

**MEMORANDUM OF UNDERSTANDING
AMONG
THE FEDERAL HIGHWAY ADMINISTRATION,
INDIANA STATE HISTORIC PRESERVATION OFFICER,
INDIANA DEPARTMENT OF TRANSPORTATION,
and
FEDERALLY RECOGNIZED TRIBES INTERESTED IN INDIANA LANDS
REGARDING TRIBAL CONSULTATION REQUIREMENTS
FOR THE INDIANA FEDERAL TRANSPORTATION PROGRAM**

PREFACE

This Memorandum of Understanding (MOU) is the result of discussions among the Federal Highway Administration (FHWA), the Indiana Department of Transportation (INDOT), the Indiana State Historic Preservation Officer (SHPO), and federally recognized Tribes whose ancestral homelands include the State of Indiana (Tribes)¹. This document is intended to define and develop procedures for consultation in compliance with the National Historic Preservation Act (NHPA) (54 U.S.C. § 300101 et seq.), among the FHWA, INDOT, and Tribes. As required under the terms of the NHPA and resulting regulations (36 C.F.R. Part 800), consultation has revealed that many Tribes have aboriginal ties to what is now the State of Indiana. Those Tribes have requested to be consulted on future transportation projects in Indiana.

The FHWA and INDOT understand that cultural resources are revered by the Tribes and are a connection to their past and important to their cultural identity, sense of self and future well-being. Tribes are concerned with the continuing destruction of places and items of cultural value, including cultural resources, burial sites, and Traditional Cultural Properties (TCPs)². The destruction of these resources impacts Tribal cultural identity today. Cultural resources are tied to people's ancestors, some are related to important religious activities, and many have ongoing spiritual connections. The FHWA and INDOT recognize the importance of these cultural resources to aboriginal people living today.

The FHWA and INDOT recognize that transportation projects have the potential to adversely affect historic properties³: burials, funerary objects, sacred objects, objects of cultural patrimony, sacred sites, archaeological sites, and TCPs, as well as traditional cultural landscapes⁴ and traditional natural resources⁵ that may not be eligible and/or protected by the National Register but may still be of value to Tribes. The

¹ See Appendix A: COUNTY LISTING OF THE TRIBES' ANCESTRAL HOMELANDS AND TERRITORY IN THE STATE OF INDIANA.

² A Traditional Cultural Property (TCP) is eligible for inclusion in the National Register because of its association with cultural practices or beliefs of a living community that: (a) are rooted in that community's history, and (b) are important in maintaining the continuing cultural identity of the community. (National Register Bulletin 38).

³ The term "historic property" is defined in the NHPA as, "any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion, on the National Register"; such term includes artifacts, records, and remains which are related to such district, site, building, structure, or object (54 U.S.C. § 300308).

⁴ Traditional cultural landscapes are understood to be areas considered sacred or culturally significant by tribes that include plants, animals, sound, light, view shed, and other sometimes intangible features that are revered through or described through a tribe's language, songs, stories, ceremonies, and place names (ACHP's The Protection of Indian Sacred Sites: General Information, July 2015. <http://www.achp.gov/docs/sacred-sites-general-info-july-2015.pdf>; accessed December 11, 2015).

⁵ Traditional natural resources are understood to be trees, plants, berries, nuts, fruits, minerals, and any floral or fauna species that are considered sacred, medicinal, or culturally important to tribal religious beliefs, traditions, and practices (ACHP's The Protection of Indian Sacred Sites: General Information, July 2015. <http://www.achp.gov/docs/sacred-sites-general-info-july-2015.pdf>; accessed December 11, 2015).

FHWA and INDOT understand that the construction of the modern transportation network typically did not take into account impacts to these resources. The FHWA and INDOT do not wish further destruction of these culturally valued places, and recognize the inherent rights of Tribes to preserve those places that they value.

Modern development, including transportation construction, has the potential to destroy or adversely impact valuable cultural resources. This MOU is intended to ensure that all parties understand which cultural resources are important to Tribes and work together to protect and preserve them, or mitigate for their loss. The FHWA and INDOT are committed to providing a transportation system that will benefit all people of Indiana, both current and historic, and to learning tribal perspectives about cultural resources important to Tribes. The Tribes are committed to understanding transportation issues and the perspectives of the FHWA and INDOT. Jointly, we are committed to establishing a relationship of mutual trust and respect.

It is the intention of the FHWA and INDOT to work with Tribes to find appropriate ways to avoid, minimize or mitigate adverse effects to historic properties. The FHWA and INDOT pledge to always look for ways to avoid adverse effects to historic properties as the first option. When avoidance of adverse effects is impossible or impractical, given other concerns of equal importance, the FHWA and INDOT will work with the Tribes for appropriate and respectful resolution.

INDOT will ensure that the requirements of the Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. § 3001 et seq.) are followed when there is a discovery of human remains, burials or associated funerary objects (AFOs) on federal lands. In the event of a discovery of human remains or burial objects on non-federal lands during transportation planning or construction activities, at a minimum INDOT will comply with all applicable federal and state laws and regulations, including Section 106 of the NHPA of 1966 (54 U.S.C. § 300101 and 36 C.F.R. Part 800), the Indiana Historic Preservation Act (IC 14-21), and Indiana Administrative Code 312 IAC 22 (see III.C.2).

WHEREAS, all signatory Tribes identified in Appendix A are federally recognized sovereign, self-governing Indian Tribes with their own tribal laws, with established government-to-government relationships with the United States, and a historical connection to specific areas of Indiana, as shown in Appendix A: “COUNTY LISTING OF THE TRIBES’ ANCESTRAL HOMELANDS AND TERRITORY IN THE STATE OF INDIANA,” and have been consulted and agree to be signatories to this document;

WHEREAS, the Indiana SHPO has been consulted and agrees to be a signatory to this document;

WHEREAS, the FHWA wish to affirm the government-to-government relationship with the Tribes for consultation and cooperation regarding federal acts and orders including, but not limited to, Section 106 of the National Historic Preservation Act (54 U.S.C. § 300101 et seq.); the National Environmental Policy Act, (42 U.S.C. § 4321 et seq.); the Archaeological Resource Protection Act (16 U.S.C. § 470aa et seq.); Presidential Executive Order 13007 (Indian Sacred Sites); Presidential Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments); Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. § 3001 et seq.); and, the American Indian Religious Freedom Act (42 U.S.C. § 1996);

WHEREAS, the FHWA is the federal agency with statutory responsibilities for administering the federal-aid highway program under 23 U.S.C. § 101 et seq., and INDOT administers and oversees federal funds for

state and local transportation projects in Indiana. The FHWA agrees to coordinate under a government-to-government relationship with Tribes with regard to federal responsibilities under Section 106 of the NHPA through the terms of this MOU. INDOT will also consult with Tribes to manage or advise on matters pertaining to cultural resources;

WHEREAS, the FHWA has determined that its undertakings may have an effect upon properties included in or eligible for inclusion in the National Register of Historic Places (NRHP). FHWA and INDOT have also determined that its undertakings may have an effect upon traditional cultural landscapes and traditional natural resources that may not be eligible or protected by the National Register but may still be of value to Tribes. Through this MOU, FHWA and INDOT will consult with Tribes pursuant to Section 106 of the NHPA (54 U.S.C. § 300101 et seq.);

WHEREAS, the FHWA and INDOT are committed to: 1) avoiding, minimizing, and mitigating adverse effects to historic properties; 2) considering tribal interests in the preservation of significant cultural resources that are important to tribal well-being, growth, and prosperity; and 3) responding to the needs of Tribes;

WHEREAS, INDOT will employ departmental staff that meet the federal professional qualification requirements of 36 C.F.R. Part 61 and State of Indiana standards (IC 14-21-1 and 312 IAC 21). At a minimum, the professional staff required to carry out the terms of this MOU shall consist of one permanent, full time archaeologist;

WHEREAS, INDOT contracts archaeological fieldwork to only qualified professionals. INDOT will ensure that all consultants conducting archaeological fieldwork meet the federal professional qualification requirements of 36 C.F.R. Part 61 and State of Indiana standards (IC 14-21-1 and 312 IAC 21). INDOT ensures and will continue to ensure that fieldwork and reporting meets federal and state guidelines;

WHEREAS, the FHWA, INDOT, and the signatory Tribes aspire to engage in meaningful, long-term planning for the appropriate consideration of cultural resources important to Tribes, and to pursue the following:

- develop a comprehensive and efficient tribal consultation process based upon education and understanding for Section 106 undertakings;
- continue to identify ways to streamline the Section 106 process and procedural requirements;
- recognize that Tribes share the responsibility to engage in effective consultation;
- involve the Tribes' cultural experts to a greater extent and at an earlier point than before the implementation of this MOU;
- devote the time and energy needed to identify relevant transportation problems threatening cultural resources important to the Tribes; and
- accomplish any additional goals identified through consultation and agreed upon by the parties;

BE IT RESOLVED, the FHWA, INDOT and Tribes hereby agree that the implementation of tribal consultation on transportation projects shall be established through government-to-government relations with Tribes. At a minimum, consultation will be in accordance with the following stipulations in order to satisfy FHWA tribal consultation responsibilities under the NHPA.

STIPULATIONS

I. GENERAL

A. This MOU sets forth the process by which FHWA will meet its responsibilities of the Federal Aid Highway Program with regard to tribal consultation under Section 106 of the NHPA for transportation projects within the State of Indiana. This MOU establishes a protocol for consultation with Tribes on individual transportation projects.

B. Nothing in this MOU shall be interpreted to alter the requirements of the NHPA or its implementing regulations. In the event any portion of this MOU is deemed contradictory, or less restrictive, to law or regulation, only that portion becomes void. The sole contradictory provision or issue shall not negate the entire MOU. The parties should consult to resolve the contradictory issue with the intent to reform or amend that portion of the MOU to make it compliant with applicable law or regulation while all remaining provisions of the MOU remain in full force and effect.

C. No portion of this MOU shall be interpreted to limit the rights, duties, or responsibilities of any party as may be required under federal laws, regulations, policies, executive memoranda or executive orders, or Indiana state statutes.

D. Consultation with Tribes shall begin when Section 106 consultation is initiated and before a final transportation alternative is approved. Tribal early coordination shall be sent to ensure tribal views are considered into the decision making process and consultation shall continue throughout a Section 106 undertaking. A letter or email of notification, in and of itself, from FHWA/INDOT to a Tribe is not considered consultation. Consultation is a mutual, meaningful dialogue between FHWA, INDOT, SHPO, and Tribes regarding historic properties that may be affected by an undertaking. The FHWA and INDOT shall consult with Tribes on a government-to-government basis in recognition of its sovereign status as early as possible in the planning process and throughout the Section 106 process, regarding any activity or undertaking that might affect cultural resources of concern to the Tribes.

Consultation may include face-to-face meetings, as well as communications by mail, electronic mail, facsimile, and telephone. When it is determined that consultation will be by a face-to-face meeting, FHWA and INDOT will coordinate with the consulting party Tribes to develop a mutually agreed upon time and place to meet.

Consultation may be extended to include future management, protection, and preservation if historic properties that are of cultural and/or religious significance to Tribes are identified.

E. The FHWA and INDOT shall ensure that Tribes are afforded, in accordance with applicable federal, state, and local authorities and highway safety measures, the opportunity to conduct religious/traditional ceremonies within right-of-way owned by INDOT.

F. The FHWA and INDOT recognize that facilitating effective tribal consultation may require providing travel support for tribal officials. Future formal agreements may specify how this support may occur.

G. The FHWA and INDOT shall ensure that consultation with other consulting parties, including local governments, shall not include the dissemination, beyond those who have an official need to know, of

confidential information except as mandated by federal or state laws. Confidential information is defined as information pertaining to Native American⁶ sites, that, if disclosed may:

1. cause a significant invasion of privacy; risk harm to historic properties; or impede the use of a traditional religious site by practitioners (54 U.S.C. § 307103 et seq.);
2. risk harm to TCPs, traditional cultural landscapes, and traditional natural resources;
3. risk harm to archaeological sites that may contain burials or human remains, funerary objects, sacred objects and/or objects of cultural patrimony; or
4. risk harm to Native American historic properties in accordance with Section 304 of the NHPA.

H. As Native American archaeological sites, TCPs, traditional cultural landscapes, traditional natural resources, burial sites, funerary objects, sacred objects, and/or objects of cultural patrimony are non-renewable resources, FHWA and INDOT shall make a reasonable and good faith effort to inform the public and private landowners regarding stewardship, site protection and preservation which may include but not be limited to tax incentives or related benefits, lectures, exhibits, site-specific consultation, brochures, and videos.

I. A Tribe may request to enter the process at any time.

J. Tribes will be contacted if Native American human remains, burials, or burial objects are found during archaeological investigations or during construction. In any instance where Native American human remains are uncovered, Tribes will be notified in accordance with III.C. of this MOU.

⁶ Throughout this MOU, the term Native American can refer to pre-Columbian peoples and post-Columbian American Indians.

II. NOTIFICATION FOR CONSULTATION PROCEDURES

A. *Points of Contact*: The FHWA, INDOT, SHPO, and Tribes shall each designate primary and secondary contacts⁷. The primary contact for Tribes is the contact to whom all initial and formal correspondence goes, including notification and updates of public involvement for the Indiana Statewide Transportation Improvement Plan (STIP) and project specific Section 106 correspondence and documentation. If the individual designated as the primary point of contact is not available, communications shall be directed to the secondary contact. The primary and secondary contacts within each Tribe are responsible for involving the appropriate tribal individuals. Each party of this MOU shall provide in writing (hardcopy or email) the other parties with the phone numbers, email addresses, and mailing addresses for the primary and secondary contacts. Each party shall notify the other parties in writing (hardcopy or email) when either point of contact changes. On an annual basis, FHWA/INDOT will send an email request to the Tribes asking for new or updated contact information and update the contact list accordingly. Such changes shall not require the amendment of this agreement.

B. *Tribal Areas of Concern*: The Tribes have provided, or will provide, FHWA/INDOT with a listing of all Indiana counties that exist within their ancestral homeland and territory, in which they have an interest (see Appendix A). At the Tribes' discretion, a Tribe or Tribes may also be identified to review projects in other areas of Indiana. The FHWA/INDOT will maintain this list and will update as necessary when additional tribal interests are made known. If Tribes do not provide FHWA/INDOT with their counties of interest, FHWA/INDOT will utilize the table entitled *Indiana-Present Day Tribes Associated with Indiana Land Cessions 1784-1894* available from National NAGPRA Online Databases in its tribal consultation.

C. *Delegation of Certain Responsibilities to INDOT*: INDOT will provide Indiana STIP annual updates to Tribes and notify Tribes of public meetings and comment periods on the STIP. INDOT will conduct Early Coordination with the Tribes for applicable projects (see Stipulation II.F.), soliciting the Tribes' input as early as possible in the project's development, and providing them detailed project information as necessary or requested.

INDOT will maintain cultural resource staff, or utilize consultants, who, at a minimum, meet the federal qualifications set forth in the Secretary of the Interior's Professional Qualification Standards (36 C.F.R. Part 61) and State of Indiana standards (IC 14-21-1 and 312 IAC 21) for cultural resource studies. INDOT may also carry out consultation activities in accordance with Stipulation I.D., but FHWA will be involved in or monitor all such consultations and will at all times be available for direct communication with any party. The FHWA will be a signatory on all project-specific or other formal agreement documents.

D. *Indiana Program Documents*: The Indiana Statewide Transportation Improvement Program (STIP) is a four-year planning document that lists all projects expected to be funded in those four years with Federal funds and those state-funded projects that have been deemed as Regionally Significant. The list of projects included in the STIP is maintained on the INDOT website <http://www.in.gov/indot/2348.htm>.

E. *Programmatic Agreement and Projects Exempt from Section 106 Early Coordination*: FHWA and INDOT periodically execute programmatic agreements (PA) with the SHPO and the Advisory Council on Historic Preservation (ACHP) that determines how Section 106 is satisfied by FHWA in Indiana. At the

⁷ see Appendix B: POINT OF CONTACT LIST.

time of execution of this MOU, the FHWA IN Division administers Section 106 following the *Programmatic Agreement Among the Federal Highway Administration, the Indiana Department of Transportation, the Advisory Council on Historic Preservation Officer Regarding the Implementation of the Federal Aid Highway Program In the State of Indiana* dated September 6, 2006⁸. This PA includes categories of minor projects exempted from Section 106 early coordination and consultation. The project types exempted from Section 106 early coordination and consultation by the PA are generally limited to the repair, replacement or upgrade of existing transportation infrastructure. The PA can also be applied to three project types (B-8: Trails; B-9: Small Structure Replacements; and B-10: Slide Corrections) after an archaeological reconnaissance has identified no NRHP eligible archaeological sites within the project area. If a potentially eligible or eligible archaeological site is identified, the PA does not apply and Section 106 consultation is required. All archaeological reports prepared for review under the PA shall be provided to Tribes and SHPO.

FHWA and INDOT will consult with the Tribes in development of new programmatic agreements. As new programmatic agreements are executed, Appendix C will be updated with the most recent version without requiring amendment to this MOU.

No federal-aid projects are exempt from being listed in the Indiana STIP. Tribes will see a listing of *all* federal-aid projects in their counties of interest (see III.A). If a Tribe expresses concerns about a project listed in the STIP that qualifies for Section 106 clearance under the PA, FHWA and INDOT will consult further with the Tribe. Based on this consultation, FHWA and INDOT may determine that the PA is not applicable due to tribal concerns and Section 106 consultation will be required as outlined in III.A-C.

F. Transportation Projects to be Considered for Early Coordination: INDOT will initiate Early Coordination with Tribes and SHPO on projects that have the potential to affect cultural resources that may be of interest to Tribes. Early Coordination will be initiated for:

1. Any INDOT project that is considered to be a Federal undertaking that is subject to Section 106 as described in 36 C.F.R. Parts 800.3(a) and 800.16(y) and is not exempt from Section 106 early coordination and consultation through application of the PA. The FHWA/INDOT will coordinate with Tribes who claim association with that project's county (see II.B); and
2. The FHWA/INDOT will consult with Tribes regarding any properties in which they have an expressed interest as a result of their review of project documentation provided by INDOT.

G. Early Coordination: Early Coordination provides the SHPO, Tribes, and other consulting parties the opportunity to request participation in the Section 106 process and to comment on a project's anticipated impacts early in project development. Early Coordination may be conducted via an email generated from INDOT's Section 106 electronic consultation portal, an email sent by FHWA/INDOT, or hard copy correspondence sent by FHWA/INDOT, if requested. Minimally, Early Coordination will include a project description, topographical map indicating township, section and range, a request for the recipient to indicate their interest for consulting on the project, and request for any concerns/feedback. When Section

⁸ See Appendix C: PROGRAMMATIC AGREEMENT (PA) AMONG THE FEDERAL HIGHWAY ADMINISTRATION, THE INDIANA DEPARTMENT OF TRANSPORTATION, THE ADVISORY COUNCIL ON HISTORIC PRESERVATION AND THE INDIANA STATE HISTORIC PRESERVATION OFFICER REGARDING THE IMPLEMENTATION OF THE FEDERAL AID HIGHWAY PROGRAM IN THE STATE OF INDIANA.

106 consultation is initiated and before a final transportation alternative is approved, tribal early coordination shall be sent to ensure tribal views are considered into the decision making process. Tribes will have 30 days from receipt of the early coordination letter to provide comments and/or concerns.

H. *Quality Assurance Reviews*: On an annual basis, FHWA and INDOT will conduct Quality Assurance Reviews (QARs) of post-construction transportation projects in three (of six) INDOT Districts. QARs consist of reviewing projects exempted from Section 106 early coordination and consultation through the PA to confirm that the PA was applied correctly based on the scope of work. QARs will also include on-site visits to project locations to verify that the project scope and construction were completed as explained in the PA or Section 106 documentation as appropriate and to ensure that any commitments regarding cultural resources were followed. Should a QAR involve a project in which Tribes expressed an interest during Section 106 consultation, Tribes will be notified two weeks prior to the QAR and invited to attend the site visit. In addition, if Tribes have specific projects of concern, they can request that those projects be included in future QARs at any time. If serious problems regarding tribal commitments not being followed are identified during a QAR, Tribes will be notified immediately. QAR annual reports will be provided to INDOT, FHWA, SHPO, and Tribes.

III. CONSULTATION PROCEDURES

A. *Indiana Program Documents*: On an annual basis, INDOT will email tribal contacts the STIP website address for review. INDOT will also notify tribal contacts by email when INDOT offers public comment periods or public meetings in development of a new STIP document. This information will give the Tribes the opportunity to review and comment on *all* projects in their counties of interest in advance of project development.

If a Tribe expresses interest in any project(s) listed in the STIP, detailed project information will be sent to them and the procedures under Stipulation III. B. will be followed.

B. *Early Coordination*: In addition to the regular notification of all projects in the Indiana STIP, INDOT will initiate Section 106 early coordination and consultation early in project development when Section 106 consultation is initiated and before a final transportation alternative is approved, for undertakings that are not categories of minor projects exempted from Section 106 early coordination and consultation (Appendix C). These are projects that INDOT has determined may have potential to affect historic properties.

Tribes, FHWA, SHPO, and INDOT mutually agree on the following consultation procedures for identifying and evaluating the effects of projects on cultural resources. These procedures shall comply with all applicable federal and state laws, statutes, and regulations. To the extent any provision conflicts with or is less protective of Tribal interests than applicable federal law or regulation, the federal law or regulation shall take precedent.

1. Early coordination letters and any follow up correspondence will be written on either INDOT or FHWA letterhead and signed by a representative of sending agency; informal correspondence between agencies and Tribes may be by email. INDOT will use Appendices A and B to identify and invite Tribes into Section 106 consultation for a project under study in their area of concern. The early coordination letter (ECL) will provide a project description along with a 7.5 minute quadrangle map showing the proposed project location, providing township, section, and range. The Tribe will notify INDOT if there is a Native American archaeological site, TCP, traditional cultural landscape, or traditional natural resource within the

project area, or if they have an interest in the undertaking. If INDOT does not receive a response from the Tribe by the date specified by INDOT (not fewer than 30 days) they may assume the Tribe has no interest in the undertaking.

2. Tribes that respond within the time allotted by INDOT (not fewer than 30 days) with an interest in the undertaking will be a consulting party for the project. Tribes may request additional project information, which INDOT will provide. The means of consultation will be negotiated on a project case-by-case basis as appropriate for each Tribe's interest and request. Tribes may re-enter into consultation at any point during the Section 106 process.

3. If there is any disagreement among the agencies and Tribes regarding the eligibility of an archaeological site, TCP, traditional cultural landscape or traditional natural resource all parties will have further discussions to attempt to reach agreement and will follow eligibility guidelines in National Park Service Bulletin 38.

If INDOT/FHWA and Tribes cannot reach agreement regarding the eligibility of an archaeological site, TCP, traditional cultural landscape or traditional natural resource after following the guidelines outlined in National Park Service Bulletin 38, the Tribe may, per the Section 106 regulations at 36 C.F.R. Part 800.4(c)(2), ask the ACHP to request that the federal agency obtain a formal eligibility determination from the Keeper of the National Register.

4. INDOT, in consultation with SHPO and Tribes, shall conduct appropriate archaeological investigations and prepare reports, which will be posted on INDOT's Section 106 electronic communication web portal. A notification that a report has been posted will be provided to the tribal contacts and SHPO. A hardcopy report will be provided to SHPO for as long as they require hard copy report submissions. Reports may also be sent by hardcopy to any consulting party Tribe that requests a hard-copy. The Tribes and SHPO will be provided a 30-day review period that will run concurrently.

Any response received from a consulting party Tribe during this period will be provided to SHPO for consideration in the identification of historic properties. If INDOT does not receive a response within the 30-day period from a consulting party Tribe, FHWA/INDOT may assume the Tribe has no comment regarding the outcome of the archaeological investigation.

5. For identified archaeological sites that FHWA and INDOT, in consultation with consulting party Tribes and SHPO, agree are not eligible for inclusion in the NRHP, no further archaeological investigations will be required. For projects where there are no historic properties present or none that will be affected, INDOT shall provide documentation of no historic properties affected as set forth in 36 C.F.R. Part 800.11(d) to the consulting party Tribes and SHPO.

6. For archaeological sites evaluated as eligible for listing on the NRHP, consultation will continue with the SHPO and consulting party Tribes to avoid, minimize or mitigate adverse effects to the eligible resource. When a historic property may be affected by the undertaking, FHWA/INDOT will apply the criteria of adverse effect as set forth in C.F.R. 36 Part 800.5(a)(1) and shall provide documentation as set forth in 36 C.F.R. Part 800.11(e) to the consulting party Tribes and the Indiana SHPO. If adverse effects cannot be avoided, then INDOT, FHWA, the Tribes, and SHPO will consult to develop a Memorandum of Agreement (MOA).

C. Unanticipated Discoveries During Construction: The following procedures will be used in the event that previously unreported and unanticipated artifacts or human remains (including funerary objects, sacred objects, and objects of cultural patrimony) are found during INDOT construction activities. The procedures differ depending on whether unanticipated artifacts (see Section C.1.) or human remains (including funerary objects, sacred objects, and objects of cultural patrimony) (see Section C.2.) are encountered. These procedures are 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 (54 U.S.C. § 300101 and 36 C.F.R. Part 800), the Indiana Historic Preservation Act (IC 14-21), Indiana Administrative Code 312 IAC 22, and INDOT Standard Specification 107.10.

1. *Procedures for an Unanticipated Discovery of artifacts:* In the event of unanticipated discovery of artifacts during INDOT construction activities, INDOT will follow these procedures:

- (a) The construction contractor (Contractor) shall immediately stop all construction activity within a 100 ft. radius of the discovery and cease further disturbance. If the Contractor is unaware of the size and scope of the discovery or if the discovery suggests the possible presence of other artifacts within the work site, the Contractor shall also immediately stop all construction activity beyond a 100 ft. radius of the discovery to the extent appropriate. The Contractor shall notify the INDOT Project Engineer (Engineer) who will inform INDOT CRO of the discovery. Within two business days from the time of discovery, INDOT CRO shall notify the Indiana Department of Natural Resources-Division of Historic Preservation and Archaeology (DHPA) and Tribes.

Within 48 hours of notification of the discovery, INDOT CRO shall review a description and photographs of the discovery provided by the Contractor or Engineer and determine whether construction may resume or if a site visit is warranted to document and evaluate the discovery. Consultation with Tribes and DHPA will be initiated to help determine the value of items found and assist in determinations of eligibility. If a site visit is warranted, INDOT CRO will have two business days following the site visit and Tribal input to determine the NRHP eligibility of the discovery. Tribes shall be invited to attend site visits to assist in eligibility determinations.

- (b) If the discovery is not eligible for listing on the NRHP, INDOT CRO will report the site to DHPA and inform the Engineer that construction in the area of the discovery may resume. If there is disagreement among the agencies and Tribes regarding the eligibility of a discovery for listing, all parties shall further consult to attempt to reach an agreement. If an agreement cannot be reached after following the guidelines outlined in National Park Service Bulletin 38, the Tribe may, per the Section 106 regulations at 36 C.F.R. Part 800.4(c)(2), ask the ACHP to request that the federal agency obtain a formal eligibility determination from the Keeper of the National Register.
- (c) If the discovery is determined, through consultation, to be eligible for listing on the NRHP, INDOT CRO will consult with Tribes, previously identified consulting parties, FHWA, SHPO and the ACHP regarding INDOT CRO's proposed actions to resolve the adverse effects, if adverse effects cannot be avoided. Tribes and other consulting parties will have two business days to provide their views on the proposed actions. INDOT/FHWA will ensure that the recommendations of 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:

- preparation of a mitigation plan by INDOT CRO in consultation with the Tribes for approval by the DHPA;
- implementation of the mitigation plan;
- archaeological mitigation of the site (data recovery);
- DHPA approval to resume construction following completion of the fieldwork component of the mitigation plan;
- photographic documentation and/or scaled mapping of the resource;
- visits to the site by Tribes and DHPA.

(d) 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.

2. Procedures for an Unanticipated Discovery of Human Remains and Burials (including funerary objects, sacred objects, and objects of cultural patrimony): In the event of an unanticipated discovery of human remains or burials (including funerary objects, sacred objects, and objects of cultural patrimony as defined by 43 C.F.R. § 10.2(d)) during INDOT construction activities or FHWA/INDOT archaeological investigations, INDOT will comply with the Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. § 3001 et seq.), the Indiana Historic Preservation Act (IC 14-21), 312 IAC 22 and INDOT Standard Specification 107.10, and any other applicable federal and state laws, and will follow these procedures:

(a) Upon encountering human remains or an unmarked human burial (including funerary objects, sacred objects, and objects of cultural patrimony) during ground disturbing construction activities or archaeological investigations, INDOT, its consultant, or the Contractor shall immediately cease work within a 100 ft. radius of the discovery and inform local or state police and the county coroner. If the discovering party is unaware of the size and scope of the discovery or if the discovery suggests the possible presence of other human remains or an unmarked human burial within the work site, the party shall also immediately stop all construction activity beyond a 100 ft. radius of the discovery to the extent appropriate. If uncovered during construction, the Contractor shall notify the Engineer who will inform INDOT CRO of the discovery; INDOT CRO will then notify DHPA/SHPO and Tribes within two business days of the time of the discovery. If identified during archaeological work, INDOT will notify SHPO and Tribes within two business days of the time of discovery. In addition to ceasing work, the discovering party must make a reasonable effort to protect the human remains, funerary objects, sacred objects, or objects of cultural patrimony discovered inadvertently.

(b) In coordination with DHPA/SHPO and Tribes, INDOT CRO 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. If the skeletal remains are human and are Native American in origin, CRO will notify by email the point of contact(s) for each Tribe claiming interest in the county of the discovery. If discoveries are not of human remains, the INDOT CRO shall further consult with Tribes to determine if such discoveries are funerary objects, sacred objects, or objects of cultural patrimony.

(c) If it is determined by INDOT CRO, in consultation with DHPA/SHPO, FHWA, and Tribes, that intact or fragmented human remains are present and are Native American in origin, or that the discovered materials are funerary objects, sacred objects, and objects of cultural patrimony, INDOT

CRO will consult with Tribes, DHPA/SHPO, and FHWA regarding measures to avoid and protect the discovery or mitigate any adverse effect of the project on the discovery. These measures may include:

- INDOT CRO collaborating with design team to alter project plans to avoid human remains and/or burials (including funerary objects, sacred objects, and objects of cultural patrimony);
- avoiding the human remains and/or burial (including funerary objects, sacred objects, and objects of cultural patrimony) and preserving in place;
- if avoidance is not feasible, in consultation with Tribes, recovering the human remains and/or burial (including funerary objects, sacred objects, and objects of cultural patrimony) through standard archaeological methods;
- preparation of a mitigation plan by INDOT CRO in consultation with the Tribes for approval by the DHPA;
- implementation of the mitigation plan;
- archaeological mitigation of the site (data recovery);
- visits to the site by Tribes and DHPA;
- DHPA approval to resume construction following completion of the fieldwork component of the mitigation plan;
- consultation with Tribes, FHWA, and DHPA/SHPO regarding disinterment and reinterment of Native American human remains. FHWA and DHPA/SHPO will defer to tribal recommendations regarding cultural affiliations, disinterment, and reburial of Native American human remains and/or burials (including funerary objects, sacred objects, and objects of cultural patrimony).

IV. OTHER POINTS OF MUTUAL AGREEMENT

A. Execution and Implementation: This MOU is effective as of the date of the last signature among FHWA, SHPO, INDOT, and at least one Tribe with an interest in Indiana lands. Other Tribes may become signatory to this MOU after that date, without the need to amend this MOU. The successful implementation of this process shall constitute meaningful consultation between FHWA and the Signatory Tribes to fulfill tribal consultation requirements of Section 106 of the NHPA.

B. Annual Report and Evaluation of MOU Implementation: On an annual basis, INDOT will submit a report to FHWA, SHPO, and Tribes identifying projects processed under this MOU. The report shall include a description of actions taken to comply with this MOU. The report should provide a description and summary of exempted projects listed in Appendix C for which INDOT did not conduct Section 106 early coordination and consultation. At the same time, FHWA and INDOT will offer the opportunity for a meeting (in-person, teleconference or web-conference) with signatories to discuss issues defined in this MOU. The purpose of the annual meeting is to continue effective working relationships and evaluate the implementation of this agreement.

C. Confidentiality: The FHWA and INDOT acknowledge the need for confidentiality of certain tribal religious and cultural information that may be provided by Tribes during the course of consultations, and other aspects of tribal consultation conducted on cultural resource issues. Information identified as sensitive by consulted tribal members, and requested to remain confidential, will remain confidential to the extent permitted by state and federal law (54 U.S.C. § 307103 et seq. and Section 304 of NHPA).

D. *Dispute Resolution*: Should any signatory object at a later date to the implementation of this agreement in whole or in part, the objecting party will consult with all signatories to resolve the objection. If all signatories are unable to satisfactorily resolve the issue, and the issue involves resolution of the Adverse Effect of an INDOT project on a site eligible for inclusion on the NRHP, the administrative process defined in 36 C.F.R. Part 800.6 will be followed.

E. *Failure to Comply/Termination*: If any signatory determines that the terms of this MOU cannot be or are not being carried out, then the signatories shall consult regarding the reasons, and will seek amendment to the MOU, if appropriate. If the MOU is not amended, any signatory may terminate their participation in the MOU by providing 30 calendar days written notice to the other parties. In the event of termination by a Tribe, the FHWA and INDOT shall comply with 36 C.F.R. Part 800 and continue with individual tribal consultation with that Tribe. As long as the FHWA, INDOT, SHPO, and at least one Tribe continues to participate, the MOU will remain in effect, but the Tribes who have terminated their participation will no longer be held to the terms of this agreement.

F. *Amendment*: Any signatory to this MOU may request that it be amended, whereupon all signatories shall consult to consider such an amendment. Any resulting amendments shall be developed and executed among the signatories in the same manner as the original MOU. Any amendment to this MOU will go into effect only upon written agreement of all signatories.

G. *Participation in Similar Activities*: This MOU in no way restricts the FHWA, INDOT, or the signatory Tribes from participating in similar activities with other public or private agencies, organizations, and individuals.

H. *Commencement/Termination Date*: This MOU is executed as of the date of last signature between FHWA, INDOT, SHPO, the ACHP, and at least one Tribe. Other Tribes may become signatory to this agreement after that date. This MOU is effective through December 31, 2030, at which time it will expire unless specifically extended by signatory resolution. One year prior to expiration, the signatories will discuss whether this agreement should be renewed, modified, or allowed to expire.

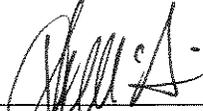
SIGNATORIES:

FEDERAL HIGHWAY ADMINISTRATION

By: Mayela Sosa
Mayela Sosa
Division Administrator

Date: 14 Feb 2017

INDIANA DEPARTMENT OF TRANSPORTATION

By: 

Joseph McGuinness
Commissioner

Date: 2/3/2017

INDIANA STATE HISTORIC PRESERVATION OFFICER

By: 

Cameron Clark,
Director, Indiana Department of Natural Resources

Date: 3-6-17

Insert individual Tribe(s) pages here:

MEMORANDUM OF UNDERSTANDING
AMONG
THE FEDERAL HIGHWAY ADMINISTRATION,
INDIANA STATE HISTORIC PRESERVATION OFFICER,
INDIANA DEPARTMENT OF TRANSPORTATION,
and
FEDERALLY RECOGNIZED TRIBES INTERESTED IN INDIANA LANDS
REGARDING TRIBAL CONSULTATION REQUIREMENTS
FOR THE INDIANA FEDERAL TRANSPORTATION PROGRAM

Name of Tribe: RED CLIFF BAND OF LAKE SUPERIOR CHIPPWAS

Signature: Lawrence Balber

Date: 4/4/2017

Please Print Name: LAWRENCE BALBER

Title: TRIBAL HISTORIC PRESERVATIONS
OFFICER

**MEMORANDUM OF UNDERSTANDING
AMONG
THE FEDERAL HIGHWAY ADMINISTRATION,
INDIANA STATE HISTORIC PRESERVATION OFFICER,
INDIANA DEPARTMENT OF TRANSPORTATION,
and
FEDERALLY RECOGNIZED TRIBES INTERESTED IN INDIANA LANDS
REGARDING TRIBAL CONSULTATION REQUIREMENTS
FOR THE INDIANA FEDERAL TRANSPORTATION PROGRAM**

Name of Tribe: Delaware Nation

Signature: 

Date: 5/16/2017

Please Print Name: Kerry Holton

Title: 5/16/2017

MEMORANDUM OF UNDERSTANDING
AMONG
THE FEDERAL HIGHWAY ADMINISTRATION,
INDIANA STATE HISTORIC PRESERVATION OFFICER,
INDIANA DEPARTMENT OF TRANSPORTATION,
and
FEDERALLY RECOGNIZED TRIBES INTERESTED IN INDIANA LANDS
REGARDING TRIBAL CONSULTATION REQUIREMENTS
FOR THE INDIANA FEDERAL TRANSPORTATION PROGRAM

Name of Tribe: Niami Tribe of Oklahoma

Signature: Douglas Lansford Date: 3-16-17

Please Print Name: Douglas Lansford Title: Chief

**MEMORANDUM OF UNDERSTANDING
AMONG
THE FEDERAL HIGHWAY ADMINISTRATION,
INDIANA STATE HISTORIC PRESERVATION OFFICER,
INDIANA DEPARTMENT OF TRANSPORTATION,
and
FEDERALLY RECOGNIZED TRIBES INTERESTED IN INDIANA LANDS
REGARDING TRIBAL CONSULTATION REQUIREMENTS
FOR THE INDIANA FEDERAL TRANSPORTATION PROGRAM**

Name of Tribe: Seneca-Cayuga Nation

Signature: William L. Fisher Date: 3-13-2017

Please Print Name: William L. Fisher Title: Chief

MEMORANDUM OF UNDERSTANDING
AMONG
THE FEDERAL HIGHWAY ADMINISTRATION,
INDIANA STATE HISTORIC PRESERVATION OFFICER,
INDIANA DEPARTMENT OF TRANSPORTATION,
and
FEDERALLY RECOGNIZED TRIBES INTERESTED IN INDIANA LANDS
REGARDING TRIBAL CONSULTATION REQUIREMENTS
FOR THE INDIANA FEDERAL TRANSPORTATION PROGRAM

Name of Tribe: Delaware Nation

Signature: 

Date: 4/4/2017

Please Print Name: # Kerry Holton

Title: 4/4/2017

MEMORANDUM OF UNDERSTANDING
AMONG
THE FEDERAL HIGHWAY ADMINISTRATION,
INDIANA STATE HISTORIC PRESERVATION OFFICER,
INDIANA DEPARTMENT OF TRANSPORTATION,
and
FEDERALLY RECOGNIZED TRIBES INTERESTED IN INDIANA LANDS
REGARDING TRIBAL CONSULTATION REQUIREMENTS
FOR THE INDIANA FEDERAL TRANSPORTATION PROGRAM

Name of Tribe: DELAWARE TRIBE OF INDIANS

Signature: Chester L. Brooks Date: 3-6-2017

Please Print Name: CHESTER L. BROOKS Title: CHIEF

MEMORANDUM OF UNDERSTANDING
AMONG
THE FEDERAL HIGHWAY ADMINISTRATION,
INDIANA STATE HISTORIC PRESERVATION OFFICER,
INDIANA DEPARTMENT OF TRANSPORTATION,
and
FEDERALLY RECOGNIZED TRIBES INTERESTED IN INDIANA LANDS
REGARDING TRIBAL CONSULTATION REQUIREMENTS
FOR THE INDIANA FEDERAL TRANSPORTATION PROGRAM

Name of Tribe: Eastern Shawnee Tribe of Oklahoma

Signature: Glenna J. Wallace

Date: 3-1-2017

Please Print Name: GLENN J. WALLACE

Title: Chief

**MEMORANDUM OF UNDERSTANDING
AMONG
THE FEDERAL HIGHWAY ADMINISTRATION,
INDIANA STATE HISTORIC PRESERVATION OFFICER,
INDIANA DEPARTMENT OF TRANSPORTATION,
and
FEDERALLY RECOGNIZED TRIBES INTERESTED IN INDIANA LANDS
REGARDING TRIBAL CONSULTATION REQUIREMENTS
FOR THE INDIANA FEDERAL TRANSPORTATION PROGRAM**

Name of Tribe: F.C.P.

Signature: alw. milham

Date: 3/20/2017

Please Print Name: AL W. MILHAM

Title: Vice Chairman

**MEMORANDUM OF UNDERSTANDING
AMONG
THE FEDERAL HIGHWAY ADMINISTRATION,
INDIANA STATE HISTORIC PRESERVATION OFFICER,
INDIANA DEPARTMENT OF TRANSPORTATION,
and
FEDERALLY RECOGNIZED TRIBES INTERESTED IN INDIANA LANDS
REGARDING TRIBAL CONSULTATION REQUIREMENTS
FOR THE INDIANA FEDERAL TRANSPORTATION PROGRAM**

Name of Tribe: Leech Lake Band of Ojibwe

Signature:  Date: 3-16-17

Please Print Name: Faron Jackson Sr. Title: chairman

LEECH LAKE BAND OF OJIBWE



Maggi Jordan
Executive Assistant
Tribal Chairman
Maggi.Jordan@llojibwe.org
Fax: (218) 335-7225
190 Sailstar Drive NW
Cass Lake, MN 56633

Office: (218) 335-4404 Cell: (218) 513-5623

MEMORANDUM OF UNDERSTANDING
AMONG
THE FEDERAL HIGHWAY ADMINISTRATION,
INDIANA STATE HISTORIC PRESERVATION OFFICER,
INDIANA DEPARTMENT OF TRANSPORTATION,
and
FEDERALLY RECOGNIZED TRIBES INTERESTED IN INDIANA LANDS
REGARDING TRIBAL CONSULTATION REQUIREMENTS
FOR THE INDIANA FEDERAL TRANSPORTATION PROGRAM

Name of Tribe: Pokagon Band of Potawatomi Indian

Signature: Jason M. Wesaw

Date: 3-31-17

Please Print Name: Jason M. Wesaw

Title: Government Manager

MEMORANDUM OF UNDERSTANDING
AMONG
THE FEDERAL HIGHWAY ADMINISTRATION,
INDIANA STATE HISTORIC PRESERVATION OFFICER,
INDIANA DEPARTMENT OF TRANSPORTATION,
and
FEDERALLY RECOGNIZED TRIBES INTERESTED IN INDIANA LANDS
REGARDING TRIBAL CONSULTATION REQUIREMENTS
FOR THE INDIANA FEDERAL TRANSPORTATION PROGRAM

Name of Tribe: Turtle Mountain Band of Chippewa Indians

Signature: Wayne Keplin Date: 3/5/12

Please Print Name: Wayne Keplin Title: Tribal Chairman

**APPENDIX A: COUNTY LISTING OF THE TRIBES' ANCESTRAL HOMELANDS
AND TERRITORY IN THE STATE OF INDIANA**

Delaware Nation of Oklahoma

Bartholomew, Delaware Hamilton, Knox,
Madison, Marion, Orange, Posey, Washington,
Warrick and Wells

Wyandotte Nation

Adams and Allen

Delaware Tribe of Indians of Oklahoma

Delaware, Hamilton, Madison and any Delaware
sites

Eastern Shawnee Tribe

All Indiana counties

Forest County Potawatomi Community

Adams, Allen, Benton, Blackford, Boone,
Carroll, Cass, Clay, Clinton, DeKalb, Elkhart,
Fountain, Fulton, Grant, Hendricks, Howard,
Huntington, Jasper, Jay, Kosciusko, LaGrange,
Lake, LaPorte, Marshall, Miami, Montgomery,
Newton, Noble, Porter, Pulaski, Putnam, St.
Joseph, Starke, Steuben, Sullivan, Tippecanoe,
Tipton, Vermillion, Vigo, Wabash, Warren

Miami Tribe of Oklahoma

All Indiana counties

Peoria Tribe of Indians of Oklahoma

All Indiana counties

Pokagon Band of Potawatomi Indians

Fort Wayne and LaPorte

United Keetoowah Band of Cherokee Indians

Clark, Crawford, Dearborn, Floyd, Harrison,
Ohio, Perry, Posey, Spencer, Switzerland,
Vanderburgh, Warrick

APPENDIX B: POINT OF CONTACT LIST

	A	B	C	D	E	F	G	H	I	J	K
1	Agency Name	POC	Job Title	Telephone	Email Address	Address 1	Address 2	City	State	Zip Code	Counties of Interest
2	Absentee Shawnee Tribe of Oklahoma	Edwina Butler-Wolfe	Governor	405 275-4030		2025 South Gordon Cooper Drive		Shawnee	OK	74801	
3	Absentee Shawnee Tribe of Oklahoma	Leonard Longhorn	THPO	405 275-4030, ext. 6335	llonghorn@astribe.com	2025 South Gordon Cooper Drive		Shawnee	OK	74801	
4											
5	Bay Mills Indian Community	Levi Carrick, Sr.	Chairman	906-248-3241		12140 W. Lakeshore Dr.		Brimley	MI	49715	
6	Bay Mills Indian Community	Paula Carrick	THPO	906-248-8759	paulacarrick@baymills.org	12485 W. Lakeshore Dr.		Brimley	MI	49715	
7											
8	Bois Forte Band of Chippewa	Cathy Chavers	Chairman	218-757-3261	cchavers@boisforte-nsn.gov	5344 Lakeshore Drive		Nett Lake	MN	55772	
9	Bois Forte Band of Chippewa	Rose Berens	THPO	218-753-6026	rberens@boisforte-nsn.gov	1500 Bois Forte Road		Tower	MN	55790	
10											
11	Chippewa-Cree Tribe	Ken St. Marks	Chairman	406-395-5705		31 Agency Square, Box 544		Box Elder	MT	59521	
12	Chippewa-Cree Tribe	Alvin Windy Boy	THPO	406-395-4700, ext. 101	alvin@nei-yahw.com	PO Box 230		Box Elder	MT	59521	
13	Chippewa-Cree Tribe	Melody Henry		406-395-4700	melody.henry@nei-yahw.com	PO Box 230		Box Elder	MT	59521	
14											
15	Citizen Potawatomi Nation	John A. Barrett, Jr.	Chairperson	405-275-3121	rbarrett@potawatomi.org	1601 Gordon Cooper Drive		Shawnee	OK	74801	
16	Citizen Potawatomi Nation	Kelli Mosteller	THPO	405-878-5830	kelli_mosteller@potawatomi.org	1899 Gordon Cooper Drive		Shawnee	OK	74801	
17	Citizen Potawatomi Nation	Andrew Gourd	Assistant THPO	405-878-5830	andrew.gourd@potawatomi.org	1899 Gordon Cooper Drive		Shawnee	OK	74801	
18											
19	Delaware Nation of Oklahoma	Kerry Holton	President	405-247-2448		PO Box 825		Anadarko	OK	73005	Bartholomew, Delaware, Hamilton, Knox, Madison, Marion, Organe, Posey, Washington, Warrick, and Wells
20	Delaware Nation of Oklahoma	Nekole Alligood	Director of Cultural Preservation	405-247-2448 ext. 1403	nalligood@delawarenation.com	PO Box 825		Anadarko	OK	73005	Bartholomew, Delaware, Hamilton, Knox, Madison, Marion, Organe, Posey, Washington, Warrick, and Wells
21	Delaware Nation of Oklahoma	Corey Smith	Assistant Director of Cultural Preservation	405-247-2448, ext. 1405		P.O. Box 825		Anadarko	OK	73005	Bartholomew, Delaware, Hamilton, Knox, Madison, Marion, Organe, Posey, Washington, Warrick, and Wells
22											
23	Delaware Tribes of Indians, Oklahoma	Chester Brooks	Chief	918-337-6590		5100 Tuxedo Blvd		Bartlesville	OK	74006	Delaware, Hamilton, Madison (and any Delaware sites)
24	Delaware Tribes of Indians, Oklahoma	Brice Obermeyer	THPO	620-341-6699 918-335-7026 (cell)	bobermeyer@delawaretribe.org	Delaware Tribe Historic Preservation Office Roosevelt Hall, RM 212 1 Kellog Drive		Emporia	KS	66801	Delaware, Hamilton, Madison (and any Delaware sites)
25											
26	Eastern Shawnee Tribe of Oklahoma	Glenna Wallace	Chief	918-666-2435	gwallace@estoo.net	70500 East 128 Road		Wyandotte	OK	74370	All Indiana counties
27	Eastern Shawnee Tribe of Oklahoma	Robin Dushane	THPO	918-666-2435, ext. 247 918-533-4104 (cell)	rdushane@estoo.net	12705 E. 705 Road		Wyandotte	OK	74370	All Indiana counties
28											
29	Fond du Lac Band of Lake Superior Chippewa Indians	Kevin DuPuis	Chairman	218-879-4593		1720 Big Lake Road		Clogquet	MN	55720	
30	Fond du Lac Band of Lake Superior Chippewa Indians										
31											
32	Forest County Potawatomi Community	Harold G. Frank	Chairperson	715-478-7200	gus.frank@fcpotawatomi-nsn.gov	5416 Everbody's Road	PO Box 340	Crandon	WI	54520	Adams, Allen, Benton, Blackford, Boone, Carroll, Cass, Clay, Clinton, DeKalb, Elkhart, Fountain, Fulton, Grant, Hendricks, Howard, Huntington, Jasper, Jay, Kosciusko, LaGrange, Lake, LaPorte, Marshall, Miami, Montgomery, Newton, Noble, Porter, Pulaski, Putnam, St. Joseph, Starke, Steuben, Sullivan, Tippecanoe, Tipton, Vermillion, Vigo, Wabash, Warren
33	Forest County Potawatomi Community	Michael LaRonge	THPO	715-478-7354	michael.laronge@fcpotawatomi-nsn.gov	5320 Wensaut Lane		Crandon	WI	54520	Adams, Allen, Benton, Blackford, Boone, Carroll, Cass, Clay, Clinton, DeKalb, Elkhart, Fountain, Fulton, Grant, Hendricks, Howard, Huntington, Jasper, Jay, Kosciusko, LaGrange, Lake, LaPorte, Marshall, Miami, Montgomery, Newton, Noble, Porter, Pulaski, Putnam, St. Joseph, Starke, Steuben, Sullivan, Tippecanoe, Tipton, Vermillion, Vigo, Wabash, Warren
34											
35	Grand Portage Band of Minnesota Chippewa Tribe	Norman Deshampe	Chairman	218-475-2277		PO Box 428		Grand Portage	MN	55605	
36	Grand Portage Band of Minnesota Chippewa Tribe										
37											
38	Grand Traverse Band of Ottawa and Chippewa Indians, Michigan	Thurlow ("Sam") McClellan	Chairman	231-534-7129	thurlow.mcclellan@gtbindians.com	2605 North West Bay Shore Drive		Peshawbestown	MI	49682	
39	Grand Traverse Band of Ottawa and Chippewa Indians, Michigan	Cindy Winslow	THPO	231-534-7764	cindy.winslow@gtbindians.com	2605 North West Bay Shore Drive		Peshawbestown	MI	49682	
40	Grand Traverse Band of Ottawa and Chippewa Indians, Michigan	Sheila Chingwa	THPO		sheila.chingwa@gtbindians.com	2605 North West Bay Shore Drive		Peshawbestown	MI	49682	
41											
42	Hannahville Indian Community	Kenneth Meshigaud	Chairperson	906-466-2934	tydervien@hannahville.org	N14911 Hannahville B-1 Road		Wilson	MI	49896	
43	Hannahville Indian Community	Earl Meshigaud	NAGPRA contact	906-723-2270	earlmeshigaud@hannahville.org	N14911 Hannahville B-1 Road		Wilson	MI	49896	
44											
45	Ho-Chunk Nation, Wisconsin	Wilfrid Cleveland	President	715-284-9343, ext.1255		W9814 Airport Road		Black River Falls	WI	54615	
46	Ho-Chunk Nation, Wisconsin	Bill Quackenbush	THPO	715-284-7181, ext. 1121	bill.quackenbush@ho-chunk.com	W9035 Highway 54		Black River Falls	WI	54615	

APPENDIX C: PROGRAMMATIC AGREEMENT (PA) AMONG THE FEDERAL HIGHWAY ADMINISTRATION, THE INDIANA DEPARTMENT OF TRANSPORTATION, THE ADVISORY COUNCIL ON HISTORIC PRESERVATION AND THE INDIANA STATE HISTORIC PRESERVATION OFFICER REGARDING THE IMPLEMENTATION OF THE FEDERAL AID HIGHWAY PROGRAM IN THE STATE OF INDIANA.

**Programmatic Agreement (PA)
Among the Federal Highway Administration,
the Indiana Department of Transportation,
the Advisory Council on Historic Preservation
and the Indiana State Historic Preservation Officer
Regarding the Implementation of the Federal Aid Highway Program
In the State of Indiana**

WHEREAS, the Federal Highway Administration (FHWA) administers the Federal Aid Highway Program in Indiana authorized by 23 U.S.C. §§ 101 et seq., through the Indiana Department of Transportation (INDOT) (23 U.S.C. § 315); and

WHEREAS, INDOT undertakes Federal minor highway projects that would qualify as Categorical Exclusions (CEs), including Local Public Agency Federal aid projects, as defined in 23 CFR 771, that do not individually or cumulatively have a significant impact on the environment, and therefore may not require the preparation of an environmental document; and

WHEREAS, FHWA has determined that certain types of minor highway projects typically have no effect upon historic properties included in or eligible for inclusion in the National Register and has consulted with the Advisory Council on Historic Preservation (Council), and the Indiana State Historic Preservation Officer (SHPO) pursuant to Section 800.14(b) of the regulations (36 CFR Part 800 Subpart C) implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f); and

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

WHEREAS, INDOT maintains cultural resource staff and consultants meeting the Secretary of Interior's Professional Qualification standards (48 Federal Register (FR) 44716) and State of Indiana standards (Indiana Code 14-21-1 and 312 IAC 21) in the fields of archaeology, history and architectural history;

NOW, THEREFORE, FHWA, INDOT, the Council, and SHPO agree that the Federal Aid Highway Program shall be administered in accordance with the following stipulations to satisfy the FHWA Section 106 responsibility for all individual undertakings of the program.

STIPULATIONS

FHWA shall ensure that the following measures are carried out:

1. Purpose and Scope

A. This PA sets forth the process by which FHWA; with the assistance of INDOT; will meet its responsibilities for undertakings pursuant to Sections 106 and 110 of the National Historic Preservation Act (NHPA) (16 U.S.C. § 470f).

B. FHWA Responsibilities - In compliance with its responsibilities under the NHPA, and as a condition of its award to INDOT of any assistance under the Federal Aid Highway Program, FHWA will ensure that INDOT

carries out the requirements of this agreement and Council policies and guidelines for undertakings subject to this agreement.

C. INDOT Responsibilities

1. Pursuant to this agreement, INDOT will ensure that all cultural resource staff and/or consultants, employed under its contract to conduct work in the field of cultural resources, meet the qualifications set forth in the Secretary of Interior's Professional Qualification standards (48 FR 44716) and State of Indiana standards (IC 14-21-1 and 312 IAC 21) for such work. These qualified INDOT cultural resources personnel shall have the primary responsibility for implementing this PA.
2. Prior to December 31, 2007, and in consultation with SHPO and FHWA, INDOT will prepare a Cultural Resources Manual detailing the procedures for implementing this agreement. Upon approval of the Cultural Resources Manual by INDOT, SHPO, and FHWA, this programmatic agreement will be appended to the INDOT Cultural Resources Manual and be fully explained therein.

2. Minor Projects

The following types of undertakings, listed in Appendices A and B, are activities in which INDOT routinely utilizes Federal Aid highway funds and consist of minor projects that generally do not affect historic properties. None of the minor projects listed below will require consultation with or review by the SHPO, provided the undertaking:

- is limited to the activities specified
- is not part of a larger project
- is on an existing transportation facility
- if ground disturbance in previously disturbed soils is specified, occurs in soils previously disturbed by vertical and horizontal highway construction activities
- has no known public controversy based on historic preservation issues

Such minor projects fall into two categories: minor projects that do not require review by INDOT Cultural Resources staff (Category A; Appendix A), and minor projects that do require documentation and review by INDOT Cultural Resources staff to assess the likelihood that historic properties exist in the area of potential effects or determine the degree of existing soil disturbance within the project area (Category B; Appendix B).

For undertakings in Category B, or where questions arise about the need for review of an undertaking in Category A, INDOT Cultural Resources staff shall determine whether a particular project should be exempt from SHPO review. If the SHPO specifically requests a copy of the documentation for a particular undertaking covered by this stipulation, INDOT will provide SHPO with the requested documentation and, if the project has not already been approved, will review the project in accordance with Stipulation 4 of this Agreement. All of the minor projects listed in Appendices A and B will be subject to regular internal audit by INDOT.

3. Documentation of Minor Projects

- A. Any minor project listed in Appendices A or B shall be documented in the National Environmental Policy Act documentation. The documentation shall reference and include the description of the specific stipulation in the PA that qualifies the project as exempt from further Section 106 review.
- B. INDOT Cultural Resources staff will utilize the County Interim Reports, most current Bridge Inventory, as well as additional documentation to assure projects are not adjacent to a National Register eligible property

or district. Documentation may include construction plans, project area descriptions, soil survey data, photographs, and archaeological documentation.

4. Section 106 Consultation for FHWA Undertakings Not Exempt from Review

For those projects not exempt from review under terms of Stipulation 2, INDOT and FHWA shall review the undertakings in accordance with the procedures found in 36 CFR Part 800. Upon completion of the Cultural Resources Manual required in Stipulation 1, INDOT, using staff and/or consultants meeting the *Secretary of the Interior's Professional Qualifications Standards* (48 FR 44738-9), may independently perform the work and consultation described in the following sections of 36 CFR Part 800 (including any succeeding revisions to the regulations) on behalf of FHWA as follows:

36 CFR § 800.3

- (1) Establish undertaking
- (2) Coordinate with other reviews
- (3) Identify the appropriate SHPO and/or THPO
- (4) Plan to involve the public
- (5) Identify other consulting parties
- (6) Expediting consultation

36 CFR § 800.4

- (1) Determine scope of identification
- (2) Identify historic properties
- (3) Evaluate historic significance
- (4) Results of identification and evaluation

36 CFR § 800.5

- (1) Apply criteria of adverse effect
- (2) Finding of no adverse effect
- (3) Consulting party review
- (4) Results of assessment

In recognition of the unique government-to-government relationship between the Federal government and Indian tribes, FHWA shall take the lead in identifying and establishing consultation with the Indian tribes and Tribal Historic Preservation Officers (THPO) consistent with 36 CFR § 800.3(c) - (f). If the tribe is agreeable, further consultation may be conducted among the tribe and INDOT.

A. Finding of "No Historic Properties Affected"

If INDOT determines, in consultation with the SHPO and consulting parties, that no historic properties will be affected by the undertaking, INDOT will make a finding of "no historic properties affected," and documentation (800.11[d]) will be forwarded to the SHPO for concurrence. Copies of this documentation will be provided to all consulting parties and will be made available for public inspection. INDOT may proceed with the project if the SHPO has agreed, in writing, with the finding or if within 30 days of receipt neither SHPO nor another consulting party has objected to the finding. If the SHPO or any consulting party objects, in writing, to INDOT's finding within 30 days of receipt of an adequately documented finding, the documentation will be submitted to FHWA for resolution. If, through consultation, consensus can be reached, the process will move forward in

accordance with this agreement. If consensus is not achieved, the undertaking will not be developed under this agreement, but instead will proceed in accordance with 36 CFR Part 800.3 through 800.6. If INDOT determines, in consultation with the SHPO and consulting parties, that historic properties may be affected by the undertaking, INDOT shall apply the Criteria of Adverse Effect, 36 CFR Part 800.5(a)(1).

B. Finding of “No Adverse Effect”

If INDOT determines, in consultation with the SHPO and consulting parties, that the undertaking will have no adverse effect on historic properties, it will make a finding of “no adverse effect,” and documentation (800.11[e]) will be forwarded to the SHPO for concurrence. Copies of this documentation will be provided to all consulting parties and will be made available for public comment. INDOT may proceed with the project if the SHPO has agreed, in writing, with the finding or if within 30 days of receipt neither the SHPO nor another consulting party objects to the finding. If SHPO or any consulting party objects within 30 days of receipt of adequate documentation, in writing, to INDOT's finding, the documentation will be submitted to FHWA for resolution. If, through consultation, consensus can be reached, the process will move forward in accordance with this agreement. If consensus is not achieved, the undertaking will not be developed under this agreement, but instead will proceed in accordance with 36 CFR Part 800.3 through 800.6.

C. Finding of “Adverse Effect”

If INDOT determines, in consultation with the SHPO and consulting parties, that the undertaking will have an adverse effect on historic properties, it will notify FHWA and FHWA will ensure the Section 106 process is completed in accordance with 36 CFR 800.6. FHWA will be responsible for making a finding of “adverse effect” and the resolution of those effects.

5. Unanticipated Discovery

If any unanticipated discoveries of historic properties, sites, artifacts, or objects are encountered during the implementation of any project exempted under this PA, INDOT and FHWA shall comply with 36 CFR 800.13 and IC 14-21-1-27 and 14-21-1-29 by stopping work in the immediate area and informing the SHPO, housed in the Indiana Department of Natural Resources (“DNR”) of such unanticipated discoveries or effects within two (2) business days. Any necessary archaeological investigations will be conducted according to the provisions of IC 14-21-1 and 312 IAC 21.

If any unanticipated effects on historic properties are found to be occurring during the implementation of any project exempted under this PA, INDOT and FHWA shall comply with 36 CFR 800.13 and inform the SHPO immediately.

If any human remains are encountered during the implementation of any project exempted under this PA, work shall cease in the immediate area and the human remains left undisturbed. INDOT and FHWA will contact the county coroner and law enforcement officials immediately, and the discovery must be reported to the SHPO within two (2) business days. The discovery must be treated in accordance with IC 14-21-1 and 312 IAC 22. If the remains are determined to be Native American, FHWA will notify the appropriate federally recognized Indian Tribes.

Work at the site shall not resume until a plan for the treatment of the human remains is developed and approved in consultation with the SHPO and any appropriate consulting parties. The plan will comply with IC 14-21-1,

312 IAC 22, the current Guidebook for Indiana Historic Sites and Structures Inventory--Archaeological Sites, and all other appropriate federal and state guidelines, statutes, rules, and regulations.

6. Monitoring

- A. INDOT, FHWA and the SHPO will consult as needed to review implementation of the terms of the PA.
- B. FHWA and INDOT may monitor activities carried out pursuant with this agreement, and the SHPO will be invited to participate. INDOT shall cooperate in carrying out the monitoring effort. Should monitoring or other activities result in evidence that the requirements of this PA need modification or are not being met, FHWA, the SHPO, and INDOT will meet to develop and implement corrective measures.

7. Dispute Resolution

- A. If the Indiana SHPO, INDOT, the Council, or a consulting party for an individual undertaking carried out under the terms of this agreement objects in writing to the FHWA regarding any action carried out or proposed with respect to the implementation of this PA, then FHWA shall consult with the objecting party to resolve this objection. If after such consultation FHWA determines that the objection cannot be resolved through consultation, then FHWA shall forward all documentation relevant to the objection to the Council, including FHWA's proposed response to the objection. Within fifteen (15) days after receipt of all pertinent documentation, the Council shall exercise one of the following options:
 - 1) Advise FHWA that the Council concurs in FHWA's proposed response to the objection, whereupon FHWA will respond to the objection accordingly; or
 - 2) Provide FHWA with recommendations, which FHWA shall take into account in reaching a final decision regarding its response to the objection.
- B. Should the Council not exercise one of the above options within fifteen (15) days after receipt of all pertinent documentation, FHWA may assume the Council's concurrence with the proposed response to the objection.

8. Terminate, Modify, and Amend

- A. Any party to this PA may terminate it by providing thirty (30) days written notice to the other parties, provided that the parties shall consult during the period prior to termination to seek agreement on amendments or other action that would avoid termination. In the event of termination, FHWA shall conduct individual project review pursuant to 36 CFR Part 800.
- B. FHWA, INDOT, and the SHPO will review this PA every ten (10) years from the date of execution for modifications or termination. If no changes are proposed and no party objects, the term of the PA will be extended automatically for another ten years without re-execution.
- C. Any party to this agreement may request that it be amended, whereupon the parties shall consult to consider such amendment. The amendment will be effective on the date a copy is signed by all of the original signatories. The lists of minor projects in Appendices A and B may be modified by the mutual written agreement of FHWA, INDOT, and the SHPO, and shall not require a formal amendment to this agreement.

Execution and implementation of this PA evidences that the Federal Highway Administration has satisfied its Section 106 responsibilities for all individual undertakings of highway projects covered under this agreement.

SIGNATORIES:

FEDERAL HIGHWAY ADMINISTRATION

By: Robert F. Tally, Jr. Date: 10/3/06
Robert F. Tally, Jr., P.E.
Division Administrator

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: John M. Fowler Date: 10/12/06
John M. Fowler
Executive Director

INDIANA STATE HISTORIC PRESERVATION OFFICER

By: Kyle Hopper Date: 9/26/06
Kyle Hopper
Director, Indiana Department of Natural Resources

INDIANA DEPARTMENT OF TRANSPORTATION

By: Thomas O. Sharp Date: 9/22/2006
Thomas O. Sharp
Commissioner

APPENDIX A

**Category A (Minor Projects Requiring No Review
by INDOT Cultural Resources Staff)**

Category A consists of projects that, by their nature, have little to no potential to cause effect to historic properties and do not require review by INDOT Cultural Resources Staff.

1. Any work to be done on bridges under the conditions listed below. If all conditions cannot be met, please see Category B-12. This category **does not** include bridge replacement projects (when both superstructure and substructure are removed).

- The project takes place in previously disturbed soils; AND
- The bridge is not classified as Select or Non-Select in the latest historic bridge inventory, and the work is limited to bridge substructure or superstructure elements without replacing, widening, or elevating the superstructure; AND EITHER
- The bridge was determined not National Register eligible in the latest historic bridge inventory; OR
- The bridge was built after 1945, and is a common type as defined in Section V. of the *Program Comment Issued for Streamlining Section 106 Review for Actions Affecting Post-1945 Concrete and Steel Bridges* issued by the Advisory Council on Historic Preservation on November 2, 2012 for so long as that Program Comment remains in effect AND the considerations listed in Section IV. of the Program Comment do not apply; OR
- The bridge is part of the Interstate system, and was determined not National Register eligible under the Section 106 Exemption Regarding Effects to the Interstate Highway System adopted by the Advisory Council on Historic Preservation on March 10, 2005, for so long as that Exemption remains in effect.

2. All work within interchanges and within medians of divided highways in previously disturbed soils.

3. Replacement, repair, lining, or extension of culverts and other drainage structures which do not extend beyond or deeper than previous construction limits, and do not exhibit stone or brick structures or parts therein.

4. Roadway surface replacement, rehabilitation, resurfacing, or reconstruction, overlays, shoulder treatments, pavement repair, seal coating, pavement grinding, and pavement marking within areas previously disturbed by construction where replacement, repair, or installation of curbs or sidewalks will not be required.

5. Repair, replacement, or upgrade of existing lighting, signals, signage, and other traffic control devices in previously disturbed soils.

6. Repair, replacement, or upgrade of existing safety appurtenances such as guardrails, barriers, glare screens, and crash attenuators in previously disturbed soils.

7. Fencing and landscaping in previously disturbed soils.

8. Railway crossing signs and signal installation or modification and surface improvement in previously disturbed areas.

9. Erosion control within previously disturbed soils to prevent erosion of roadways, waterways and bridge piers.

10. Routine roadside maintenance activities necessary to preserve existing infrastructure and maintain roadway safety in previously disturbed areas.

11. Rehabilitation of existing rest areas and truck weigh stations within previously disturbed soils.

12. Hazardous waste removal and disposal constituting a public hazard and which require immediate removal.

13. Bridge deck resurfacing, overlay, pavement repair, seal coating, pavement grinding, and pavement marking on National Register of Historic Places eligible or listed bridges within areas previously disturbed by construction where replacement, repair, or installation of curbs, curb ramps, or sidewalks will not be required and provided the work is limited to the roadway cross section only and does not impact structural members of the bridge. Work under this category can only take place where the existing surface is already concrete or asphalt pavement.

APPENDIX B

**Category B (Minor Projects Requiring Submittal
of Documentation and Review by INDOT Cultural Resources Staff)**

Category B consists of projects that do require documentation and review by INDOT Cultural Resources staff to assess the likelihood that historic properties exist in the area of potential effects or determine the degree of existing soil disturbance within the project area.

1. Roadway surface replacement, rehabilitation, resurfacing, or reconstruction, overlays, shoulder treatments, pavement repair, seal coating, pavement grinding, and pavement marking within areas previously disturbed by construction where replacement, repair, or installation of curbs or sidewalks will be required when such activities do not take place adjacent to or within a National Register listed or eligible bridge, property or historic district.
2. Installation of new lighting, signals and other traffic control devices in previously disturbed soils when such activities do not take place adjacent to or within a National Register listed or eligible bridge, property or historic district.
3. Construction of turning and auxiliary lanes (e.g., truck climbing, acceleration and deceleration lanes) and shoulder widening in areas previously disturbed by vertical and horizontal construction activities except when adjacent to or within a National Register listed or eligible bridge, property or historic district.
4. Installation of new safety appurtenances such as guardrails, barriers, glare screens, and crash attenuators, when such activities do not take place adjacent to or within a National Register listed or eligible bridge, property or historic district.
5. Emergency repairs to maintain the integrity of bridges (except National Register listed or eligible bridges) and roadways.
6. Other minor actions if deemed appropriate for coverage under this PA, by consultation and mutual agreement between INDOT, FHWA, and the SHPO.
7. Roadway surface replacement, rehabilitation, resurfacing, or reconstruction, overlays, shoulder treatments, pavement repair, seal coating, pavement grinding, and pavement marking within areas previously disturbed by construction where replacement, repair, or installation of curbs or sidewalks will be required when such activities take place adjacent to or within a National Register listed or eligible bridge, property or historic district, but where the National Register listed or eligible bridge, property or historic district does not possess any unusual features such as brick or stone sidewalks, curbs or sidewalks/curb ramps; stepped or elevated sidewalks, curbs or sidewalks/curb ramps; or any other feature whose replacement or modification might constitute an adverse effect to nearby properties. All projects proposed to fall under this stipulation must be reviewed by INDOT Cultural Resources Staff (both archaeologists and historians) as outlined in Stipulations 2 and 3 of this agreement. They also must be field checked by an INDOT Cultural Resources' staff historian or other qualified professional historian (meeting the Secretary of Interior's Professional Qualification standards [48 Federal Register (FR) 44716]). The Cultural Resources staff historian, or other qualified professional historian, shall survey the project area for any unusual features. If no unusual features are observed adjacent to or within a National Register listed or eligible bridge, property or historic district, documentation will be gathered to this effect for the project files. If a non-INDOT qualified professional historian field checks the project area, the documentation must be sent to the INDOT Cultural Resources Section for review and approval. If unusual features are observed, full Section 106 review will be required.
8. For the purposes of this programmatic agreement, certain recreational trail projects are considered *minor projects*,

IF ONE OF THE FOLLOWING TWO CONDITIONS IS MET:

Condition 1

Construction of a trail would occur within an existing roadway, sidewalk, or rail bed where replacement, repair, or installation of a trail feature occurs within areas previously disturbed by vertical and horizontal construction activities, and not on, within, or adjacent to a National Register listed or eligible site, bridge, property or historic district. In such a case, the project may be reviewed as a *minor project*, according to Stipulation 2 of this agreement, as long as the project is not otherwise disqualified from treatment of a *minor project*. If the trail construction occurs on, within, or adjacent to a National Register listed or eligible archaeological site, bridge, property or historic district, then the project must complete full Section 106 review consultation pursuant to Stipulation 4 of this agreement. Any archeological resources uncovered accidentally during construction must be treated according to Stipulation 5 of this agreement.

OR

Condition 2

Construction of a trail would occur within previously undisturbed soils and such trail construction would not occur on, within or adjacent to National Register eligible or listed archaeological resources, as determined by an archaeological investigation (archaeological records check up to a Phase Ia reconnaissance, as determined by the INDOT Cultural Resources Section) of the project area, submitted to the INDOT Cultural Resources Section by the applicant. If the archaeological investigation determines that no National Register eligible or listed archaeological resources are present within the project area, then the project may be reviewed as a *minor project*, according to Stipulation 2 of this agreement, as long as the project is not otherwise disqualified from treatment as a *minor project*. If the archaeological investigation locates National Register eligible or listed archaeological resources, then the project must complete full Section 106 review consultation pursuant to Stipulation 4 of this agreement. Any archaeological resources uncovered accidentally during construction must be treated according to Stipulation 5 of this agreement. Copies of any reports will be provided to the DHPA from the INDOT Cultural Resources Section and the archaeological site form information will be entered directly into SHAARD.

In addition, trail construction must not occur on, within, or adjacent to an above-ground National Register listed or eligible site, bridge, property or historic district. If the trail construction occurs on, within, or adjacent to an above-ground National Register listed or eligible site, bridge, property or historic district, then the project must complete full Section 106 review consultation pursuant to Stipulation 4 of this agreement.

Activities related to trail projects that are considered minor in nature may include the following:

- roadway surface replacement; rehabilitation, resurfacing, or reconstruction; overlays; laying down of crushed stone or gravel
- shoulder treatments; pavement repair; seal coating; pavement grinding
- pavement marking
- installation of new signals and other traffic control devices
- installation of new safety appurtenances such as guardrails and barriers
- installation of trees, bike racks, benches, trash cans, and other amenities, excluding lighting
- the installation of directional signage
- trail heads that do not involve rehabilitation or alteration of National Register eligible, potentially eligible, or listed structures and occur within areas previously disturbed by vertical and horizontal

construction activities but do not involve rehabilitation or alteration of National Register eligible, potentially eligible, or listed structures

- parking lots that occur within areas previously disturbed by vertical and horizontal construction activities

Any activities NOT included in the above list are NOT considered minor in nature, are not covered under this agreement, and require a full Section 106 review consultation pursuant to Stipulation 4 of this agreement.

9. Replacement, repair, lining, or extension of culverts and other drainage structures in undisturbed soils, under the conditions listed below. If both conditions of this stipulation cannot be met, full Section 106 review will be required pursuant to Stipulation 4 of this agreement.

- The structure does not exhibit non-modern wood, stone, or brick structures or parts therein, or a context that suggests it might have engineering or historical significance.
- The project does not take place on, adjacent to, or within a National Register listed or eligible bridge, property or historic district.

Additionally, an archaeological investigation (archaeological records check up to a Phase Ia reconnaissance, as determined by the INDOT Cultural Resources Section) must be conducted by the applicant to assure that no National Register-eligible sites are within the undisturbed project area. If the archaeological investigation determines that no National Register eligible or listed archaeological resources are present within the project area, then the project may be reviewed as a minor project, according to Stipulation 2 of this agreement. If the archaeological investigation locates National Register eligible or listed archaeological resources, then the project must complete full Section 106 review consultation pursuant to Stipulation 4 of this agreement. Any archaeological resources uncovered accidentally during construction must be treated according to Stipulation 5 of this agreement. Copies of any reports will be provided to the DHPA from the INDOT Cultural Resources Section and the archaeological site form information will be entered directly into SHAARD.

10. Slide corrections, slope corrections, and similar erosion control measures, in soils not previously disturbed under the conditions listed below. If all conditions of this stipulation cannot be met, full Section 106 review will be required pursuant to Stipulation 4 of this agreement.

- The project does not take place adjacent to or within a National Register listed or eligible bridge, property or historic district.
- An archaeological investigation (archaeological records check up to a Phase Ia reconnaissance, as determined by the INDOT Cultural Resources Section) has been conducted by the applicant to assure that no National Register-eligible sites are within the undisturbed project area. If the archaeological investigation determines that no National Register eligible or listed archaeological resources are present within the project area, then the project may be reviewed as a *minor project*, according to Stipulation 2 of this agreement. If the archaeological investigation locates National Register eligible or listed archaeological resources, and those resources cannot be avoided, then the project must complete full Section 106 review consultation pursuant to Stipulation 4 of this agreement. Any archaeological resources uncovered accidentally during construction must be treated according to Stipulation 5 of this agreement. Copies of any reports will be provided to the DHPA from the INDOT Cultural Resources Section and the archaeological site information will be entered directly into SHAARD.

11. Scour protection projects for bridges that are eligible for listing in or listed in the National Register of Historic Places under the conditions listed below. If all conditions cannot be met, full Section 106 review will be required pursuant to Stipulation 4 of this agreement.

- Scour protection allowable under this category is defined as placement of riprap around and adjacent to abutments, piers, wingwalls, etc. Scour protection that involves more complex measures, such as installation of gabion walls or other retaining devices, is not allowable under this category.
- Ground excavation may be necessary so that riprap can be laid and the top of the riprap is at the ground elevation. If ground excavation is involved, the project must take place in previously disturbed soils.

12. Replacement, widening, or raising the elevation of the superstructure on existing bridges, and bridge replacement projects (when both the superstructure and substructure are removed), under the conditions listed below. If all conditions cannot be met, full Section 106 review will be required pursuant to Stipulation 4 of this agreement.

- The project takes place in previously disturbed soils; AND
- The bridge is not classified as Select or Non-Select in the latest historic bridge inventory, and the project does not take place within 0.25 mile of any other National Register listed or eligible property or historic district; AND EITHER
- The bridge was determined not National Register eligible in the latest historic bridge inventory; OR
- The bridge was built after 1945, and is a common type as defined in Section V. of the *Program Comment Issued for Streamlining Section 106 Review for Actions Affecting Post-1945 Concrete and Steel Bridges* issued by the Advisory Council on Historic Preservation on November 2, 2012 for so long as that Program Comment remains in effect AND the considerations listed in Section IV. of the Program Comment do not apply; OR
- The bridge is part of the Interstate system, and was determined not National Register eligible under the Section 106 Exemption Regarding Effects to the Interstate Highway System adopted by the Advisory Council on Historic Preservation on March 10, 2005, for so long as that Exemption remains in effect.

APPENDIX D: THE INDIANA HISTORIC PRESERVATION ACT (IC 14-21) AND 312 IAC 22

IC 14-21

ARTICLE 21. HISTORIC PRESERVATION AND ARCHEOLOGY

IC 14-21-1

Chapter 1. Division of Historic Preservation and Archeology

IC 14-21-1-1

Applicability of chapter

Sec. 1. This chapter does not apply to the human remains of individuals who die after December 31, 1939.

As added by P.L.1-1995, SEC.14.

IC 14-21-1-2

"Artifact" defined

Sec. 2. As used in this chapter, "artifact" means:

- (1) a feature that is:
 - (A) nonportable evidence of past human behavior or activity;
 - (B) found on or in the ground, including structural remains; and
 - (C) formed before December 31, 1870; or
- (2) an object made, modified, or used before December 31, 1870.

As added by P.L.1-1995, SEC.14. Amended by P.L.26-2008, SEC.2.

IC 14-21-1-3

"Burial ground" defined

Sec. 3. (a) As used in this chapter, "burial ground" means ground in which human remains are buried, including the surrounding area that is either:

- (1) marked by a permanent visible boundary, including a fence or wall; or
- (2) if there is not a permanent visible boundary, determined by the department based on records or surveys of the land containing the historic or prehistoric site in which human remains, mounds, or burial objects are reported to occur.

(b) The term includes the following:

- (1) The land associated with or incidental to the burial of human remains.
- (2) Subject to section 1 of this chapter, historic cemeteries or land with human remains buried before January 1, 1940.

As added by P.L.1-1995, SEC.14. Amended by P.L.26-2008, SEC.3.

IC 14-21-1-4

"Burial object" defined

Sec. 4. As used in this chapter, "burial object" means any item intentionally placed in a burial ground at or near the time of burial.

As added by P.L.1-1995, SEC.14.

IC 14-21-1-5

"Council" defined

Sec. 5. As used in this chapter, "council" refers to the advisory council established by IC 14-9-6-1.
As added by P.L.1-1995, SEC.14. Amended by P.L.95-2006, SEC.8.

IC 14-21-1-6

Repealed

(Repealed by P.L.85-2008, SEC.6.)

IC 14-21-1-7

"Human remains" defined

Sec. 7. As used in this chapter, "human remains" means any part of the body of a human being in any:

- (1) stage of decomposition; or
- (2) state of preservation.

As added by P.L.1-1995, SEC.14.

IC 14-21-1-8

"Plan", "archeological plan", and "development plan" defined

Sec. 8. (a) As used in this chapter, "plan" refers to:

- (1) an archeological plan, as described in subsection (b); or
- (2) a development plan, as described in subsection (c).

(b) As used in this chapter, "archeological plan" means a plan for the systematic recovery, analysis, and disposition by scientific methods of material evidence and information about the life and culture in past ages.

(c) As used in this chapter, "development plan" means:

- (1) a plan for the erection, alteration, or repair of any structure; or
- (2) a plan for the excavation or the covering of any ground related to construction.

As added by P.L.1-1995, SEC.14. Amended by P.L.46-2000, SEC.7; P.L.26-2008, SEC.4.

IC 14-21-1-9

"Register" defined

Sec. 9. As used in this chapter, "register" refers to the register of Indiana historic sites and historic structures established under this chapter.

As added by P.L.1-1995, SEC.14.

IC 14-21-1-10

"Review board" defined

Sec. 10. As used in this chapter, "review board" refers to the historic preservation review board established by this chapter.

As added by P.L.1-1995, SEC.14.

IC 14-21-1-10.4

"State college or university project" defined

Sec. 10.4. As used in this chapter, "state college or university project" means a project of a state college or university that involves the construction, renovation, or demolition of one (1) or more buildings.

As added by P.L.135-1996, SEC.2.

IC 14-21-1-11

Administration and development of programs and policies

Sec. 11. The division of historic preservation and archeology shall administer and develop the

IC 14-21-1-12

Duties of division

Sec. 12. The division shall do the following:

- (1) Develop a program of historical, architectural, and archeological research and development, including continuing surveys, excavations, scientific recording, interpretation, and publication of the state's historical, architectural, and archeological resources.
 - (2) Prepare a preservation plan for the state that establishes planning guidelines to encourage the continuous maintenance and integrity of historic sites and historic structures. However, the plan is not effective until the plan has been:
 - (A) presented to the council for review and comment; and
 - (B) approved by the review board after public hearing.
 - (3) Undertake the action necessary to qualify the state for participation in sources of federal aid to further the purposes stated in subdivisions (1) and (2).
 - (4) Provide information on historic sites and structures within Indiana to federal, state, and local governmental agencies, private individuals, and organizations.
 - (5) Advise and coordinate the activities of local historical associations, historic district commissions, historic commissions, and other interested groups or persons.
 - (6) Provide technical and financial assistance to local historical associations, historic district commissions, historic commissions, and other interested groups or persons.
 - (7) Review environmental impact statements as required by federal and state law for actions significantly affecting historic properties.
- As added by P.L.1-1995, SEC.14.*

IC 14-21-1-13

Powers of division

Sec. 13. The division may do the following:

- (1) Recommend the purchase, lease, or gift of historic property of archeological importance and make recommendations to the director, council, and commission regarding policies affecting the operation and administration of these sites and structures by the section of historic sites of the division of state museums and historic sites.
 - (2) Prepare and review planning and research studies relating to archeology.
 - (3) Conduct a program of education in archeology, either within the division or in conjunction with a postsecondary educational institution.
 - (4) Inspect and supervise an archeological field investigation authorized by this chapter.
- As added by P.L.1-1995, SEC.14. Amended by P.L.2-2007, SEC.169.*

IC 14-21-1-13.5

Survey and registry of Indiana burial grounds

Sec. 13.5. (a) The division may conduct a program to survey and register in a registry of Indiana cemeteries and burial grounds that the division establishes and maintains all cemeteries and burial grounds in each county in Indiana. The division may conduct the program alone or by entering into an agreement with one (1) or more of the following entities:

- (1) The Indiana Historical Society established under IC 23-6-3.
 - (2) A historical society (as defined in IC 36-10-13-3).
 - (3) The Historic Landmarks Foundation of Indiana.
 - (4) A professional archeologist or historian associated with a postsecondary educational institution.
 - (5) A township trustee.
 - (6) Any other entity that the division selects.
- (b) In conducting a program under subsection (a), the division may receive gifts and grants under terms, obligations, and liabilities that the director

considers appropriate. The director shall use a gift or grant received under this subsection:

- (1) to carry out subsection (a); and
- (2) according to the terms of the gift or grant.

(c) At the request of the director, the auditor of state shall establish a trust fund for purposes of holding money received under subsection (b).

(d) The director shall administer a trust fund established by subsection (c). The expenses of administering the trust fund shall be paid from money in the trust fund.

(e) The treasurer of state shall invest the money in the trust fund established by subsection (c) that is not currently needed to meet the obligations of the trust fund in the same manner as other public trust funds may be invested. The treasurer of state shall deposit in the trust fund the interest that accrues from the investment of the trust fund.

(f) Money in the trust fund at the end of a state fiscal year does not revert to the state general fund.

(g) Nothing in this section may be construed to authorize violation of the confidentiality of information requirements of 16 U.S.C. 470w-3 and 16 U.S.C. 470hh.

(h) The division may record in each county recorder's office the location of each cemetery and burial ground located in that county.

As added by P.L.46-2000, SEC.8. Amended by P.L.177-2001, SEC.2; P.L.1-2005, SEC.143; P.L.1-2007, SEC.128; P.L.2-2007, SEC.170; P.L.3-2008, SEC.101.

IC 14-21-1-14

Duties upon proposed transfers of property by the state

Sec. 14. (a) This section does not apply to real property that is owned by a state educational institution.

(b) The Indiana department of administration shall notify the division of a proposed transfer of real property owned by the state at the earliest planning stage and not later than ninety (90) days before the date of the proposed transfer.

(c) The division shall:

- (1) inspect the property; and
- (2) notify the Indiana department of administration of the location of each historic site or historic structure on the property; not later than thirty (30) days after receiving notice under subsection (b). If the division does not notify the Indiana department of administration under subdivision (2) within thirty (30) days after receiving notice under subsection (b), the Indiana department of administration may proceed with the proposed transfer.

(d) If the Indiana department of administration receives notice under subsection (c)(2) of a historic site or historic structure on the property, the Indiana department of administration shall reserve control of the appropriate historic property by means of a covenant or an easement contained in the transferring instrument.

(e) The department shall administer property of which control is reserved under subsection (d).

As added by P.L.1-1995, SEC.14. Amended by P.L.135-1996, SEC.3; P.L.2-2007, SEC.171; P.L.33- 2011, SEC.3.

IC 14-21-1-15

Duties regarding registers and federal preservation grants

Sec. 15. The division shall do the following:

- (1) Undertake a statewide survey to identify and document historic sites and historic structures.
- (2) Prepare and maintain a register of Indiana historic sites and historic structures and establish criteria for the listing of historic sites and historic structures on the register.
- (3) Maintain the Indiana part of the National Register of Historic Places under 16 U.S.C. 470 et seq.
- (4) Administer the federal preservation grants program under 16 U.S.C. 470 et seq.

As added by P.L.1-1995, SEC.14.

IC 14-21-1-16

Field investigations or alteration of historic property without permit

Sec. 16. Except as provided in section 18 and sections 25 through 27 of this chapter, a person who knowingly, without a permit, conducts a field investigation or alters historic property within the boundaries of property owned or leased by the state commits a Class A misdemeanor.

As added by P.L.1-1995, SEC.14. Amended by P.L.54-1997, SEC.7.

IC 14-21-1-17

Additions to or removals from register

Sec. 17. (a) Any person may nominate a site or structure for addition to or removal from the register. Upon approval of the nomination by the division, all affected persons shall be notified.

(b) If an objection to the action is not filed with the division within thirty (30) days after the notification date, the nomination is automatically approved.

(c) If an objection is received within thirty (30) days, a designated member of the review board shall hold a hearing and make a determination. The review board shall make the final decision regarding a nomination, subject to administrative review by the commission under IC 4-21.5.

As added by P.L.1-1995, SEC.14.

IC 14-21-1-18

Alteration of historic sites or structures; certificate of approval; exceptions; survey of historic sites and structures; reports

Sec. 18. (a) A:

- (1) historic site or historic structure owned by the state; or
- (2) historic site or historic structure listed on the state or national register;

may not be altered, demolished, or removed by a project funded, in whole or in part, by the state unless the review board has granted a certificate of approval.

(b) An application for a certificate of approval:

- (1) must be filed with the division; and
- (2) shall be granted or rejected by the review board after a public hearing.

(c) Subsections (a) and (b) do not apply to real property that is owned by a state educational institution.

(d) The commission for higher education and each state educational institution, in cooperation with the division of historic preservation and archeology, shall develop and continually maintain a survey of historic sites and historic structures owned by the state educational institution. Historic sites and historic structures include buildings, structures, outdoor sculpture, designed landscapes, gardens, archeological sites, cemeteries, campus plans, and historic districts. A survey developed under this subsection must conform with the Indiana Historic Sites and Structures Survey Manual.

(e) The state historic preservation officer no later than one (1) year after receipt of a ten

(10) year capital plan under IC 14-21-1-18.5 shall:

- (1) review a proposed state educational institution project that involves a historic site or historic structure owned by a state educational institution; and
- (2) submit an advisory report to the commission for higher education, the state educational institution, and the general assembly. An advisory report submitted under this subdivision to the general assembly must be in an electronic format under IC 5-14-6.

(f) Not more than thirty (30) days after a state educational institution, under section 18.6 of this chapter, submits to the division a description of a proposed project that involves the substantial alteration, demolition, or removal of a historic site or historic structure, the state historic preservation officer shall:

- (1) review the description of the proposed project; and
- (2) submit to the state educational institution an advisory report concerning the proposed project. The state educational institution shall review and consider the advisory report before proceeding with the substantial alteration, demolition, or removal of a historic site or historic structure.

As added by P.L.1-1995, SEC.14. Amended by P.L.135-1996, SEC.4; P.L.54-1997, SEC.8; P.L.28-2004, SEC.130; P.L.2-2007, SEC.172.

IC 14-21-1-18.5

State college or university to submit copy of capital plan regarding alteration or demolition of historic sites or structures

Sec. 18.5. When submitting its biennial budget request, a state educational institution must:

- (1) submit to the division of historic preservation and archeology of the department of natural resources a copy of any ten (10) year capital plan of the state educational institution that is required by the budget agency or the commission for higher education; and
- (2) identify the projects included in the capital plan that may involve the alteration or demolition of historic sites or structures.

As added by P.L.135-1996, SEC.5. Amended by P.L.2-2007, SEC.173.

IC 14-21-1-18.6

Alteration of historic sites or structures not identified in capital plan; submission of description; publication of notice

Sec. 18.6. (a) As used in this section, "substantial alteration" means a conspicuous, exterior material change in a historic site or historic structure which, in the good faith judgment of a state college or university, affects the historic character of the historic site or historic structure.

(b) If a proposed project of a state educational institution:

- (1) involves the substantial alteration, demolition, or removal of a historic site or historic structure;

and

- (2) is not identified in-a-capital plan submitted to the division under section 185 of this chapter; the state educational institution shall submit a description of the proposed project to the division and publish a notice describing the project one (1) time in a newspaper of general circulation in the county in which the proposed project is located. The submission of the description and the publication of the notice must be at least thirty (30) days before the commencement of the proposed project.

As added by P.L.54-1997, SEC.9. Amended by P.L.2-2007, SEC.174.

IC 14-21-1-19

Director as state historic preservation officer

Sec. 19. The director is designated as the state historic preservation officer.
As added by P.L.1-1995, SEC.14.

IC 14-21-1-20

Review board; establishment; members

Sec. 20. (a) The historic preservation review board is established.

(b) The review board consists of nine (9) members as follows:

(1) The director.

(2) At least five (5) individuals meeting minimum professional requirements established by the United States Department of the Interior in 36 CFR, Part 61, as in effect on January 1, 1984.

(3) Professionals in the following disciplines:

(A) History.

(B) Prehistoric or historic archeology.

(C) Architecture or historical architecture.

(c) The division director is a nonvoting advisor to the review board entitled to attend and participate in the proceedings of all meetings of the review board.

(d) The director shall, with the concurrence of the governor, appoint the members of the review board under subsection (b)(2) and (b)(3) for terms of three (3) years. The terms shall be staggered so that the terms of two (2) or three (3) members expire each year. A member may be reappointed.

(e) Appointments to the review board shall be made in accordance with 36 CFR, Part 60, and 36 CFR, Part 61, as in effect on January 1, 1984.

As added by P.L.1-1995, SEC.14.

IC 14-21-1-21

Review board; chairman

Sec. 21. The director is chairman of the review board. The review board may select other officers that the review board determines.

As added by P.L.1-1995, SEC.14.

IC 14-21-1-22

Review board; duties

Sec. 22. (a) The review board shall carry out the duties:

(1) required by this chapter; and

(2) as required under 16 U.S.C. 470 et seq. and the regulations relating to 16 U.S.C. 470 et seq.

(b) The review board shall also advise the division and the department as requested by the director.

As added by P.L.1-1995, SEC.14.

IC 14-21-1-23

Review board; per diem compensation and traveling expenses

Sec. 23. (a) Each member of the review board who is not a state employee is entitled to the minimum salary per diem as provided in IC 4-10-11-2.1 (b) for each day that the member is engaged in the official business of the committee. The member is also entitled to reimbursement for traveling expenses as provided under IC 4-13-1-4 and other expenses actually incurred in connection with the member's duties as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency.

(b) Each member of the review board who is a state employee is entitled to reimbursement for traveling expenses as provided under IC 4-13-1-4 and other expenses actually incurred in connection with the member's duties as provided in the state policies and procedures

established by the Indiana department of administration and approved by the budget agency.
As added by P.L.J-1995, SEC.14.

IC 14-21-1-24

Applicability of statutes regarding disturbance of grounds

Sec. 24. (a) As used in this section, "agricultural purpose" includes farming, dairying, pasturage, agriculture, horticulture, floriculture, viticulture, ornamental horticulture, olericulture, pomiculture, animal husbandry, and poultry husbandry.

(b) Sections 25, 26, 28, and 29 of this chapter do not apply to the following:

(1) Surface coal mining regulated under IC 14-34.

(2) Cemeteries and human remains subject to IC 23-14.

(3) Disturbing the earth for an agricultural purpose.

(4) Collecting any object other than human remains that is visible in whole or in part on the surface of the ground, regardless of the time the object was made or shaped.

(5) Qualified professional archeologists, as determined by the department, who conduct phase 1a archeological surveys according to guidelines adopted by the department.

As added by P.L.1-1995, SEC.14. Amended by P.L.26-2008, SEC.5.

IC 14-21-1-25

Rules concerning standards for plans; action on submitted plans

Sec. 25. (a) The commission shall adopt rules establishing standards for plans.

(b) With respect to archeological plans, the rules must impose a standard of conduct that does the following:

(1) Promotes the scientific investigation and conservation of past cultures.

(2) Considers the interests and expertise of amateur archeologists and professional archeologists.

(c) With respect to development plans, the rules must impose a standard of conduct that preserves and protects both of the following:

(1) The rights and interests of landowners.

(2) The sensitivity of human beings for treating human remains with respect and dignity, as determined by the commission.

(d) Subject to subsection (e), plans required under this chapter must be submitted to the department for approval according to rules adopted by the commission.

(e) Proposed plans submitted to the department must be:

(1) approved;

(2) denied; or

(3) held because of the need for additional information; by the department not more than sixty (60) days after the date of submission. If the department does not take any action on the plan within the time required by this subsection, the plan is considered to be approved, unless approval is prohibited under a state or federal law. If the department requests additional information under subdivision (3), the department shall approve or deny the resubmitted plan not more than thirty (30) days after the resubmitted plan is received.

As added by P.L.1-1995, SEC.14. Amended by P.L.46-2000, SEC.9; P.L.26-2008, SEC.6.

IC 14-21-1-25.5

Notice of discovered burial ground; recommendations

Sec. 25.5. (a) If a Native American Indian burial ground is discovered, the department shall immediately provide notice to the Native American Indian affairs commission established by IC 4-4- 31.4.

(b) If Native American Indian human remains are removed from a burial ground, the

department shall provide the following to the Native American Indian affairs commission:

(1) Any written findings or reports that result from the analysis and study of the human remains.

(2) Written notice to the Native American Indian affairs commission that the analysis and study of the human remains are complete.

(c) After receiving written notice under subsection (b)(2), the Native American Indian affairs commission shall make recommendations to the department regarding the final disposition of the Native American Indian human remains.

As added by P.L.283-2003, SEC.2.

IC 14-21-1-26

Disturbing ground to discover artifacts, burial objects, or human remains; penalty

Sec. 26. (a) A person who disturbs the ground for the purpose of discovering, uncovering, or moving artifacts, burial objects, or human remains must do so in accordance with a plan approved by the department under section 25 of this chapter or under IC 14-3-3.4-14 (before its repeal).

(b) A person who recklessly, knowingly, or intentionally violates this section commits the following:

(1) A Class A misdemeanor, if the violation does not involve disturbing human remains.

(2) A Class D felony, if the violation involves disturbing human remains.

As added by P.L.1-1995, SEC.14. Amended by P.L.26-2008, SEC. 7.

IC 14-21-1-26.5

Development plan requirements; penalty

Sec. 26.5. (a) Notwithstanding IC 23-14-44-1, this section does not apply to the following:

(1) A public utility (as defined in IC 8-1-2-l(a)).

(2) A corporation organized under IC 8-1-13.

(3) A municipally owned utility (as defined in IC 8-1-2-l(h)).

(4) A surface coal mining and reclamation operation permitted under IC 14-34.

(b) Except as provided in this subsection and subsections (c) and (d), a person may not disturb the ground within one hundred (100) feet of a burial ground for the purpose of excavating or covering over the ground or erecting, altering, or repairing any structure without having a development plan approved by the department under section 25 of this chapter or in violation of a development plan approved by the department under section 25 of this chapter. The department must review the development plan as required by section 25(e) of this chapter.

(c) A development plan:

(1) must be approved if a person intends to:

(A) excavate or cover over the ground; or

(B) construct a new structure or alter or repair an existing structure; that would impact the burial ground or cemetery;
and

(2) is not required if a person intends to:

(A) excavate or cover over the ground; or

(B) erect, alter, or repair an existing structure;

for an incidental or existing use that would not impact the burial ground or cemetery.

(d) A development plan for a governmental entity to disturb ground within one hundred (100) feet of a burial ground must be approved as follows:

(1) A development plan of a municipality requires approval of the executive of the municipality and does not require the approval of the department. However, if the burial ground or cemetery is located outside the municipality, approval is also required by the executive of the county where the burial ground or cemetery is located. A county cemetery

commission established under IC 23-14-67-2 may advise the executive of the municipality on whether to approve a development plan.

(2) A development plan of a governmental entity other than:

(A) a municipality; or

(B) the state;

requires the approval of the executive of the county where the governmental entity is located and does not require the approval of the department. However, if the governmental entity is located in more than one (1) county, only the approval of the executive of the county where the burial ground or cemetery is located is required. A county cemetery commission established under IC 23-14-67-2 may advise the county executive on whether to approve a development plan.

(3) A development plan of the state requires the approval of the department.

(e) If a burial ground is within an archeological site, an archeological plan is required to be part of the development plan.

(f) A person who recklessly, knowingly, or intentionally violates this section commits a Class A misdemeanor. However, the offense is a Class D felony if the person disturbs buried human remains or grave markers while committing the offense.

As added by P.L.46-2000, SEC.JO. Amended by P.L.177-2001, SEC.3; P.L.26-2008, SEC.8.

IC 14-21-1-27

Duties when buried human remains or burial grounds are disturbed; penalty

Sec. 27. (a) A person who disturbs buried human remains or burial grounds shall do the following:

(1) Notify the department within two (2) business days of the time of the disturbance.

(2) Treat or rebury the human remains in a manner and place according to rules adopted by the commission or a court order and permit issued by the state department of health under IC 23-14-57.

(b) A person who recklessly, knowingly, or intentionally violates this section commits a Class A misdemeanor.

As added by P.L.1-1995, SEC.14. Amended by P.L.52-1997, SEC.4; P.L.14-2000, SEC.38; P.L.26-2008, SEC.9.

IC 14-21-1-28

Penalty for disturbing human remains or grave markers

Sec. 28. A person who recklessly, knowingly, or intentionally disturbs human remains or grave markers while moving, uncovering, or removing artifacts or burial objects either:

(1) without a plan approved by the department under:

(A) section 25 of this chapter; or

(B) IC 14-3-3.4-14 (before its repeal); or

(2) in violation of such a plan; commits Class D felony.

As added by P.L.1-1995, SEC.14. Amended by P.L.26-2008, SEC.JO.

IC 14-21-1-29

Duty upon discovering artifacts or burial objects; penalty

Sec.29. (a) A person who discovers, uncovers, or moves an artifact or burial object while disturbing the ground for a purpose other than the discovery, uncovering, or moving of artifacts or burial objects shall do the following:

(1) Immediately cease disturbing the ground and the area within one hundred (100) feet of the artifact or burial object.

(2) Notify the department within two (2) business days after the time of the disturbance.

(b) After notification under subsection (a), the department may do any of the following:

(1) Authorize the person to continue the ground disturbing activity, with or without conditions.

(2) Require that continued ground disturbance activity be conducted only in accordance with an approved plan. However, this subdivision does not apply after ten (10) business days from the date that the department receives notice.

(c) A person who violates subsection (a) commits a Class A infraction.

As added by P.L.1-1995, SEC.14. Amended by P.L.26-2008, SEC.11.

IC 14-21-1-30

Amateur groups encouraged to establish codes of ethics

Sec. 30. The department shall actively encourage all groups of amateur archeologists to establish and maintain a code of ethics as a minimum guide for the conduct of searches for evidence from the life and culture of past ages.

As added by P.L.1-1995, SEC.14.

IC 14-21-1-31

Adoption of rules

Sec. 31. (a) The commission shall adopt rules under IC 4-22-2 to implement this chapter.

(b) When adopting rules under this chapter the commission shall consider the following:

(1) The rights and interests of landowners.

(2) The sensitivity of human beings for treating human remains with respect and dignity.

(3) The value of history and archeology as a guide to human activity.

(4) The importance of amateur archeologists in making historical, cultural, and archeological discoveries.

(5) Applicable laws, standards, and guidelines for the conduct of archeology and codes of ethics for participation in archeology.

As added by P.L.1-1995, SEC.14.

IC 14-21-1-32

Confidential archeological site information

Sec. 32. (a) Subject to subsections (b) and (c), the division may keep reports and information concerning the location of historic and archeological sites confidential if the director of the division determines that disclosure would likely:

(1) risk harm to the historic or archeological site;

(2) cause a significant invasion of privacy; or

(3) impede the use of a traditional religious site by practitioners.

(b) The division may not disclose to the public reports and information required to be confidential under federal law.

(c) If the director of the division determines that reports and information should be confidential under subsection (a), the director of the department, in consultation with the director of the division, shall determine who may have access to the confidential reports and information.

As added by P.L.26-2008, SEC.12.

IC 14-21-1-33

Persons authorized to accompany conservation officers to determine violations

Sec. 33. An employee of the division or a person authorized by the department may accompany a conservation officer on public or private property to determine if there is a violation of this article.

As added by P.L.26-2008, SEC.13.

IC 14-21-1-34

Homeowner assistance program; archeology preservation trust fund

Sec. 34. (a) The division may conduct a program to assist private homeowners who have accidentally discovered an artifact, a burial object, or human remains and who need assistance to comply with an approved plan to excavate or secure the site from further disturbance. The division may conduct the program alone or by entering into an agreement with any entity that the division selects.

(b) In conducting a program under subsection (a), the division may receive gifts and grants under terms, obligations, and liabilities that the director of the division considers appropriate. The director shall use a gift or grant received under this subsection:

- (1) to carry out subsection (a); and
- (2) according to the terms and obligations of the gift or grant.

(c) The auditor of state shall establish the archeology preservation trust fund to hold money received under subsection (b).

(d) The director of the division shall administer the archeology preservation trust fund. The expenses of administering the fund shall be paid from money in the trust fund.

(e) The treasurer of state shall invest the money in the archeology preservation trust fund that is not currently needed to meet the obligations of the fund in the same manner as other public trust funds may be invested. The treasurer of state shall deposit in the fund the interest that accrues from the investment of the fund.

(f) Money in the archeology preservation trust fund at the end of a state fiscal year does not revert to the state general fund. There is annually appropriated to the division the money in the archeology preservation trust fund for the division's use in carrying out the purposes of this section.

(g) The division may adopt rules under IC 4-22-2 to govern the administration of this section.
As added by P.L.26-2008, SEC.14.

IC 14-21-1-35

Restitution orders

Sec. 35. (a) In addition to:

(1) a:

- (A) sentence imposed under this chapter for a felony or misdemeanor; or
- (B) judgment imposed under this chapter for an infraction; and

(2) an order for restitution to a victim; a court may order an individual to make restitution to the archeology preservation trust fund established under section 34 of this chapter for the division's costs incurred because of the offense committed by the individual.

(b) In ordering restitution under this section, the court shall consider the following:

(1) The schedule of costs submitted to the court by the division.

(2) The cost to the property owner to restore or repair the damaged area of an archeological site or burial ground and place the property in the property's original condition as nearly as practicable.

(3) The amount of restitution that the individual is or will be able to pay.

(c) The court shall immediately forward to the division a copy of an order for restitution made under this section.

As added by P.L.26-2008, SEC.15.

IC 14-21-1-36

Possession of looted property; penalty

Sec. 36. A person who knowingly or intentionally receives, retains, or disposes of an

artifact, a burial object, or human remains obtained in violation of this chapter commits possession of looted property, a Class D felony. However, the offense is a Class C felony if the fair market cost of carrying out a scientific archeological investigation of the area that was damaged to obtain the artifact, burial object, or human remains is at least one hundred thousand dollars (\$100,000).

As added by P.L.26-2008, SEC.16.

ARTICLE 22. HUMAN REMAINS, BURIAL OBJECTS, AND ARTIFACTS

Rule 1. Definitions

312 IAC 22-1-1 Application of definitions

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-21-1

Sec. 1. The definitions contained in this rule apply throughout this article and are in addition to those set forth in 312 IAC

1. (*Natural Resources Commission; 312 IAC 22-1-1; filed Jun 21, 2001, 2:35 p.m.: 24 IR 3375; readopted filed Jul 19, 2007, 12:30*

p.m.: 20070808-IR-312070192RFA; readopted filed Sep 19, 2013, 10:16 a.m.: 20131016-IR-312130184RFA)

312 IAC 22-1-2 "Agricultural purpose" defined

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-21-1

Sec. 2. "Agricultural purpose" includes the following:

- (1) Farming.
- (2) Dairying.
- (3) Pasturage.
- (4) Agriculture.
- (5) Horticulture.
- (6) Floriculture.
- (7) Vitaculture.
- (8) Ornamental horticulture.
- (9) Olericulture.
- (10) Pomiculture.
- (11) Animal husbandry.
- (12) Poultry husbandry.

(*Natural Resources Commission; 312 IAC 22-1-2; filed Jun 21, 2001, 2:35 p.m.: 24 IR 3375; readopted filed Jul 19, 2007, 12:30 p.m.: 20070808-IR-312070192RFA; readopted filed Sep 19, 2013, 10:16 a.m.: 20131016-IR-312130184RFA)*)

312 IAC 22-1-3 "Artifact" defined

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-21-1

Sec. 3. "Artifact" means an object made or shaped by human workmanship before December 11, 1816. (*Natural Resources Commission; 312 IAC 22-1-3; filed Jun 21, 2001, 2:35 p.m.: 24 IR 3375; readopted filed Jul 19, 2007, 12:30 p.m.: 20070808-IR-*

312070192RFA; readopted filed Sep 19, 2013, 10:16 a.m.: 20131016-IR-312130184RFA)

312 IAC 22-1-4 "Burial ground" defined

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-21-1

Sec. 4. "Burial ground" means ground in which human remains are buried, including the land associated with or incidental to the burial of human remains. (*Natural Resources Commission; 312 IAC 22-1-4; filed Jun 21, 2001, 2:35 p.m.: 24 IR 3375; readopted filed Jul 19, 2007, 12:30 p.m.: 20070808-IR-312070192RFA; readopted filed Sep 19, 2013, 10:16 a.m.: 20131016-IR-312130184RFA)*)

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312 IAC 22-1-5 "Burial object" defined

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-21-1

Sec. 5. "Burial object" means an item intentionally placed in a burial ground at or near the time of burial. (*Natural Resources Commission; 312 IAC 22-1-5; filed Jun 21, 2001, 2:35 p.m.: 24 IR 3375; readopted filed Jul 19, 2007, 12:30 p.m.: 20070808-IR-*

312070192RFA; readopted filed Sep 19, 2013, 10:16 a.m.: 20131016-IR-312130184RFA)

312 IAC 22-1-6 "Cultural" defined

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-21-1

Sec. 6. "Cultural" means patterned behavior consisting of beliefs, values, customs, art, morals, or laws practiced in whole or in part by a corporate group of society as a measure of inclusiveness that is verifiable by archaeological, historical, or anthropological study. (*Natural Resources Commission; 312 IAC 22-1-6; filed Jun 21, 2001, 2:35 p.m.: 24 IR 3375; readopted filed Jul 19, 2007, 12:30 p.m.: 20070808-IR-312070192RFA; readopted filed Sep 19, 2013, 10:16 a.m.: 20131016-IR-*

312130184RFA)

312 IAC 22-1-7 "Division" defined

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-9-4-1; IC 14-21-1

Sec. 7. "Division" means the division of historic preservation and archaeology. (*Natural Resources Commission; 312 IAC 22-1-7; filed Jun 21, 2001, 2:35 p.m.: 24 IR 3375; readopted filed Jul 19, 2007, 12:30 p.m.: 20070808-IR-312070192RFA; readopted filed Sep 19, 2013, 10:16 a.m.: 20131016-IR-312130184RFA*)

312 IAC 22-1-8 "Division director" defined

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-21-1

Sec. 8. "Division director" means the director of the division. (*Natural Resources Commission; 312 IAC 22-1-8; filed Jun 21, 2001, 2:35 p.m.: 24 IR 3375; readopted filed Jul 19, 2007, 12:30 p.m.: 20070808-IR-312070192RFA; readopted filed Sep 19,*

2013, 10:16 a.m.: 20131016-IR-312130184RFA)

312 IAC 22-1-9 "Historic property" defined

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-21-1

Sec. 9. "Historic property" means any historic site, historic structure, or other personal or real property located on or in a historic site or historic structure. (*Natural Resources Commission; 312 IAC 22-1-9; filed Jun 21, 2001, 2:35 p.m.: 24 IR 3375; readopted filed Jul 19, 2007, 12:30 p.m.: 20070808-IR-312070192RFA; readopted filed Sep 19, 2013, 10:16 a.m.: 20131016-IR-312130184RFA*)

312 IAC 22-1-10 "Historic site" defined

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-21-1

Sec. 10. "Historic site" means any site that is important to the general, archaeological, agricultural, economic, social, political, architectural, industrial, or cultural history of Indiana. A historic site includes any adjacent property that is necessary to Indiana Administrative Code Page 2

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the preservation or restoration of the site. (*Natural Resources Commission; 312 IAC 22-1-10; filed Jun 21, 2001, 2:35 p.m.: 24 IR 3376; readopted filed Jul 19, 2007, 12:30 p.m.: 20070808-IR-312070192RFA; readopted filed Sep 19, 2013, 10:16 a.m.: 20131016-IR-312130184RFA*)

312 IAC 22-1-11 "Historic structure" defined

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-21-1

Sec. 11. "Historic structure" means any structure that is important to the general, archaeological, agricultural, economic, social, political, architectural, industrial, or cultural history of Indiana. A historic structure includes any adjacent property that is necessary to the preservation or restoration of the structure. (*Natural Resources Commission; 312 IAC 22-1-11; filed Jun 21, 2001,*

2:35 p.m.: 24 IR 3376; readopted filed Jul 19, 2007, 12:30 p.m.: 20070808-IR-312070192RFA; readopted filed Sep 19, 2013, 10:16 a.m.: 20131016-IR-312130184RFA)

312 IAC 22-1-12 "Human remains" defined

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-21-1

Sec. 12. "Human remains" means any part of the body of a human being in any stage of decomposition or state of preservation. However, this article does not apply to the human remains of individuals dying after December 31, 1939. (*Natural Resources Commission; 312 IAC 22-1-12; filed Jun 21, 2001, 2:35 p.m.: 24 IR 3376; readopted filed Jul 19, 2007, 12:30 p.m.: 20070808-IR-312070192RFA; readopted filed Sep 19, 2013, 10:16 a.m.: 20131016-IR-312130184RFA*)

312 IAC 22-1-13 "Investigation" defined

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-21-1

Sec. 13. "Investigation" means an archaeological or historical investigation that does the following:

- (1) Principally employs amateur archaeologists.
- (2) Is not under the control or supervision of a principal investigator.
- (3) Uses systematic methods and techniques to locate, identify, evaluate, recover, treat, analyze, and conserve artifacts and associated contexts.
- (4) Results in the production of a report detailing its various activities and findings.

(*Natural Resources Commission; 312 IAC 22-1-13; filed Jun 21, 2001, 2:35 p.m.: 24 IR 3376; readopted filed Jul 19, 2007, 12:30*

p.m.: 20070808-IR-312070192RFA; readopted filed Sep 19, 2013, 10:16 a.m.: 20131016-IR-312130184RFA)

312 IAC 22-1-14 "Plan" defined

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-21-1

Sec. 14. "Plan" means an archaeological plan for the systematic recovery, analysis, and disposition by scientific methods of material evidence and information about the life and culture in past ages. (*Natural Resources Commission; 312 IAC 22-1-14; filed Jun 21, 2001,*

2:35 p.m.: 24 IR 3376; readopted filed Jul 19, 2007, 12:30 p.m.: 20070808-IR-312070192RFA; readopted filed Sep 19, 2013, 10:16 a.m.: 20131016-IR-312130184RFA)

312 IAC 22-1-15 "Principal investigator" defined

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-21-1

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Sec. 15. "Principal investigator" means the individual who is responsible for coordinating, developing, and completing an archaeological project under IC 14-21-1 and 312 IAC 20. (*Natural Resources Commission; 312 IAC 22-1-15; filed Jun 21, 2001, 2:35 p.m.: 24 IR 3376; readopted filed Jul 19, 2007, 12:30 p.m.: 20070808-IR-312070192RFA; readopted filed Sep 19, 2013, 10:16 a.m.: 20131016-IR-312130184RFA)*

312 IAC 22-1-16 "Register" defined

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-21-1-15

Sec. 16. "Register" means the register of Indiana historic sites and historic structures established under IC 14-21-1-15.

(*Natural Resources Commission; 312 IAC 22-1-16; filed Jun 21, 2001, 2:35 p.m.: 24 IR 3376; readopted filed Jul 19, 2007, 12:30*

p.m.: 20070808-IR-312070192RFA; readopted filed Sep 19, 2013, 10:16 a.m.: 20131016-IR-312130184RFA)

312 IAC 22-1-17 "Related field" defined

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-21-1

Sec. 17. "Related field" means anthropology, physical anthropology, or another discipline to archaeology where archaeological or bioarchaeological course work and fieldwork are part of the background and research. (*Natural Resources Commission; 312 IAC 22-1-17; filed Jun 21, 2001, 2:35 p.m.: 24 IR 3376; readopted filed Jul 19, 2007, 12:30 p.m.: 20070808-IR-*

312070192RFA; readopted filed Sep 19, 2013, 10:16 a.m.: 20131016-IR-312130184RFA)

312 IAC 22-1-18 "Religious" defined

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-21-1

Sec. 18. "Religious" means a system of beliefs, symbols, rituals, or ideology practiced in whole or in part by a corporate group of society that:

(1) serves to define human, sacred, or supernatural relations and the rationale for human existence; and

(2) is verifiable by archaeological, historical, or anthropological study.

(*Natural Resources Commission; 312 IAC 22-1-18; filed Jun 21, 2001, 2:35 p.m.: 24 IR 3376; readopted filed Jul 19, 2007, 12:30*

p.m.: 20070808-IR-312070192RFA; readopted filed Sep 19, 2013, 10:16 a.m.: 20131016-IR-312130184RFA)

312 IAC 22-1-19 "Review board" defined

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-21-1-20

Sec. 19. "Review board" means the historic preservation review board established under IC 14-21-1-20. (*Natural Resources Commission; 312 IAC 22-1-19; filed Jun 21, 2001, 2:35 p.m.: 24 IR 3376; readopted filed Jul 19, 2007, 12:30 p.m.: 20070808-IR-*

312070192RFA; readopted filed Sep 19, 2013, 10:16 a.m.: 20131016-IR-312130184RFA)

312 IAC 22-1-20 "Scientific investigation" defined

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-21-1

Sec. 20. "Scientific investigation" means an archaeological, anthropological, physical anthropological, or historical investigation that does the following:

(1) Is conducted under the control or supervision of a principal investigator.

(2) Employs specialized, systematic methods and techniques to locate, identify, evaluate, recover, treat, analyze, and conserve

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any artifacts, burial objects, and buried human remains and associated contexts.

(3) Produces a report detailing its various activities and findings.

(Natural Resources Commission; 312 IAC 22-1-20; filed Jun 21, 2001, 2:35 p.m.: 24 IR 3377; readopted filed Jul 19, 2007, 12:30

p.m.: 20070808-IR-312070192RFA; readopted filed Sep 19, 2013, 10:16 a.m.: 20131016-IR-312130184RFA)

312 IAC 22-1-21 "Site" defined

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-21-1

Sec. 21. "Site" means any aboriginal mound, fort, earthwork, village location, burial ground, ruin, mine, cave, battleground, shipwreck, or other similar location on land or under water or any location that contains or once contained a structure. *(Natural Resources Commission; 312 IAC 22-1-21; filed Jun 21, 2001, 2:35 p.m.: 24 IR 3377; readopted filed Jul 19, 2007, 12:30 p.m.: 20070808-IR-312070192RFA; readopted filed Sep 19, 2013, 10:16 a.m.: 20131016-IR-312130184RFA)*

312 IAC 22-1-22 "Structure" defined

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-21-1

Sec. 22. "Structure" means any manmade construction. *(Natural Resources Commission; 312 IAC 22-1-22; filed Jun 21, 2001, 2:35 p.m.: 24 IR 3377; readopted filed Jul 19, 2007, 12:30 p.m.: 20070808-IR-312070192RFA; readopted filed Sep 19, 2013, 10:16 a.m.: 20131016-IR-312130184RFA)*

312 IAC 22-1-23 "Traditional" defined

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-21-1

Sec. 23. "Traditional" means a cultural or religious practice or behavior pattern that is:

- (1) shared by a corporate group;
- (2) passed from generation to generation as part of the socialization process; and
- (3) verifiable by archaeological, historical, or anthropological study.

(Natural Resources Commission; 312 IAC 22-1-23; filed Jun 21, 2001, 2:35 p.m.: 24 IR 3377; readopted filed Jul 19, 2007, 12:30

p.m.: 20070808-IR-312070192RFA; readopted filed Sep 19, 2013, 10:16 a.m.: 20131016-IR-312130184RFA)

Rule 2. Intentional and Accidental Discoveries of Human Remains and Artifacts; Permits

312 IAC 22-2-1 Application

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-21-1-27; IC 14-22-1; IC 14-34; IC 23-14

Sec. 1. (a) This article establishes standards for each of the following:

- (1) Investigations.
- (2) Scientific investigations.
- (3) The accidental discovery or purposeful disturbance of archaeological sites and human remains on any property.
- (4) The issuance of permits.
- (5) Permit conditions required to satisfy IC 14-22-1 and this article.

(b) A person must satisfy this article where:

- (1) an investigation or scientific investigation is required;
- (2) a permit must be issued or conditioned;
- (3) the director issues an order to locate, identify, evaluate, recover, treat, or protect artifacts, burial objects, or burial

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grounds; or

(4) human remains require treatment or reburial.

(c) Except as required by IC 14-21-1-27, this article does not apply to the following:

- (1) Surface coal mining regulated under IC 14-34.
- (2) Cemeteries and human remains subject to regulation under IC 23-14.
- (3) Disturbing the earth for an agricultural purpose.
- (4) Collecting any object, other than human remains that is visible in whole or in part on the surface of the ground, regardless of the time the object was made.

(d) This article sets forth how the department shall protect human remains discovered as a result of an accidental discovery, the conduct of an investigation, the conduct of a scientific investigation, or a violation of IC 14-21-1. The department may, according to the context, condition, or nature of the discovery of the human remains, do any of the following:

- (1) Take custody of the human remains.
- (2) Assign or remand custody or ownership of the human remains to an institution that satisfies 312 IAC 22-3-9(f).

(3) Designate or prescribe the conditions or scheduling for the reburial of remains under 312 IAC 22-3-9(b).
(*Natural Resources Commission; 312 IAC 22-2-1; filed Jun 21, 2001, 2:35 p.m.: 24 IR 3377; readopted filed Jul 19, 2007, 12:30 p.m.: 20070808-IR-312070192RFA; readopted filed Sep 19, 2013, 10:16 a.m.: 20131016-IR-312130184RFA*)

312 IAC 22-2-2 Administration

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 4-21.5-1-15; IC 14-21-1

Sec. 2. (a) The division is responsible for conduct of the technical and professional functions of the department under this article.

(b) The review board or the division director may make an initial order or determination under this article.

(c) The commission is the ultimate authority for a final order or determination under this article. (*Natural Resources Commission; 312 IAC 22-2-2; filed Jun 21, 2001, 2:35 p.m.: 24 IR 3377; readopted filed Jul 19, 2007, 12:30 p.m.: 20070808-IR-*

312070192RFA; readopted filed Sep 19, 2013, 10:16 a.m.: 20131016-IR-312130184RFA)

312 IAC 22-2-3 Permits

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-21-1-26; IC 14-21-1-28

Sec. 3. (a) No person may disturb the ground, or continue the disturbance following an accidental discovery, for the purpose of discovering or removing artifacts, burial objects, grave markers, or human remains without a prior permit issued by the department under IC 14-22-1-26 [*sic.*, IC 14-21-1-26], IC 14-22-1-28 [*sic.*, IC 14-21-1-28], and this article.

(b) Except as provided in section 7 of this rule, an applicant for a permit must comply with the following:

(1) A plan, which includes the information required under 312 IAC 22-3-2 through 312 IAC 22-3-8, shall be submitted with each permit application.

(2) An application to conduct an investigation or a scientific investigation shall be filed at least thirty (30) days before the proposed commencement of the project.

(c) An application for a permit to conduct an investigation or a scientific investigation shall be reviewed by the division to determine whether the permit is issued. A favorable determination must be made with respect to each of the following factors before

a permit can be issued:

(1) The application is found to be complete, technically accurate, and feasible.

(2) The applicant has demonstrated that the information derived will contribute to:

(A) Indiana's history or archaeology; or

(B) understanding the physical or cultural nature of past human populations.

(3) The requirements of 312 IAC 22-3-9 are satisfied.

(4) The applicant will provide for the treatment of human remains in conformance with section 1(d) of this rule.

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(5) The rights and interests of landowners are considered, including written documents that demonstrate each of the following have been adequately addressed by the applicant:

(A) A determination of the ownership of any human remains, burial object, or artifact which is recovered.

(B) Consent of the landowner for access by the applicant to the site for the purpose of conducting any activities set forth in the permit, including the plan.

(C) Consent of the landowner for access by the department to the site to determine compliance with the conditions of the permit.

(*Natural Resources Commission; 312 IAC 22-2-3; filed Jun 21, 2001, 2:35 p.m.: 24 IR 3378; readopted filed Jul 19, 2007, 12:30 p.m.: 20070808-IR-312070192RFA; readopted filed Sep 19, 2013, 10:16 a.m.: 20131016-IR-312130184RFA*)

312 IAC 22-2-4 Notification and permit conditions

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-21-1; IC 23-14

Sec. 4. (a) Except as provided in subsections (c) through (d), a person who discovers an artifact or a burial object while disturbing the ground for a purpose other than the discovery of artifacts or burial objects must do the following:

(1) Immediately cease disturbing the ground.

(2) Notify the department within two (2) business days after the time of disturbance.

(b) After a notification made under subsection (a) is received, the department may do either of the following:

(1) Authorize the person to continue the ground disturbing activity with or without conditions.

(2) Require that continued ground disturbance activity be conducted only under a plan approved under this article. However, this subdivision does not apply if the department does not respond within thirty (30) days from the date that the department receives the notification.

(c) A person who disturbs any human remains must do the following:

- (1) Immediately cease disturbing the ground.
 - (2) Notify the department within two (2) business days after the time of the disturbance.
 - (d) After a notification made under subsection (c) is received, the department may do any of the following:
 - (1) Require the person to submit additional information to enable the department an informed determination whether the disturbed human remains are exempt from IC 14-21-1 and this article. Exempt human remains shall be treated and reburied under IC 23-14.
 - (2) Authorize the person to continue the ground disturbing activity with or without conditions.
 - (3) Require that continued ground disturbance activity be conducted only under a permit issued under this article.
- (Natural Resources Commission; 312 IAC 22-2-4; filed Jun 21, 2001, 2:35 p.m.: 24 IR 3378; readopted filed Jul 19, 2007, 12:30 p.m.: 20070808-IR-312070192RFA; readopted filed Sep 19, 2013, 10:16 a.m.: 20131016-IR-312130184RFA)*

312 IAC 22-2-5 Permit determinations and revocations

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 4-21.5-1-4; IC 4-21.5-3-8; IC 4-21.5-4; IC 14-21-1

Sec. 5. (a) Where an application for a permit is received by the department that is not complete, the division may:

- (1) provide instructions to the applicant for completion of the application; or
- (2) return the application with a notification that a permit will not be issued until sections 2 through 3 of this rule are satisfied. A determination under this subdivision is an agency order under IC 4-21.5-1-4 and is subject to administrative review.

(b) The department may inspect the site of an investigation or a scientific investigation to determine whether a person is in compliance with IC 14-21-1, this article, and the terms of a permit issued under this article.

(c) The department may, under IC 4-21.5-3-8, revoke a permit, if the division determines the permittee has violated IC 14-21-1, this article, or the terms of a permit issued under this article. The director may, under IC 4-21.5-4, seek appropriate emergency or temporary relief with respect to a permit or an activity for which a permit is required. *(Natural Resources Indiana Administrative Code Page 7*

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Commission; 312 IAC 22-2-5; filed Jun 21, 2001, 2:35 p.m.: 24 IR 3378; readopted filed Jul 19, 2007, 12:30 p.m.: 20070808-IR-312070192RFA; readopted filed Sep 19, 2013, 10:16 a.m.: 20131016-IR-312130184RFA)

312 IAC 22-2-6 Disturbing the ground in the absence of or violation of a plan

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-21-1-26; IC 14-21-1-28

Sec. 6. (a) A person who disturbs the ground for the purpose of discovering artifacts or burial objects must do so in accordance with a plan approved by the department in a permit issued under IC 14-21-1 and this article.

(b) Criminal sanctions for violation of IC 14-21-1 and this article are set forth in IC 14-21-1-26 and IC 14-21-1-28. *(Natural Resources Commission; 312 IAC 22-2-6; filed Jun 21, 2001, 2:35 p.m.: 24 IR 3379; readopted filed Jul 19, 2007, 12:30 p.m.: 20070808-IR-312070192RFA; readopted filed Sep 19, 2013, 10:16 a.m.: 20131016-IR-312130184RFA)*

312 IAC 22-2-7 Emergency permits

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 4-21.5-4; IC 14-21-1

Sec. 7. (a) The division director may, under IC 4-21.5-4, issue an emergency permit to conduct a scientific investigation where imminent or irreparable damage to an historic site or a burial ground is likely to occur due to natural or cultural causes before a permit can be processed under section 3(b) of this rule.

(b) An emergency permit must satisfy each of the following:

- (1) The performance standards contained in IC 14-21-1.
- (2) The requirements of 312 IAC 22-3-2 through 312 IAC 22-3-9.
- (3) To the extent feasible, the requirements of section 3(c) of this rule.
- (4) Any other conditions set forth by the department in the emergency permit.

(c) An emergency permit issued under this section expires on the elapse of ninety (90) days unless an earlier expiration date is set forth in the emergency permit. *(Natural Resources Commission; 312 IAC 22-2-7; filed Jun 21, 2001, 2:35 p.m.: 24 IR 3379;*

readopted filed Jul 19, 2007, 12:30 p.m.: 20070808-IR-312070192RFA; readopted filed Sep 19, 2013, 10:16 a.m.: 20131016-IR-312130184RFA)

Rule 3. Participation; Plans; Personnel; Project Facilities; Analysis; Curation; Treatment and Disposition of Human Remains; Project Documentation; Reporting

312 IAC 22-3-1 Application

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-21-1

Sec. 1. (a) This rule establishes the standards applicable to the following:

- (1) Participation.
- (2) Plans.
- (3) Personnel.
- (4) Project facilities.
- (5) Analyses.
- (6) Curation.
- (7) Treatment and disposition of human remains.
- (8) Project documentation.
- (9) Reporting.

(b) The requirements of this rule shall be applied in a manner that recognizes each of the following:

- (1) The important and complex nature of historic sites and burial grounds.

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(2) The need to provide for scientific investigations that contribute to the understanding of the past.

(3) An understanding that important site information in the form of materials and features may be present beyond artifacts, burial objects, and human remains.

(4) The need to use specialized methods and techniques in:

- (A) archaeology;
- (B) anthropology;
- (C) geology;
- (D) biology;
- (E) physical anthropology; and
- (F) forensic sciences;

for the recovery and analysis of site information.

(5) A realization of the paramount role of:

- (A) archaeologists;
- (B) cultural anthropologists;
- (C) physical anthropologists; and
- (D) related professionals;

with specialized training in data recovery, processing, analysis, and reporting to develop, coordinate, or direct scientific investigations.

(6) A recognition of the expertise and interest of amateur archaeologists in the participation in site discovery projects and scientific investigations.

(7) An understanding of the need to protect:

- (A) a historic site that is listed on or eligible for listing on the state register of historic sites and structures or the National Register of Historic Places; or
- (B) a burial ground.

(Natural Resources Commission; 312 IAC 22-3-1; filed Jun 21, 2001, 2:35 p.m.: 24 IR 3379; readopted filed Jul 19, 2007, 12:30 p.m.: 20070808-IR-312070192RFA; readopted filed Sep 19, 2013, 10:16 a.m.: 20131016-IR-312130184RFA)

312 IAC 22-3-2 Participation

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-21-1

Sec. 2. (a) A scientific investigation must be carried out under the direction of a principal investigator where any of the following conditions are present:

- (1) The investigation must be conducted to satisfy a state or federal law other than this article.
- (2) The investigation will be conducted on a property owned or leased by the state or one (1) of its agencies.
- (3) The investigation will be funded in whole or in part by the state.
- (4) The investigation will be conducted on a site that is listed on or eligible for listing on the state register of historic sites and structures or the National Register of Historic Places.
- (5) The investigation is likely to result in the discovery of buried human remains.

(b) A participant in an investigation or scientific investigation who has a supervisory or decision making responsibility must adhere to a code of conduct that does each of the following:

- (1) Promotes the scientific investigation and conservation of past cultures so the investigation is conducted in the interests of qualified research, environmental review, or historic preservation review related compliance, or site management or protection.
- (2) Demonstrates sensitivity for treating other human beings with respect and dignity.
- (3) Considers the interest and expertise of amateur archaeologists and professional archaeologists.

(c) A scientific investigation that is approved by the division as part of a federal or state environmental review requirement does not require a separate permit under this article. This subsection does not relieve a person of the responsibility for reporting and responding under IC 14-21-1 and this article to any accidental discovery. (*Natural Resources Commission; 312 IAC 22-3-2; Indiana Administrative Code Page 9*)

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filed Jun 21, 2001, 2:35 p.m.: 24 IR 3379; readopted filed Jul 19, 2007, 12:30 p.m.: 20070808-IR-312070192RFA; readopted filed

Sep 19, 2013, 10:16 a.m.: 20131016-IR-312130184RFA)

312 IAC 22-3-3 Plans

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-21-1

Sec. 3. (a) A plan must be submitted with any application for a permit for an investigation or a scientific investigation. The plan shall provide a coherent approach to the type of project or investigation, the environmental and cultural setting, and the type of archaeological or human remains known to exist or yet unidentified in the project area. A plan shall consider the time constraints

upon the applicant, the rights and interests of landowners, personnel needed to accomplish the work, and the season and environmental conditions within which work would be accomplished.

(b) A plan shall consider the appropriate use of each of the following persons:

(1) Professionals in:

(A) archaeology;

(B) anthropology;

(C) physical anthropology;

(D) medicine;

(E) forensic science;

(F) biology;

(G) cultural geography;

(H) geology; and

(I) paleontology.

(2) Amateur archaeologists.

(c) A plan for a scientific investigation that will address an archaeological site, result in the recovery of artifacts, or result in the recovery of burial objects or buried human remains shall satisfy the requirements under subsections (b) and (d) and section 4 of this rule.

(d) A plan for a scientific investigation where buried human remains are likely to be recovered or disturbed shall additionally provide a scientific justification for the recovery or disturbance of those human remains that does each of the following:

(1) Demonstrates the need to recover or disturb the buried human remains to protect, treat, or conserve the remains or important scientific information that might otherwise be lost through unavoidable natural or human activities.

(2) Defines a methodology governed by systematic scientific methods that incorporates recording, recovery, and conservation methods and techniques used by professional archaeologists and related professionals who routinely locate, identify, record, recover, analyze, treat, conserve, and curate human remains.

(3) Demonstrates the disturbed or recovered human remains are and will be treated in a dignified and respectful fashion that recognizes their cultural, religious, or traditional importance to living human groups.

(e) A plan submitted to conduct an investigation, other than a scientific investigation, shall include each of the following:

(1) The location of the project area, including the county, township, range, and section and, if available, the street address.

(2) A description of the project area, including the natural environment and cultural environment.

(3) The portion of the United States Geological Survey Quadrangle Section map (1:24000) that locates the area and an accurate map of the area of investigation.

(4) A clearly and concisely written plan supported by appropriate references and other written material that justifies the need to undertake the recovery of buried artifacts.

(5) A demonstration that the recovery, if undertaken, will contribute to the understanding, interpretation, or conservation of Indiana's historic and archaeological resources.

(6) An identification of the methods to be employed that will enable the recording and recovery of artifacts and associated contexts in a systematic and controlled fashion.

(7) A process that will result in minimal damage to organic and fragile materials during recording and recovery.

(8) Provision for notes, drawings, photographs, collections of artifacts, descriptive lists of recovered artifacts and samples, Indiana Administrative Code Page 10

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and documents that will enable the permittee to produce a report of the findings.

(9) Standards for plan and profile maps of all excavation units and exposed or excavated features or cultural strata.

- (10) The names of persons or organizations who may work during the investigation and recovery of artifacts.
- (11) The name and address of the person who will have supervisory or decision making responsibility for the investigation.
- (12) The beginning date and ending date of the investigation.
- (13) The place where any recovered artifacts and curated or associated contexts will be cleaned, processed, and housed.
- (14) A proposal for the conservation of artifacts and associated context through:
 - (A) the documentation of an agreement with an established institution; or
 - (B) if the permittee will provide for conservation, a conservation plan that describes how the recovered artifacts and associated context will be conserved to prevent degradation and the loss of integrity.
- (15) A proposal for access to the completed project for continued or future research.
- (16) A strategy for the timely termination of the project and the protection of the site if the project:
 - (A) discovers human remains or burial objects; or
 - (B) identifies buried deposits that have been defined by the department as nonrecoverable without the assistance or direction of a principal investigator under section 2(a) of this rule.
- (f) A final report of findings must be submitted under this section in accordance with the following specifications:
 - (1) The use of standard quality paper on white bond, eight and one-half (8½) inches wide and eleven (11) inches long.
 - (2) Inclusion of a title page with the:
 - (A) project title;
 - (B) project supervisor;
 - (C) name of the organization; and
 - (D) if applicable, name of the agency or institutional affiliation, any coauthors, and date of issuance of the report.
 - (3) Inclusion of a table of contents, as well as any appropriate figures and appendices.
 - (4) Acknowledgements to persons and organizations assisting in the project.
 - (5) Appropriate reference to the plan approved as part of the permit, including a statement of investigation goals and methods.
 - (6) Data analysis.
 - (7) Results of the investigations.
 - (8) Conclusions and recommendations.
 - (9) Bibliographic references.
 - (10) Completed Historic Sites and Structures Inventory-Archaeology Site Forms.
 - (11) Copies of completed notes, drawings, a descriptive list of all recovered artifacts and samples and photographs generated by the project.
 - (12) Location where the recovered artifacts and associated contexts will be housed, and the name of the person responsible for curation, if the plan provides for curation.

(Natural Resources Commission; 312 IAC 22-3-3; filed Jun 21, 2001, 2:35 p.m.: 24 IR 3380; readopted filed Jul 19, 2007, 12:30 p.m.: 20070808-IR-312070192RFA; readopted filed Sep 19, 2013, 10:16 a.m.: 20131016-IR-312130184RFA)

312 IAC 22-3-4 Personnel qualifications

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-21-1

Sec. 4. (a) A person who conducts an investigation or a scientific investigation under this article must satisfy the qualification standards established by 312 IAC 21-3-4.

(b) In addition to the requirements of subsection (a), the department may require the use of professionals with specialized expertise as appropriate to serve in a capacity equivalent to that of a principal investigator in the exercise of a particular permit involving the removal of human remains or as appropriate to the removal of particular human remains. Persons who may possess the required expertise include those in the areas of archaeology, anthropology, physical anthropology, paleopathology, or another closely related field. Qualifications for these professionals include the following requirements:

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- (1) A graduate degree in anthropology or another closely related field as anticipated in this subsection.
- (2) Satisfaction of either of the following:
 - (A) Three (3) years of supervisory experience in archaeology, anthropology, physical anthropology, paleopathology, or a closely related field where the principal focus of professional study has been the recovery, evaluation, analysis, and curation of artifacts, materials and information, burial objects, and human remains discovered in historic, archaeological, or historic burial ground sites, and whose professional work has resulted in the study of paleopathology and human osteology. This work:
 - (i) shall include cranial, postcranial, and dental analysis, and destructive and nondestructive scientific testing of human remains; and
 - (ii) must have resulted in the preparation of a research-oriented monograph, thesis, or dissertation.
 - (B) Accreditation by the Forensic Anthropology Section of the American Academy of Forensic Sciences.

(c) A field or laboratory supervisor may submit draft and final reports that address the recovery, evaluation, analysis, or curation of human remains. To qualify as a field or laboratory supervisor, a person must satisfy either of the following requirements:

(1) A master's degree in archaeology, anthropology, physical anthropology, or paleopathology or a related field and one (1) year of supervisory experience in the excavation or laboratory techniques pertinent to the recovery, evaluation, analyses, and curation of human remains from an historic, archaeological, or a burial ground located within an historic site.

(2) Accreditation by the Forensic Anthropology Section of the American Academy of Forensic Sciences.

(d) A field or laboratory technician is an assistant supervisor or field or laboratory field or laboratory crew member with experience in archaeological or physical anthropological techniques related to the recovery and preparation for analysis of human

remains recovered from historic, archaeological, or historic burial ground sites. A laboratory technician must:

(1) be experienced in laboratory analyses and techniques; and

(2) hold a bachelor's degree in anthropology, or a closely related field, or possess equivalent background, with one (1) year of field recovery, preparation, or analyses.

(e) Qualification for specialists in the fields of medicine, forensic medicine, pathology, or related sciences who are employed during the course of scientific investigations to provide biological, genetic, or chemical information will be based on verifiable professional accreditation or qualifying graduate degrees. (*Natural Resources Commission; 312 IAC 22-3-4; filed Jun 21, 2001, 2:35 p.m.: 24 IR 3381; readopted filed Jul 19, 2007, 12:30 p.m.: 20070808-IR-312070192RFA; readopted filed Sep 19, 2013, 10:16 a.m.: 20131016-IR-312130184RFA*)

312 IAC 22-3-5 Project facilities

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-21-1

Sec. 5. A person who performs an investigation or a scientific investigation under this article must demonstrate both of the following with respect to project facilities:

(1) Adequate facilities and equipment will be provided to conduct any nonfield portions of the plan in a manner which is no less effective than the requirements of 312 IAC 21-3-5.

(2) If the recovery of human remains is part of the plan, sufficient arrangements will be made for any special or technical analyses. These arrangements must include reference to paleopathology, osteology, radiometry, radiology, biochemistry, and any other discipline needed to properly evaluate the human remains relative to their cultural and chronological context and condition when recovered.

(*Natural Resources Commission; 312 IAC 22-3-5; filed Jun 21, 2001, 2:35 p.m.: 24 IR 3382; readopted filed Jul 19, 2007, 12:30 p.m.: 20070808-IR-312070192RFA; readopted filed Sep 19, 2013, 10:16 a.m.: 20131016-IR-312130184RFA*)

312 IAC 22-3-6 Analyses

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-21-1

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Sec. 6. (a) A person who performs an investigation or a scientific investigation under this article must demonstrate both of the following:

(1) The analysis requirements will be met in a manner which is no less effective than the analysis requirements contained in 312 IAC 21-3-6.

(2) If the recovery of human remains is part of the plan, the analysis requirements will be met in a manner which is no less effective than those contained in section 9(a) through 9(c) of this rule.

(b) The director may require analyses in addition to those required in section 9(b) through 9(c) of this rule for a scientific investigation that requires the application of specialized technology or methods to resolve issues of genetic affinity or scientific research in the study of past human populations. (*Natural Resources Commission; 312 IAC 22-3-6; filed Jun 21, 2001, 2:35 p.m.:*

24 IR 3382; readopted filed Jul 19, 2007, 12:30 p.m.: 20070808-IR-312070192RFA; readopted filed Sep 19, 2013, 10:16 a.m.: 20131016-IR-312130184RFA)

312 IAC 22-3-7 Curation; scientific investigations

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-21-1

Sec. 7. (a) The curation of artifacts, materials, and specimens recovered during a scientific investigation is controlled by 312 IAC 21-3-8(a) through 312 IAC 21-3-8(b).

(b) In addition to the requirements contained in subsection (a), section 9(g) through 9(h) of this rule applies to the recovery of buried human remains. (*Natural Resources Commission; 312 IAC 22-3-7; filed Jun 21, 2001, 2:35 p.m.: 24 IR 3382; readopted*

filed Jul 19, 2007, 12:30 p.m.: 20070808-IR-312070192RFA; readopted filed Sep 19, 2013, 10:16 a.m.: 20131016-IR-

312130184RFA)

312 IAC 22-3-8 Documentation and reporting

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-21-1

Sec. 8. (a) Project documentation and reporting for a scientific investigation is controlled by 312 IAC 21-3-8(a) through 312 IAC 21-3-8(d).

(b) In addition to the requirements of subsection (a), this subsection applies if human remains are recovered, evaluated, or analyzed. Documentation shall be provided that details or integrates the results of the study of the human remains to satisfy section

9(b) through 9(c) of this rule with evaluations (based upon the context and condition of those remains) as to their value for ascertaining genetic affinity or scientific value and recommendations for their long term curation.

(c) Project documentation and reporting for investigations is controlled by section 3 of this rule. (*Natural Resources Commission; 312 IAC 22-3-8; filed Jun 21, 2001, 2:35 p.m.: 24 IR 3382; readopted filed Jul 19, 2007, 12:30 p.m.: 20070808-IR-*

312070192RFA; readopted filed Sep 19, 2013, 10:16 a.m.: 20131016-IR-312130184RFA)

312 IAC 22-3-9 Treatment and disposition of human remains

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-21-1; IC 23-14

Sec. 9. (a) In determining whether human remains, which are subject to IC 14-21-1 and this article, should be reburied or should be curated and retained for further analysis and study, the following factors shall be considered by the director:

(1) Whether there was a scientific investigation of the burial content and context, including the physical remains and associated artifacts, burial objects, and grave markers.

(2) Whether physical anthropological analysis of the remains consistent with prevailing technology will minimally address cultural or genetic affinity through the analysis of biological data.

(3) Whether ethnic, ethnohistorical, historical, anthropological, or archaeological documents or records establish the validity or verification of interests.

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(4) Whether another factor that may be considered under IC 14-21-1 bears upon the propriety of retention or reburial.

(b) Subject to verification under subsection (a), the director may require the reburial of human remains. Before reburial occurs, the director shall determine whether scientific value exists that warrants further examination, and, if further examination is needed, the schedule within which the examination must be completed. Factors that may be required during the examination are as follows:

(1) An analysis of dentition, including measurements, casting, attrition, pathologies, premortem modifications, and postmortem modifications.

(2) An analysis of cranial and postcranial remains for an overall biological assessment of growth, pathologies, trauma, postmortem modifications, nonmetric genetic markings, and measurements.

(3) The removal of samples for destructive analyses to ascertain the age of an interment (through Carbon 14 or similar analyses), bone histology, isotope, or trace element analysis, including radiological analyses as applicable to the context and condition of the remains.

(4) Other specialized testing determined by the director to be appropriate because of unique or unusual conditions, circumstances, or contexts.

(c) Conditional analyses of human remains that are accidentally disturbed or deliberately disturbed in violation of IC 14-21-1 shall be conducted in a timely fashion based upon the availability of qualified professional persons and of facilities suitable for the

scientific investigation of human remains.

(d) In addition to the requirements of IC 14-21-1 and this article, the reburial of human remains must conform to IC 23-14, except where either of the following is determined:

(1) Conditions encountered at a burial ground have integrity so that:

(A) in-place scientific investigation may occur; and

(B) removal of the human remains is not in the best interests of the protection or preservation of those remains.

(2) Where reinterment conditions should replicate those prescribed by cultural, religious, or traditional values and where the reinterment context is the same as disinterment. For example, reinterment may take place on Native American reservation land in Indiana dedicated as a burial ground.

(e) A person may petition the director for the reburial of human remains. Any approval of a petition is conditioned upon compliance with IC 14-21-1, this article, and terms contained in the approval. The director may require that the petitioner satisfy the costs of reburial. A person who removes human remains in violation of IC 14-21-1, this article, or a petition approved under this subsection, must satisfy reburial costs. A plan approved in association with a scientific investigation may be required by the

director to identify who will satisfy costs associated with the discovery, recovery, analysis, and curation of any human remains. To the extent allowed by law, however, the director may modify the allocation of reburial costs under this subsection if required to prevent manifest injustice.

(f) Human remains that are retained for a future scientific investigation may be held only by a public institution, private institution, university, or college that has a faculty or research staff, laboratories, analytical facilities, and curatorial facilities dedicated to the study of the physical and cultural nature of past human populations. Any future scientific investigation of the human remains must be conducted under the direction of a principal investigator or similar professional from a related field in a manner consistent with the scientific investigation of human remains as required in this article. *(Natural Resources Commission; 312 IAC 22-3-9; filed Jun 21, 2001, 2:35 p.m.: 24 IR 3383; readopted filed Jul 19, 2007, 12:30 p.m.: 20070808-IR-312070192RFA; readopted filed Sep 19, 2013, 10:16 a.m.: 20131016-IR-312130184RFA)*

Rule 4. Expedited License for a Qualified Cemetery Restoration Project

312 IAC 22-4-1 Application

Authority: IC 14-10-2-4; IC 14-21-1-31

Affected: IC 14-21-1

Sec. 1. (a) This rule provides an expedited licensure process for cemetery restoration.

(b) A person who qualifies for and complies with this rule is not required to obtain approval of a plan under 312 IAC 21-3-3 or a permit under 312 IAC 22-2-3.

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(c) A license is not available under this rule for either of the following:

(1) A cemetery that is part of a historic site or historic structure owned by the state.

(2) A project that includes activities other than cemetery restoration.

(Natural Resources Commission; 312 IAC 22-4-1; filed Jan 5, 2011, 3:12 p.m.: 20110202-IR-312100059FRA; readopted filed Sep 19, 2013, 10:16 a.m.: 20131016-IR-312130184RFA)

312 IAC 22-4-2 Additional definitions

Authority: IC 14-10-2-4; IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-21-1

Sec. 2. (a) The definitions in this section are in addition to those in IC 14 and 312 IAC 1 and apply throughout this rule.

(b) "Cemetery" means any land or structure in Indiana that is:

(1) dedicated to; and

(2) used for, or intended to be used for;

the internment, entombment, or inurnment of humans *[sic]* remains.

(c) "Cemetery restoration" refers to the following:

(1) Probing the ground of a cemetery.

(2) Recovering, restoring, and resetting a fallen grave memorial.

(d) "Grave memorial" refers to a gravestone, monument, grave marker, or any other type of similar item that is located in a cemetery and used to mark the burial of human remains.

(e) "Probing" means inserting an object into the ground, to a depth not greater than six (6) inches, for the purpose of locating a fallen grave memorial in a cemetery. *(Natural Resources Commission; 312 IAC 22-4-2; filed Jan 5, 2011, 3:12 p.m.: 20110202-*

IR-312100059FRA; readopted filed Sep 19, 2013, 10:16 a.m.: 20131016-IR-312130184RFA)

312 IAC 22-4-3 Application for cemetery restoration license

Authority: IC 14-10-2-4; IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-21-1

Sec. 3. (a) A person who wishes a cemetery restoration license must submit a written application to the division.

(b) The applicant must provide the division with the following:

(1) The location of the cemetery. An applicant must not include more than one (1) cemetery in a license application.

(2) A document from the cemetery owner showing permission to provide cemetery restoration.

(3) If land owned by a person other than the owner of the cemetery would be crossed to access the cemetery, a document showing permission to perform the crossing.

(4) Who would be the coordinator of the cemetery restoration.

(5) Any other information reasonably required by the division form referenced in subsection (a).

(Natural Resources Commission; 312 IAC 22-4-3; filed Jan 5, 2011, 3:12 p.m.: 20110202-IR-312100059FRA; readopted filed Sep 19, 2013, 10:16 a.m.: 20131016-IR-312130184RFA)

312 IAC 22-4-4 Identification of a permanent visible boundary for a cemetery

Authority: IC 14-10-2-4; IC 14-21-1-31

Affected: IC 14-9; IC 14-21-1

Sec. 4. For a cemetery, which is not marked by a permanent visible boundary, the division may require an applicant to

identify the boundary as a condition for approval of a cemetery restoration. The applicant may use land records, surveys, historical records, and any other relevant sources to help identify the boundary. (*Natural Resources Commission; 312 IAC 22-4-4; filed Jan*

5, 2011, 3:12 p.m.: 20110202-IR-312100059FRA; readopted filed Sep 19, 2013, 10:16 a.m.: 20131016-IR-312130184RFA)
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312 IAC 22-4-5 Qualification as coordinator

Authority: IC 14-10-2-4; IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-21-1

Sec. 5. (a) The division shall establish minimum training standards that a coordinator of a project for cemetery restoration must meet. Those standards shall include successful completion of training in the appropriate techniques for each of the following:

- (1) Probing in a cemetery to locate a fallen grave memorial.
- (2) Recovering a fallen grave memorial.
- (3) Restoring a fallen grave memorial.
- (4) Resetting a grave memorial in the cemetery.

(b) "The Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for the Treatment of Cultural Landscapes*" (U.S. Department of the Interior, National Park Service, 1996) is the professional guide for training a coordinator.

*This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or is available for review and copying at the Indiana Department of Natural Resources, Division of Historic Preservation and Archaeology, Indiana Government Center South, Room 274, 402 West Washington Street, Indianapolis, Indiana 46204.

(c) A person who does not satisfy the minimum standards set forth in this section cannot serve as a coordinator under this rule. (*Natural Resources Commission; 312 IAC 22-4-5; filed Jan 5, 2011, 3:12 p.m.: 20110202-IR-312100059FRA; readopted filed Sep 19, 2013, 10:16 a.m.: 20131016-IR-312130184RFA)*

312 IAC 22-4-6 Approval of cemetery restoration license

Authority: IC 14-10-2-4; IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-21-1

Sec. 6. (a) The division may issue a written license to a coordinator for a project for cemetery restoration that satisfies this rule. The license shall require compliance with this rule and may include special conditions if otherwise needed for compliance with IC 14-21-1.

(b) Except as provided in this subsection, a license issued under subsection (a) expires one (1) year after issuance. The division may, on one (1) occasion, renew a license under subsection (a) for a period not longer than one (1) year. (*Natural Resources Commission; 312 IAC 22-4-6; filed Jan 5, 2011, 3:12 p.m.: 20110202-IR-312100059FRA; readopted filed Sep 19, 2013,*

10:16 a.m.: 20131016-IR-312130184RFA)

312 IAC 22-4-7 Reports after project completion

Authority: IC 14-10-2-4; IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-21-1

Sec. 7. (a) The coordinator must submit a report to the division within sixty (60) days of the earlier of the following events:

- (1) Completion of the project for cemetery restoration.
- (2) The expiration of a license, including any period of license renewal, under section 6(b) of this rule.

(b) The report must include each of the following:

- (1) A summary of the work conducted.
- (2) Documentation for grave memorials that were recovered or restored.
- (3) A map showing the location of any work.
- (4) Other information if required by a license issued under section 6 of this rule.

(c) The division shall review the report and inform the coordinator whether the:

- (1) work described meets the standards of the division; and
- (2) report is complete and acceptable.

(d) The division may issue a license to the coordinator for another project or projects for a cemetery restoration, if the division informs the coordinator that the work described in a project report:

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informs the coordinator that the work described in a project report:

- (1) meets the standards of the division; and
- (2) is complete and acceptable.

(e) Except as provided in subsection (f), the division shall not issue another license to a coordinator under this rule if a coordinator does not submit a report as required by any of the following:

(1) Subsection (a).

(2) During the periods of their effectiveness:

(A) SECTION 7(a) of LSA Document #08-899(E); and

(B) SECTION 7(a) of LSA Document #09-773(E).

(f) The division may issue another license for a cemetery restoration, if a report is submitted after the periods described in subsection (e), and the division determines the delinquent submission of the report did not cause significant harm. (*Natural Resources Commission; 312 IAC 22-4-7; filed Jan 5, 2011, 3:12 p.m.: 20110202-IR-312100059FRA; readopted filed Sep 19, 2013,*

10:16 a.m.: 20131016-IR-312130184RFA)

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