

Consolidated Review Comments

CAR2015 Draft Programmatic Agreement (7-25 Version)

Reviewers

Midwest Archeological Center

Osage Nation (see also track changes PA provided)

Jefferson National Expansion Memorial

Advisory Council on Historic Preservation

General Comments

(1) Complicated PA Issue – The Programmatic Agreement should not be streamlined any more than absolutely necessary as it governs phased identification of historic properties; phased treatment of potential adverse effects to known and unknown historic properties, including a National Historic Landmark; phased design planning; and phased construction with over a dozen principal interested parties. We support a clear and concise document but are wary of a document that may fail to effectively govern the proposed undertaking. The PA is meant to guide the work with specific protocols, not merely state that the work will be done. (Osage Nation)

(2) Please note: it is the Osage Nation not the Osage Nation of Oklahoma. (Osage Nation)

(3) Appendices should be provided for a complete review. (Osage Nation)

PA Title

(1) Add the following to the end of the existing title: "...AND PROCEDURES FOR CONSULTATION AND INADVERTENT DISCOVERIES." (Osage Nation)

Whereas Clauses

(1) Regarding:

WHEREAS, the United States Department of the Interior, National Park Service, Jefferson National Expansion Memorial (NPS) and the CityArchRiver 2015 Foundation (Foundation) propose to implement the winning design of the Framing a Modern Masterpiece International Design Competition (the Design Competition) by carrying out the physical and programmatic elements called for by that design as modified during consultation in Appendix A (the Undertaking) and in doing so must meet the requirements of Section 106 of the National Historic Preservation Act (16 U.S.C. 470f); (ACHP)

(2) Regarding:

WHEREAS, the FHWA has satisfied the requirements of Section 106 for the proposed construction of a 300-foot wide landscaped 'lid' over the sunken lanes of I-70 between Market and Chestnut streets as demonstrated by a concurrence by the Missouri SHPO dated September 30, 2011 with FHWA's finding of a no adverse effect; and

Please clarify the full extent of the undertaking per the MOU. (ACHP)

(3) Regarding:

WHEREAS, the NPS acknowledges that removal of parking will create a demand for parking accommodation beyond the confines of the Site, and the connection to this Undertaking, if

any, will be clarified and NPS agrees to undertake separate review of that action under Section 106, **as appropriate**; before the removal of the parking garage will commence; and

Will S106 Review follow normal protocols under Part 800? If not, those protocols must be included within this PA? (Osage Nation)

(4) Add two whereas clauses (Osage Nation):

WHEREAS, the NPS, ACHP, and SHPO concur that the Undertaking will affect historic properties (still need to make a statement regarding the known historic properties within the proposed APE – an APE map with known properties identified is Appendix B), as defined at 36 CFR §800.16(l)(1), the NPS shall defer, pursuant to 36 CFR §800.4(b)(2), the agency's final identification and evaluation of historic properties, as well as assessment of effects, pending completion of the schematic design development phase of the design process (36 CFR §800.14(b)(1)(ii)); and

WHEREAS, the NPS has and continues to provide the public with information about the Undertaking and shall continue to seek and consider the views of the public regarding the Undertaking through both the context of complying with the National Environmental Policy Act of 1969 (NEPA) and public meetings to be held during the schematic and design development phases of the design process;

As the undertaking will affect known historic properties and stipulations of this agreement deal with the treatment of those historic properties, these properties must be referred to within the Preamble to the agreement or by way of citing the appropriate Appendix. (Osage Nation, see track changes version of PA provided for placement of whereas clauses)

(5) Add two whereas clauses (ACHP):

WHEREAS, the City of St. Louis, Great Rivers Greenway District [and any property owners upon whose land the undertaking will occur] are Signatories to this Agreement by virtue of their respective responsibilities as identified herein; and

WHEREAS, the Secretary of the Interior has been invited to participate in recognition of the effects to a National Historic Landmark; and

(3) Regarding

NOW, THEREFORE, **the NPS, the ACHP, and the Missouri SHPO** agree that the Undertaking shall be implemented in accordance with the following stipulations in order to take into account the effects of the Undertaking on historic properties.

Include all signatories – this follows standard guidelines provided by the ACHP. (Osage Nation)

Preamble

(1) Regarding:

Consistent with assurances contained in the GMP/EIS for the Park, the National Park Service will not allow the implementation of a project that would cause impairment to the Memorial, and all of the enhancements would be required to be located in such a manner as to preserve the integrity of the National Historic Landmark and National Register Historic District.

The intent of the PA is to balance all interests, and the integrity of the NHL is only one facet, but there's also preservation of non-NHL HPs, HPs of importance to Tribes, and the right of the public to information that can be yielded. (ACHP)

Applicability and Scope

(1) Regarding:

A. This PA applies to the design and construction of the Undertaking defined in Appendix _____. The NPS is the lead federal agency for fulfilling the Section 106 requirements in accordance with this PA. ~~The PA does not apply to the components of the Design Competition design where the Federal Highway Administration, United States Coast Guard, and the United States Army Corp of Engineers are the lead federal agency. The Federal Highway Administration, in partnership with the Missouri Department of Transportation, is the lead federal agency for major transportation improvements associated with the Undertaking, to include the design and construction of the closing of Memorial Drive through Jefferson National Expansion Memorial to Washington Avenue, of a lid over the existing Interstate 70 connecting Luther Ely Smith Square and the Memorial's national historic landscape, and of the redesign of the Interstate ramps at Washington Avenue.~~ (ACHP)

B. With funding assistance from FHWA and ~~other sources [identify federal agency sources]~~ which has [have] designated NPS to carry out their Section 106 compliance, the Great Rivers Greenway District is a principal partner in this undertaking and proposes to: (ACHP)

Identification and Evaluation of Historic Properties

(1) Add a section on continuing consultation. (ACHP)

Archeology

(1) Our one concern at this point is that the NPS is designated the lead agency but that the APE extends beyond the park limits. We propose that there should be some language in the PA stipulating that the NPS only has responsibility for archeology within the park boundaries, not the entire APE. (Midwest Archeology Center)

(2) 90 meter radius – Dr. Reeder has requested that MoDOT not be subjected to the work stoppage within a 90 meter radius. The PA states that MoDOT is not subject to the stipulations within the PA.

The Osage Nation strongly supports work stoppage within a 90 meter radius for all inadvertent and unanticipated discoveries and has provided supportive statements along with past comments on the present PA. In further support of our contention, we submit that, for example, the lot on which Big Mound sat, north of downtown St. Louis, is approximately 90 meters in width. The site was also the location of an historic carriage factory and associated buildings. A 90 meter radius work stoppage provision would have protected the site or, at the very least, provided for investigation rather than outright destruction under a 50 foot radius should prior investigations not have revealed the presence of the site before work had commenced. We are convinced that a 50 foot radius would be insufficient in protecting unknown historic properties and graves.

The recommended protocol currently deals with an early judgment made regarding the size and scope of the discovered materials. This early judgment can be communicated quickly and simply by professionals to the interested parties. The Osage Nation is strongly in support of the current proposed activities and does not wish to cause undue delay. We believe that the only time when work will be stopped in an appreciable way is when it is justified. (Osage Nation)

(3) Regarding

B. Archeological Resources - Identification. It is possible that implementation of the Undertaking could result in damage to previously unknown archeological resources. Accordingly, the NPS will consult with the Missouri SHPO, the Osage Nation, and other signatories to this PA, as appropriate, and carry out needed archeological surveys to determine if any such archeological sites are present and whether such sites are eligible for inclusion in the National Register consistent with the following measures.

Particularly due to the fact that the undertaking is under a rather significant time constraint, the Osage Nation strongly recommends that specific protocols for submittal and review of these documents be included within the PA. This would, in fact, be required, should they differ from the normal requirements of Section 106 and the implementing procedures (Part 800). Further, and in the interest of preserving the streamlined nature of the CAR2015 draft, these may be included in the agreement as an appendix. (Osage Nation)

Add: "...to develop an archeological work plan" after "as appropriate." (ACHP)

(4) Regarding:

1. *Survey Scope.* The NPS will identify all surface areas that may be altered in any way by construction activities, to include any areas subject to temporary disturbance due to construction activities, lay-down areas, access roads, etc. An archeological identification effort will be carried out for these areas with the exception of any areas for which sufficient archeological information is already known. ~~or there is clear evidence that an area has been disturbed by previous activity to the extent that the presence of archeological deposits is highly unlikely.~~ It is understood that although the NHL was constructed on fill over the original settlement of St. Louis, signatories acknowledge that the fill deposits have the potential to yield information important to history and prehistory.(ACHP)
2. *Survey Timing.* The NPS will schedule survey activities to reflect the sequential nature of construction activities and to ensure that survey activities ~~and consultation on the identification, effects, and resolution of any adverse effects~~ are completed well in advance of any construction related soil disturbance activities. (ACHP)

(5) Regarding C. Archeological Resources – Treatment:

Recommend developing a work plan and potential treatment measures. (ACHP)

Mitigation of Adverse Effects

(1) Add additional clarification and mitigation measures for levee. (ACHP)

E. St. Louis Mississippi River Levee. The NPS shall prepare a determination of eligibility for the National Register for the St. Louis Mississippi River levee. The NPS shall submit the determination of eligibility to the SHPO and the Osage Nation for review no later than _____. The SHPO and the Osage Nation shall have 30 calendar days from the date of receipt to provide comments to the NPS. If the SHPO or the Osage Nation fail to respond within this time period, the NPS shall assume concurrence with its determination of eligibility. ~~Otherwise, the NPS will work with consulting parties to resolve disagreements. Prior to any ground disturbance, signatories shall consult to resolve any adverse effects from implementation of the Undertaking.~~

F. Nomination of St. Louis Mississippi River Levee. ~~As mitigation for changes to the Levee configuration, CityArchRiver and the NPS shall prepare and submit within five years of the execution of this agreement, a nomination of the Levee to the Keeper of the National Register.~~

Outreach to and Involvement of Tribes

(1) Other tribes participating - We wholeheartedly support the participation of other tribes and recommend that the NPS follow up with all interested tribes to see if they wish to participate and on what level.

It is not for us to say if other tribes claim the area as part of their ancestral territories or to what extent (temporally) they claim the area. That is for them to decide. The Osage Nation speaks for itself but would be happy to assist in any way that it can short of performing the NPS's duties for it regarding government-to-government consultation with federally-recognized tribes.

The Osage Nation, though, has a long-standing interest in the area for many reasons and would likely have a priority of custody regarding human remains and items falling under NAGPRA. We are aware of no other federally-recognized tribe (outside of the Dhegiha tribes) with a stronger interest in the area up until the historic period. (Osage Nation)

(2) Regarding IV.B - Add the tribal monitoring plan as an appendix to the PA (Osage Nation):

(3) Regarding Unanticipated Discovery of Human Remains or Graves: Add the as an appendix to the PA (Osage Nation):

(4) Regarding C. 3:

The NPS shall ensure that the excavation and handling of any such human remains and associated funerary objects, sacred objects, or objects of cultural patrimony are excavated, handled, and processed in accordance with the SHPO, Osage Nation, and interested Tribes' instructions and pursuant to any provisions of the Native American Graves Protection and Repatriation Act (NAGPRA) applicable to such remains and artifacts found on non-federal lands.

Are NAGPRA protocols being extended to state land? There are no NAGPRA protocols for non-federal or non-tribal lands. Please clarify. (Osage Nation)

Inadvertent Discoveries

(1) We need to plan for the possibility of inadvertent discoveries. If there are no plans, work stoppage will be lengthened significantly because no one will know what to do and mistakes will most likely occur. It is better to plan for those discoveries now rather than try to come up with something down the road. The Osage Nation strongly recommends inclusion of the protocols for inadvertent discovery of historic properties under Section 106 of the National Historic Preservation Act and unanticipated discoveries under NAGPRA in the Programmatic Agreement.

If there is an issue with including NAGPRA protocols in the PA, we could make a separate agreement with the NPS and deal with them there. The rest of the parties may not need to participate as the NPS is solely responsible for NAGPRA and would communicate the discovery protocols and NAGPRA protocols within that agreement to the other parties. (Osage Nation)

Design Plans

(1) They are a little difficult to understand. Could there be a separate set of plans that clearly demonstrate what they are actually going to do? (Osage Nation)

APE

(1) We need to re-address the APE. As it stands now, it seems overly large. (JEFF)

Proposed Appendices (Osage Nation)

**APPENDIX A
UNDERTAKING**

**APPENDIX B
AREA OF POTENTIAL EFFECTS**

APPENDIX C

PROTOCOLS FOR IDENTIFICATION OF ARCHAEOLOGICAL RESOURCES

Given the nature and variety of activities related to this undertaking, and the ongoing development of project planning and design, archeological investigations need to be considered across the APE. Highly significant pre-Contact resources are known to exist just north and east of the APE, so it is reasonable to anticipate such materials within the project area as well. In addition, significant early historic and 19th century deposits are expected to occur within the APE. Although it is assumed that construction of the Arch resulted in large-scale disturbance of sediments, the actual distribution and degree of this disturbance is currently unknown. No systematic park-wide archeological investigations have been conducted to date, so the distribution of intact significant archeological deposits is also unknown. These factors make identification and evaluation of subsurface historic resources an especially critical step for this project.

Because of the large spatial extent of the project area, a nested approach to identification is recommended. Continuous, solid soil cores, taken at intervals across the APE, will provide information on the potential for and locations of intact buried landscape components. Geophysical survey, conducted between core sample points, will provide a means to test hypotheses regarding buried surfaces and refine understanding of potential for significant archeology in portions of the APE. Archeological excavation will then be used to evaluate specific deposits for significance, or their potential to bear unique information about the past. This information, and specific project plans as developed, will feed into treatment recommendations for any significant resources found.

Once an individual component of the overall undertaking is selected for funding, the NPS will provide a draft scope of work detailing the process of identifying historic properties within the individual component's APE to the SHPO, the Osage Nation, and interested Tribes. These parties shall have thirty (30) calendar days from the time of receipt to review the draft scope of work and provide comments to the NPS.

The NPS will ensure that all contractors and sub-contractors meet the minimum standards, as appropriate, stipulated in Section II and abide by the stipulations regarding inadvertent discoveries and unanticipated effects (Section IX) and unanticipated discovery of human remains or graves (Section X). The Osage Nation and interested Tribes may request tribal monitoring through consultation of certain portions of specific project areas in accordance with Part B of this Section and Appendix C of this agreement.

Upon completion of the identification efforts described within the scope of work for each individual component of the overall undertaking, the NPS will submit a draft technical report to the SHPO, the Osage Nation, and interested Tribes. These parties shall have thirty (30) calendar days from the time of receipt to review the results of the identification efforts and provide comments to the NPS. The NPS will submit a Final Report to the SHPO, the Osage Nation, and interested Tribes upon its completion for their records and final review.

Evaluation of potential historic properties by the NPS will be conducted in consultation and concurrence with the SHPO, the Osage Nation, and interested Tribes. Plans for mitigation or treatment of adverse effects to historic properties will be drafted concurrently with the review of the 50% draft design development documents (Section VII).

APPENDIX D

TRIBAL MONITORING PLAN

- A. The NPS is committed to working with the Tribes to assist in identifying and minimizing the Undertaking's impacts on important cultural resources, graves, and isolated human remains.
- B. In general, tribal monitors are hired by the Tribe to monitor areas during the historic property identification and evaluation process and ground disturbing activities related to construction. The NPS will reimburse the Tribe at an agreed upon daily rate. The areas to be monitored have cultural significance and may have been identified as a result of Cultural Resource Surveys and Inventories and the Section 106 Consultation process. The monitors are required to have adequate training and must follow strict protocols while in the field. The tribal monitors shall be selected by the individual Tribes. There will be clear lines of communication among the tribal monitors, the Tribes, and the NPS representatives and their consultants and contractors. Reports may be shared with the NPS, other tribes, and other consulting parties that will be identified through the consultation process.
- C. The objective of the tribal monitoring program is to develop a reasonable monitoring process while minimizing the potential for adverse effects from identification and project activities to historic properties and sites of religious and cultural significance. This plan provides guidelines to assist in the decision-making process when consulting with the Tribe and to implement an effective communication system.
- D. Tribal Monitors Position Description
 1. During ground-disturbing activities the tribal monitor will provide assistance with the identification of traditional cultural resources of significance to the Tribe.
 2. Tribal monitors may not direct construction personnel or equipment.
 3. It is the responsibility of the tribal monitor to actively observe and report any cultural artifact or human remains found either on the surface or subsurface within the project boundaries to the NPS representative.
 4. The tribal monitor is required to adhere to the PA and report to the NPS if an archaeological or cultural resource is discovered.
 5. Monitors must abide by all safety rules and wear protective equipment at all times while on site.
 6. NPS representatives will seek the advice and input of tribal monitors when unanticipated discoveries are encountered.
 7. Only if the tribal monitor feels that extremely sensitive materials, such as human remains, are in immediate danger of being damaged or destroyed, they may notify the operator and request that they cease operations in that area until their respective Tribe and the NPS representative can be notified.
- E. Credentials and qualifications of the tribal monitors shall be within the purview of the individual Tribes. The individuals selected will be officially recognized by the Tribe as having the capabilities to perform the duties as described in the job description. The NPS will coordinate the activities of the monitors according to the survey, evaluation, or construction schedule. It is anticipated that the Tribe will administer the activities of the monitors from a tribal perspective. Indian Tribes can also contract out monitoring work to other Native American Tribes who have qualified staff provided that each Tribe officially delegates such authority in writing, stating that they endorse the candidate.

- F. The NPS and the Tribe will agree, through the consultation process, upon the extent of and locations of tribal monitoring. Tribal monitoring will be conducted on areas identified by the Tribes as having significance to that Tribe and areas identified by Tribes during the Section 106 process.
- G. Tribal monitors will work together with the NPS representative to assist in cultural resource identification and perform monitoring activities in areas targeted for survey, evaluation, or construction. If a cultural resource is discovered, NPS representatives will follow the terms of the PA, as well as all local, state, and federal laws governing the protection and discovery of archaeological and cultural resources. Tribal monitors will communicate with the NPS representative and will not direct construction personnel or equipment. The authority to stop work will rest on the NPS representative except as is outlined in IV.7.
- H. It will be the responsibility of the NPS representative to contact, in person, or via email, text, or telephone, the tribal monitor(s) and notify them of emergencies or potential emergencies affecting the entire project areas, such as inclement or violent weather.
- I. The tribal monitor will not remove cultural material unless directly instructed to do so by the NPS representative. Should they be instructed to move the cultural material, they will place the material in an appropriate container and properly label the container to preserve the provenience of the material and deliver it directly to the NPS representative. Transfer of the cultural material to the NPS representative's custody will be documented within a report provided by the monitor or their represented Tribe.
- J. Disputes arising out of this agreement will be resolved in the most efficient manner appropriate to the dispute. If an agreement cannot be reached in this manner, the parties shall engage a mutually agreed-upon mediator. The mediator's decision shall be binding upon the parties. The parties shall share the cost of mediation.

APPENDIX E

UNANTICIPATED DISCOVERY OF HUMAN REMAINS AND NAGPRA ITEMS

Procedures for **Inadvertent Discoveries of Human Remains, Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony** During Cultural Resources Investigation Efforts, Construction, and Maintenance:

- A. Any contractor or applicant or their agents, representatives, or employees who knows or has reason to know that he or she has discovered inadvertently human remains, funerary objects, sacred objects, or objects of cultural patrimony must provide immediate telephone notification of the inadvertent discovery, with written confirmation, to the superintendent.
- B. Upon encountering human remains, funerary objects, sacred objects, or items of cultural patrimony during ground disturbing activities, the NPS will ensure that the cultural resource investigator or construction contractor immediately stops work within the ninety (90) meter radius buffer zone around the point of discovery. The NPS will assume responsibility for implementing additional measures, as appropriate, to protect the discovery from looting and vandalism until the requirements of NAGPRA have been completed, but must not remove or otherwise disturb any human remains or other items in the immediate vicinity of the discovery.
- C. The NPS will **immediately** notify law enforcement by telephone of the discovery of unmarked human remains.
- D. The NPS will notify the Osage Nation by telephone and email within forty-eight (48) hours of the discovery of human remains, funerary objects, sacred objects, or items of cultural patrimony. This step is not intended to satisfy the requirements of 43 CFR 10.4(d)(iii).
- E. The NPS will take immediate steps, if necessary, to further secure and protect inadvertently discovered human remains, funerary objects, sacred objects, or items of cultural patrimony, including, as appropriate, stabilization or covering.
- F. Other than for crime scene investigation, no excavation, examination, or analysis of human remains will be conducted without first securing permission from the Osage Nation.
- G. If upon investigation, the local enforcement officer determines that the remains are not involved in a legal investigation, the protocol implementing NAGPRA applies.
- H. The NPS, in consultation with the Osage Nation, will have seven (7) working days to determine if the skeletal remains are human, the degree to which they were disturbed, and, if possible, assess their potential age, cultural affiliation, and identity, if possible, without any further disturbance. Upon making their determination or at the end of the seven (7) days, whichever comes first, the NPS will notify the Osage Nation and other interested Tribes of its findings. This notification must include pertinent information as to kinds of human remains, funerary objects, sacred objects, or items of cultural patrimony discovered inadvertently, their condition, and the circumstances of their inadvertent discovery.
- I. The Osage Nation and other interested Tribes will have seventy-two (72) hours to respond verbally followed by written response via U.S. mail or electronic mail. The response should specify the Osage Nation's intention to conduct or decline further consultation.
- J. The NPS will consult with the Osage Nation, other interested Tribes, or identified lineal descendant regarding additional measures to avoid and protect or mitigate the adverse effect of the project on the human remains and grave site. These measures may include:
 - 1) formal archeological evaluation of the site;

- 2) visits to the site by the Osage Nation and/or interested Tribes;
 - 3) exploration of potential alternatives to avoid the human remains or grave;
 - 4) implementation of a mitigation plan by the NPS in consultation and concurrence with the Osage Nation, including procedures for disinterment and re-interment; and
 - 5) implementation of the mitigation plan.
- K. The NPS or its agents, in consultation with the Osage Nation, interested Tribes, and other interested parties such as living descendants, may consult with a qualified physical anthropologist, forensic scientist, or other experts as may be needed to examine and assess the inadvertent discovery. Unless the remains were inadvertently removed, the evaluation will be conducted at the site of discovery. The consulting expert will be allowed to draw and measure the exposed remains **and** associated funerary objects. No photographs or digital images will be permitted. Drawings and other records will be curated at a state-approved curation facility in Missouri. Drawings cannot be published in any form or shown as part of scholarly presentations without the written permission of the Osage Nation or nearest living descendant.
- L. A report of findings describing the background history leading to and immediately following the reporting **and resolution** of an inadvertent discovery will be prepared within thirty (30) calendar days of **the resolution of** each inadvertent discovery. This report must meet the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (49 FR 44716) guidelines.

APPENDIX F

INADVERTENT DISCOVERY OF HISTORIC PROPERTIES

- A. Objectives: The following procedures shall be used in the event that previously unreported and unanticipated historic properties are found during activities conducted by or on behalf of the NPS.
- B. The construction contractor must immediately stop all work activity within a ninety (90) meter radius buffer zone, notify the NPS of the discovery, and implement interim measures to protect the discovery from looting and vandalism. Construction may continue outside the buffer zone. Within forty-eight (48) hours of receipt of this notification of the discovery, the NPS shall:
- 1) inspect the work site to determine the extent of the discovery and ensure that work activities have halted within the ninety (90) meter radius buffer zone;
 - 2) clearly mark the area of the discovery;
 - 3) implement additional measures, as appropriate, to protect the discovery from looting and vandalism; and
 - 4) notify the **respective SHPO, Osage Nation, and interested Tribes** of the discovery.
- C. The NPS, in consultation and concurrence with the **respective SHPO, Osage Nation, and interested Tribes (need to identify in whereas clauses which tribes want to be notified and note that they are referred to as "Tribes" in the agreement)**, shall have seven (7) business days following notification to determine the National Register of Historic Places eligibility of the discovery. The NPS may assume the newly discovered property to be eligible for the National Register for the purposes of Section 106 pursuant to 36 CFR §800.13(c).
- D. If the find is National Register eligible, the NPS shall consult with the **respective SHPO, Osage Nation, and interested tribes** regarding appropriate measures for site treatment pursuant to 36 CFR §800.6(a). The SHPO, **Osage Nation, and interested Tribes** shall have seven (7) business days to provide their objections or concurrence on the proposed actions. Concurrence on the part of the **respective SHPO, Osage Nation, and interested Tribes** is required for all adverse effect resolution measures. These measures may include:
- 1) formal archeological evaluation of the site;
 - 2) visits to the site by the **respective SHPO, Osage Nation, and interested Tribes**;
 - 3) exploration of potential alternatives to avoid the site;
 - 4) preparation of a mitigation plan by the NPS in consultation and concurrence with the **Osage Nation and interested Tribes** for approval by the respective SHPO; and
 - 5) implementation of a mitigation plan.
- E. If the find is determined to be either isolated or completely disturbed by construction activities, the NPS shall consult with the **respective SHPO, Osage Nation, and interested Tribes** prior to resuming construction within the ninety (90) meter radius buffer zone.