

Appendix E

**Detroit River International Crossing Study
Draft Memorandum of Agreement Among
the Michigan Department of Transportation,
the Federal Highway Administration
and the Michigan State
Historic Preservation Officer**

**MEMORANDUM OF AGREEMENT BETWEEN
THE FEDERAL HIGHWAY ADMINISTRATION AND
THE MICHIGAN STATE HISTORIC PRESERVATION OFFICER
REGARDING
THE DETROIT RIVER INTERNATIONAL CROSSING (DRIC),
DETROIT, WAYNE COUNTY, MICHIGAN
SUBMITTED TO THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
PURSUANT TO 36 CFR PART 800.6(b)(1)**

WHEREAS, the Federal Highway Administration (FHWA) of the U.S. Department of Transportation has determined that the proposed plaza for the DRIC, Detroit, Wayne County, Michigan will pose an adverse effect upon St. Paul AME Church (579 South Rademacher Street), Kovacs Bar (6986 West Jefferson Avenue), and two historical archaeological sites (20WN1132 and 20WN1133), all of which appear to meet the criteria for listing in the National Register of Historic Places and has consulted with the Michigan State Historic Preservation Officer (SHPO) pursuant to 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f) (the Act); and

WHEREAS, The Berwalt Manor Apartment Building (760 Campbell Street) appears to meet the criteria for listing in the National Register of Historic Places and the project will have no adverse effect on those qualities making it eligible for listing in the National Register; and

WHEREAS, Fort Wayne is listed on the National Register of Historic Places and the project will have no adverse effect on this historic property; and

WHEREAS, The Michigan Department of Transportation (MDOT) and the City of Detroit participated in the consultation and has been invited to concur in this Memorandum of Agreement (MOA);

NOW, THEREFORE, FHWA and SHPO agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on the historic properties.

STIPULATIONS

I. FHWA shall ensure that the following measures are carried out:

A. Recordation

1. St. Paul A.M.E. and Kovacs Bar shall be recorded so that there is a permanent record of their existence. MDOT shall prepare photographic documentation and a historical overview of the resources according to the SHPO *Documentation Guidelines* attached hereto as **Attachment A**. Unless otherwise agreed to by the SHPO, MDOT shall ensure that all documentation is completed and accepted by the SHPO for deposit in

the State Archives of Michigan prior to the commencement of any demolition or construction activity concerning the affected properties. MDOT will provide additional original copies of the recordation package to appropriate local repositories designated by the SHPO.

- 2 MDOT shall include, if available, as part of the recordation package original or archival –quality copies of historic photographs of the affected properties; additionally, electronic versions of these photographs will be submitted to the SHPO.

B. Berwalt Manor

1. Should MDOT perform any work to the exterior of the Berwalt Manor apartment building to minimize noise for the residents, then the work will follow the *Secretary of the Interior Standards for Rehabilitation*.
2. Right of way fence installed adjacent to the Berwalt building will be decorative and historically appropriate.
3. The area adjacent to the I-75 northbound exit ramp onto Campbell Street shall be landscaped as will Campbell Street itself.
4. MDOT shall submit work plans and specifications to the SHPO for review and approval of the above-noted work.

C. Historic Fort Wayne

1. MDOT shall pay for an update of the existing Fort Wayne Master Plan to revisit Fort entryway options..
2. MDOT shall conduct videotape documentation of building conditions before, during, and after construction for Fort buildings closest to Jefferson Avenue and buildings containing historical collections. MDOT will monitor vibration levels at the Fort. MDOT shall implement a protocol to notify the City of Detroit of any damage that may be associated with construction-related vibration.
3. MDOT shall provide wayfinding signage to assist visitors in accessing the Fort and create and print brochures showing changes in access to the Fort.
4. A direct local access road to and from the plaza to Campbell Street will be built. Campbell Street shall receive pavement, landscaping and lighting improvements from the new I-75 northbound ramp south to West Jefferson Avenue to serve as a gateway to the Fort. Campbell Street will be reconstructed as a narrow boulevard from the railroad tracks to West Jefferson Avenue.

5. MDOT shall install new pavement, landscaping and lighting along West Jefferson Avenue from West End Street to Clark Street as well as along Clark Street from its interchange with I-75 to Jefferson Avenue to provide an attractive route to Fort Wayne.
6. MDOT shall construct a new decorative and historically appropriate fence along the West Jefferson property line of the Fort.
7. MDOT shall construct a new or refurbish the Fort's entranceway from West Jefferson Avenue as identified in the updated Historic Fort Wayne Master Plan.
8. The security wall surrounding the plaza will receive a surface treatment aesthetically compatible with Historic Fort Wayne along its West Jefferson Avenue perimeter.
9. The 100' wide buffer area between the plaza security wall and West Jefferson Avenue will receive landscaping meeting Customs and Border Protection guidelines.
10. MDOT will work with Customs and Border Protection to institute truck anti-idling measures on the plaza.
11. Work plans and specifications for all work near Fort Wayne will be submitted to the City of Detroit and the SHPO for review and approval.
12. MDOT shall coordinate with the Detroit Recreation Department and City of Detroit emergency services providers (police, fire, and emergency medical services) to develop traffic management plans to facilitate traffic movement during high-volume special events hosted on Fort property.

II. ARCHEAOLOGICAL RESOURCES

- A. The FHWA and SHPO agree that sites 20WN1132 and 20WN1133 are important for the information that they may yield, and that preservation in place is not warranted.
- B. MDOT shall develop an appropriate data recovery strategy for sites 20WN1132 and 20WN1133 to mitigate the adverse effects of construction of the proposed Detroit River International Crossing, which includes the border crossing, plaza, and interchange connecting the plaza to I-75.
 1. The data recovery plan shall be approved by SHPO prior to implementation and shall be consistent with the Secretary of the Interior's Standards and Guidelines for Archaeological Documentation (48 FR 44734-37) and take into account the Advisory Council on Historic Preservation's policy statement, Treatment of Burial Sites, Human Remains and Funerary Objects, as well as any applicable SHPO guidelines.

2. The data recovery plan, at minimum, shall specify the research questions that are to be addressed through the data recovery and the methods to be employed, with an explanation of their relevance and importance; the methods of data analysis, management and dissemination of recovered data, the disposition of recovered archaeological data; a procedure for the treatment of human remains, if encountered; and procedures for consultation with consulting parties, including Indian tribes (see below).
3. It is agreed that, per their formal requests, the Hannahville Indian Community and the Gun Lake Tribe shall be notified and consulted in the event of the discovery of Native American human remains, in accordance with the applicable federal and state laws, rules, and regulations concerning such finds.

III. GENERAL CONSIDERATIONS

A. Amendment

1. Any party to this MOA may propose to the other parties that it be amended, whereupon the parties will consult in accordance with 36 CFR800.6(c)(7) to consider such an amendment.
2. In the event that any portion of this MOA is found to be infeasible, the parties to this MOA shall consult to consider appropriate alternative mitigation.
3. Any additional or alternative actions considered pursuant to this agreement shall be subject to implementation by amending this MOA in accordance with this section.

B. Dispute Resolution

Should the SHPO, the City of Detroit or MDOT object within 30 (thirty) days to any actions proposed pursuant to this MOA, the FHWA shall consult with the objecting party to resolve the objection. If the FHWA determines that the objection cannot be resolved, the FHWA shall forward all documentation relevant to the dispute to the Advisory Council on Historic Preservation (Council). Within 45 (forty-five) days after receipt of all pertinent documentation, the Council will either:

1. Provide the FHWA with recommendations, which the FHWA will take into account in reaching a final decision regarding the dispute; or

2. Notify the FHWA that it will comment pursuant to 36 CFR 800.7(c) and proceed to comment. Any Council comment provided in response to such a request will be taken into account by FHWA in accordance with 36 CFR 800.7(c)(4) with reference to the subject of the dispute.

C. Termination

1. If the FHWA determines that it cannot implement the terms of this MOA, or if the SHPO determines that the MOA is not being properly implemented, the FHWA or the SHPO may propose to the other parties to this MOA that it be terminated.
2. The party proposing to terminate this MOA shall so notify all parties to this MOA explaining the reasons for termination and affording at least sixty (60) days to consult and seek alternatives to termination. The parties shall then consult.
3. Should such consultation fail, the FHWA or the SHPO may terminate the MOA by so notifying all parties.
4. Should this MOA be terminated, the FHWA shall either:
 - a. Consult in accordance with 36 CFR § 800.6 to develop a new MOA; or
 - b. Request the comments of the Council pursuant to 36 CFR § 800.7.

Execution and implementation of this MOA and its submission to the Council evidences that FHWA has afforded the Council a reasonable opportunity to comment on the project and that the FHWA has taken into account the effects of the project on historic properties.

FEDERAL HIGHWAY ADMINISTRATION

By: _____ Date: _____
James J. Steele, Division Administrator

MICHIGAN STATE HISTORIC PRESERVATION OFFICER

By: _____ Date: _____
Brian D. Conway, State Historic Preservation Officer

Concur:

MICHIGAN DEPARTMENT OF TRANSPORTATION

By: _____ Date: _____
Susan Mortel, Director, Bureau of Transportation Planning

CITY OF DETROIT

By: _____ Date: _____
Alicia C. Minter, Deputy Director, Detroit Recreation Department

DRAFT



Preserving America's Heritage

September 30, 2008

Mr. James Steele
Michigan Division Administrator
Federal Highway Administration
315 W. Allegan, Room 201
Lansing, MI 48933

Ref: *Detroit River International Crossing*
Detroit, Wayne County, Michigan

Dear Mr. Steele:

On September 17, 2008, the Advisory Council on Historic Preservation (ACHP) received your notification and supporting documentation regarding the adverse effects of the referenced undertaking on properties listed or eligible for listing in the National Register of Historic Places. Based upon the information you provided, we have concluded that Appendix A, *Criteria for Council Involvement in Reviewing Individual Section 106 Cases*, of our regulations, "Protection of Historic Properties" (36 CFR Part 800), does not apply to this undertaking. Accordingly, we do not believe that our participation in the consultation to resolve adverse effects is needed. However, if we receive a request for participation from the Michigan State Historic Preservation Officer (SHPO), Tribal Historic Preservation Officer, affected Indian tribe, a consulting party, or other party, we may reconsider this decision. Additionally, should circumstances change, and you determine that our participation is needed to conclude the consultation process, please notify us.

We note that the effect finding for Fort Wayne, a historic property within the Area of Potential Effects (APE) for this undertaking, is pending additional consultation with SHPO. It is important that FHWA complete its finding of effect for this property early in the Section 106 process so that a full range of alternatives for avoiding, minimizing, or mitigating adverse effects can be considered as consultation moves forward. The FHWA should also clarify the involvement of other federal agencies, identified as cooperating agencies in the documentation provided, in this undertaking and whether such agencies are coordinating with the FHWA to comply with Section 106.

Pursuant to 36 CFR §800.6(b)(1)(iv), you will need to file the final MOA, developed in consultation with the Michigan SHPO and any other consulting parties, and related documentation with the ACHP at the conclusion of the consultation process. The filing of the MOA and supporting documentation with the ACHP is required in order to complete the requirements of Section 106 of the National Historic Preservation Act.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

1100 Pennsylvania Avenue NW, Suite 809 • Washington, DC 20004
Phone: 202-606-8503 • Fax: 202-606-8647 • achp@achp.gov • www.achp.gov

Thank you for providing us with your notification of adverse effect. If you have any questions, please contact Blythe Semmer at 202-606-8552 or via e-mail at bsemmer@achp.gov.

Sincerely,



Charlene Dwin Vaughn, AICP
Assistant Director
Office of Federal Agency Programs
Federal Permitting, Licensing, and Assistance Section