



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

Illinois Division

February 23, 2011

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

In Reply Refer To:
HPER-IL

Mr. Reid Nelson
Advisory Council on Historic Preservation
1100 Pennsylvania Ave. NW, Ste 803
Washington, DC 20004

Subject: Programmatic Agreement for Dupo Interchange Project

Dear Mr. Nelson:

The Illinois Department of Transportation proposes to use Federal-aid funding for the proposed interchange at Interstate 255 and Imbs Station Road in Dupo, St. Clair County, Illinois. The Federal Highway Administration, in consultation with the Illinois State Historic Preservation Officer, has determined the undertaking may have an adverse effect on archaeological resources eligible for the National Register of Historic Places.

Enclosed is a fully ratified Programmatic Agreement pursuant to 36 CFR 800.6. We have consulted with the Osage Nation regarding language in the Programmatic Agreement, and they have signed a separate signature sheet as a concurring party. If you have any questions, please call me at (217) 492-4625.

Sincerely,

Matt Fuller
Environmental Programs Engineer

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

Enclosure

cc: Dr. Andrea Hunter, Osage Nation
Mr. Keith McMullen, US Army Corps of Engineers – St. Louis
Ms. Anne Haaker, Illinois Historic Preservation Agency
Mr. Scott Stitt, Bureau of Design and Environment, IDOT

ecc: Ms. Mary Lamie, District 8, IDOT
Dr. John Walthall, Bureau of Design and Environment, IDOT



PROGRAMMATIC AGREEMENT
AMONG

FEDERAL HIGHWAY ADMINISTRATION,
UNITED STATES ARMY CORPS OF ENGINEERS
ILLINOIS STATE HISTORIC PRESERVATION OFFICER
ILLINOIS DEPARTMENT OF TRANSPORTATION
AND THE
THE CITY OF DUPO
ST. CLAIR COUNTY, ILLINOIS,

REGARDING THE INTERCHANGE AT I-255 AND IMBS STATION ROAD
AND DEFINED AREA OF POTENTIAL EFFECT
ST. CLAIR COUNTY, ILLINOIS

WHEREAS, The City of Dupo, hereinafter known as the Grantee, is proposing a new Interchange on Interstate 255 (I-255) and business park, hereinafter known as the Project, in southern St. Clair County, Illinois, which requires approval from the Federal Highway Administration (FHWA) and which will be funded by FHWA, the lead Federal agency, and which undertaking may require the issuance of individual Section 404 permits from the U.S. Army Corps of Engineers (USACE); and

WHEREAS, the FHWA has determined that the proposed Project's Area of Potential Effect (APE), as defined in 36 CFR 800.16(d), includes approximately a 2,280 acre area, as depicted in Attachment 1; and

WHEREAS, all parties recognize that the Project will be developed and constructed in stages over several years and the Grantee currently proposes the Project's stages in the following sequence: 1) Interchange on I-255; and 2) public roads within the APE and 3) development of lots within the APE; and

WHEREAS, archaeological sites 11-S-46, 48, 62, 292, 293, MO PAC Mounds Number 1 and 2, and likely a portion of the Pulcher (S-40) site which have been determined to be eligible for listing on the National Register of Historic Places are within the APE; and

WHEREAS, additional survey and subsurface testing may lead to the discovery of additional archaeological sites within the APE; and

WHEREAS, the FHWA, in consultation with the Illinois State Historic Preservation Officer (SHPO), has determined that the development and construction of the Project will have an adverse effect on historic properties (Attachment 2), and has notified the Kaw Nation, the Osage Nation, the Peoria Tribe of Oklahoma, the Ponca Tribe of Nebraska, the Quapaw Tribe of Oklahoma, and the Sac and Fox Tribes pursuant to 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. Section 470f) to resolve such adverse effects to historic properties; and

WHEREAS, the Osage Nation has requested to be a concurring party to this Programmatic Agreement (PA); and

WHEREAS, the FHWA has consulted with the Illinois SHPO in accordance with Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. Section 470, and its implementing regulations, 36 CFR Part 800, to resolve the adverse effects to historic properties; and

WHEREAS, the FHWA invited the Advisory Council on Historic Preservation (Council) to participate in consultation on March 23, 2009, and on June 12, 2009, declined to participate (Attachment 3); and

WHEREAS, an architectural standing structure survey has been completed for the Project APE and no properties subject to protection under Section 106 were found, and the Illinois SHPO concurred with this finding November 29, 2007 (Attachment 4), and

WHEREAS, the USACE, St. Louis District, has participated in the consultation process and has delegated lead agency status to FHWA and will be a signatory to this PA; and

WHEREAS, the Illinois Department of Transportation (IDOT), has participated in the consultation process and has been invited to be a signatory to this PA; and

WHEREAS, the Grantee has participated in the consultation process and has been invited to be a signatory to this PA; and

WHEREAS, the FHWA and USACE, pursuant to 36 CFR 800.14(b)(1)(iii), elect to delegate certain Section 106 decision-making responsibilities to IDOT under this agreement; and

NOW, THEREFORE, the FHWA, the USACE and the Illinois SHPO agree that upon the FHWA's decision to proceed with the issuance of funding or permitting of the Project, the FHWA, the USACE, IDOT, and the Grantee shall ensure that the following stipulations related to significant archaeological sites are implemented within the APE in order to take into account the effects of the undertaking on historic properties.

STIPULATIONS

The FHWA and the USACE shall ensure that the following measures are carried out:

I. IDENTIFICATION AND EVALUATION OF ARCHAEOLOGICAL RESOURCES

The Grantee, IDOT and the Illinois SHPO shall consult throughout the cultural resource investigation process outlined in these stipulations to ensure that all archaeological investigations are performed to adequately take into account the Grantee's staging and construction of the Project.

- A. The IDOT will ensure that an archaeological reconnaissance survey, Phase I, will be completed during activities covered by this PA in the APE. At no cost to the

Grantee and in accordance with the crop damage provisions set forth in Paragraph I(D) below, IDOT will conduct Phase I survey work that it deems necessary for the interchange area and areas that will become public right-of-way. The Grantee's qualified archaeologist will perform the Phase I survey work for the remainder of the APE in consultation with IDOT and the Illinois SHPO and in coordination with the Project construction schedule. Reports of the Phase I survey shall be submitted to IDOT and the Illinois SHPO for review and comment. Upon acceptance of the Phase I reports by IDOT and the Illinois SHPO, IDOT shall issue written notification of clearance for construction activities on those parts of the surveyed APE where no archaeological sites were discovered.

- B. The interested Tribes will be contacted if human remains or burials are found during archaeological investigations conducted within the APE and the remains are determined to be associated with Tribes. If individual or scattered bones are found, further investigation will be done to determine if they are isolated or part of additional remains or burials. All such investigations will follow procedures and guidelines in the Illinois Human Skeletal Remains Protection Act (20 ILCS 3440, 17 IAC 4170).
- C. The IDOT will ensure an archaeological intensive survey, Phase II, will be completed during activities covered by this PA in the APE. The IDOT will conduct Phase II site testing work for the interchange and areas that will become public right-of-way within the APE. The Grantee's qualified archaeologist will perform the Phase II survey work for the remainder of the APE at all archaeological properties determined to be eligible or potentially eligible by IDOT and the Illinois SHPO for the National Register. The Grantee will prepare the Phase II report for those portions of the APE for which they are responsible and submit to IDOT for review and approval. Phase II intensive survey methodologies shall be formulated by IDOT and the Illinois SHPO, and as appropriate, in consultation with the Grantee's archaeologist. The Osage Nation will be given an opportunity to provide comments on the survey methodologies and IDOT and the Illinois SHPO will consider those comments before finalizing and approving the methodologies. Reports of the Phase II findings shall be submitted by IDOT to the Osage Nation and the Illinois SHPO for comment. The Phase II findings must be approved by IDOT and the Illinois SHPO for acceptability.
- D. The Phase I and Phase II surveys will be conducted in a manner consistent with the approaches of the Secretary of the Interior's Standards and Guidelines for Identification (48 Federal Register 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. The Phase I and Phase II surveys will be monitored by IDOT and the Illinois SHPO. The Osage Nation may request, through IDOT, to monitor Phase I and Phase II survey activities on site. The IDOT commits to provide sufficient resources for any Phase I or Phase II cultural resources surveys in the interchange area within the APE (said interchange area is further depicted in Attachment 5) in coordination with the Project construction schedule. The IDOT

will also commit to providing sufficient resources for any Phase I or Phase II cultural resources surveys in the public right-of-way within the APE after IDOT, the Grantee and the Illinois SHPO mutually agree upon a construction schedule for said public right-of-way. To facilitate the Project, during any Phase I or Phase II cultural resources surveys, the Grantee and IDOT will provide to each other and to the Osage Nation monthly updates of the status of the surveys as well as the Project's construction schedule. The Grantee agrees to accept responsibility for any property or crop damage occasioned and caused as a direct result of the performance of the Phase I or Phase II cultural resources surveys conducted by the Grantee's qualified archaeologist. The IDOT agrees to accept responsibility for any property or crop damage occasioned and caused as a direct result of the performance of IDOT authorized Phase I or Phase II cultural resources surveys conducted by the Illinois State Archaeological Survey (ISAS) in the interchange area within the APE that becomes IDOT right-of-way. The Grantee will also have sufficient control of the real estate subject to the Phase I or Phase II cultural resources surveys so as to allow IDOT to conduct any such surveys, as well as monitor Grantee's qualified archaeologist in areas outside of IDOT right-of-way.

- E. The IDOT shall evaluate properties identified through the Phase II intensive survey against the National Register criteria (36 CFR Part 60.4), will consider the views of the Osage Nation, and will seek concurrence from the Illinois SHPO concerning its findings. If there is any disagreement among the agencies and the Tribes regarding the identification or eligibility of a Traditional Cultural Property (as defined in National Park Service Bulletin 38), all parties will have further discussions to attempt to reach agreement (see Section VI of this PA "Dispute Resolution") and will follow the eligibility guidelines in National Park Service Bulletin 38. The IDOT will notify the Osage Nation, and the Grantee's qualified archaeologist, as appropriate, of the eligibility determinations.
- F. For those properties which IDOT and the Illinois SHPO agree are not eligible for inclusion in the National Register, no further archaeological investigations will be required, and the Project may proceed in those areas. Those properties identified in the survey and agreed upon by IDOT and the Illinois SHPO to be eligible for the National Register, shall be treated in accordance with Stipulation II below.

II. ARCHAEOLOGICAL MITIGATION (Phase III)

For those sites which IDOT and the Illinois SHPO agree are considered eligible for listing on the National Register of Historic Places, IDOT and the Grantee, as appropriate, shall ensure the following measures are carried out within the APE:

- A. Prior to ground disturbance or construction activities within the boundaries of any historic properties, IDOT and as appropriate, the Grantee's qualified archaeologist, shall determine the location of subsurface archaeological features. This work will be done in accordance with the Data Recovery Plans for prehistoric and historic sites or approved revisions thereof (Attachment 6).

B. The historic properties will be treated in the following fashion:

1. After the subsurface features have been identified by IDOT and the Grantee, IDOT shall consult with the Illinois SHPO regarding development of a plan for avoidance of the historic property. IDOT shall offer the Osage Nation the opportunity to participate in the development of the plan to avoid the historic property when appropriate. The plan may include stipulations such as those included in the "Draft Preservation Covenant Language" in Attachment 7.
2. If, after consultation, the Illinois SHPO, IDOT, and the Grantee agree that avoidance is not feasible, IDOT or the Grantee's qualified archaeologist, as appropriate, shall complete a Phase III investigation in accordance with the Data Recovery Plan or an approved version thereof that is approved by IDOT and the Illinois SHPO and agreed upon by the Grantee. At no cost to the Grantee, and in accordance with the crop damage provision set forth below, IDOT commits to provide sufficient resources for any Phase III cultural resources data recovery in the interchange area within the APE (said interchange area is further depicted in Attachment 5) in coordination with the Project construction schedule. The IDOT will also commit to providing sufficient resources for any Phase III cultural resources data recovery in the public right-of-way within the APE after IDOT, the Grantee and the Illinois SHPO mutually agree upon a construction schedule for said public right-of-way. To facilitate the Project, during any Phase III cultural resources data recovery, Grantee and IDOT will provide to each other and to the Osage Nation, as new information becomes available, monthly updates of the status of said cultural resources data recoveries as well as the Project's construction schedule. The Grantee agrees to accept responsibility for any property or crop damage occasioned and caused as a direct result of the performance of the Phase III cultural resources data recoveries conducted by the Grantee. The IDOT agrees to accept responsibility for any property or crop damage occasioned and caused as a direct result of the performance of IDOT authorized Phase III cultural resources data recoveries conducted by the ISAS in the interchange area within the APE that becomes IDOT right-of-way. The Grantee will also have sufficient control of the real estate subject to the Phase III cultural resources data recovery so as to allow IDOT to conduct any such data recovery, as well as monitor the Grantee's qualified archaeologist in areas outside of IDOT right-of-way.
3. After consultation with the Illinois SHPO, IDOT and the Osage Nation, and the approval of a site-specific protection plan by IDOT and the SHPO, the Grantee may bury an archaeological site or portion thereof to assist in its protection from further disturbance. With the exception of surface parking lots, no other buildings, including any parking structures, can be constructed in these areas. No subsurface excavations, including those for underground

utility lines, will be allowed in such restricted areas. These areas will also be protected by a preservation covenant (Attachment 7).

4. The IDOT and the Grantee, as appropriate, shall ensure that a Data Recovery Plan addressing substantive research questions is developed in consultation with the Illinois SHPO, IDOT, and the Osage Nation, as appropriate 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 Federal Register 44734-37) and take into account the Council's publication, Treatment of Archaeological Properties. It shall specify, at a minimum, the following:
 - a. The property or portion thereof where data recovery is to be carried out;
 - b. The research questions to be addressed through the data recovery, with an explanation of their relevance and importance;
 - c. The field and laboratory methods to be used and their relevance to specific-site resources and contexts, and related research questions;
 - d. Proposed methods of disseminating results of the work in the interest of the public; and
 - e. A proposed schedule for the submission of reports to IDOT and the Illinois SHPO and the Osage Nation.
5. The Data Recovery Plan shall be submitted to IDOT, and after review and approval, IDOT will send the Data Recovery Plan to the Illinois SHPO and the Osage Nation, as appropriate for a 30-day comment period. After receipt of comments, IDOT will consult with the Grantee to produce a final Data Recovery Plan. IDOT will monitor the implementation of the Data Recovery Plan by the Grantee's qualified archaeologist as necessary to ensure compliance.
6. The IDOT or the Grantee, as necessary, shall ensure that its Data Recovery Plan is carried out by or under the direct supervision of an archaeologist who meets, at a minimum, the Secretary of the Interior's Professional Qualifications Standards (48 Federal Register 44738k-9).
7. The IDOT or the Grantee, as necessary, shall ensure that adequate laboratory time and space are available for analysis of osteological, cultural, and biological materials recovered from the excavations.
8. The IDOT or the Grantee, as necessary, shall ensure that an adequate program of site security through such measures as fencing, signage and surveillance, to

protect the sites from vandalism during data recovery is developed and implemented in consultation with the Illinois SHPO.

9. The interested Tribes will be contacted if human remains or burials are found during archaeological investigations conducted within the APE and the remains are determined to be associated with Tribes. If individual or scattered bones are found, further investigation will be done to determine if they are isolated or part of additional remains or burials. All such investigations will follow procedures and guidelines in the Illinois Human Skeletal Remains Protection Act (20 ILCS 3440, 17 IAC 4170).
- C. The Grantee shall submit a written Bi-Annual Progress Report to FHWA, the Osage Nation, IDOT and the Illinois SHPO with respect to activities undertaken by the Grantee under this PA, by the fifteenth day of June and December, each year until the parties agree that the terms of this PA are fulfilled. Concurrently, IDOT shall submit a written Progress Report to FHWA, the Osage Nation, the Illinois SHPO and the Grantee with respect to activities undertaken by IDOT under this PA.
- D. Notification of Completion of Cultural Resource Field Activity: The Grantee and IDOT shall inform each other and the Illinois SHPO and the Osage Nation promptly in writing of completion of field activities in the site areas of the APE undertaken according to this PA and Data Recovery plan(s). These areas shall include the Interchange area for I-255, public road right-of-ways as planned and presented in segments and other property. This notification shall include the following:
 1. location of completed activity (as noted on an applicable map),
 2. date activity was completed,
 3. summary of what activity occurred, and
 4. summary results of field work. If such notification is from the Grantee, the Grantee shall also include a written request for clearance of the site for construction work. If such notification from the Grantee does not include a request for clearance of the site for construction work, the Grantee may then subsequently submit a written request for clearance of such work to IDOT who after review and approval will forward to the SHPO.

Likewise, if IDOT's written notification does not include a statement that the site has been cleared for construction activity, the Grantee may then submit a written request for clearance of such work so that construction activity can commence in the area addressed by the notification.

For purposes of this paragraph, written notification shall be sent registered mail to the following:

Deputy Director of Highways
Illinois Department of Transportation
2300 South Dirksen Parkway
Springfield, IL 62764

Mayor
City of Dupo
Municipal Building
100 N. 2nd Street
Dupo, IL 62239

Deputy State Historic Preservation Officer
1 Old State Capitol Plaza
Springfield, IL 62701

E. Curation and Dissemination of Information

1. In consultation with the Illinois SHPO, the Grantee and IDOT shall ensure that all materials and records resulting from archaeological survey and data recovery conducted for the project are curated at a qualified repository within the State of Illinois and in accordance with 36 CFR Part 79. The Illinois State Archaeological Survey is the recommended repository.
2. The Grantee and IDOT shall ensure that all final archaeological reports resulting from actions pursuant to this agreement will be provided in a format acceptable to the Illinois SHPO and the National Park Service for possible peer review and submission to the National Technical Information Service. The Grantee's archaeologist and IDOT 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 Federal Register 5377-79). Precise location data may be provided only in a separate appendix if it appears that its release could jeopardize archaeological data.

III. Post Review Discoveries

- A. 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 and Grantee 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 or Grantee construction activities, IDOT and Grantee will comply with 20 Illinois Compiled Statutes 3440/0.01, et seq. (Human Skeletal Remains Protection Act) as administered by the Illinois Historic Preservation Agency (IHPA) and follow these procedures:
 1. Upon encountering human remains or an unmarked human burial during ground disturbing construction activities, IDOT and Grantee will ensure that the construction contractor immediately stops work within a one-hundred-fifty (150) foot radius from the point of discovery. The IDOT and Grantee 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.

2. Immediately following receipt of such notification, the IDOT and Grantee will ensure that construction activities have halted within a one-hundred-fifty (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.
3. 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.
4. The IDOT will notify the county coroner, IHPA, the Osage Nation, and other interested parties within forty-eight (48) hours of the discovery. The FHWA will contact by phone the point of contact for the Osage Nation.
5. Within seventy-two (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.
6. The IDOT and/or FHWA are responsible for notifying the Osage Nation within twenty-four (24) hours of IHPA's findings.
7. 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 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:
 - a. formal archaeological evaluation of the site;
 - b. if the remains are determined to be Native American, consultation with the Osage Nation and other interested Tribes will be required;
 - c. visits to the site by the IHPA, Illinois SHPO, the Osage Nation, and other interested parties;
 - d. exploration of potential alternatives to avoid the human remains or burial;
 - e. for Native American remains, implementation of a mitigation plan by IDOT in consultation with IHPA and the Osage Nation and other interested Tribes, including procedures for disinterment and re-interment;
 - f. implementation of the mitigation plan; and

- g. IHPA and FHWA approval to resume construction following completion of the fieldwork component of the mitigation plan.

A. *Procedures for an Unanticipated Discovery of Historic Properties:* In the event of an unanticipated discovery of historic properties during IDOT and Grantee construction activities, IDOT and Grantee will follow these procedures:

1. The construction contractor must immediately stop all construction activity within a three-hundred (300) foot radius of the discovery, notify IDOT and Grantee of the discovery and implement interim measures to protect the discovery from looting and vandalism. Within forty-eight (48) hours of receipt of this notification of the discovery, the IDOT shall:
 - a. inspect the work site to determine the extent of the discovery and ensure that construction activities have halted;
 - b. clearly mark the area of the discovery;
 - c. implement additional measures, as appropriate, to protect the discovery from looting and vandalism; and
 - d. notify the FHWA, the SHPO, and the Osage Nation and other interested Tribes of the discovery.
2. IDOT/FHWA will have seven (7) business days following notification to determine the National Register eligibility of the discovery after considering the filed comments of the SHPO, the Osage Nation, and other consulting parties. IDOT/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)
3. If the find is determined to be potentially significant the IDOT will consult with the SHPO, the Osage Nation, and other interested parties regarding appropriate measures for site treatment. For properties determined eligible for the National Register, IDOT/FHWA will notify the 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 (7) business days to provide their views on the proposed actions. IDOT/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:
 - a. formal archaeological evaluation of the site;
 - b. visits to the site by the SHPO, the Osage Nation, and other interested parties;
 - c. exploration of potential alternatives to avoid the site;
 - d. preparation of a mitigation plan by IDOT in consultation with the Osage Nation and other interested Tribes, when appropriate for approval by the SHPO;

- e. implementation of a mitigation plan; and
 - f. FHWA approval to resume construction following completion of the fieldwork component of the mitigation plan.
- 4. If the find is determined to be either isolated or completely disturbed by construction activities, the IDOT will consult with the SHPO, the Osage Nation, and other interested parties prior to resuming construction.
 - 5. 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.

IV. DISPUTE RESOLUTION

Should any signatory or invited signatory to this PA object at any time to any actions proposed or the manner in which the terms of this PA are implemented, FHWA shall consult with the objecting party(ies) to resolve the objection. If the objection involves archaeological actions, such actions will be halted until resolution of the objection. Archaeological and construction activities that FHWA determines are not involved in the dispute may continue. If FHWA determines that such objection(s) cannot be resolved, within 30 days of FHWA's determination, FHWA will:

- A. Forward all documentation relevant to the dispute to the Council in accordance with 36 CFR 800.2(b)(2). Upon receipt of adequate documentation, the Council shall review and advise FHWA on the resolution of the objection within 30 days. Any comment provided by the Council, and all comments from the parties to this PA, will be taken into account by FHWA in reaching a final decision regarding the dispute.
- B. If the Council does not provide comments regarding the dispute within 30 days after receipt of adequate documentation, FHWA may render a decision regarding the dispute. In reaching the decision, FHWA will take into account all comments regarding the dispute from the parties to the PA.
- C. The FHWA's responsibilities to carry out all other actions subject to the terms of this PA that are not the subject of the dispute remain unchanged. The FHWA will notify all parties of its decision in writing before implementing that portion of the undertaking subject to dispute under this stipulation. The FHWA's decision will be final.

V. DURATION

This PA shall become effective upon execution by FHWA, USACE, the Illinois SHPO, IDOT and the Grantee and shall remain in effect until December 31, 2030. No later than December 31, 2029, FHWA will consult with the Illinois SHPO, IDOT, the Grantee and USACE to determine if the PA should be renewed. The PA may be extended for an

additional term upon the written agreement of the original signatories.

VI. TERMINATION AND MODIFICATION

The Illinois SHPO, IDOT, the Grantee, USACE or FHWA may propose to terminate this PA by providing 30 calendar days written notice to the other parties and a written explanation of the reason(s) for the proposed termination. The Illinois SHPO, IDOT, the Grantee, USACE and FHWA will consult during this period to seek agreement or amendments or other actions that would avoid termination. In the event of termination, FHWA and USACE will comply with 36 CFR Part 800 with regard to individual undertakings covered by this PA.

If any signatory to this PA determines the terms of this PA will not or cannot be carried out or that an amendment to its terms must be made, that party shall immediately consult with the other parties to develop an amendment. The amendment will be effective on the date a copy is signed by all the original signatories. If the signatories cannot agree to appropriate terms to amend the PA, any signatory may terminate the PA in accordance with the termination stipulation. In the event FHWA and USACE does not carry out the terms of this PA, FHWA and USACE will comply with 36 CFR Part 800 with regard to individual undertakings covered by this PA.

Execution of this PA by IDOT, the Grantee, FHWA, USACE, and the Illinois SHPO and implementation of its terms, shall constitute evidence that the FHWA and USACE have taken into account the effects of the undertaking on historic properties as required by Section 106 of the National Historic Preservation Act of 1966, as amended.

Signatories

Federal Highway Administration

By: Max Tuttle Date: 12/16/2010

The United States Army, Corps of Engineers, St. Louis District

By: Krista McMillan Date: 2-15-10

Illinois State Historic Preservation Officer

By: Anne Elbert Date: 12-16-10

INVITED SIGNATORIES

The City of Dupon, Illinois

By: Ken Hall Date: 12/16/10

The Illinois Department of Transportation

By: My Chamin Date: 11/30/10

CONCURRING PARTY

Osage Nation

By: _____ Date: _____

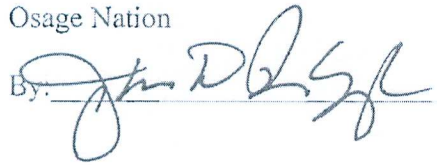
By: _____ Date: _____

The Illinois Department of Transportation

By: _____ Date: _____

CONCURRING PARTY

Osage Nation

By:  _____ Date: 1/24/11

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Pulcher Mound Group
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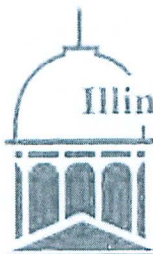
Sugarloaf, Fla.

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~~J. Bixby~~

CLARK CO
WROE CO



Illinois Historic
Preservation Agency

1 Old State Capitol Plaza • Springfield, Illinois 62701-1512 • www.illinois-history.gov

St. Clair County
Dupo and East Carondelet Vicinity

PLEASE REFER TO: IHPA LOG #001012209

FHWA, IDOT Seq #-13854
Dupo Interchange Project

January 22, 2009

John Walthall
Illinois Department of Transportation
2300 S. Dirksen Parkway
Springfield, IL 62764

Dear Mr. Walthall:

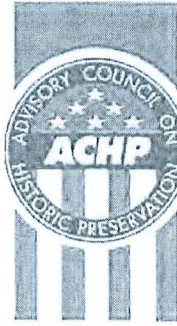
We are in receipt of a report entitled *Cooperative Cultural Resources Treatment Plan; Dupo Interstate 255 Interchange and the Adjacent Discovery Business Park Located in St. Clair and Monroe Counties, Illinois* by Prairie Archaeology & Research. This report summarizes archaeological surveys and testing projects in the proposed Area of Potential Effect and indicates that at least nine previously recorded archaeological sites are eligible for inclusion on the National Register of Historic Places.

We concur with your letter dated January 20, 2009 that states that "...several of the prehistoric sites known to be present in the project area are eligible for listing on the National Register of Historic Places" and that the project, as proposed, will have an adverse effect on these sites. Avoidance and preservation in place of NRHP eligible sites is always our preference and the sites may be preserved through placing a Deed Covenant on the archaeological properties. However, if your project cannot avoid these sites then mitigation of the impacts will require the initiation of a Section 106 Programmatic Agreement. Please let us know how you wish to proceed.

If you have questions please contact David J. Halpin, Staff Archaeologist, at 217-785-4998.

Sincerely,

Anne E. Haaker
Deputy State Historic
Preservation Officer
AEH:DJH



Preserving America's Heritage

June 12, 2009

Norman R. Stoner, P.E.
Division Administrator
FHWA – Illinois Division
3250 Executive Park Drive
Springfield, IL 62703

Ref: *Proposed Dupo I-255 Interchange Project*
St. Clair County, Illinois

Dear Mr. Stoner:

The Advisory Council on Historic Preservation (ACHP) has received your notification and supporting documentation regarding the adverse effects of the referenced undertaking on a property or properties listed or eligible for listing in the National Register of Historic Places. Based upon the information you provided, we have concluded that Appendix A, *Criteria for Council Involvement in Reviewing Individual Section 106 Cases*, of our regulations, "Protection of Historic Properties" (36 CFR Part 800), does not apply to this undertaking. Accordingly, we do not believe that our participation in the consultation to resolve adverse effects is needed. However, if we receive a request for participation from the State Historic Preservation Officer (SHPO), Tribal Historic Preservation Officer, affected Indian tribe, a consulting party, or other party, we may reconsider this decision. Additionally, should circumstances change, and you determine that our participation is needed to conclude the consultation process, please notify us.

Pursuant to 36 CFR §800.6(b)(1)(iv), you will need to file the final Programmatic Agreement (PA), developed in consultation with the Illinois State Historic Preservation Office (SHPO) and any other consulting parties, and related documentation with the ACHP at the conclusion of the consultation process. The filing of the PA and supporting documentation with the ACHP is required in order to complete the requirements of Section 106 of the National Historic Preservation Act.

Thank you for providing us with your notification of adverse effect. If you have any questions or require further assistance, please contact Carol Legard at 202 606-8522 or via e-mail at clegard@achp.gov.

Sincerely,

LaShavio Johnson
Historic Preservation Technician
Federal Permitting, Licensing and Assistance Section
Office of Federal Agency Programs

ADVISORY COUNCIL ON HISTORIC PRESERVATION

1100 Pennsylvania Avenue NW, Suite 803 • Washington, DC 20004
Phone: 202-606-8503 • Fax: 202-606-8647 • achp@achp.gov • www.achp.gov



Illinois Department of Transportation

2300 South Dirksen Parkway / Springfield, Illinois / 62764

November 29, 2007

St. Clair County
FAI 255, I-255
Dupo Interchange Project Area
Section: 05-00019-00-PV

IDOT Seq # 13854

FEDERAL 106 PROJECT

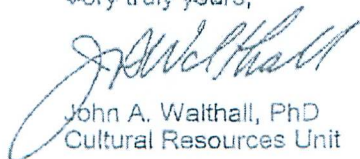
Ms. Anne Haaker
Deputy State Historic Preservation Officer
Illinois Historic Preservation Agency
Springfield, Illinois 62701

Dear Ms. Haaker:

Enclosed is a copy of a report and documentation completed by Environmental Compliance Consultants personnel concerning survey of historical and architectural standing structures potentially to be impacted by the proposed project referenced above. The photographs contained in this report depict 79 standing structures all located within the project Area of Potential Effect (APE). The vast majority of these structures are houses built after 1950 and none of the structures located with the APE possess architectural or historical characteristics which would make them eligible for listing on the National Register of Historic Places.

In accordance with the established procedure for coordination of Illinois Department of Transportation projects, we request the concurrence of the State Historic Preservation Officer in our determination that these 79 structures are not cultural properties which are subject to protection under Section 106 of the National Historic Preservation Act of 1966, as amended.

Very truly yours,


John A. Walthall, PhD
Cultural Resources Unit

CONCUR
By: 
Deputy State Historic Preservation Officer
Date: 11-29-07



ATTACHEMENT 6

PART A: STANDARD DATA RECOVERY PLAN FOR PREHISTORIC SITES

Introduction

The Illinois State Archaeological Survey (ISAS), 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 ISAS techniques, which are outlined in ISAS Field Manual 2005: Standard ISAS 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 ISAS 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 Mississippian 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 ISAS archaeologists who meet the Secretary of the Interior's professional qualification standards (48 FR 447838-9). In designing and carrying out the work, ISAS staff will also take into account the Advisory Council on Historic Preservation's publication on the "Treatment of Archaeological Properties."

Standard ISAS methods (as outlined in the ISAS 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 ISAS excavation techniques described in the ISAS 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, 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 and screened with ¼-inch hardware cloth as appropriate. 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 ISAS personnel at the appropriate Survey Division office. Botanical, zoological and human remains

will be analyzed by specialists at ISAS'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 ISAS 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 (NTIS). This report will be submitted to the Illinois DOT and IHPA 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 ISAS in accordance with federal standards as outlined in 36 CFR Part 79

PART B: STANDARD DATA RECOVERY PLAN FOR HISTORIC SITES

Introduction

The Illinois State Archaeological Survey (ISAS), 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 historic 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 ISAS techniques, which are outlined in *ISAS Field Manual 2005: Standard ISAS Field Procedures for Phase I, II, and III Archaeological Investigations*.

The IDOT and Illinois State Historic Preservation Officer have jointly determined that the historic sites to be investigated with this recovery plan are eligible for the National Register of Historic Places (NRHP) 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 and in the field. A verbal description of the natural setting will accompany maps and photographs in the final reporting of the site. Midwestern archaeological studies have noted a

preference among early Euro-American pioneers to build their first homes along timber-prairie borders. Environmental factors, such as protection from the elements and proximity to timber, water, and wild animal resources, and cultural factors, such as origin of the settler and proximity to roads, both affect the placement of early settlement homes and farms. General Land Office survey and plat maps, coupled with native vegetation information from county soil surveys, assist in the reconstruction of local environments during the early settlement era. In much of the State, survey maps were created prior to and immediately following the initial Euro-American settlement. Government land transfer and original land entries/patents provide information about locations of early settlements. Further information from county history books, census data, and assorted primary source documents such as letters and diaries can also assist in reconstruction of the environmental and cultural factors affecting individual and group settlement. Aerial photographs and modern maps (US Geological Survey, USDA soil survey, etc.) provide documentation of more recent environmental conditions.

Summary of Previous Investigations

In general, sites to be investigated under this data recovery plan were recorded by ISAS 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 the history of this area in order to warrant additional investigation.

Research Design

The data generated by excavations at the historic site(s) will be used to examine at least three broad topics: (1) settlement patterns and land distribution; (2) architecture; and (3) subsistence practices. Insights into changing patterns of community organization may also be gained, as may insights into changes in social organization and subscription to mass-produced goods. The data recovered will then be compared with that from other regional sites.

1. **Settlement Patterns and Land Distribution.** The mitigation of historic sites requires the study of patterns of settlement by the pioneers who came to Illinois. The types of sites, their location, number and distribution, all provide important information on early settlement patterns and how they influenced later land development and settlement. In order to understand these settlement patterns, detailed artifact and archival information is required to determine the age, type, and function of specific sites. In addition, data indicating when specific features originated and any transformations in function through time is also needed. Inter- and intra-spatial orientation of structures and features must also be studied.
2. **Architecture.** Building techniques and architectural forms can reflect ethnic identity, stylistic concerns, economic status, and the relative availability of local and imported construction materials. Intact structures dating from the era of earliest Euro-American

settlement are comparatively scarce, as many buildings have been abandoned, dismantled, or otherwise destroyed and/or replaced by more recent construction. Early structures are generally poorly documented and specific details regarding their construction are not available. Intact subsurface remains provide information on dwelling size and shape and details of cellar and footing construction. The distribution of hardware, wood, glass, and other structural items within and around the foundation fill offers clues to the appearance of the superstructure. Exposure and detailed mapping of complete foundations is necessary to document the size, orientation, and shape of the dwelling. The construction materials employed need to be identified along with their likely places of origin. Measured plan views, profiles, and photographs of structural features will provide details on construction techniques. Horizontal and vertical provenience data on other structural remains will aid in the interpretation of aspects of the building superstructure.

3. **Subsistence.** Subsistence in early Euro-American farmsteads was based largely on foods produced directly for household consumption. With limited transportation systems and access to processed flour, wheat was an important crop. Water-powered gristmills were among the earliest important industries. Hogs were important sources of meat, cattle provided milk and butter, and chickens were commonly kept for eggs. Fruit trees and vegetable gardens were also important sources of food on many nineteenth century farms. In addition to these homegrown foods, wild plants and animals supplemented the diet. Deer, various small game mammals, fish, waterfowl, and wild turkey were common, along with wild nuts and fruits, which were seasonally available. Flotation samples taken from feature contexts should provide abundant evidence of subsistence. Identification of carbonized and uncarbonized plant remains will document the range of wild, domestic, and exotic plant species present. Wild, domesticated, and imported animal resources will be identified through the analysis of faunal remains recovered from flotation samples, as well as larger specimens recovered through standard excavation procedures.

Mitigation Plan

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

Standard ISAS methods (as outlined in the *ISAS Field Manual 2005*) will be employed in all aspects of the data recovery. A standard controlled surface collection grid (generally comprised of 10x10m collection units) will also be used, where possible, as the basis for a gridded metal detector survey to recover that class of artifacts. These individual grid cells will also form the parameters for subsequent machine-aided excavation units, which will be removed in an incremental fashion to increase the artifact sample from the site. Experience indicates that a significant percentage of the historic artifacts from a given site are located in the plow zone and this material, if collected systematically, can provide information about

the location of activity loci that are generally not represented by subsurface features (i.e. barnyard activities).

Given this type of systematic plow zone sampling approach, hand excavated units will be used more sparingly on 19th century historic period sites, because intact subsurface deposits are generally rare outside the limits of subterranean facilities. Thus, adequate artifact samples can typically be derived from surface collection, metal surveys, feature excavation, and systematically collected, standard sized machine excavation blocks. However, more rigorous plow zone and A-Horizon sampling, including dry or water screening and bulk flotation sample collection, will be undertaken on sites believed to be attributable to historic Indian, French, and very early British/American period components to amass adequate samples and recover micro-artifacts, such as glass beads.

Due to the large size of many historic cellars and the extremely deep nature of some water collection facilities, standard ISAS excavation protocols allow these features to be sampled as opposed to completely excavated. The cellars will be excavated in quarters (similar to prehistoric structures) so that both the long and short axis profiles can be mapped and documented. Deeper features, such as wells and cisterns, will typically only be sampled to a reasonable depth (ca. one to two meters) because their absolute limits often cannot be established through hand excavation given personal safety considerations. The overall depths of these features may be assessed through additional hand probing or machine trenching once the hand-excavated samples have been removed. Such sampling strategies, however, must obtain an adequate artifact assemblage and other forms of information to determine the feature's temporal placement and construction techniques. In addition, historic posts will be mapped in plan view, but only a subset may be formally excavated depending upon the number encountered and their relationship to other site features. Any posts that are not excavated will be hand-probed to assess their overall depth.

While not expected, should historic mortuary sites or features be encountered, the remains will be mapped and removed in accordance with all procedures and guidelines associated with the Illinois Human Skeletal Remains Protection Act (HSRPA, 20 ILCS 3440, 17 IAC 4170) and detailed in the ISAS excavation manual (ISAS 2005). Disposition of the human remains and any burial artifacts will be accomplished under the provisions of the Act.

In the laboratory, all artifacts will be washed, cleaned, labeled, and sorted by ISAS personnel at the appropriate Survey Division office, following standard ISAS procedures (ISAS 2005). Botanical, zoological, and historical materials will then be analyzed by ISAS specialists 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 ISAS will also insure that all final archeological 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 (NTIS). These reports will be submitted to the Illinois DOT and the IHPA 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 ISAS in accordance with federal standards as outlined in 36 CFR, Part 79.

ATTACHMENT 7

DRAFT PRESERVATION COVENANT LANGUAGE

In consideration of the conveyance of certain real property, [address of property] in the city of () of the County (), State of Illinois and legally defined as (insert legal description):

- (1) The grantee hereby covenants on behalf of itself, its heirs, successors and assigns at all time to restore, maintain and preserve this property in accordance with the recommended approaches of the "Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic buildings" (National Park Service, 1989) in order to preserve those qualities that make this property eligible for listing on the National Register of Historic Places.
- (2) No construction, alteration or rehabilitation shall be undertaken or permitted to be undertaken that would affect the historic features of the property without consultation with and the express permission of the Illinois Historic Preservation Agency (IHPA) or a fully authorized representative thereof.
- (3) The IHPA shall be permitted at all reasonable times to inspect the property in order to ascertain if the above conditions are being met.
- (4) In the event of a violation of this covenant, and in addition to any remedy now or hereafter provided by law, the IHPA may, following reasonable notice to the grantee, institute suit to enjoin said violation or to require the restoration of the property.
- (5) This covenant is binding on the grantee, its heirs, successors and assigns in perpetuity. All stipulations and covenants contained herein shall be inserted by the grantee verbatim or by express reference in any deed or other legal instrument by which the grantee divests itself of any interest in the property or any part thereof.
- (6) The failure of the IHPA to exercise any right or remedy granted under this instrument shall not have the effect of waiving or limiting the exercise of any other right or remedy or use of such right or remedy at any other time.
- (7) This covenant shall be a binding servitude upon the property and shall be deemed to run with the land. Execution of this covenant shall constitute conclusive evidence that the grantee agrees to be bound by the foregoing conditions and restrictions and to perform to obligations herein set forth.
- (8) The IHPA may, for good cause, modify or cancel any or all of the foregoing restrictions upon application of the grantee, its heirs, successors or assigns.

Signatures required