

# **Illinois Transportation Archaeology and Tribal Consultation: Memorandum of Understanding Annual Report for Calendar Year 2011**

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## **Introduction**

In 2011 the Memorandum of Understanding (MOU) for Tribal Consultation among federally-recognized American Indian Tribes with an interest in Illinois, the Illinois Division of the Federal Highway Administration (FHWA), the Illinois Department of Transportation (IDOT), and the Illinois State Historic Preservation Officer (SHPO) was ratified (view MOU at: [Tribal Consultation](#)). The goal of this report is to provide information to Tribes and agencies so that the effectiveness of the MOU can be evaluated on an annual basis.

## **Background and Report Organization**

The National Historic Preservation Act of 1966 (NHPA), as amended (16 U.S.C. 470) and its implementing regulations (36 CFR 800) requires federal agencies to consult with federally-recognized American Indian Tribes about undertakings that may affect sites of importance to Tribes. The IDOT and FHWA Illinois Division have a long history of consulting with Tribes about transportation projects in Illinois. The IDOT and FHWA also have a long history of collaboration in complying with Section 106 of the NHPA. The Programmatic Agreement (PA) for the Delegation of Authority for Minor Projects of the Federal Aid Highway Program in Illinois outlines the principles and procedures of the FHWA's delegation of Section 106 responsibilities to the IDOT (view Delegation PA at: [Minor Projects](#)).

In 2008 and 2009 the IDOT and FHWA co-sponsored tribal consultation workshops in Illinois that were well-attended by Tribes with an expressed interest in Illinois. Resulting from these workshops, the MOU was developed by the FHWA, IDOT, SHPO, and tribal representatives. The MOU outlines the principles and procedures for tribal consultation in Illinois for transportation projects. The centerpiece of the MOU is the adoption of the web-based Project Notification System (PNS) as the primary means by which IDOT/FHWA will notify Tribes of proposed minor projects that have the potential to affect archaeological resources. The agreed upon guidelines governing the PNS are outlined in Sections II and III of the MOU.

The MOU was signed by the FHWA, IDOT, and SHPO on August 31, 2011. It was subsequently signed by the Iowa Tribe of Kansas and Nebraska on September 19, 2011 and the Ponca Tribe of Nebraska on December 13, 2011. Section IV of the MOU states that an annual report will be prepared by the IDOT for submission to the FHWA, SHPO, and Tribes. The report will identify projects and actions taken to comply with the MOU.

The following pages represent the first annual MOU report. Because the PNS and other consultation procedures stipulated in the MOU were implemented early in 2009, but the MOU was not ratified until 2011, the first annual report will cover the calendar year 2011. The next annual report will cover the calendar year 2012, and so on. The report is divided into four parts: (1) project notification and site investigation, (2) projects with discoveries of human remains, (3) tribal participation, and (4) evaluation.

### **Part 1: Project Notification and Site Investigation**

The PNS is a web-based password-protected database and e-mail communication system that transmits project notifications to Tribes and the SHPO. In turn, Tribes can transmit project comments to the IDOT and FHWA. Tribes are subsequently notified when archaeological survey reports and SHPO occurrence letters are posted on the PNS website. The PNS is maintained by the Illinois State Archaeological Survey (ISAS) at the University of Illinois, Urbana-Champaign. Originally created by the IDOT and ISAS for the transmittal of information about highway projects, the effectiveness of the system has led to its adoption by the Federal Aviation Administration (FAA) and the Federal Railroad Administration (FRA) for Section 106 project notifications.

In 2011 the Cultural Resources Unit in the Bureau of Design and Environment at the IDOT received 584 Environmental Survey Requests for transportation projects: 554 for highways and related projects (bridges, bike trails, streetscapes, etc.), 17 for railroad projects, and 13 for airport projects (Table 1). In accordance with the MOU, 440 minor projects were reviewed for archaeological resources and cleared for construction by the IDOT's Chief Archaeologist. Appendix C of the MOU specifies the kinds of minor projects that can be reviewed and cleared in-house without initial tribal notification. However, if unexpected discoveries of historic properties or human remains are made during construction, these minor projects are not exempt from tribal consultation, as note in Appendix C of the MOU.

Projects involving new ROW or easements in undisturbed ground are sent to the ISAS for archaeological survey concurrent with tribal notification via the PNS. In 2011 this process encompassed 144 projects: 142 for highways, 1 for railroads, and 1 for airports. Forty of these projects, when surveyed, resulted in the identification of archaeological sites (Table 2). Eight of these projects involved sites that warranted further investigation. For six projects Phase II test excavations were undertaken resulting in either no archaeological resources found or resources were found but avoidance measures were implemented. Test excavations for the two remaining projects resulted in discoveries of archaeological resources determined eligible for the Nation Register of Historic Places, and potential construction impacts could not be avoided. Consequently, Phase III data-recovery excavations were undertaken by ISAS.

1. IL Route 3, Waterloo Bypass, Monroe County (IDOT #11869A&B; ISAS #11028). Phase III field investigations were initiated in September 2012 at four Late Woodland and Mississippian Tradition habitation sites (11MO712, 11MO716, 11MO717, and 11MO718) pursuant to a project Memorandum of Agreement (MOA) for the mitigation of adverse effects. The MOA was ratified in the summer of 2012 with the Osage Nation as a consulting party (view MOA at: [Waterloo Bypass](#)).
2. Olympian Drive, Champaign County (IDOT #10329A; ISAS #11093). Phase III field investigations were completed in August 2012 at site 11CH341, an early- to mid-nineteenth century Euro-American farmstead. Data-recovery excavations were conducted in accordance with the stipulations of the PA for the Mitigation of Adverse

Effects to Euro-American Tradition Archaeological Sites (view PA at: [Euro-American Sites](#)).

## **Part 2: Projects with Discoveries of Human Remains**

In accordance with the MOU, the IDOT and FHWA will follow the Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. 3001) when there is a discovery of human remains or burials on federal lands. In the event of the discovery of human remains or burials on non-federal lands the IDOT and FHWA will comply with the Illinois State Human Skeletal Remains Protection Act (20ILCS 3440). According to the state law, if the remains cannot be avoided, the recovered remains are examined, a report is prepared, and the report and remains are delivered to the Illinois Historic Preservation Agency (IHPA) for disposition. When the remains are transferred to the Illinois State Museum (ISM), they become subject to NAGPRA.

No projects initiated with PNS notifications in 2011 have thus far resulted in the discovery of human remains. However, field investigations for three earlier projects uncovered human remains on state land in 2011:

1. IL Route 2, Ogle County (IDOT #965; ISAS #02071). Test excavations at a habitation site (11OG234) discovered the remains of a Late Woodland Tradition burial. The remains could not be preserved in-place, and Tribes with an expressed interest in Ogle County were notified of the discovery. Following the state law, the remains were removed; a report was prepared; and the remains were transferred to the ISM on June 8, 2012 (HSRPA #2011-26).
2. Cal-Sag Bike Trail, Cook County (IDOT #16072; ISAS #10165). Test excavations at a habitation site (11CK284) uncovered a fragment of human bone in Feature 47, as well as a largely intact burial in Feature 127. Tribes with an expressed interest in Cook County were notified of the discoveries. Project redesign allowed Feature 127 to be preserved in-place. Following the state law, the single bone fragment was removed from Feature 47; a report was prepared; and the fragment was transferred to the ISM on October 20, 2011 (HSRPA #2011-79).
3. New Mississippi River Bridge, St. Clair County (IDOT #33, 13966, 14427; ISAS #05104, 07128, 08080). Since 2009 data-recovery excavations at the Mississippian Tradition East St. Louis site (11S706) have been underway pursuant to a project MOA for the mitigation of adverse effects (view MOA at: [NMRB](#)). In 2011 more than 2,000 habitation features were excavated, in addition to 41 burials. Pursuant to the project MOA, the burials were excavated and Tribes with an expressed interest in St. Clair County were notified. Eight of the excavated burials were discovered along with at least 18 possible burials that were preserved in-place with the basal remnants of an earthen mound identified as Feature 2000. In consultation with Tribes, the SHPO, FHWA, and IHPA project redesign efforts by IDOT created the Feature 2000 Preservation Area. Encompassing one acre, the Preservation Area preserves in perpetuity the mound remnant and associated burials under 5-10' of fill. When complete, its perimeter will be fenced, and its surface will be planted in native prairie grasses (see Figures 1-3). On August 3, 2011 burials excavated from four features (F2, F5, F27, and F170) were transferred to the ISM (HSRPA #2011-44). The IDOT has extended an offer to consulting Tribes to rebury the remains excavated from the project area within the Feature 2000 Preservation Area, which is located on IDOT right-of-way.

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

In total, 745 initial project notification emails were sent to the 11 Tribes participating in the PNS during 2011: Delaware Nation, Ho-Chunk Nation, Iowa Tribe of Kansas and Nebraska, Kaw Nation, Kickapoo Tribe of Kansas, Miami Tribe of Oklahoma, Osage Nation, Peoria Tribe of Indians of Oklahoma, Pokagon Band of the Potawatomi, Ponca Tribe of Nebraska, and Sac and Fox Nation of Oklahoma. Participating Tribes replied with 152 separate PNS email comments (Table 2). Tribal comments in several cases resulted in further consultation. For example, tribal requests to visit project areas resulted in one visit by the Iowa Tribe of Kansas and Nebraska, two visits by the Miami Tribe of Oklahoma, and three visits by the Osage Nation. The Osage Nation requested consulting party status in 2011 for the IL Route 3 Waterloo Bypass project in Monroe County, and subsequently in 2012, the Osage Nation signed the MOA for the mitigation of adverse effects caused by the planned roadway improvements.

### **Part 4: Evaluation**

The goal of this report is to provide information to Tribes and agencies so that the effectiveness of the MOU and its consultation procedures can be evaluated on an annual basis. From IDOT's perspective, the PNS is a key component of tribal consultation for minor projects. Implemented in 2009 and refined with comments from Tribes in 2010 and 2011, the PNS not only facilitates rapid communication and easy access to IDOT project information but also reduces the "environmental footprint" of the consultation process by eliminating the traditional use of paper correspondence and postal deliveries. The FHWA recognized the innovative nature of the PNS and tribal consultation procedures in Illinois in 2010 with an Exemplary Human Environment Initiatives Award. Nonetheless, IDOT fully realizes that, while the PNS is an effective tool, it cannot and should not replace other forms of consultation—most important of which is face-to-face meetings. It was just such meetings that facilitated the project redesign that led to the establishment of the Feature 2000 Preservation Area at the East St. Louis site in the New Mississippi River Bridge project area. The collaborative efforts of Tribes, archaeologists, and engineers resulted in the preservation of Feature 2000, and these efforts well-illustrate the power of good-faith negotiations, as well as IDOT's commitment to tribal consultation and historic preservation.

Table 1. Transportation Projects Reviewed for Cultural Resources in 2011.

IDOT District	Total Projects	Highways (FHWA)			Airports (FAA)			Railroads (FRA)			Total	
		IDOT In-House Clearance	ISAS Survey SHPO/Tribal Review	IDOT In-House Clearance	ISAS Survey SHPO/Tribal Review	IDOT In-House Clearance	ISAS Survey SHPO/Tribal Review	IDOT In-House Clearance	ISAS Survey SHPO/Tribal Review	IDOT In-House Clearance	ISAS Survey SHPO/Tribal Review	
1	176	129	32	4	--	11	--	144	32	--	32	
2	61	37	21	2	--	1	--	40	21	--	21	
3	47	31	10	2	--	3	1	36	11	1	11	
4	46	34	12	--	--	--	--	34	12	--	12	
5	26	15	10	1	--	--	--	16	10	--	10	
6	55	41	14	--	--	--	--	41	14	--	14	
7	61	45	14	1	--	1	--	47	14	--	14	
8	67	42	25	--	--	--	--	42	25	--	25	
9	45	38	4	2	1	--	--	40	5	--	5	
Total	584	412	142	12	1	16	1	440	144	1	144	

\*Projects reviewed and cleared for construction by IDOT Chief Archaeologist in accordance with Tribal MOU.

**Table 2. Projects Posted on PNS and Surveyed by ISAS with SHPO/Tribal Review in 2011.**

IDOT	County	Projects	Projects with Sites	Projects with Phase II/III	Tribal PNS Comments
<b>District 1</b>	Cook	7	--	--	4
	DuPage	5	--	--	5
	Kane	2	--	--	2
	Kane, Kendall	1	--	--	1
	Lake	8	1	--	7
	McHenry	2	1	--	1
	Will	6	4	--	5
	Will, Grundy, Livingston	1	--	--	1
	<b>Total</b>	<b>32</b>	<b>6</b>	<b>--</b>	<b>26</b>
<b>District 2</b>	Carroll	3	1	--	2
	Henry	2	1	1 Phase II	2
	Jo Daviess	3	1	--	4
	Lee	4	--	--	4
	Mercer, Rock Island	1	1	--	1
	Ogle	1	1	--	1
	Ogle, Winnebago	2	1	--	2
	Rock Island	1	--	--	1
	Whiteside	1	--	--	1
	Winnebago	3	--	--	3
	<b>Total</b>	<b>21</b>	<b>6</b>	<b>1</b>	<b>21</b>
<b>District 3</b>	Bureau	2	--	--	2
	DeKalb	1	--	--	1
	Iroquois	2	--	--	2
	Kankakee	1	--	--	1
	Kendall	2	2	--	2
	LaSalle	2	2	--	2
	Livingston	1	1	--	1
	<b>Total</b>	<b>11</b>	<b>5</b>	<b>--</b>	<b>11</b>
<b>District 4</b>	Fulton	5	2	1 Phase II	5
	Knox	1	1	--	--
	Peoria	3	--	--	--
	Marshall	1	--	--	3
	Tazewell	2	--	--	2
	<b>Total</b>	<b>12</b>	<b>3</b>	<b>1</b>	<b>10</b>
<b>District 5</b>	Champaign	3	3	1 Phase II & III	3
	Edgar	4	2	1 Phase II	2
	McLean	1	--	--	--
	Vermillion	2	--	--	2
	<b>Total</b>	<b>10</b>	<b>5</b>	<b>2</b>	<b>7</b>
<b>District 6</b>	Adams	2	--	--	2
	Hancock	2	--	--	1
	Logan	1	--	--	1
	Macoupin	2	--	--	3
	Menard	2	1	--	2
	Montgomery	1	1	--	--
	Pike	1	1	--	2
	Sangamon	3	2	--	2
	<b>Total</b>	<b>14</b>	<b>5</b>	<b>--</b>	<b>13</b>
<b>District 7</b>	Coles	1	--	--	1
	Effingham	3	--	--	3
	Fayette	1	--	--	1
	Jasper	1	--	--	1
	Macon	3	2	--	3
	Richland	1	--	--	1
	Shelby	4	1	--	3
	<b>Total</b>	<b>14</b>	<b>3</b>	<b>--</b>	<b>13</b>
<b>District 8</b>	Bond	2	--	--	4
	Calhoun	2	1	1 Phase II	2
	Jersey	1	--	--	2
	Madison	5	1	1 Phase II	10
	Madison, Jersey	1	--	--	1
	Madison, St. Clair	1	--	--	2
	Monroe	4	2	1 Phase II & III	6
	Randolph	1	--	--	2
	St. Clair	6	1	--	9
	St. Clair, Randolph	1	--	--	2
	Washington	1	--	--	2
	<b>Total</b>	<b>25</b>	<b>5</b>	<b>3</b>	<b>42</b>
<b>District 9</b>	Jefferson	1	1	1 Phase II	2
	Massac	1	--	--	1
	Pulaski	1	1	--	2
	Union	1	--	--	2
	Williamson	1	--	--	2
	<b>Total</b>	<b>5</b>	<b>2</b>	<b>1</b>	<b>9</b>
<b>Grand Total</b>		<b>144</b>	<b>40</b>	<b>8</b>	<b>152</b>



Figure 1. New Mississippi River Bridge Project, Feature 2000 Preservation Area, Spring 2012.



Figure 2. New Mississippi River Bridge Project, Feature 2000 Preservation Area, Summer 2012.



Figure 3. New Mississippi River Bridge Project, Proposed Feature 2000 Preservation Area.