

# Adverse Effect? Dealing With Those Forgotten MOA Commitments

4:00PM (EDT), Wednesday, March 16, 2022





# Agenda

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- Expectations/Section 106 Overview
- Section 106 Consulting Parties/Effect Findings
- Adverse Effect/Memorandum of Agreement (MOA)
- Mitigation Stipulations
- INDOT Cultural Resources Office (CRO)
  - Perspective/Role/Procedures within MOAs
  - Examples of Adverse Effect Findings/MOAs
  - Field Review of Mitigation Stipulations Status
- United States Army Corps of Engineers (USACE)
  - Perspective/Role/Procedures within MOAs
  - Examples of Adverse Effect Findings/MOAs
  - Review of Mitigation Stipulations Status
- Question & Answer Period



Log House, Dubois County



Unmarked graves of those who did not complete MOA stipulations within 5-10 years.



# Defining Expectations (Take Away Points)

- An understanding of Adverse Effects
- An understanding of MOAs
- The importance of Mitigation Stipulations (within MOAs)
- INDOT CRO role & procedures with MOAs
- USACE role & procedures with MOAs
- Monitoring by INDOT CRO & USACE
- Responsibility for the completion of Mitigation Stipulations



White River Union Church Cemetery,  
Lawrence County



# Section 106 Overview

- National Historic Preservation Act
- Federal agencies must take into account the **effects** of their undertakings on:
  - Historic and archaeological properties **listed in or eligible** for the National Register of Historic Places
- Section 106 Process
  - **Identify** historic and archaeological properties potentially affected by the undertaking within an **Area of Potential Effects (APE)**
  - **Assess** the undertakings effects on these properties = **No Historic Properties Affected, No Adverse Effect or Adverse Effect**
  - Seek ways to avoid, minimize, or **mitigate** any **adverse effects** on historic and archaeological properties = **Memorandum of Agreement**



John Prechtel Barn, Jasper

John Prechtel Barn, Jasper



# Section 106 Consulting Parties

- **Who are they?**
- SHPO, Representatives of Local Governments (County Commissioners), Native American Tribes, Indiana Landmarks, County Historian Local/Regional Historical Societies, Specialized Historical Organizations (Bridges/Canals), County Highway Superintendent or Engineer, Other Community Organizations (Chamber of Commerce), MPOs, Owners of Historic Properties and private citizens with a demonstrated interest undertaking
- **Key participants in determining valid mitigation stipulations within your MOA!**



St. John's Lutheran Church, Dubois County



## No Historic Properties Affected

No historic properties are present within the APE OR they are present, but the undertaking will have no effect on them.

## No Adverse Effect

One or more historic properties are impacted by the undertaking, but the impact/s will not alter the characteristics (directly or indirectly) that qualify the historic property/ies for listing in the NRHP.

Stone Bridge, Lawrence County

## ADVERSE EFFECT

The undertaking may alter (directly or indirectly) any of the characteristics of a historic property that qualify it for inclusion in the NRHP in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, association or **USE**.

# What is an Adverse Effect?

- Physical destruction of, or damage to, all or part of the property.
- Alteration of a property not consistent with Secretary of Interior standards.
- Removal of the property from its historic location.
- Change of character of the property's use or physical features.
- Introduction of visual/atmospheric/audible elements.
- Neglect of a property that causes its deterioration.
- Transfer/lease/sale of property from federal ownership/control.
- Acquisition of right-of way from within the property boundaries (reasonably foreseeable effects that may occur later in time).





# Memorandum of Agreement (MOA)



A binding legal document that holds parties responsible to the mitigation commitments stipulated within it.

c.1955 Ranch House, Dubois County



**MEMORANDUM OF AGREEMENT  
BETWEEN THE FEDERAL HIGHWAY ADMINISTRATION AND  
THE INDIANA STATE HISTORIC PRESERVATION OFFICER  
SUBMITTED TO THE ADVISORY COUNCIL ON HISTORIC PRESERVATION  
PURSUANT TO 36 C.F.R. Section 800.6(b)(iv) REGARDING THE  
MOUNT VERNON BICYCLE/PEDESTRIAN TRAIL PROJECT  
IN THE CITY OF MOUNT VERNON, BLACK TOWNSHIP,  
POSEY COUNTY, INDIANA, DES NO. 1383629**

**WHEREAS** the Federal Highway Administration ("FHWA") proposes to provide funding to the City of Mount Vernon for the Mount Vernon Bicycle/Pedestrian Trail Project located in the City of Mount Vernon, Black Township, Posey County, Indiana; and

**WHEREAS** the Mount Vernon Bicycle/Pedestrian Trail Project is subject to Section 106 of the National Historic Preservation Act (54 U.S.C. § 306108) and its implementing regulations (36 C.F.R. Part 800) that are in effect as of the execution of this Memorandum of Agreement; and

**WHEREAS** the FHWA, in consultation with the Indiana State Historic Preservation Officer ("Indiana SHPO"), has defined the Mount Vernon Bicycle/Pedestrian Trail Project's area of potential effects ("APE") for above ground resources, as the term is defined in 36 C.F.R. Section 800.16(d), to generally encompass those areas immediately adjacent to where ground-disturbing activity will occur. The proposed APE contracts down to approximately 100 feet where commercial development restricts views and expands to approximately 400 feet where commercial development is less restrictive; and

**WHEREAS** the FHWA, in consultation with the Indiana SHPO, has found that the Posey County Courthouse Square, the Mount Vernon Downtown Historic District, and the Welborn Historic District are within the APE; and

**WHEREAS** the Posey County Courthouse Square, the Mount Vernon Downtown Historic District, and the Welborn Historic District are listed in the National Register of Historic Places (National Register); and

**WHEREAS** the FHWA, in consultation with the Indiana SHPO, has determined pursuant to 36 C.F.R. Section 800.5(a) that the Mount Vernon Bicycle/Pedestrian Trail Project will have no adverse effect on the Posey County Courthouse Square; and

**WHEREAS** the FHWA, in consultation with the Indiana SHPO, has determined pursuant to 36 C.F.R. Section 800.5(a) that the Mount Vernon Bicycle/Pedestrian Trail Project will have no adverse effect on the Welborn Historic District; and

**WHEREAS** the FHWA, in consultation with the Indiana SHPO, has determined pursuant to 36 C.F.R. Section 800.5(a) that the Mount Vernon Bicycle/Pedestrian Trail Project will have an adverse effect on the Mount Vernon Downtown Historic District; and

## Section 106 MOA (Whereasmania)

- Who is making this agreement?
- Why are we making this agreement?
- What historic properties are in the APE?
- Which historic properties are being affected **adversely**?





**WHEREAS** the FHWA has consulted with the Indiana SHPO in accordance with Section 106 of the National Historic Preservation Act (54 U.S.C. 306108) and its implementing regulations (36 C.F.R. Section 800) to resolve the adverse effect on the Mount Vernon Downtown Historic District; and

**WHEREAS** the Alexandrian Public Library, City of Mount Vernon, Evansville Metropolitan Planning Organization, Indiana Landmarks Southwest Field Office, Mount Vernon City Council, Posey County Commissioners, Posey County Community Foundation, Posey County Historian, and Posey County Historical Society were invited to participate as Consulting Parties, among whom the Alexandrian Public Library and Posey County Historian elected to participate as Consulting Parties; and

**WHEREAS** the public was given an opportunity to comment on the undertaking's adverse effect in a notice published on September 6, 2017 in the *Mount Vernon Democrat*; and

**WHEREAS** the FHWA has notified the Advisory Council on Historic Preservation ("Council") of the adverse effect and invited the Council's participation in the project, pursuant to 36 CFR Section 800.6(a)(1), in an e-mail dated September 12, 2017; and

**WHEREAS** the Council declined to participate in consultation in a letter dated September 22, 2017; and

**WHEREAS** the FHWA, in consultation with the Indiana SHPO, has invited the Indiana Department of Transportation ("INDOT") and the City of Mount Vernon to participate in the consultation and to become signatories to this memorandum of agreement; and

**WHEREAS** the FHWA, in accordance with Section 106 of the National Historic Preservation Act (54 U.S.C. 306108) and its implementing regulations (36 C.F.R. Part 800), has consulted with the Indiana SHPO concerning the scope of work as presented in the materials and plans dated February 2, 2017 and agreed to proceed with the project as proposed; and

**NOW, THEREFORE**, the FHWA and the Indiana SHPO agree that, upon the submission of a copy of this executed memorandum of agreement, as well as the documentation specified in 36 C.F.R. Section 800.11(e) and (f) to the Council pursuant to 36 C.F.R. Section 800.6[b][1][iv]) and upon the FHWA's approval of the Mount Vernon Bicycle/Pedestrian Trail Project, the FHWA shall ensure that the following stipulations are implemented in order to take into account the effect of the Mount Vernon Bicycle/Pedestrian Trail Project on historic properties.

#### **Stipulations**

FHWA shall ensure that the following measure is implemented:

#### **I. MITIGATION**

# Section 106 MOA (Whereasmania 2)

- We consulted with SHPO.
- We invited lots of consulting parties.
- We gave the public a chance to comment.
- We invited the ACHP to participate.
- FHWA invited INDOT and the LPA to be signatories of the MOA.
- We agree to **mitigate** with **stipulations**.



# Suggested Mitigation from Consulting Parties

- Fund and install interpretive signage
- Fund and complete a NRHP nomination
- Reuse/reinstall limestone curbs, brick pavers
- Fund and complete a historical architecture tour pamphlet/brochure
- Fund and complete an oral history project or video documentary
- Fund and create a website and/or online audio tour
- Fund and complete preservation efforts
- Document photographically or with measured drawings/plans
- Physical relocation instead of demolition
- Preservation Easements
- Updates to County Surveys (IHSSI Interim Reports)





FHWA and the City of Mount Vernon shall fund and ensure the installation of interpretive signage within the Mount Vernon Downtown Historic District. The signage will discuss the history and significance of the historic district.

## II. OBJECTION RESOLUTION PROVISION

Disagreement and misunderstanding about how this memorandum of agreement is or is not being implemented shall be resolved in the following manner:

- a. If the Indiana SHPO or any invited signatory to this memorandum of agreement should object in writing to the FHWA regarding any action carried out or proposed with respect to the Mount Vernon Bicycle/Pedestrian Trail Project or implementation of this memorandum of agreement, then the FHWA shall consult with the objecting party to resolve this objection. If after such consultation the FHWA determines that the objection cannot be resolved through consultation, then the FHWA shall forward all documentation relevant to the objection to the Council, including the FHWA's proposed response to the objection. Within 45 days after receipt of all pertinent documentation, the Council shall exercise one of the following options:
  - i. Provide the FHWA with a staff-level recommendation, which the FHWA shall take into account in reaching a final decision regarding its response to the objection; or
  - ii. Notify the FHWA that the objection will be referred for formal comment pursuant to 36 C.F.R. Section 800.7(c), and proceed to refer the objection and comment. The FHWA shall take into account the Council's comments in reaching a final decision regarding its response to the objection.
- b. If comments or recommendations from the Council are provided in accordance with this stipulation, then the FHWA shall take into account any Council comment or recommendations provided in accordance with this stipulation with reference only to the subject of the objection. The FHWA's responsibility to carry out all actions under the memorandum of agreement that are not the subjects of the objection shall remain unchanged.

## III. POST REVIEW DISCOVERY

In the event that one or more historic properties other than the Mount Vernon Downtown Historic District, Posey County Courthouse Square, and the Welborn Historic District are discovered or that unanticipated effects on historic properties (which may include the Mount Vernon Downtown Historic District) are found during the implementation of this memorandum of agreement, the FHWA shall follow the procedure specified in 36 C.F.R. Section 800.13, as well as IC 14-21-1-27 and IC 14-21-1-29, by stopping work in the immediate area (100 feet) and informing the Indiana SHPO and the INDOT Cultural Resources Section of such unanticipated discoveries or effects within two (2) business days. FHWA will also notify Native American tribes who requested to be consulting parties or requested to be notified of archaeological site

# Section 106 MOA

- **Mitigation** steps specifically noted.
- What we'll do if one of the invited signatories objects to how the project is being executed or how the MOA is being implemented.
- What we'll do if another historic or archaeological resource is found while the MOA is in effect.



discoveries. Any necessary archaeological investigations shall be conducted according to the provisions of IC 14-21-1, 312-IAC-21 and 312-IAC-22, and the most current *Guidebook for Indiana Historic Sites and Structures Inventory – Archaeological Sites*.

IV. **AMENDMENT**

Any signatory to this memorandum of agreement may request that it be amended, whereupon the parties shall consult to consider the proposed amendment. 36 C.F.R. 800.6(c)(7) shall govern the execution of any such amendment.

V. **TERMINATION**

A. If the terms of this memorandum of agreement have not been implemented by December 31, 2022, then this memorandum of agreement shall be considered null and void. In such an event, the FHWA shall so notify the parties to this memorandum of agreement and, if it chooses to continue with the Mount Vernon Bicycle/Pedestrian Trail Project, then it shall reinstate review of the Mount Vernon Bicycle/Pedestrian Trail Project in accordance with 36 C.F.R. Sections 800.3 through 800.7.

B. Any signatory to the memorandum of agreement may terminate it by providing thirty (30) days notice to the other parties, provided that the parties shall consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, the FHWA shall comply with 36 C.F.R. Sections 800.3 through 800.7 with regard to the review of the Mount Vernon Bicycle/Pedestrian Trail Project.

C. In the event that the FHWA does not carry out the terms of this memorandum of agreement, the FHWA shall comply with 36 C.F.R. Sections 800.3 through 800.7 with regard to the review of the Mount Vernon Bicycle/Pedestrian Trail Project.

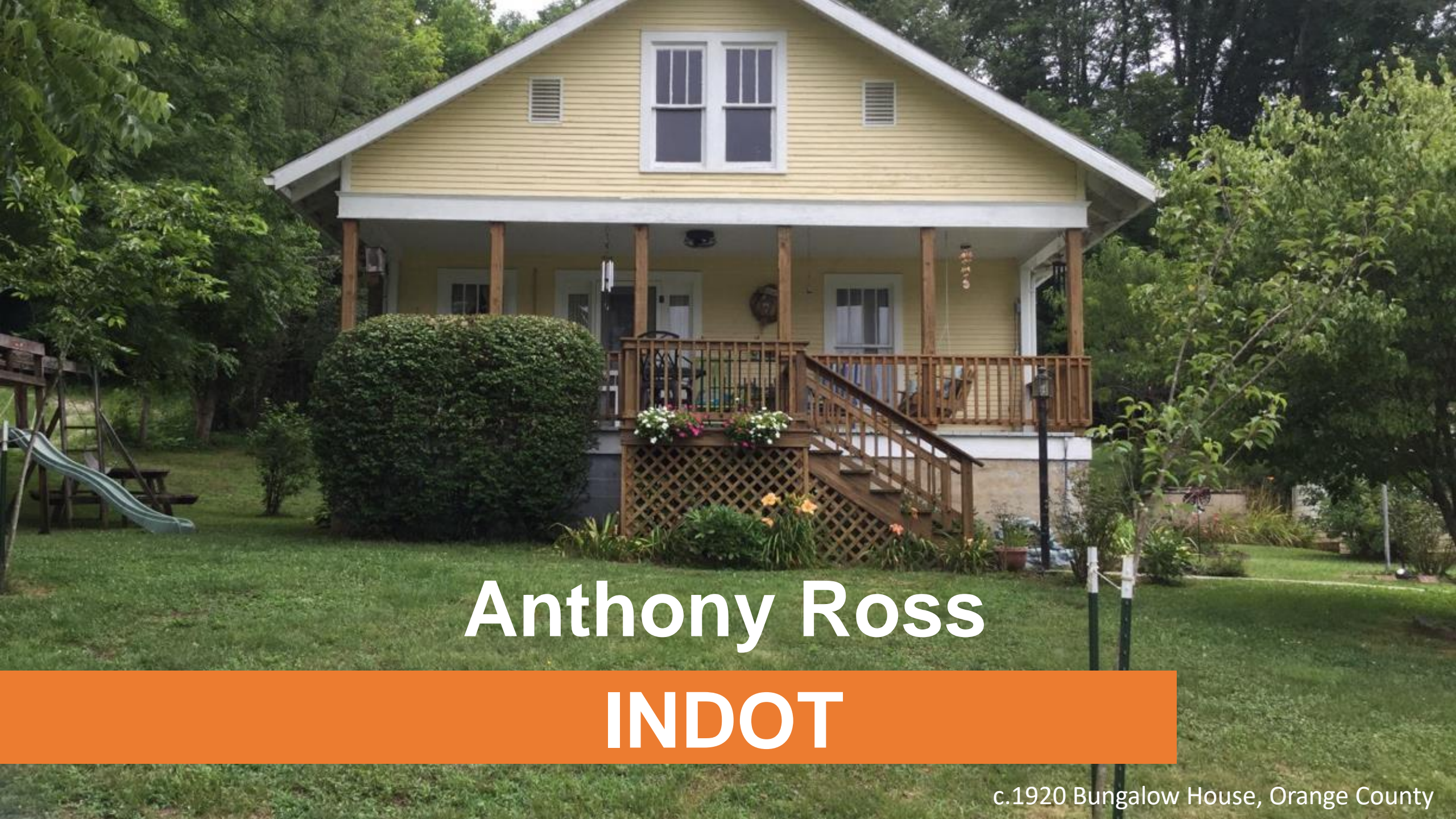
The execution of this memorandum of agreement by the FHWA, the Indiana SHPO, INDOT, IDNR, the submission of it to the Council with the appropriate documentation specified in 36 C.F.R. Section 800.11(e) and (f), and the implementation of its terms evidence that the FHWA has afforded the Council an opportunity to comment on the Mount Vernon Bicycle/Pedestrian Trail Project and its effect on historic properties and that the FHWA has taken into account the effects of the Mount Vernon Bicycle/Pedestrian Trail Project on historic properties.

# Section 106 MOA

- How to Amend/Revise the MOA.
- The **SUNSET CLAUSE**.
- Other termination causes.
- If **mitigation stipulations** not completed or the MOA is otherwise terminated, Section 106 Review begins again.







**Anthony Ross**

**INDOT**

c.1920 Bungalow House, Orange County



# Adverse Effect?: Dealing with those Forgotten MOA Commitments

Anthony Ross

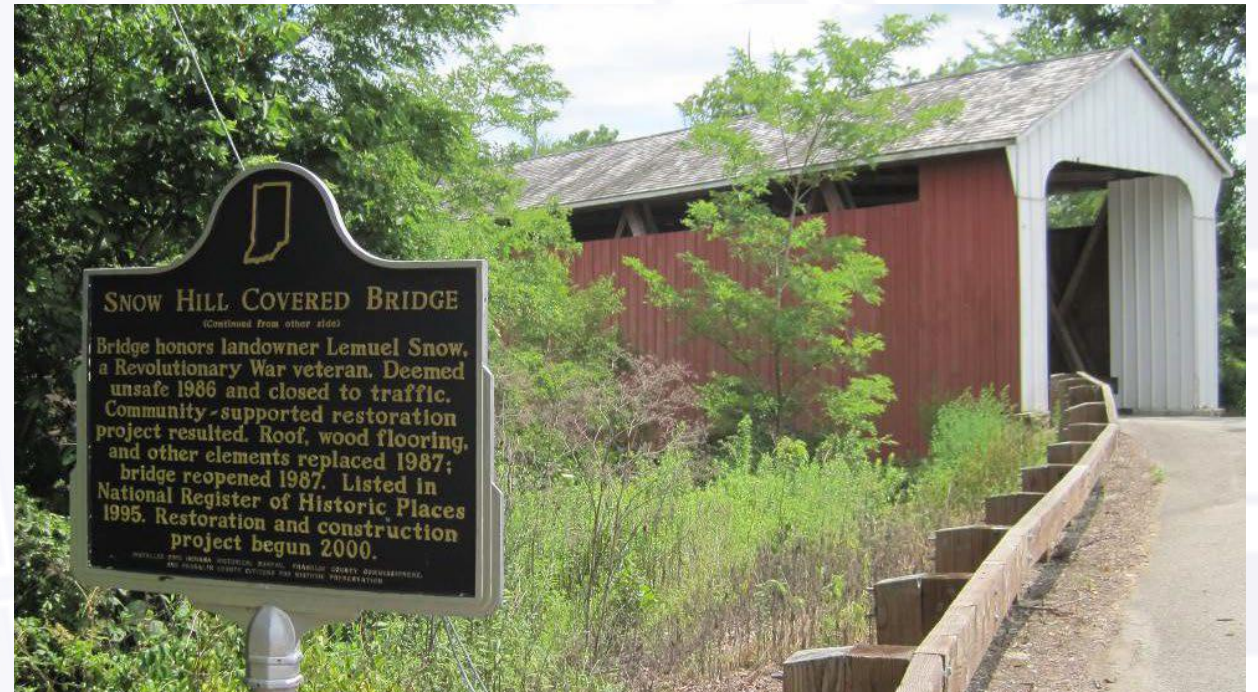
INDOT Environmental Services Division



# Memorandum of Agreement (MOA)

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- Not an MOU
- Legally binding
- Stipulations **MUST** be completed



# Who is responsible for fulfilling an MOA?

- FHWA → INDOT → LPA (if it's LPA-Sponsored)
- In rare cases, other entities may have responsibilities and will sign
- Change of political leadership does not obviate the LPA's legal duty to comply with MOA

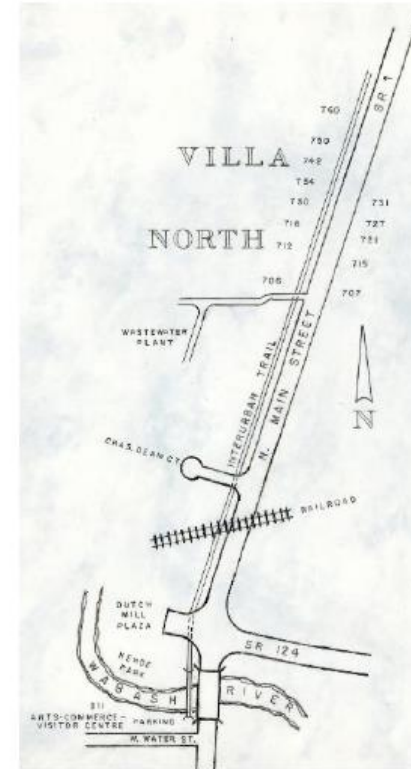




# Expiration date = Deadline

- Usually, 10 years or more
- Don't wait until it's too late
- Expiration does NOT mean that you're free from obligations of Section 106 mitigation → consultation needed – may result in additional mitigation

## VILLA NORTH HISTORIC DISTRICT WALKING TOUR BLUFFTON, INDIANA



**The Lent A. Williamson Residence, 760 North Main Street**  
The first house built in Villa North (1891) was this two story Queen Anne style design, designed by the prominent Fort Wayne architects, Wing and Mahurin. Lent A. Williamson was President of the Wells County Bank in the late 1800s.



**The Amos G. King Residence, 750 North Main Street**  
This two story design combines an Italianate form with Colonial Revival details. Alvin J. Stewart, local civil engineer, designed and built the house for his daughter and her husband Amos King in 1894. Although Stewart was a resident of Bluffton from 1871 and was active as a local builder and architect, only this residence and his own home at 414 W. Market St. in Bluffton (1882), which is the present Wells County Historical Society Museum, have been identified as Stewart designs. King and Stewart were partners in the Bluffton Creamery, and King was later elected Wells County Treasurer (1901-1904).



**The James H. Chaddock Residence, 742 North Main Street**  
This two story Queen Anne style design has a Colonial Revival style

# Example Adverse Effect Finding and MOA

- Georgia St. Improvement Project (2010)



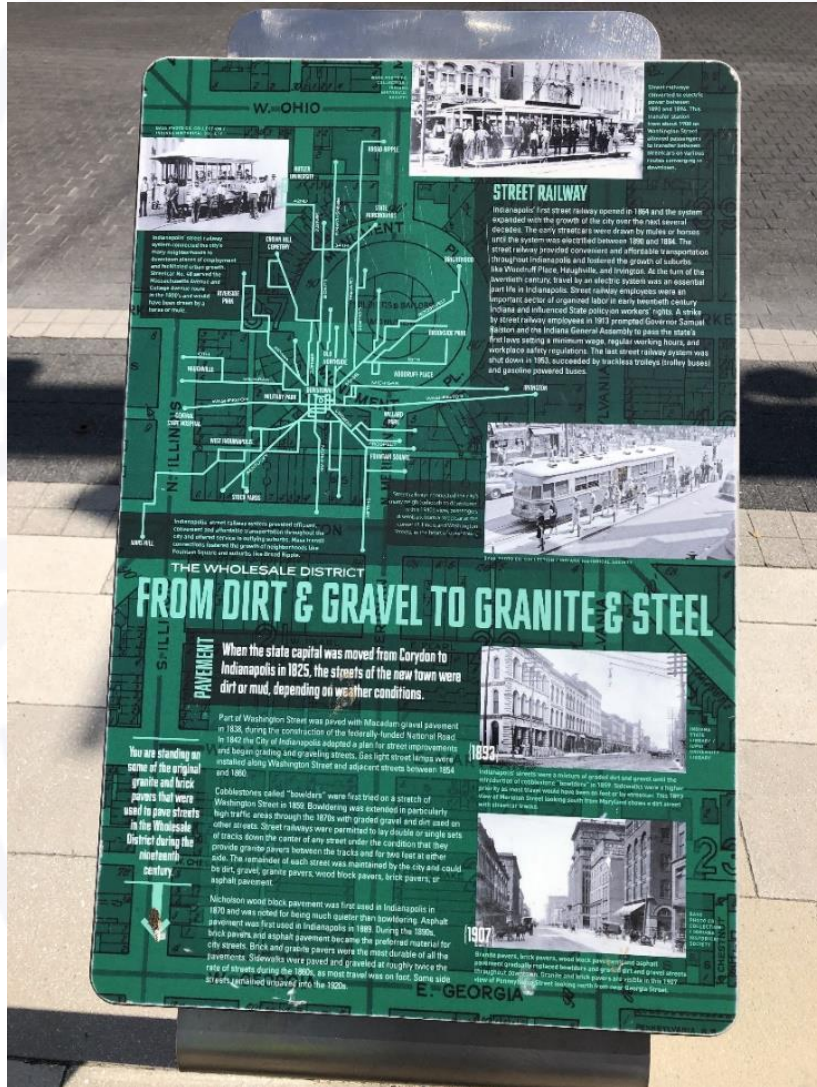
## I. STIPULATIONS

The FHWA will ensure that the following measures are implemented:

- Use of concrete pavements or pavers for the sidewalks adjacent to the contributing historic properties identified along Georgia Street between Illinois Street and Pennsylvania Street and adjacent to the St. John's Church and Rectory. The attempt to create a monolithic appearance and patterning of such sidewalks will be based on information available in historical photographs of Georgia Street between Capitol Avenue and Pennsylvania Street during the 1870 to 1930 period.
- At select locations along the street between Capitol Avenue and Pennsylvania Street, provide Interpretative signage and displays of the history and architecture of the Wholesale District as illustrated by the contributing buildings along Georgia Street.
- Final construction documents, incorporating the above, will be submitted to the Indiana SHPO for review and comment when available.
- If, during the course of the project, previous pavement materials or features, (such as wood, brick or granite pavers or streetcar rails) are discovered, and if the project sponsors, FHWA, and the Indiana SHPO deem it feasible after consultation, interpretive displays along the street shall be created utilizing the materials and features to visualize earlier periods of the street's history. As the completion of the Georgia Street Improvement Project is time sensitive, the project sponsors, FHWA, and the Indiana SHPO shall meet, consult and resolve how to proceed with any post-review discovery within one (1) week of being notified of the issue.



# Georgia St., Indianapolis



# INDOT Review

- INDOT-CRO is charged with tracking compliance
- Annual Quality Assurance Reviews with FHWA and SHPO
- LPA MOA report

## Georgia St. Improvements Des. No. 100065

MOA executed in 2010.

### Stipulations

- A. Use of concrete pavements or pavers for the sidewalks adjacent to the contributing historic properties identified along Georgia Street between Illinois Street and Pennsylvania Street and adjacent to the St. John's Church and Rectory. The attempt to create a monolithic appearance and patterning of such sidewalks will be based on information available in historical photographs of Georgia Street between Capitol Avenue and Pennsylvania Street during the 1870 to 1930 period.
- B. At select locations along the street between Capitol Avenue and Pennsylvania Street, provide interpretive signage and displays of the history and architecture of the Wholesale District as illustrated by the contributing buildings along Georgia Street.
- C. Final construction documents, incorporating the above, will be submitted to the Indiana SHPO for review and comment when available.
- D. If, during the course of the project, previous pavement materials or features, (such as wood, brick or granite pavers or streetcar rails) are discovered, and if the project sponsors, FHWA, and the Indiana SHPO deem it feasible after consultation, interpretive displays along the street shall be created utilizing the materials and features to visualize earlier periods of the street's history. As the completion of the Georgia Street Improvement Project is time sensitive, the project sponsors, FHWA, and the Indiana SHPO shall meet, consult and resolve how to proceed with any postreview discovery within one (1) week of being notified of the issue.

### Status

This project was included in the 2020 INDOT-CRO QAR. The satisfaction of stipulations A and B was confirmed during the QAR.

With regard to Stipulation C, plans for the project, including plans for the interpretive signs, were discussed with SHPO at a meeting on December 15, 2010. In addition, plans were submitted to SHPO on March 4, 2011, August 26, 2011, and September 2, 2011. SHPO provided comments in letters dated March 10, 2011 and September 20, 2011. Meeting minutes and correspondence are on file at INDOT-CRO.

With regard to Stipulation D, previous paving materials, such as those mentioned in the MOA, were discovered. Photographs of these materials were provided to SHPO on March 18, 2011. Pursuant to the stipulation, plans for interpretive displays were developed and provided to SHPO for comment on September 2, 2011. SHPO provided comments in their September 20, 2011 letter. Correspondence is on file at INDOT-CRO. The installation of the interpretive displays was confirmed during the 2020 QAR.

See 2020 QAR report for photos.

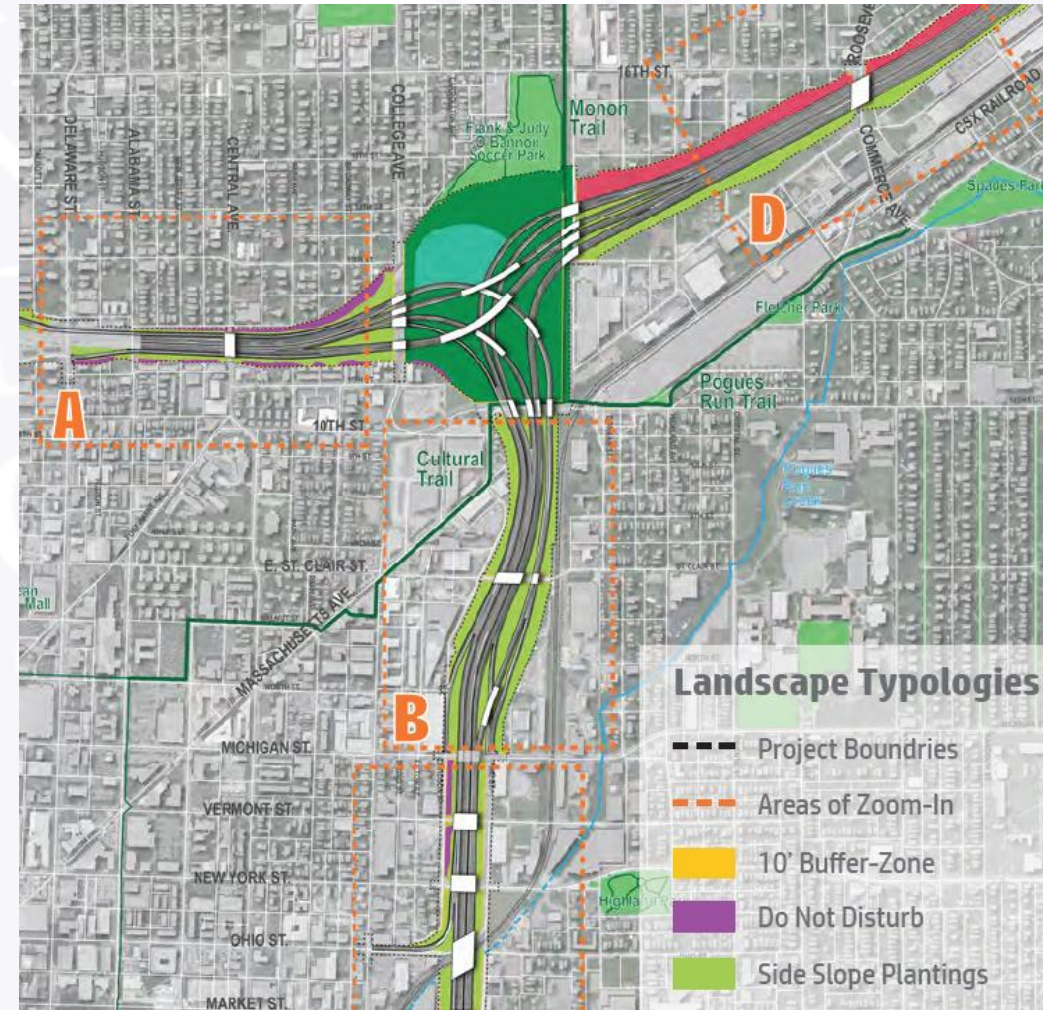
### Summary

This MOA has been satisfied.



# Lessons for future MOAs

- Make sure you have a plan for fulfilling stipulations
- Better to have stipulations that can be completed before or during construction
- Specificity can be good or bad



# INDOT Contacts

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**Leiellen Atz - USACE**

HIGH CR...



# Adverse Effect? Dealing with Forgotten MOA Commitments

Leiellen Atz

Archaeologist

US Army Corps of Engineers,  
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Division



®

US Army Corps of Engineers  
**BUILDING STRONG**®



# Regulatory Program: What We Do



## Federal Permitting

- The Corps Regulatory Program's authority is delegated directly from the U.S. Congress under two sections of law.
  - ▶ Section 10 of the River and Harbors Act of 1899.
    - Structures, work, or dredging in over or under a navigable water.
  - ▶ Section 404 of the Clean Water Act.
    - Discharge of fill material into jurisdictional waters of the U.S.



# Waters of the United States (WoUS)

1. Traditional Navigable Waters
2. Interstate waters including interstate wetlands
3. Other waters including intra-state, non-navigable waters with interstate/foreign commerce connections
4. Impoundments of waters of the U.S.
5. Streams and tributaries
6. Territorial seas
7. Wetlands with a surface water connection to downstream tributaries.





# Types of Permits

## General Permits

- **Nationwide Permits (NWP)\***
  - ▶ Authorize specific types of activities (i.e. bank stabilization, housing, road crossing)
  - ▶ Minimal impact to aquatic environment
  - ▶ Expedited permit review process
  - ▶ Mitigation may be required (avoid, minimize, compensate)
- **Regional General Permits (RGP)**
  - ▶ District wide permit or geographic area
  - ▶ Authorize proposals commonly applied for within the District
  - ▶ Minimal impact to aquatic environment
  - ▶ May require notification and affirmation by Corps prior to use or non-reporting
- **Programmatic General Permits (PGP)**

## Individual Permits

- **Letters of Permission**
  - ▶ Authorize minor activities that exceed limits of general permits
  - ▶ Non-controversial
  - ▶ Limited 15 day coordination
- **Standard Permits**
  - ▶ Full public interest review
  - ▶ Public notice (15-30 days)
  - ▶ Determination of compliance with USEPA Section 404(b)(1) Guidelines
  - ▶ Preparation of Environmental assessment (EA) and statement of findings (SOF)
  - ▶ Results in permit issuance or denial

\*Issued at a national or regional level every 5 years for groups of similar activities with minimal impacts



# Section 106:Alternative Process

The need for a federal permit under the CWA or Section 10 of the Rivers and Harbors Act triggers Regulatory' s Section 106 process.

- ▶ 36 CFR 800.3 (a)(2) allows Federal agencies to substitute a program alternative for the review process
- ▶ USACE, Regulatory Division has a program alternative.





# Appendix C

## 33 CFR Part 325

- Appendix C- Procedures for the Protection of Historic Properties was published June 29, 1990. Legally promulgated under laws in existence at that time.



# Appendix C

## What it Does

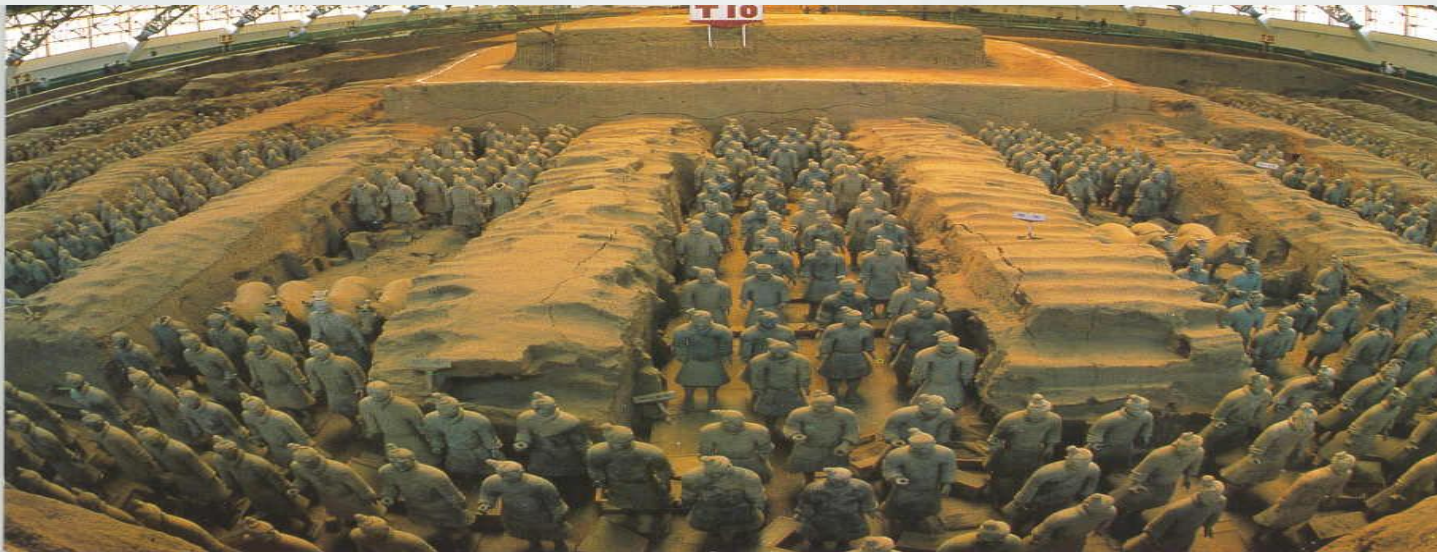
- A. The DE will take into account the effects...of the undertaking on historic properties both within and beyond waters of the U.S.
- B. Defines the undertaking for Corps regulation pursuant to the authorities given by Congress to the Corps under Section 404 of the Clean Water Act (CWA).
  - ▶ *“the work, structure or discharge that requires a Department of the Army permit pursuant to Corps regulations at 33 CFR 320-324.” (33 CFR 325 Appendix C)*
- C. Explains the Corps’ undertaking for cultural resources review within our authorities.
- D. Outlines how historic properties are to be addressed during permit application evaluation.
- E. Corps Headquarters issued guidance in 2005 and 2007 to address changes to Section 106 and the implementing regulations.





# Appendix C Permit Area

- Permit Area/Undertaking: Jurisdictional Waters of the United States that would be directly affected by the undertaking.
- Uplands directly affected as a result of the permitted activity may be included if they meet a three part test.



# Three-Part Test

## 33 C.F.R. 325, Appendix C, Section 1(g)

- The work in the uplands would not occur but for the permitted activity;
- The work is integrally related to the permitted activity; or the permitted activity is essential to the completeness of the overall project; and
- The activity in the uplands is directly associated with the work or structures to be authorized.





# Appendix C Review Process

- Similar to 36 CFR 800, Subpart B process:
  1. Initiate the process;
  2. Identify SHPO, CPs;
  3. Identify historic properties;
  4. Evaluate Historic Significance;
  5. Assess Effects;
  6. Resolution of adverse effects, if any.



# Resolution of Adverse Effect

Three avenues for addressing adverse effects:

1. Avoidance
2. Minimization
3. Mitigation

***Section 106 does not mandate preservation, although it encourages it.***

Memorandum of Agreement (MOA)

- The agreement document resulting from consultation that stipulates the measures that will be taken to reduce effects on historic properties or to mitigate for impacts.
- Mandatory Signatories: Federal Agency, SHPO, and ACHP if they are participating.





# Developing MOA Stipulations

- Who is responsible for completing the stipulations?
  - ▶ For USACE Regulatory, the Applicant is responsible. BUT Regulatory is responsible for ensuring that the Applicant fulfills their responsibilities.
  - ▶ Include timelines for completion of each stipulation.
  - ▶ Include a sunset clause in the MOA
  
- Involve consulting parties
  - ▶ What kind of mitigation are consulting parties interested in?
  - ▶ Incorporate consulting parties' suggestions as appropriate
  
- Mitigation should be commensurate with the impacts to historic properties
  - ▶ The significance of the resource and the impact should be taken into consideration: direct impacts or indirect
  - ▶ If a specific outcome is expected, be specific in the stipulation
  - ▶ If there's room for creativity, be flexible in the stipulation



# Elmwood Drive Bridge Replacement: MOA Between the USACE, INSHPO and the City of Lebanon, Indiana

**A specific mitigation outcome was expected, so this stipulation is very specific:**

## **I. ELMWOOD DRIVE BRIDGE**

### **A. Photo Documentation**

1. Prior to bridge demolition, the Applicant shall contract with a consultant that meets the *Secretary of the Interior's Professional Qualification Standards* to document the Bridge in accordance with the Indiana Division of Historic Preservation & Archaeology Minimum Architectural Documentation Standards:
  - a. Digital photo documentation of the bridge that show the bridge's architectural and structural elements, surrounding environmental settings, views from each approach, and any other significant character-defining details. Digital, color photographs in .TIF format, a photo log that corresponds to the photographs, a photo key, and an overview thumbnail sheet of the photographs will be provided on CD, flash drive, or any other previously approved storage device or transfer method.
  - b. If available, a copy of the original construction plans and details shall be provided by the Applicant.
  - c. Drafts of the completed documentation will be submitted by the Applicant to the Corps and to the Indiana SHPO for review and approval. The Corps and Indiana SHPO shall provide comments within 30 calendar days of receipt.
    - i. Upon notification by the Corps of acceptance of the documentation, the Applicant will provide a copy to the Indiana SHPO for upload to the State Historic Architectural and Archaeological Research Database and transferal to the Indiana State Archives.





# Nucor Steel: Memorandum of Agreement between USACE, Louisville District, KYSHPO, Nucor Steel and the Osage Nation

**This stipulation is vague to allow the consulting parties/Native American Tribes to drive the content:**

## **I. ARCHAEOLOGICAL SITES 15Md458, 15Md475, and 15Md476**

A. Nucor shall contract with a cultural resources consultant that meets the Secretary of the Interior's qualifications to develop a World Wide Web-based public outreach product discussing the pre-contact history of Meade County from the Tribal perspective. The product will be developed with the input and approval of the Federally-recognized Tribes. The Corps recognizes that Tribal consultation is conducted on a government-to-government basis; therefore, the Corps shall coordinate and attend all meetings between the Federally-recognized Tribes, the Nucor and the Nucor's consultant.

1. Within thirty (30) days of completion of the data recovery Management Summaries, Nucor will request that the Corps coordinate a meeting with the Federally-recognized Tribes, KY-SHPO, Nucor, and Nucor's consultant to discuss the findings of the data recovery excavations, develop recommendations on the subject and the format of the public outreach project, and to develop a timeline for the completion of mitigation.
2. The consultant shall, within thirty (30) days of the meeting, prepare a draft Scope of Work (SOW) detailing the agreed-upon subject, format of the product, and timeline, including progress reporting, and submit it to the Corps. The Corps shall distribute the draft SOW to the Federally-recognized Tribes and KY-SHPO for review and comment.



# Uh Oh, That Didn't Work Out

- What happens if a mitigation stipulation cannot be fulfilled?
  - ▶ Don't panic: MOAs can be modified
    - Modification clause should be included in the MOA;
    - Reasons to modify: more time, new mitigation strategy, consulting party request
    - Make modifications before the end date of the sunset clause!
  
- What happens if an applicant refuses to comply with a stipulation?
  - ▶ Permit may be revoked;
  - ▶ Regulatory may not be able to permit future project by the applicant
  - ▶ Administrative penalties.





# QUESTIONS/COMMENTS

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# Questions/Comments

## Section 106 Adverse Effects/MOAs

Martin County Bridge #59, Loogootee



To learn more about it,  
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*FOR...*

- INDOT CULTURAL RESOURCES MANUAL
- SECTION 106 APPLICANT TOOL KIT
- SECTION 106 AGREEMENT DOCUMENTS



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# THANK YOU

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