

Appendix D:
FHWA and SHPO Memorandum of Agreement

**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 Detroit River International Crossing (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 archaeological sites (20WN1132 and 20WN1133), all of which appear to meet the criteria for listing in the National Register of Historic Places;
- Pose no adverse affect on Berwalt Manor Apartment Building (760 Campbell Street) which appears to meet the criteria for listing in the National Register of Historic Places, is located within the project Area of Potential Effects, and the project will have no adverse effect on those qualities making it eligible for listing in the National Register;
- Pose no adverse effect on Fort Wayne which is listed in the National Register of Historic Places, is located within the project Area of Potential Effects, and the project will have no adverse effect on this historic property;

WHEREAS, FHWA has consulted with the Michigan State Historic Preservation Officer (SHPO) on the above properties and pursuant to 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f) (the Act);

WHEREAS, the City of Detroit Historic Landmarks and Districts Ordinance (Detroit Ordinance 161-H of 1976, as amended) does not recognize the St. Paul AME Church, Kovacs Bar, Berwalt Manor, and Fort Wayne;.

WHEREAS, the City of Detroit Recreation Department was invited to concur in this Memorandum of Agreement (MOA) but declined; and

WHEREAS, the Michigan Department of Transportation (MDOT) 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 the Treatment of Historic Properties*, 36 CFR Part 68, (1995), *Standards for Rehabilitation*, 36 CFR Part 67.7 (July 1, 2004 edition).
2. MDOT shall install a right of way fence across from the termination of the NB I- 75 exit to Campbell Street. The design shall be aesthetically appropriate and complementary to the design of the building and shall be approved by MDOT, SHPO and the building owner.
3. MDOT shall landscape the area adjacent to the I-75 northbound exit ramp onto Campbell Street as well as Campbell Street itself.
4. MDOT shall submit work plans and specifications to the SHPO for review and approval of the above-noted work.
5. MDOT shall offer to conduct vibration monitoring of the building conditions before, during, and after construction.

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 and seismic monitoring of structural conditions before, during, and after construction for Fort buildings and structures closest to Jefferson Avenue, the north elevation of the Star Fort, and Detroit Historical Society collections stored within the Fort property. 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. MDOT shall construct a direct local access road to and from the plaza to Campbell Street. 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. MDOT will work with the City of Detroit to investigate the possibility of renaming Campbell Street to Fort Wayne Street or another, similar name that will help identify the street as an access route to the Fort.
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 an entryway treatment for Fort Wayne on Fort's West Jefferson Avenue frontage or on other, adjacent City-owned property to improve wayfinding and visibility as identified in the updated Historic Fort Wayne Master Plan. MDOT shall pay for the reconfiguration of those portions of existing Fort Wayne streets specifically needed to connect to the new entryway.
8. MDOT shall construct a security wall surrounding the plaza; the wall will receive a surface treatment aesthetically compatible with Historic Fort Wayne along its West Jefferson Avenue perimeter.
9. MDOT shall landscape the 100' wide buffer area between the plaza security wall and West Jefferson Avenue, meeting Customs and Border Protection guidelines.
10. MDOT shall work with Customs and Border Protection to encourage truck anti-idling measures on the plaza.
11. MDOT shall submit work plans and specifications for all of the above provisions relative to Historic Fort Wayne to the City of Detroit Recreation Department and the SHPO for review and approval.

12. MDOT shall work with the Fort staff and the Detroit Police Department to develop a traffic management plan for large events. MDOT shall contribute toward consultant services used to create the traffic management plan.
13. MDOT shall construct a surface parking lot to replace legal on-street parking that is eliminated to accommodate the plaza. The lot shall be of a design and construction similar to that used for Park and Ride Lots, commonly found adjacent to Interstate Highway interchanges. MDOT and the City of Detroit shall verify the number of legal parking spaces that will be removed from service to the fort. The City of Detroit shall provide a clean site for the parking lot. The parking lot, once constructed, shall become the responsibility of the City of Detroit for any maintenance and policing.

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 the Gun Lake Tribe and the Pokagon Band of Potawatomi Indians shall be notified by MDOT and consulted in the event of the discovery of Native American archaeological and/or human remains, in accordance with the applicable federal and state laws, rules, and regulations concerning such finds.
- C. MDOT, in consultation with the SHPO, will identify the need, or lack thereof, for monitoring ground disturbing activities that may impact archaeological deposits in

proximity to Fort Wayne as described in Stipulations I.C.4, I.C.5, I.C.6, I.C.7, I.C.8, I.C.9, and I.C.10 above, once construction plans become available.

1. MDOT shall implement the MDOT Construction Policy/Procedure for Bones, Archaeological and Historical Findings if archaeological deposits are encountered during monitoring of the construction.
 2. It is agreed that, per their formal requests, the Hannahville Indian Community, the Gun Lake Tribe, and the Pokagon Band of Potawatomi Indians shall be notified by MDOT and consulted in the event of the discovery of Native American archaeological and/or human remains in accordance with the applicable federal and state laws, rules, and regulations concerning such finds.
- D.** In all areas of DRIC construction, not including the areas in proximity to Fort Wayne described in Stipulation II.C above, MDOT shall implement the MDOT Construction Policy/Procedure for Bones, Archaeological and Historical Findings if unanticipated discoveries are encountered during the course of project construction.

It is agreed that, per their formal requests, the Hannahville Indian Community, the Gun Lake Tribe, and the Pokagon Band of Potawatomi Indians shall be notified by MDOT and consulted in the event of the discovery of Native American archaeological and/or 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 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: James J. Steele Date: Dec. 22, 2008
 James J. Steele, Division Administrator

MICHIGAN STATE HISTORIC PRESERVATION OFFICER

By: Brian D. Conway Date: 12/22/08
 Brian D. Conway, State Historic Preservation Officer

Concur:

MICHIGAN DEPARTMENT OF TRANSPORTATION

By: Susan Mortel Date: 12/22/08
 Susan Mortel, Director, Bureau of Transportation Planning