

**(20 ILCS 3440/13) (from Ch. 127, par. 2673)**

**Sec. 13.**

(a) The Historic Preservation Agency shall develop regulations, in consultation with the Illinois State Museum, whereby permits may be issued for the removal of human skeletal remains and grave artifacts from unregistered graves or the removal of grave markers.

(b) Each permit shall specify all terms and conditions under which the removal of human skeletal remains, grave artifacts, or grave markers shall be carried out. All costs accrued in the removal of the aforementioned materials shall be borne by the permit applicant. Upon completion of the project, the permit holder shall submit a report of the results to the Historic Preservation Agency. (Source: P.A. 86-151.)

**(20 ILCS 3440/14) (from Ch. 127, par. 2674)**

**Sec. 14.**

All human skeletal remains and grave artifacts in unregistered graves are held in trust for the people of Illinois by the State and are under the jurisdiction of the Historic Preservation Agency. All materials collected under this Act shall be maintained, with dignity and respect, for the people of the State under the care of the Illinois State Museum. (Source: P.A. 86-151.)

**(20 ILCS 3440/15) (from Ch. 127, par. 2675)**

**Sec. 15.**

The Historic Preservation Agency shall promulgate such regulations as may be necessary to carry out the purposes of this Act. (Source: P.A. 86-151.)

**(20 ILCS 3440/16) (from Ch. 127, par. 2676)**

**Sec. 16.**

Activities reviewed by the Historic Preservation Agency pursuant to Section 106 of the National Historic Preservation Act (16 U.S.C. 470f) and activities permitted pursuant to the Federal Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87), or the rules and regulations promulgated thereunder or any law, rule or regulation adopted by the State of Illinois thereunder shall be exempt from these permitting requirements. (Source: P.A. 86-151.)

## APPENDIX E

### DEFINITIONS

Area of Potential Effect (A.P.E.) – The geographic area(s) within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties. The A.P.E. is influenced by the scale and nature of an undertaking.

Area of Interest - The particular Illinois County that a Tribe has identified to be of interest. The FHWA Illinois Division Office and IDOT maintain a current list of known Tribal areas of interest by county.

Consultation – The process of seeking, discussing, and considering the views of participants, and where feasible seeking agreement with them. Consultation involves listening, exchanging views, and having meaningful input from all parties into final decisions. (From 36 CFR 800.16(f) and “Tribal Consultation: Best Practices in Historic Preservation”, National Association of Tribal Historic Preservation Officers, May 2005).

Illinois State Archaeological Survey (ISAS) is a joint program of the University of Illinois and the IDOT created to ensure the preservation and protection of Illinois’ important archaeological resources in the context of transportation projects. The ISAS’s mission is:

1. To assist IDOT in the preservation and protection of Illinois’ historic and archaeological resources,
2. To carry out research activities that enhance the educational and public service mission of the U of I, and
3. To promote and ensure professional and public dissemination of information regarding the prehistory and history of Illinois.

Through an Intergovernmental Agreement, ISAS performs all archaeological surveys for IDOT projects when IDOT submits such a request.

Mitigation – 1) Avoiding, 2) Minimizing, 3) Rectifying (by repairing, rehabilitating, or restoring), 4) Reducing/ eliminating over time (by preservation and maintenance), and 5) Compensating (by replacing or providing substitute resources) for an impact. (From CEQ regulations part 1508.20). Mitigation steps are listed in priority order, i.e. practicable avoidance should first be attempted, then minimization, etc.

Notification – The initial contact FHWA makes with a Tribe regarding a specific project. This will be done through IDOT PNS for minor projects (CE classes of action under NEPA), and if requested by a Tribe because of demonstrated technical difficulties accessing the PNS, may also be via hardcopy correspondence. For projects processed as EA and EIS classes of action under NEPA, the FHWA will normally notify Tribes by email. Information will include a project description, a map showing the project location, a list of any known archaeological sites in the project area, and a request that the Tribe notify FHWA/IDOT if they have an interest in the project and would like to be a consulting party in the Section 106 process.

Previously Undisturbed Ground – Soil that has not been physically altered by previous activities, such as construction, utility trenching, drainage work, and other related activities.

Project Notification System (PNS) – An electronic web-based database developed by ISAS. The IDOT submits a request to ISAS to do an archaeological survey for a project, and when ISAS enters the project into the PNS, an email is automatically generated and sent to the Tribes that have expressed an interest in that county. The PNS is only accessed by approved users with a password, and each Tribe can only receive/view projects in the counties of their interest. The notification includes: project description and location, maps, archaeological and historical information, a box to check if the Tribe “does not have any present concerns about this project”, a comment field if “The Tribe has concerns or questions regarding this project” and would like to be contacted. Previous comments are also displayed. The purpose of the PNS is to provide interested Tribes with immediate access to project information, and to solicit their input as soon as possible in the project development process.

Sacred Sites - Defined in Executive Order No. 13007 as “any specific, discrete, narrowly delineated location on Federal land that is identified by an Indian tribe, or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion; provided that the tribe or appropriately authoritative representative of an Indian religion has informed the agency of the existence of such a site.”

Traditional Cultural Landscape – “Cultural landscape” is defined in National Park Service (NPS) Preservation Briefs No. 36 as “a geographic area, including both cultural and natural resources and the wildlife or domestic animals therein, associated with a historic event, activity, or person or exhibiting other cultural or aesthetic values.” There are four general types: historic sites, historic designed landscapes, historic vernacular landscapes, and ethnographic landscapes. “Traditional Cultural Landscapes” are associated with a Tribal historic event, activity, or person, or have other association with a particular Tribe.

Traditional Cultural Property - Prehistoric and historic districts, sites, buildings, structures, or objects on or eligible for the NRHP, that is associated with cultural practices or beliefs of a living community that a) are rooted in that community’s history, and b) are important in maintaining the continuing cultural identity of the community. (From NPS Bulletin 38 under “What are traditional cultural properties?”). Sacred Sites and Traditional Cultural Landscapes are examples of TCPs (see NPS Bulletin 38 and NPS CRM journal Volume 16, special issue on TCPs.)

Tribal Official – An individual designated by Tribal government to represent the Tribe.