

**PROGRAMMATIC AGREEMENT  
FOR THE PROPOSED  
ST. CLAIR COUNTY METROLINK EXTENSION  
AMONG  
THE FEDERAL TRANSIT ADMINISTRATION,  
THE ILLINOIS STATE HISTORIC PRESERVATION OFFICE, AND  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION**

WHEREAS, The Federal Transit Administration ("FTA") has been requested by the Bi-State Development Agency of the Missouri-Illinois District ("BSDA") to fund the construction of a MetroLink extension into St. Clair County, Illinois from 5th & Missouri to Mid America Airport ("Undertaking") to be accomplished pursuant to a proposed Full Funding Grant Agreement ("FFGA"); and

WHEREAS, The BSDA, in partnership with the Metro East Transit District of St. Clair County ("SCCTD") will Engineer and Construct the Undertaking; and

WHEREAS, The BSDA has participated in the consultation process and has been invited to concur in this Programmatic Agreement; and

WHEREAS, as part of the environmental process FTA has determined that the proposed Undertaking may have an effect on archaeological resources associated with the East St. Louis Mound Group, the American Bottom Mound Group, the French Village/Lincoln Trail Mound Group, and the Dutch Hollow Mound Group which may be eligible for listing on the National Register of Historic Places, and has consulted with the Illinois State Historic Preservation Office ("SHPO") and the Advisory Council on Historic Preservation ("ACHP") pursuant to 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act of 1966, as amended ("NHPA") (16 U.S.C. 470f); and

NOW, THEREFORE, FTA, the SHPO and the ACHP agree that The Undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of The Undertaking on historic properties.

**STIPULATIONS**

FTA will ensure that the following measures are carried out:

**I. IDENTIFICATION AND EVALUATION OF ARCHAEOLOGICAL RESOURCES**

A. BSDA shall ensure that an archaeological reconnaissance survey (Phase I) shall be conducted in any area (a) proposed to be a source of borrow for The Undertaking and that such requirement will be a condition of the contractual relationship with the contractor constructing

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the Undertaking and, (b) affected by development of station 10 as indicated in Appendix A. The Phase I survey will be conducted in consultation with the SHPO, and a report of the survey will be submitted to the SHPO for review and comment.

B. Within thirty (30) days of the final execution of this document, the SHPO will notify BSDA in writing of the specific actions required to complete the Phase I survey previously initiated by the project (*St. Clair County MetroLink Extension: Phase I Cultural Resources Survey* dated April 1996, as revised in June 1996, and supplemented in July 1996). BSDA shall take all appropriate actions to comply with the SHPO's requirements and will institute immediate action to complete the Phase I survey.

C. As a result of the Phase I survey, in consultation with the FTA and BSDA, the SHPO shall identify sites requiring an archaeological intensive survey (Phase II). BSDA shall ensure that the Phase II survey will be performed on the identified sites to evaluate their National Register eligibility. Phase II investigation shall be undertaken during Final Engineering on the Undertaking and shall consist of exploration of property within the proposed right-of-way or on properties proposed for use as station areas except where the Undertaking is being accomplished on an existing railbed, or where the SHPO, BSDA, and FTA agree that the Undertaking will have no effect on archaeological resources. Phase II intensive survey methodologies shall be formulated and sites identified within 30 days after completion of the Phase I survey. A Phase II report shall be submitted to the SHPO for review and comment; and the SHPO will provide comments to BSDA within 30 days after receipt of the report.

D. The Phase I and Phase II surveys will be conducted in a manner consistent with the Secretary of the Interior's Standards and Guidelines for Identification (48 FR 44720-23) and taking into account the National Park Service publication The Archaeological Survey: Methods and Uses (1978) and the Illinois State Historic Preservation Office Guidelines for Archaeological Reconnaissance Surveys/Reports. Applicable surveys will be conducted under the supervision of an archaeologist(s) who meets, at a minimum, the Secretary of the Interior's Professional Qualifications Standards (48CFR 44738-9):

E. In consultation with the SHPO, BSDA shall evaluate properties identified through the Phase II intensive survey against the National Register criteria (36 CFR part 60.4)

F. For those properties which FTA, BSDA and the SHPO agree are not eligible for inclusion in the National Register, no further archaeological investigations will be required and the proposed Undertaking may proceed in those areas provided such construction does not preclude the potential for avoidance of sites which may be determined eligible. Those properties identified in the survey, and agreed upon by FTA, BSDA and the SHPO to be eligible for the National Register including any areas so identified as a result of inspection of the survey work

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performed in connection with Mid America Airport shall be treated in accordance with Stipulation II.

G. If unregistered graves or grave markers are discovered during the course of the archaeological survey or mitigation, work shall cease in the area of discovery and there shall be compliance with the provisions of the Human Skeletal Remains Protection Act (20 ILCS 3440) [See Appendix B].

## II. ARCHAEOLOGICAL MITIGATION (Phase III)

A. Those archaeological sites identified as a result of the Phase II survey which FTA, BSDA and the SHPO agree are considered eligible for listing on the National Register of Historic Places shall be treated in the following manner:

1. If SHPO and FTA determine that it is feasible given the requirements of the Undertaking, the location of activities pursuant to the Undertaking shall be modified to avoid or minimize impacts on the sites so identified.

2. If such modification proves infeasible, BSDA shall ensure that a data recovery plan addressing substantive research questions is developed in consultation with the SHPO for the recovery of relevant Archaeological data. The plan shall be consistent with the Secretary of the Interior's Standards and Guidelines for Archaeological Documentation (48 FR 44734-37) and take into account the ACHP's publication Treatment of Archaeological Properties. It shall specify, at a minimum, the following:

- a. the property, properties, or portions of properties where data recovery is to be carried out;
- b. the research questions to be addressed through data recovery, with an explanation of their relevance and importance;
- c. the methods to be used, with an explanation of their relevance to the research questions;
- d. proposed methods of disseminating results of the work to the interested public;
- e. a proposed schedule for the submission of progress reports to the SHPO, and;
- f. curation shall be in accordance with the provisions of Stipulation III.

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3. BSDA shall submit the data recovery plan to the SHPO for a thirty (30) day review and ratification for conformance with the acceptable professional standards and guidelines as cited in Stipulation I, paragraph D. After receipt of the SHPO's comments, BSDA shall ensure that the data recovery plan is implemented. The SHPO shall monitor the implementation.

4. BSDA shall ensure that an adequate program of site security to prevent vandalism during data recovery is developed in consultation with the SHPO and subsequently implemented.

B. BSDA shall ensure that the data recovery plan is by or under the direct supervision of an archaeologist(s) who meets, at a minimum, the Secretary of the Interior's Professional Qualifications Standards (48 CFR 44738-9).

C. BSDA shall ensure that adequate laboratory time and space are available for analysis of osteological, cultural, and biological materials recovered from the excavations.

### III. CURATION AND DISSEMINATION OF INFORMATION

A. In consultation with the SHPO, BSDA shall ensure that all materials and records resulting from the data recovery for the Undertaking are curated at a repository within the State of Illinois and in accordance with 36 CFR Part 79. If human remains are recovered, the signatories to this Agreement shall consult further to determine the appropriate disposition of the remains.

B. BSDA shall ensure that all final archaeological reports resulting from actions pursuant to this Agreement will be provided in a format acceptable to the SHPO, and to the National Park Service and submission to the National Technical Information Service ("NTIS"). The agency official shall ensure that all such reports are responsive to contemporary standards, and to the Department of the Interior's Format Standards for Final Reports of Data Recovery Programs (42 FR 5377-79). Precise locational data may be provided only in a separate appendix if it appears that its release could jeopardize archaeological sites.

### IV. PROVISION FOR UNDETECTED ARCHAEOLOGICAL RESOURCES DISCOVERED DURING IMPLEMENTATION

In accordance with 36 CFR Section 800.11(a), if previously undetected archaeological resources are discovered during project activities, BSDA will cease, or cause to stop, any activity having an effect on the resource and consult with the SHPO to determine if additional

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investigations are required. Any data recovery will be performed in accordance with Stipulation II and III of this Agreement. If both BSDA and the SHPO determine that additional investigation is not necessary, activities may resume with no further action required. Disputes between the parties will be handled pursuant to Stipulation VI.

**V. DISPUTE RESOLUTION**

FTA, BSDA and the SHPO have resolved to settle any disagreement arising from implementation of this Agreement. If BSDA, SHPC, or FTA determine that the disagreement cannot be resolved, FTA shall request the further comments of the ACHP in accordance with 36 CFR Part 800.6(b). Any comment provided in response will be taken into account by FTA and BSDA in accordance with 36 CFR Part 800.6(c)(2), with reference only to the subject of the dispute. FTA's and BSDA's responsibility to carry out all actions under this Agreement that are not the subject of the dispute will remain unchanged.

Execution of this Programmatic Agreement by ACHP, FTA and the SHPO, with concurrence by BSDA, and implementation of its terms, is evidence that FTA has afforded the ACHP the opportunity to comment on the Undertaking and its effect on historic properties, and that FTA has taken into account the effects of the Undertaking on historic properties.

**FEDERAL TRANSIT ADMINISTRATION**

By: *Lee Waddleton* Date: 8/2/96

**ILLINOIS STATE HISTORIC PRESERVATION OFFICE**

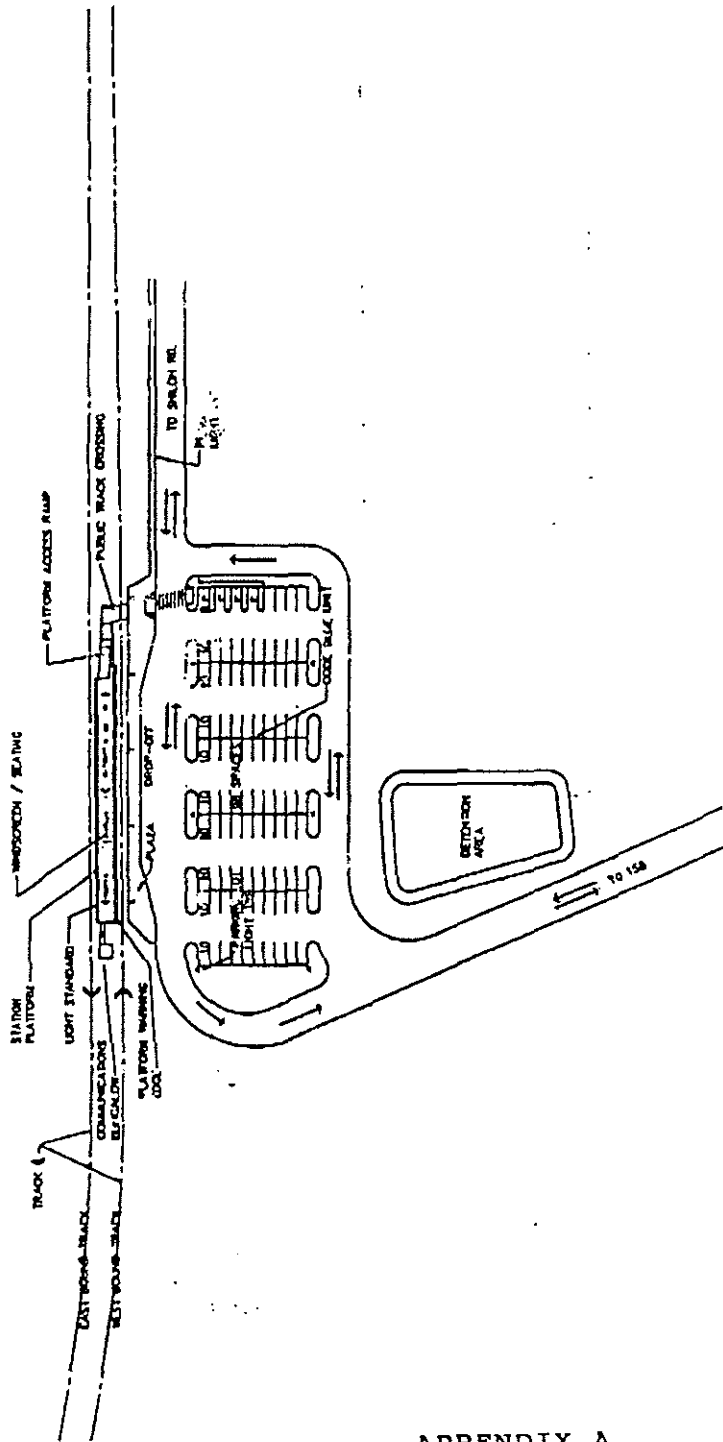
By: *James Edwards* Date: 8/5/96

**ADVISORY COUNCIL ON HISTORIC PRESERVATION**

By: *Robert B. B...* Date: 8/7/96

**Concurrence:**  
**BI STATE DEVELOPMENT AGENCY**

By: *John K. J...* Date: 8/1/96



|   |                                |   |
|---|--------------------------------|---|
| <b>STATION ORIENTATION PLAN</b><br><b>STATION 10</b><br><b>SHILOH</b> |                                | CONTRACT NO. _____<br>DRAWING NO. SAL008ST<br>SCALE 1" = 20'-0"<br>SHEET NO. _____ OF _____   |
|   |                                | NJ-STATE Development Agency<br>PROJECT NO. _____  |
|   |                                | MTA<br>PROJECT NO. _____  |
|   |                                | <b>Sverdrup</b><br>CIVIL, INC.<br>Kennedy Associates, Inc.<br>Burns-Rosche Engineers, Inc.<br>David Moxon & Associates<br>Austin Teo & Associates |
| CHECKED: _____<br>DATE: _____   | DESIGNED: _____<br>DATE: _____ | DRAWN: _____<br>DATE: _____   |
| APPROVED: _____<br>DATE: 11/11/11                                     | PROJECT NO. _____              | SHEET NO. _____ OF _____  |

APPENDIX A

## ACT 3440. HUMAN SKELETAL REMAINS PROTECTION ACT

|            |   |
|------------|---|
| Section    |   |
| 3440/0.01. | Short title.  |
| 3440/1.    | Definitions.  |
| 3440/2.    | Legislative finding and intentions.   |
| 3440/3.    | Discovery of unregistered graves.   |
| 3440/4.    | Permit—Disturbing human skeletal remains and artifacts.                                   |
| 3440/5.    | Permit—Disturbing grave markers.  |
| 3440/6.    | Sale or exchange of human skeletal remains, grave artifacts or markers.                   |
| 3440/7.    | Authority to allow disturbance of human skeletal remains, unregistered graves or markers. |
| 3440/8.    | Criminal prosecutions—Civil damages.  |
| 3440/9.    | Reward.   |
| 3440/10.   | Sentence and punishment.  |
| 3440/11.   | Sentence and punishment.  |
| 3440/12.   | Assessment of civil damages.  |
| 3440/13.   | Regulations—Permits.  |
| 3440/14.   | Remains and artifacts held in trust.  |
| 3440/15.   | Regulations.  |
| 3440/16.   | Exemptions—Federal review of activities.  |

### 3440/0.01. Short title

§ 0.01. Short title. This Act may be cited as the Human Skeletal Remains Protection Act.

P.A. 86-151, § 0.01, added by P.A. 86-1324, § 1029, eff. Sept. 6, 1990.

Formerly Ill.Rev.Stat.1991, ch. 127, ¶ 2660.

### Title of Act:

An Act in relation to the Historic Preservation Agency, amending Acts named herein. P.A. 86-151, approved and eff. Aug. 11, 1989.

### 3440/1. Definitions

§ 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.<sup>1</sup>

(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, grave markers.

P.A. 86-151, § 1, eff. Aug. 11, 1989.

Formerly Ill.Rev.Stat.1991, ch. 127, ¶ 2661.

<sup>1</sup> 760 ILCS 100/1 et seq.

### 3440/2. Legislative finding and intentions

§ 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 Illinoisians 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.

P.A. 86-151, § 2, eff. Aug. 11, 1989.

Formerly Ill.Rev.Stat.1991, ch. 127, ¶ 2662.

### 3440/3. Discovery of unregistered graves

§ 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".<sup>1</sup>

P.A. 86-151, § 3, eff. Aug. 11, 1989.

Formerly Ill.Rev.Stat.1991, ch. 127, ¶ 2663.

<sup>1</sup> Former Ill.Rev.Stat. Chapter 31, § 1 et seq. (repealed).

### 3440/4. Permit—Disturbing human skeletal remains and artifacts

§ 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.

P.A. 86-151, § 4, eff. Aug. 11, 1989.

Formerly Ill.Rev.Stat.1991, ch. 127, ¶ 2664.

**3440/5. Permit—Disturbing grave markers**

§ 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.

P.A. 86-151, § 5, eff. Aug. 11, 1989.

Formerly Ill.Rev.Stat.1991, ch. 127, § 2665.

**3440/6. Sale or exchange of human skeletal remains, grave artifacts or markers**

§ 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.

P.A. 86-151, § 6, eff. Aug. 11, 1989.

Formerly Ill.Rev.Stat.1991, ch. 127, § 2666.

**3440/7. Authority to allow disturbance of human skeletal remains, unregistered graves or markers**

§ 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.

P.A. 86-151, § 7, eff. Aug. 11, 1989.

Formerly Ill.Rev.Stat.1991, ch. 127, § 2667.

**3440/8. Criminal prosecutions—Civil damages**

§ 8. The State's Attorney of the county in which a violation of Sections 4, 5, 6 or 7 of this Act<sup>1</sup> 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 co-operate with the State's Attorney or the Attorney General. Persons aware of any violations of this Act shall contact the Historic Preservation Agency.

P.A. 86-151, § 8, eff. Aug. 11, 1989.

Formerly Ill.Rev.Stat.1991, ch. 127, § 2668.

<sup>1</sup> 20 ILCS 3440/4 to 3440/7.

**3440/9. Reward**

§ 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.<sup>1</sup>

P.A. 86-151, § 9, eff. Aug. 11, 1989.

Formerly Ill.Rev.Stat.1991, ch. 127, § 2669.

<sup>1</sup> 20 ILCS 3440/4 to 3440/7.

**3440/10. Sentence and punishment**

§ 10. Any violation of Section 4, 6 or 7 of this Act<sup>1</sup> 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.

P.A. 86-151, § 10, eff. Aug. 11, 1989.

Formerly Ill.Rev.Stat.1991, ch. 127, § 2670.

<sup>1</sup> 20 ILCS 3440/4, 3440/6 or 3440/7.

**3440/11. Sentence and punishment**

§ 11. Any violation of Section 5 of this Act<sup>1</sup> 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.

P.A. 86-151, § 11, eff. Aug. 11, 1989.

Formerly Ill.Rev.Stat.1991, ch. 127, § 2671.

<sup>1</sup> 20 ILCS 3440/5.

**3440/12. Assessment of civil damages**

§ 12. Persons convicted of a violation of Section 4 or 5 of this Act<sup>1</sup> 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.

P.A. 86-151, § 12, eff. Aug. 11, 1989.

Formerly Ill.Rev.Stat.1991, ch. 127, § 2672.

<sup>1</sup> 20 ILCS 3440/4 or 3440/5.

**3440/13. Regulations—Permits**

§ 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.

P.A. 86-151, § 13, eff. Aug. 11, 1989.

Formerly Ill.Rev.Stat.1991, ch. 127, § 2673.

**3440/14. Remains and artifacts held in trust**

§ 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.

P.A. 86-151, § 14, eff. Aug. 11, 1989.

Formerly Ill.Rev.Stat.1991, ch. 127, § 2674.

**3440/15. Regulations**

§ 15. The Historic Preservation Agency shall promulgate such regulations as may be necessary to carry out the purposes of this Act.

P.A. 86-151, § 15, eff. Aug. 11, 1989.

Formerly Ill.Rev.Stat.1991, ch. 127, § 2675.

**3440/16. Exemptions—Federal review of activities**

§ 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. 95-57),<sup>1</sup> 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.

P.A. 86-151, § 16, eff. Aug. 11, 1989.

Formerly Ill.Rev.Stat.1991, ch. 127, § 2676.

<sup>1</sup> 30 U.S.C.A. § 1201 et seq.

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