

PROGRAMMATIC MEMORANDUM OF UNDERSTANDING

AMONG

THE IOWA DIVISION OF THE FEDERAL HIGHWAY ADMINISTRATION

THE IOWA DEPARTMENT OF TRANSPORTATION

AND THE PAWNEE NATION OF OKLAHOMA

REGARDING

**IMPLEMENTING NOTIFICATION AND CONSULTATION IN ACCORDANCE WITH
36 CFR PART 800 ON HIGHWAY CONSTRUCTION PROJECTS IN
THE STATE OF IOWA**

WHEREAS the Iowa Division of the Federal Highway Administration (FHWA) is an agency of the United States Government that has the responsibility for administering the Federal-aid highway program in Iowa; and

WHEREAS the FHWA, has requested the Iowa Department of Transportation (DOT), the primary recipient of Federal-aid highway funds in the State of Iowa, to provide assistance to FHWA in complying with the body of environmental law that includes the National Environmental Policy Act (NEPA), the National Historic Preservation Act (NHPA), and other similar laws; and

WHEREAS the Iowa State Historic Preservation Office (SHPO) is responsible for the preservation of historic properties in the state of Iowa; and

WHEREAS the Iowa office of the State Archaeologist (OSA) is responsible for ensuring that Iowa and Federal laws regarding human remains and burials are observed; and

WHEREAS the Pawnee Nation is recognized as a tribal government with a governing body able to enter into agreements or understandings with other federal and state agencies on a government to government basis; and

WHEREAS the FHWA, the DOT and the SHPO in consultation with the Advisory Council on Historic Preservation, the Tribes that have indicated an interest in highway projects in Iowa, and the public, have entered into a Programmatic Agreement (PA) (copy attached and incorporated by this reference) which includes an agreed upon process for implementing the provisions of the NHPA as set forth in 36 CFR Part 800.

NOW, THEREFORE, the FHWA, DOT and the Pawnee Nation of Oklahoma agree to the following stipulations as a separate addendum to the above mentioned PA to reduce the notification and consultation of the Pawnee Nation regarding undertakings in the State of Iowa to reduce time, personnel and expense associated with the process contained in the regulations implementing Section 106 of the National Historic Preservation Act.

STIPULATIONS

This Programmatic Memorandum of Understanding (PMOU) applies to projects initiated after its effective date and to the maximum extent practicable to projects currently being developed.

The Pawnee Nation shall provide a letter identifying the agent who can represent the tribe for Section 106 consultation and whether this agent has signatory authority to enter into Memoranda of Agreement.

The Pawnee Nation acknowledges that most federal undertakings have no cultural or religious significance to the tribe and wishes to concentrate on those undertakings that do.

The Pawnee Nation has had a historical presence in the parts of Iowa shown on Appendix C, has an interest in all burials in those parts of Iowa, considers undertakings within 100 feet of burials to be an adverse effect, desires to be notified, and desires to be included in the consultation process regarding those burials. Refer to Appendix A for a description of the consultation process.

The Pawnee Nation has lost much of its history concerning religious or cultural sites due to the genocide waged against the tribe and must rely on federal agencies to ensure adequate archaeological surveys be used to detect those sites during the discovery phase in project development. The tribe recognizes a Phase 1 or an acceptable Phase 1A survey. The tribe does not recognize a literature search and/or a drive over as a good faith effort in the attempt to locate the sites important to the tribe on previously undisturbed or non-surveyed (for cultural resources) land. All areas that will be impacted by the project are considered to be part of the undertaking. This includes borrow areas, wetland mitigation sites, etc.

The Pawnee Nation has a special interest in some religious/cultural sites in Iowa and requests the FHWA and the DOT to keep the locations of those sites and all burial sites confidential. The sites are listed in the Pawnee Nation Religious and Cultural Sites Attachment. Sites may be added to this Attachment by the tribe. Undertakings within ½ mile of these sites is considered an adverse effect and the tribe desires notification and to be included in the consultation process. Refer to Appendix A for a description of the consultation process.

The Pawnee Nation realizes that unearthing of burials is possible even with thorough archaeological surveys. In the event of this happening it will be viewed as an accidental unearthing, in which case the burial contents may be recovered by the Office of the State Archaeologist until a suitable Memorandum of Agreement is drafted. In the absence of an acceptable archaeological survey, the unearthing will be considered deliberate and the burial will remain or be reburied at the site with the undertaking halted until a suitable Memorandum of Agreement is drafted.

The Pawnee Nation recognizes that discovery of sacred objects may occur during undertakings and if these objects or material are affiliated with this tribe, they will be returned to the Tribe. The tribe acquiesces authority to the Indian Advisory Council to the State Archaeologist and tribes involved in the consultation process if no response is provided within fourteen days from notification on non-affiliated sacred objects. What the tribe considers sacred objects is listed in "Attachment of Sacred Objects" which may be expanded after a 30 day review and consent of signatories.

The Pawnee Nation recognizes a timely response is necessary to address adverse effects on sites of tribal interest. If the tribe or its designated agent doesn't respond by mail, e-mail or fax within fourteen days from notification, the tribe acquiesces authority to the Indian Advisory Council to the State Archaeologist and to any other tribes involved in the consultation process. If these involved Indians do not provide a consensus, the tribe should be notified for their opinion.

The Pawnee Nation uses various agents to represent the tribal view. The federal agency may appeal to our governing body to review the agent's position.

The Pawnee Nation recognizes the FHWA and the DOT's good faith effort and their respectful consideration of the Indian people. The tribe also recognizes the lack of good faith effort and respect of some federal agencies. It is with this in mind that the tribe limits the use of our provided sites, parameters and concessions to the exclusive use of the FHWA in its undertakings.

Should any party to this agreement object in writing to any action carried out or proposed with respect to the implementation of this agreement, the parties shall consult to resolve the objection. If after initiating such consultation, the objection cannot be resolved, it will be resolved in accordance with the provisions of 36 CFR Part 800.

Modification, amendment or termination of this PMOU shall be accomplished if necessitated by changes to the relevant federal or state laws, or implementing regulation or rules, or by request of one or more of the signatories in consultation among the parties in the same manner as the original PMOU.

FEDERAL HIGHWAY ADMINISTRATION

By: Gerald L. Kennedy

**Gerald Kennedy
Assistant Division Administrator
Iowa Division**

Date: January 23, 2004

IOWA DEPARTMENT OF TRANSPORTATION

By: Mark Kerper

**Mark Kerper
Assistant Director
Location and Environment**

Date: January 23, 2004

PAWNEE NATION OF OKLAHOMA

By: Alice Alexander

**Alice Alexander
Tribal Historic Preservation Officer**

Date: Jan. 16, 2004