



U.S. Department
of Transportation

**Federal Highway
Administration**

Illinois Division

April 28, 2017

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

In Reply Refer To:
HPER-IL

Mr. Reid Nelson
Advisory Council on Historic Preservation
401 F Street NW, Suite 308
Washington, DC 20001-2637

Dear Mr. Nelson:

The Illinois Department of Transportation proposes to use Federal-aid funding to replace the eastbound McClugage Bridge (Structure #090-0070) that carries US 150 over the Illinois River in Peoria and Tazewell counties, Illinois. The Federal Highway Administration (FHWA) has determined the undertaking will have an adverse effect. We notified the Advisory Council on Historic Preservation of the adverse effect determination and the Council chose not to participate in the consultation.

This adverse effect will be mitigated through the stipulations as described in the enclosed Memorandum of Agreement (MOA). The FHWA notified the Tribes who have an interest in this project area and the Miami Nation of Oklahoma expressed an interest in the project. The FHWA has consulted with the Miami Nation in developing the MOA, provided them a revised MOA with their comments addressed, and has invited them to be a concurring party.

We are submitting this executed MOA Pursuant to 36 Code of Federal Regulations 800.6. If you have any questions, please call me at (217) 492-4989.

Sincerely,

Janis P. Piland, P.E.
Environmental Engineer

Enclosure

ecc: Ms. Priscilla Tobias, Office of Program Development, IDOT
Mr. Paul Loete, Office of Highways Project Implementation, IDOT
Ms. Maureen Addis, Bureau of Design and Environment, IDOT
Mr. Brad Koldehoff, Bureau of Design and Environment, IDOT
Mr. Kensil A. Garnett, Region 3 Engineer, IDOT
Dr. Rachel Leibowitz, Illinois Historic Preservation Agency

**MEMORANDUM OF AGREEMENT
AMONG
THE FEDERAL HIGHWAY ADMINISTRATION,
ILLINOIS STATE HISTORIC PRESERVATION OFFICER,
AND ILLINOIS DEPARTMENT OF TRANSPORTATION,
REGARDING THE REPLACEMENT OF THE EASTBOUND McCLUGAGE BRIDGE
OVER THE ILLINOIS RIVER
IN PEORIA AND TAZEWELL COUNTIES, ILLINOIS**

WHEREAS, the Illinois Department of Transportation (IDOT) plans to replace the eastbound McClugage Bridge (Structure #090-0070) that carries US 150 over the Illinois River, IDOT Sequence #18513 (Project) in the Counties of Peoria and Tazewell, Illinois; and

WHEREAS, the Federal Highway Administration (FHWA) plans to 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 CFR Part 800; and

WHEREAS, the FHWA has defined the Project's Area of Potential Effects (APE) as encompassing the existing McClugage Bridge (both eastbound and westbound structures), adjacent interchanges, the Illinois River, and adjacent parcels (Exhibit A); and

WHEREAS, the FHWA has determined that the Project will have an adverse effect on the eastbound McClugage Bridge, which has been determined eligible for the National Register of Historic Places (NRHP); and

WHEREAS, the Project may have effects upon as yet identified archaeological resources within the APE; and

WHEREAS, the FHWA has consulted with the Illinois State Historic Preservation Officer (SHPO) pursuant to 36 C.F.R. Part 800; and

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

WHEREAS, the public was given an opportunity to comment on the undertaking's adverse effect in a notice published on May 31, 2015 and July 19, 2015 in the *Peoria Journal Star*; and

WHEREAS, pursuant to 23 U.S.C. Section 144(o)(4), there were no responsible parties who expressed an interest in taking ownership of the bridge to maintain and preserve the bridge in perpetuity, and

WHEREAS, the FHWA notified the Advisory Council on Historic Preservation (ACHP) of the adverse effect to the eastbound McClugage bridge on September 15, 2016, pursuant to 36 CFR Section 800.6(a)(1); and the ACHP declined to enter into consultation in a letter to FHWA dated October 14, 2016; and

WHEREAS, the FHWA has invited consultation of the following Tribes: Ho-Chunk Nation, Iowa Tribe of Kansas and Nebraska, Iowa Tribe of Oklahoma, Kickapoo Traditional Tribe of Texas, Kickapoo Tribe in Kansas, Kickapoo Tribe of Oklahoma, Miami Tribe of Oklahoma, The Peoria Tribe of Indians of Oklahoma, Citizen Potawatomi Nation, Forest County Potawatomi, Hannahville Indian Community, Pokagon Band of Potawatomi Indians, Prairie Band Potawatomi

McClugage Bridge Memorandum of Agreement

IDOT Sequence #18513

Page 1 of 10

Nation, Sac and Fox Tribe of Mississippi in Iowa, Sac and Fox Nation of Missouri, and Sac and Fox Nation of Oklahoma; only the Miami Tribe of Oklahoma expressed an interest in the project and is invited to be a concurring party to this MOA; and

WHEREAS, the FHWA has invited consultation of the following historic preservation groups: Peoria Historic Preservation Commission, Peoria Historical Society, East Peoria Historical Society, and Tazewell County Genealogical & Historical Society; no groups expressed interest in the project; and

NOW, THEREFORE, the FHWA, IDOT, and the SHPO agree that the undertaking shall be implemented in accordance with the following stipulations to take into account the effect of the undertaking on historic properties.

STIPULATIONS

The FHWA, in coordination with the IDOT, shall ensure that the following measures are carried out:

1. BRIDGE MITIGATION

The construction of the new eastbound McClugage Bridge will require the removal of the existing structure. This adverse effect will be mitigated by commemorating and interpreting both the existing McClugage Bridge and the previous (original) structure known as the Upper Free Bridge, an 1888 structure located north of the existing bridge. Interpretative memorials will be constructed at three locations along the proposed multi-use pedestrian path: one at the trail heads on either side of the river and one at a scenic overlook on a widened section of the path on the new McClugage Bridge (Exhibit B). The final locations and interpretative content of these memorials will be coordinated with the SHPO.

2. ARCHAEOLOGICAL INVESTIGATIONS

A. Identification and Evaluation of Resources. Current land use and landowner access has hindered efforts to conduct an archaeological survey within the APE. Test excavations will be conducted by IDOT in a staged fashion when access to high-priority parcels has been secured (Exhibit C). IDOT will make a good-faith effort to identify archaeological resources and to evaluate their NRHP eligibility in consultation with FHWA, SHPO, and the Miami Tribe of Oklahoma. The FHWA and IDOT will consult with the Miami Tribe of Oklahoma regarding properties to which the Tribe may attach cultural or religious importance in compliance with the provisions of 36 C.F.R. § 800.4.

B. Mitigation of Adverse Effects. If archaeological sites are discovered that are determined eligible for the NRHP in coordination with FHWA, SHPO, and the Miami Tribe of Oklahoma, IDOT will consult with FHWA, SHPO, and the Miami Tribe of Oklahoma in developing measures to avoid and minimize potential impacts to these historic properties. When impacts cannot be avoided, data-recovery excavations will be conducted by IDOT. These investigations will follow the generalized data-recovery plans for prehistoric and historic era habitation sites listed in Exhibit D.

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 and 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.

D. FHWA and IDOT shall comply with Section IV.C. of the Memorandum of Understanding regarding Tribal Consultation Requirements for the Illinois Federal Transportation Program to ensure the confidentiality of any sensitive materials or information identified by the Miami Tribe of Oklahoma.

3. DURATION

This MOA will be null and void if its stipulations are not carried out within ten (10) years from the date of its execution. At such time, and prior to work continuing on the undertaking, the FHWA shall either (a) execute a MOA pursuant to 36 C.F.R. § 800.6, or (b) request, take into account, and respond to the comments of the ACHP under 36 C.F.R. § 800.7. Prior to such time, the FHWA may consult with the other signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation 6 below. The FHWA shall notify the signatories as to the course of action it will pursue.

4. POST-REVIEW DISCOVERIES

If potential historic properties are discovered or unanticipated effects on historic properties found, IDOT and FHWA, in coordination with the SHPO, shall make reasonable efforts to avoid, minimize, or mitigate adverse effects to such properties and follow the requirements of 36 CFR Section 800.13(b).

5. 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, the FHWA shall consult with such party to resolve the objection. If FHWA determines that such objection cannot be resolved, the 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 objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the 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 thirty (30) day time period FHWA may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the 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's responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged.

6. 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.

7. 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 per Stipulation 6 above. If within thirty (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 either (a) execute an MOA pursuant to 36 CFR § 800.6, or (b) 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 and SHPO and implementation of its terms are evidence that FHWA has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.

McClugage Bridge Memorandum of Agreement Signatory

FEDERAL HIGHWAY ADMINISTRATION

By: *Janis P. Pitard* Date: *4-26-2017*

McClugage Bridge Memorandum of Agreement Invited Signatory

ILLINOIS DEPARTMENT OF TRANSPORTATION

By: Paul A. Darned Date: 042017

McClugage Bridge Memorandum of Agreement Concurring Party

MIAMI TRIBE OF OKLAHOMA

By: _____ Date: _____