

MEMORANDUM OF UNDERSTANDING
between
Federal Highway Administration, Indiana Division,
the Indiana State Historic Preservation Officer,
and the

Indiana Department of Transportation

Regarding Section 4(f) of the U.S. Department of Transportation Act of 1966 and notification requirements of intent to make de minimis determinations for historic resources.

THIS MEMORANDUM OF UNDERSTANDING ("MOU"), is hereby made and entered as of the date of last signature (the "Effective Date") by and between the INDIANA DIVISION OF THE FEDERAL HIGHWAY ADMINISTRATION ("FHWA"), an administration in the UNITED STATES DEPARTMENT OF TRANSPORTATION ("USDOT"), the Indiana State Historic Preservation Officer ("SHPO") and the INDIANA DEPARTMENT OF TRANSPORTATION ("INDOT").

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

WHEREAS, Section 4(f) of the USDOT Act of 1966, as amended in the *Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users* (SAFETEA-LU) on August 10, 2005, applies to both publically and privately owned buildings, structures, objects, districts and sites that are listed in or are eligible for listing in the National Register of Historic Places ("NRHP"). In addition, archaeological resources that are listed in or are eligible for listing in the NRHP must also warrant "preservation in place" to qualify for protection as a Section 4(f) property; and

WHEREAS, as detailed in 23 CFR 774 and FHWA's Section 4(f) Policy Paper, there are increased flexibilities with respect to minor transportation project impacts to properties that are protected under Section 4(f), including historic properties; and

WHEREAS, the procedures through which Section 106 is administered by FHWA in Indiana are stipulated in the *Programmatic Agreement 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* ("Minor Projects PA") executed in 2006; and

WHEREAS, INDOT has been delegated the authority, on behalf of FHWA and in conjunction with the Minor Projects PA, to evaluate project impacts to historic properties, which are defined as any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in the NRHP per 36 CFR Part 800 (including any succeeding revisions to the regulations) and make determinations that a project will have "No Adverse Effects" or that there are "No Historic Properties Affected"; and

WHEREAS, for historic sites, *de minimis* impact means that the INDOT, on behalf of FHWA, has determined, in accordance with 36 CFR part 800, regulations implementing Section 106 of the National Historic Preservation Act ("NHPA") that a project will have "No Adverse Effects" or that there are "No Historic Properties Affected"; and

WHEREAS, the SHPO, as the Official with Jurisdiction over all historic resources in Indiana, concurs in writing on the effect determination in accordance with Section 106 of the NHPA; and

WHEREAS, when the historic Section 4(f) property is also a National Historic Landmark, the National Park Service is also an official with jurisdiction over that resource for purposes of this part.

NOW, THEREFORE, the FHWA is hereby notifying the SHPO of FHWA's intent to determine Section 4(f) de minimis use(s) on historic properties (when applicable) for all those projects in which the Indiana SHPO has previously concurred with a finding that the project will have "No Adverse Effect" or that there are "No Historic Properties Affected".

NOW, THEREFORE, the FHWA, SHPO and INDOT hereby agree as follows:

- 1.) FHWA intends to determine Section 4(f) de minimis use(s) on historic properties (when applicable) for all those projects in which the SHPO has previously concurred with a finding that the project will have "No Adverse Effect" or that there are "No Historic Properties Affected".
- 2.) FHWA, SHPO and INDOT concur that this agreement satisfies the notification requirements specified in 23 CFR 774 for all projects except those where there is a determination of "No Adverse Effect" or that there are "No Historic Properties Affected" associated with a historic Section 4(f) property that is also a National Historic Landmark.
- 3.) Should the SHPO prefer to conduct project-specific Section 4(f) de minimis consultation, the SHPO shall provide a written request to FHWA and INDOT within the 30-day comment period for concurrence with, or objection to, the finding of "No Adverse Effect" or "No Historic Properties Affected" being issued by INDOT, on behalf of FHWA, providing reasoning why a project-specific consultation is appropriate.
- 4.) If the SHPO does not concur or request project-specific consultation within the specified times defined in accordance with Section 106 of NHPA, then FHWA will assume SHPO concurrence and by this agreement, will consider the project to have a Section 4(f) de minimis determination.
- 5.) When appropriate, INDOT, in conjunction with the *Programmatic Agreement Between the Federal Highway Administration, Indiana Division and the Indiana Department of Transportation Regarding the Processing of Actions Classified as Categorical Exclusions for Federal-Aid Projects*, will approve these projects as a Categorical Exclusion on behalf of FHWA, as long as they do not individually or cumulatively have a significant impact on the natural and human environment as defined in 23 CFR 771.117(c) and 23 CFR 771.117(d).
- 6.) Any signatory to this agreement 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 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.
- 7.) FHWA, INDOT and SHPO shall meet at least once every ten (10) years to discuss extension of this MOU. Any extension will require written agreement from all three parties.
- 8.) This MOU is effective as of the last signature among FHWA, SHPO and INDOT and will remain in effect until one of the following occurs:
 - A. one of the parties terminates by providing 60 days written notice to the other parties;
 - B. language in Section 4(f), 23 CFR 774.17, or FHWA's Section 4(f) Policy Paper, regarding the conditions under which FHWA or INDOT may determine that a use of a historic property is de minimis, is amended or repealed; or
 - C. ten (10) years have elapsed since the Effective Date of this MOU and the Parties have not executed a written extension.

IN WITNESS THEREOF, the parties hereto have caused this MOU to be duly executed, on the date of the last signature below.

FEDERAL HIGHWAY ADMINISTRATION, INDIANA DIVISION

BY: _____
Mayela Sosa
Division Administrator

DATE: January 2, 2020

INDIANA STATE HISTORIC PRESERVATION OFFICER

BY:  _____
Cameron Clark
Director, Indiana Department of Natural Resources

DATE: 12/4/19

INDIANA DEPARTMENT OF TRANSPORTATION

BY:  _____
Joseph McGuinness
Commissioner

~~for~~ DATE: 12/11/19