



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

Illinois Division

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Springfield, IL 62703
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November 2, 2009

In Reply Refer To:
HPER-IL

Mr. Reid Nelson
Advisory Council on Historic Preservation
1100 Pennsylvania Ave. NW, Suite 803
Old Post Office Building
Washington, DC 20004

Subject: Memorandum of Agreement, Eldred-Hillview Road over Cole Creek
Greene County, Illinois

Dear: Mr. Nelson:

The Illinois Department of Transportation proposes to use Federal-aid funding for a bridge replacement on Eldred-Hillview Road over Cole Creek in Greene County, Illinois. The Federal Highway Administration (FHWA), in consultation with the Illinois State Historic Preservation Officer, has determined the undertaking will have an adverse effect on archaeological site 11-GE-630, which is eligible for listing on the National Register of Historic Places under Criterion D. We notified the Council on July 7, 2009, and we received the Council's August 17, 2009, letter declining to participate.

This adverse effect will be mitigated through the processing of a Memorandum of Agreement (MOA) which contains stipulations for archaeological data recovery at the site. No above ground historic resources will be affected by this undertaking. The FHWA has notified the Indian Tribes who have an interest in Illinois lands for this project. The Osage Nation requested to be a consulting party in the Section 106 process and a concurring party to the MOA.

We are enclosing a fully ratified MOA Pursuant to 36 CFR 800.6. We have consulted with the Osage Nation regarding language in the MOA, and sent the ratified MOA to them for their signature as a concurring party. If you have any questions, please call me at (217) 492-4619.

Sincerely,

Chris Fraley
Transportation Engineer

For: Norman R. Stoner, P.E.
Division Administrator

Enclosure



ecc: Mr. Charles Ingersoll, Bureau of Design and Environment, IDOT
Ms. Barbara Stevens, Bureau of Design and Environment, IDOT
Dr. John Walthall, Bureau of Design and Environment, IDOT
Mr. Darrell Lewis, Bureau of Local Roads and Streets, IDOT
Ms. Mary C. Lamie, District 8, IDOT

Hard copy: Ms. Anne Haaker, Illinois Historic Preservation Agency (w/ original MOA)

**MEMORANDUM OF AGREEMENT
AMONG
THE FEDERAL HIGHWAY ADMINISTRATION,
THE ILLINOIS DEPARTMENT OF TRANSPORTATION,
AND THE ILLINOIS STATE HISTORIC PRESERVATION OFFICER,
REGARDING THE
ELDRED-HILLVIEW ROAD OVER COLES CREEK
GREENE COUNTY, ILLINOIS**

WHEREAS, the Illinois Department of Transportation (IDOT), plans to construct a bridge over Coles Creek on the Eldred-Hillview Road (Project) in Green County, Illinois, (Section 98-00203-00-EG);

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

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

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

WHEREAS, the FHWA invited the following Tribes to enter consultation; the Kickapoo Tribe of Oklahoma, the Kickapoo Tribe of Kansas, and the Kickapoo Traditional Tribe of Texas, the Osage Nation, and the Peoria Tribe, and

WHEREAS, the Osage Nation has expressed interest in consulting on this undertaking; and

WHEREAS, the FHWA and IDOT, in consultation with the Illinois SHPO, have identified one archaeological site (Site), 11-GE-630, that appears to be eligible for the National Register of Historic Places under Criterion D; and

WHEREAS, the Site is a prehistoric habitation site which cannot be affiliated with an historic Indian Tribe and the Site is important for the scientific data it likely contains and does not require preservation in place; and

WHEREAS, in accordance with 36 CFR Part 800, the FHWA acknowledges and accepts the advice and conditions outlined in the Council's "Recommended Approach for Consultation on the Recovery of Significant Information from Archaeological Sites," published in the Federal Register on June 17, 1999; and

WHEREAS, the FHWA has invited the IDOT to participate in consultation and to become a signatory to this Memorandum of Agreement (MOA);

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

WHEREAS, the FHWA notified the Advisory Council on Historic Preservation (ACHP) of the preparation of this MOA and in a letter dated November 13, 2008, the Advisory Council declined to participate in the consultation for the Project;

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

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

STIPULATIONS

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

I. ARCHAEOLOGICAL MITIGATION (PHASE III)

- A. The IDOT will prepare a data recovery plan with a research design for the affected Site in consultation with the Illinois SHPO that is consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties, the Secretary of the Interior's Standards and Guidelines for Archaeological and Historic Preservation, and the Advisory Council on Historic Preservation's Treatment of Archaeological Properties: A Handbook.
- B. *Procedures for an Unanticipated Discovery of Human Remains and Burials:* In the case of an unanticipated discovery of human remains or burials on Federal land, IDOT will follow the procedures outlined by the Native American Graves Protection and Repatriation Act, as amended (43 CFR 10, Subpart B), and pursuant to the Archaeological Resources Protection Act of 1979 (43 CFR 7). In the event of an unanticipated discovery of human remains or burials on non-Federal lands during IDOT construction activities, IDOT will comply with 20 Illinois Compiled Statutes 3440/0.01, et seq. (Human Skeletal Remains Protection Act) and follow these procedures:
 - (a) Upon encountering human remains or an unmarked human burial during ground disturbing construction activities, IDOT will ensure that the construction contractor immediately stops work within a 150 foot radius from the point of discovery. The IDOT will ensure that the construction contractor implements interim measures to protect the discovery from vandalism and looting, but must not remove or otherwise disturb any human remains or other items in the immediate vicinity of the discovery.

(b) Immediately following receipt of such notification, the IDOT will ensure that construction activities have halted within a 150 foot radius from the point of discovery and assume responsibility for implementing additional measures, as appropriate, to protect the discovery from looting and vandalism until the requirements of State law have been completed.

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

(d) The IDOT will notify the county coroner, Illinois SHPO, the Osage Nation, and other interested parties within 48 hours of the discovery. The FHWA will contact by phone the point of contact for the Osage Nation.

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

(f) The Illinois SHPO is responsible for notifying FHWA, IDOT, and the Osage Nation within 24 hours of its findings.

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

II. PROFESSIONAL STANDARDS

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

III. DURATION

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

IV. POST REVIEW DISCOVERIES

A. *Procedures for an Unanticipated Discovery of 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 300 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, the 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 Osage Nation of the discovery.

(b) The IDOT and FHWA will have seven business days following notification to determine the National Register eligibility of the discovery after considering the filed comments of the Illinois SHPO, the Osage Nation, and other consulting parties. The IDOT and FHWA may assume the newly discovered property to be eligible for the National Register 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 Osage Nation, and other interested parties regarding appropriate measures for site treatment. For properties determined eligible for the National Register, IDOT and FHWA will

notify the Illinois SHPO, the Osage Nation, and other consulting parties, of those actions for which it proposes to resolve adverse effects. The Osage Nation and other consulting parties will have seven business days to provide their views on the proposed actions. The IDOT and FHWA will ensure that the recommendations of the Osage Nation 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 Osage Nation, 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 Osage Nation for approval by the Illinois SHPO;
- v. implementation of a mitigation plan; and
- vi. the 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, the IDOT will consult with the Illinois SHPO, the Osage Nation, 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.

V. DISPUTE RESOLUTION

Should any signatory to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, FHWA shall consult with such party to resolve the objection. If FHWA determines that such objection cannot be resolved, FHWA will:

- A. Forward all documentation relevant to the dispute, including the FHWA's proposed resolution, to the ACHP. The ACHP shall provide FHWA with its advice on the resolution of the objections within 30 days of receiving adequate documentation. Prior to reaching a final decision on the dispute, FHWA shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP and signatories and provide them with a copy of this written response. The FHWA will then proceed according to its final decision.

- B. If the ACHP does not provide its advice regarding the dispute within the 30 day time period FHWA may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, FHWA shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories to the MOA and provide them and the ACHP with a copy of such written response.
- C. The FHWA responsibilities to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged.

VI. AMENDMENTS

This MOA may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all of the signatories is filed with the ACHP.

VII. TERMINATION

If any signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment. If within 30 days an amendment cannot be reached, any signatory may terminate the MOA upon written notification to the other signatories. Once the MOA is terminated and prior to work continuing on the undertaking, FHWA must request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. The FHWA shall notify the signatories as to the course of action it will pursue.

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

FEDERAL HIGHWAY ADMINISTRATION

By: Mark Fultz Date: 10/23/09

ILLINOIS STATE HISTORIC PRESERVATION OFFICER

By: Anne E Haas Date: 10.21.09

INVITED SIGNATORY

ILLINOIS DEPARTMENT OF TRANSPORTATION

By: Mary C James Date: 10-21-09

CONCURRING PARTY

OSAGE NATION

By: _____ Date: _____

APPENDIX A: DATA RECOVERY PLAN FOR PREHISTORIC SITES

Introduction

The Illinois Transportation Archaeological Research Program (ITARP), a joint program of the University of Illinois at Urbana-Champaign (UIUC) and the Illinois Department of Transportation (IDOT), prepared this data recovery plan for the archaeological mitigation of prehistoric habitation sites. This plan was developed in accordance with the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation (48 FR 44716), and "The Treatment of Archaeological Properties" published in 1980 by the Advisory Council on Historic Preservation. All procedures outlined in this plan are implemented using standard ITARP techniques, which are outlined in ITARP Field Manual 2005: Standard ITARP Field Procedures for Phase I, II and III Archaeological Investigations.

The IDOT and the Illinois State Historic Preservation Officer have jointly determined that the prehistoric sites to be investigated with this recovery plan are eligible for the National Register of Historic Places under Criterion D and that these sites may not be avoided by the proposed project.

Natural Setting

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

Summary of Previous Investigations

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

Research Design

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

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

- Late Woodland). Insights into more precise time spans at both sites can be gained through analysis of point and ceramic styles, as well as the acquisition of charcoal samples for radiocarbon analysis.
2. Technology. The lithic artifacts recovered from the prehistoric site(s) are expected to reflect the inhabitant's use of this material for a variety of tasks involved in procuring and processing resources. Analysis of the lithic assemblage will identify raw materials, heating stage, overall stages of tool manufacture, and lithic reduction strategies. Analysis of the ceramics, if ceramics are recovered, may also aid in the identification of pottery manufacturing processes.
 3. Subsistence. If plant and animal remains are recovered at the prehistoric site(s), standardized flotation samples will be collected and analyzed from excavated feature fills to identify patterns of plant and animal use by the site inhabitants. These data will be used in the interpretation of seasonality and site function.

Mitigation Plan

Investigations will be conducted in compliance with the National Historic Preservation Act of 1966, as amended, and will be carried out by ITARP archaeologists who meet the Secretary of the Interior's professional qualification standards (48 FR 447838-9). In designing and carrying out the work, ITARP staff will also take into account the Advisory Council on Historic Preservation's publication on the "Treatment of Archaeological Properties."

Standard ITARP methods (as outlined in the ITARP Field Manual 2005) will be employed in all aspects of the data recovery. Portions of the plow zone at the site(s) will be removed; if warranted, a backhoe with a smooth-bladed bucket will likewise be utilized to carefully remove the plow zone at the site(s) in test trenches to recover artifacts, reveal features, and more fully investigate site stratigraphy.

If features are encountered, the archaeological studies will be conducted following the standard ITARP excavation techniques described in the ITARP Field Manual 2005. Any features encountered will be mapped by hand and tied into the site maps with an electronic transit. After plan mapping, features will be bisected along their long axis with hand tools (shovels and trowels). The subsequent profile will be mapped and photographed. Generally, the first half of each pit feature will be excavated as a single unit and screened with ¼-inch hardware cloth, with all artifacts bagged together; flotation samples generally will not be collected from the first halves of features. The second half of each pit will be excavated by fill zones identified in profile, with artifacts and flotation samples collected accordingly. At least one 10-liter flotation sample will be collected from each zone. Charcoal-rich zones will be more intensively sampled.

Human remains are not expected to be found during the excavations; however, if encountered, the remains will be mapped and removed in accordance with all procedures and guidelines associated with the Illinois Human Skeletal Remains Protection Act (20 ILCS 3440, 17 IAC 4170). Disposition of the human remains and any burial artifacts will be accomplished under the provisions of the Act.

In the laboratory, all lithic artifacts will be washed, labeled and analyzed by ITARP personnel at the appropriate Survey Division office. Botanical, zoological and human remains will be analyzed by specialists at ITARP's main office at the University of Illinois or by qualified consultants.

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

Curation

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