

Appendix C

Final Section 4(f) Findings and Section 106 Memorandum of Agreement

**AMENDED MEMORANDUM OF AGREEMENT
BETWEEN THE FEDERAL HIGHWAY ADMINISTRATION AND
THE INDIANA STATE HISTORIC PRESERVATION OFFICER
SUBMITTED TO THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
PURSUANT TO 36 C.F.R. Section 800.6(b)(iv)
REGARDING THE US 31 IMPROVEMENT PROJECT
IN CLAY AND WASHINGTON TOWNSHIPS, HAMILTON COUNTY, INDIANA**

WHEREAS the Federal Highway Administration ("FHWA") proposes to upgrade the existing US 31 facility to a multi-lane, divided freeway from 96th Street to 216th Street for reduction of congestion, improved safety, and reliable and efficient movement of commerce and regional travel in Clay Township and Washington Township, Hamilton County, Indiana; and

WHEREAS the FHWA, in consultation with the Indiana State Historic Preservation Officer ("SHPO"), has defined the US 31 Improvement Project's area of potential effects, as the term defined in 36 C.F.R. Section 800.16(d), to be the area within 1,500 feet from centerline in either direction; and

WHEREAS the FHWA, in consultation with the Indiana SHPO, has found that the Lindley Farm is within the area of potential effects; and

WHEREAS the FHWA, in consultation with the Indiana SHPO, has determined, pursuant to 36 C.F.R. Section 800.4(c), that the Lindley Farm is eligible for inclusion in the National Register of Historic Places;

WHEREAS the FHWA, in consultation with the Indiana SHPO, has determined pursuant to 36 C.F.R. Section 800.5(a) that the US 31 Improvement Project will have an adverse effect on the Lindley Farm; and

WHEREAS the FHWA has consulted with the Indiana SHPO in accordance with Section 106 of the National Historic Preservation Act (16 U.S.C. 470f) and its implementing regulations (36 C.F.R. Section 800) to resolve the adverse effect on the Lindley Farm; and

WHEREAS the public was given an opportunity to comment on the undertaking's adverse effect through release of an environmental impact statement in 2003 and a public hearing on the environmental impact statement (June 30, 2003); and

WHEREAS the Advisory Council on Historic Preservation declined to participate in consultation in a letter dated October 15, 2003; and

WHEREAS the FHWA, in consultation with the Indiana SHPO, has invited INDOT to participate in the consultation and to become a signatory to this Amended Memorandum of Agreement; and

WHEREAS the FHWA has determined that this project has a *net benefit* on the 4(f) resource, and SHPO signature serves as a concurrence in the use of the Net Benefit Programmatic 4(f) for this resource; and

WHEREAS the FHWA, Indiana SHPO, and INDOT executed a Memorandum of Agreement in January-February 2004 (signed on February 4, February 17, and January 29 respectively) taking into account effects on the Hunt House and the Lindley Farm; and

WHEREAS the Indiana SHPO has subsequently determined that the Hunt House is not eligible for inclusion in the National Register of Historic Places (letter dated May 12, 2008) and thus the US 31 Improvement Project will not have an adverse effect on the Hunt House; and

WHEREAS the same parties have agreed that an amendment to this Memorandum of Agreement should be executed;

NOW, THEREFORE, the FHWA and the Indiana SHPO agree that, upon the submission of a copy of this executed memorandum of agreement, as well as the documentation specified in 36 C.F.R. Section 800.11(e) and (f) to the Advisory Council on Historic Preservation ("Council" pursuant to 36 C.F.R. Section 800.6[b][1][iv]) and upon the FHWA's approval of the US 31 Improvement Project, the FHWA shall ensure that the above referenced Memorandum of Agreement of January-February 2004 is amended by deleting all of its stipulations and replacing them with the following:

Stipulations

- I. Project Development: The stipulations within this section apply to the overall construction of the project unless otherwise noted. All measures stipulated within the MOA shall be implemented as part of the project prior to its completion. The FHWA agrees to program and fund as a project cost component monies necessary for implementation of the measures stipulated within this MOA.
 - A. *Project Goals* – The design of the project is to meet the project purpose and need while avoiding, minimizing, or mitigating adverse impacts to the environment, including adverse effects to historic properties to the extent reasonable, feasible, and prudent. Avoidance of adverse effects is the preferred treatment.
- II. Lindley Farm Site Specific Mitigation
 - A. INDOT will develop documentation required for a National Register of Historic Places (NRHP) nomination for the Lindley Farm. The documentation shall be prepared by a qualified historic preservation consultant selected by INDOT, as appropriate, upon receipt of written consent from the property owner(s). The nomination, owner's written consent, and other supporting documentation shall be forwarded to the Indiana SHPO within the first two years following the Record of Decision for the project so that, if owner consent is obtained, the application for nomination of the Lindley Farm to the NRHP will be processed. If the property owner does not consent to NRHP listing, then INDOT will make a reasonable

effort to prepare documentation for the Lindley Farm at a level to be agreed upon by the Indiana SHPO, INDOT, and FHWA.

- B. INDOT will, as appropriate, avoid existing woody vegetation (trees and shrubs). Trees and shrubs that are removed will be replaced at a mitigation ratio that will be determined in final design. Funding for additional plantings for visual screening will be provided, as appropriate.
- C. INDOT will provide access to the parent parcel from State Road 38. Funding for a new driveway to the Lindley Farm will be provided by INDOT, encouraging, as appropriate, that the historic approach be maintained, whenever possible. Design and construction of the new driveway will be at the discretion of the property owner(s).

III. OBJECTION RESOLUTION PROVISION

Disagreement and misunderstanding about how this memorandum of agreement is or is not being implemented shall be resolved in the following manner:

- A. If the Indiana SHPO or any invited signatory to this memorandum of agreement should object in writing to the FHWA regarding any action carried out or proposed with respect to the US 31 Improvement Project or implementation of this memorandum of agreement, then the FHWA shall consult with the objecting party to resolve this objection. If after such consultation the FHWA determines that the objection cannot be resolved through consultation, then the FHWA shall forward all documentation relevant to the objection to the Council, including the FHWA's proposed response to the objection. Within 45 days after receipt of all pertinent documentation, the Council shall exercise one of the following options:
 - i. Provide the FHWA with a staff-level recommendation, which the FHWA shall take into account in reaching a final decision regarding its response to the objection; or
 - ii. Notify the FHWA that the objection will be referred for formal comment pursuant to 36 C.F.R. Section 800.7(c), and proceed to refer the objection and comment. The FHWA shall take into account the Council's comments in reaching a final decision regarding its response to the objection.
- B. If comments or recommendations from the Council are provided in accordance with this stipulation, then the FHWA shall take into account any Council comment or recommendations provided in accordance with this stipulation with reference only to the subject of the objection. The FHWA's responsibility to carry out all actions under the memorandum of agreement that are not the subjects of the objection shall remain unchanged.

IV. POST REVIEW DISCOVERY

In the event that one or more historic properties—other than the Lindley Farm—are discovered or that unanticipated effects on historic properties are found during the implementation of this memorandum of agreement, the FHWA shall follow the procedure

specified in 36 C.F.R. Section 800.13, as well as and IC 14-21-1-27 and IC 14-21-1-29, by stopping work in the immediate area and informing the Indiana SHPO and the INDOT Cultural Resources Section of such unanticipated discoveries or effects within two (2) business days. Any necessary archaeological investigations will be conducted according to the provisions of IC 14-21-1 and 312 IAC 21, and the most current *Guidebook for Indiana Historic Sites and Structures Inventory-- Archaeological Sites*.

V. AMENDMENT

Any signatory to this memorandum of agreement may request that it be amended, whereupon the parties shall consult to consider the proposed amendment. 36 C.F.R. 800.6(c)(7) shall govern the execution of any such amendment.

VI. TERMINATION

- a. If the terms of this memorandum of agreement have not been implemented by January 23, 2018, then this memorandum of agreement shall be considered null and void. In such an event, the FHWA shall so notify the parties to this memorandum of agreement and, if it chooses to continue with the US 31 Improvement Project, then it shall reinitiate review of the US 31 Improvement Project in accordance with 36 C.F.R. Sections 800.3 through 800.7.
- b. Any signatory to the memorandum of agreement may terminate it by providing thirty (30) days notice to the other parties, provided that the parties shall consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, the FHWA shall comply with 36 C.F.R. Sections 800.3 through 800.7 with regard to the review of the US 31 Improvement Project.
- c. In the event that the FHWA does not carry out the terms of this memorandum of agreement, the FHWA shall comply with 36 C.F.R. Sections 800.3 through 800.7 with regard to the review of the US 31 Improvement Project.

The execution of this memorandum of agreement by the FWHA, INDOT, and the Indiana SHPO, the submission of it to the Council with the appropriate documentation specified in 36 C.F.R. Section 800.11(e) and (f), and the implementation of its terms evidence that the FHWA has afforded the Council an opportunity to comment on the US 31 Improvement Project and its effect on historic properties and that the FHWA has taken into account the effects of the US 31 Improvement Project on historic properties.

SIGNATORIES (required):

FEDERAL HIGHWAY ADMINISTRATION

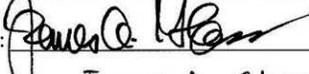
Signed by: Lawrence M. Heil Date: 10-3-2008

Name and Title: Lawrence M. Heil, Environmental Specialist

(Typed or printed)

SIGNATORIES (required):

INDIANA STATE HISTORIC PRESERVATION OFFICER

Signed by:  Date: 10/10/2008

Name and Title: James A. Glass
Deputy SHPO
(Typed or printed)

INVITED SIGNATORIES

INDIANA DEPARTMENT OF TRANSPORTATION

Signed by: Jan M. Poth Date: 10/9/08

Name and Title: James M. Poturalski
(Typed or printed) Deputy Commissioner,
Highway Management

DATE: April 8, 2008

TO: Ben Lawrence, Administrator, Environmental Policy Section
Joyce Newland, Planning/Environmental Specialist, FHWA *gzn*

THROUGH: Chris Andrews, Supervisor, NEPA Document Review Unit

FROM: Loni Hrynk, Environmental Scientist, NEPA Document Review Unit

SUBJECT: Additional Information to Approved Environmental Document for the Road Construction of the MacGregor Park Primary Access Road in Hamilton County, Designation Number 0500018

This memorandum provides additional information to the approved environmental document for the road construction of the MacGregor Park Primary Access Road in Hamilton County. This memorandum contains a history of the environmental documentation, a revised project description, and revised discussions of impacts to potential archaeological sites, historic properties, Section 4(f) resources, and of hazardous materials. Traffic maintenance will also be discussed in this memorandum.

Project and Environmental Document History: The MacGregor Park Primary Access Road was originally included in the scope for the US 31 project (des. no. 9905500). A decision was made in December 2004 to accelerate the design and construction of the access road under a separate project. The decision to remove the park access road from the US 31 project also took into consideration that the current access drive on US 31 is not an ideal location for a park entrance. It is very near the intersection of US 31 and SR 38 and vehicles are currently limited to turning right to enter and right to exit. For these reasons, INDOT decided to accelerate the schedule for the park access road into MacGregor Park from SR 38.

A Categorical Exclusion (CE) for the MacGregor Park Primary Access Road on SR 38 was approved on January 19, 2005. The project, as described in the CE, included a typical roadway cross section of a 10 foot wide raised/curb median, a single 12 foot wide travel lane in each direction, an 8 foot wide paved shared multi-use path and a 3:1 or 4:1 side slope to open ditches. The north end of the access road would cross Lindley Ditch. The Lindley ditch structure was estimated to be a three-sided 24 foot span by 6 foot rise culvert.

Since the approval of the CE, there have been changes in the design of the access road including a shift of the road south along Lindley Ditch and minor changes in the roadway cross section. The access road approach at SR 38 will remain the same as discussed in the CE, while the structure crossing Lindley Ditch will be further south. The proposed project includes a typical roadway cross section of an 11 foot wide raised/curb median, a single 11 foot wide travel lane in each direction, 4-7 foot shoulders, and a 3:1 or 4:1 side slope to open ditches. The north end of the access road will cross Lindley Ditch. The Lindley ditch structure is estimated to be a 36'-9¹/₈" single span timber bridge with a clear roadway width of 32'-6".

Archaeological Sites and Historic Properties (Section 106): The original CE referenced a Section 106 finding for US 31. Because there was no finding made for the access road project, the Section 106 process was initiated on November 30, 2007 specifically for the access road.

An archaeological reconnaissance was conducted on December 14, 2007. Approximately 1.79 acres of land was investigated for cultural resources. No evidence of cultural resources was identified during the field reconnaissance and a recommendation was made by INDOT to allow the project to proceed as planned.

Based on the Historic Properties Report, no historic buildings, structures, districts, objects, or archaeological resources listed in or eligible for inclusion on the National Register were identified within the proposed area of potential effects (APE).

The State Historic Preservation Officer (SHPO) agreed with the area of potential effects (APE), and with the findings from the archaeology and historic property reports in a letter dated January 17, 2008. At that time, the SHPO found it would be appropriate for INDOT, on behalf of the FHWA, to analyze the information gathered, and to make the necessary determinations and findings.

The APE, eligibility determinations, effect finding, and Section 4(f) compliance requirements (for historic properties) was signed by INDOT for the FHWA on February 13, 2008.

The SHPO and public were given 30 days to comment on the finding. No comments were received.

Section 4(f) Resource:

Project Description:

The proposed project involves construction of an access road into the town of Westfield's MacGregor Park at the northeast quadrant of the intersection of SR 38 and US 31 as described above in Project and Environmental Document History. The project begins approximately 1330 feet east of the intersection of SR 38 and US 31 and ends approximately 800 feet north of SR 38 into MacGregor Park. The total length of the project is 0.14 mile. The estimated cost of the project is \$988,000.00. Construction is anticipated to begin in April of 2009 and end in July of 2009.

Section 4(f) Applicability and Impacts to the Section 4(f) Resource:

MacGregor Park is publicly-owned, by Washington Township – Hamilton County. The property has a deed restriction in the form of a conservation easement that designates the property as a nature preserve. This easement is enforced by the Indiana Department of Natural Resources, Department of Outdoor Recreation. Washington Township is in the process of developing walking/hiking trails on the site, as well as a parking and event area. The development of the trails, parking, and event area was to be completed by December 31, 2007. A septic system and restroom/maintenance facility will also be built. The park was scheduled to open on January 1, 2008 with a Grand Opening schedule when the road to MacGregor off SR 38 is completed. The park hopes that this will occur in the summer of 2008. Due to issues related to the weather, the park was unable to complete construction on the access road off of US 31 and the opening of the

park has been delayed. As the proposed park provides public access to recreational facilities, Section 4(f) of the Department of Transportation Act of 1966 applies to this property, and the property is therefore considered a Section 4(f) resource.

Construction of the access road from SR 28 to MacGregor Park will result in the use of approximately 0.22 acres of permanent right-of-way and 0.19 acre of temporary right-of-way north of Lindley ditch on property for the planned MacGregor Park. Currently, this land has not been developed by the park. The transportation impacts to the park are minor, and will not adversely affect the features or functions of the resource. Currently, the only other planned access to MacGregor Park is off of US 31, and allows for only a right turn in and a right turn out of the park. Providing an additional road to access the park will be a benefit to the Section 4(f) resource. As stated in the December 19, 2007 letter from Ms. Melody Sweat –Director of Washington Township Parks and Recreation, the park is “excited about working with INDOT to expedite the construction of the road to MacGregor Park.” Based on the limited impacts to the park, a *de minimis* finding is applicable.

Coordination and Correspondence with officials with jurisdiction over the Section 4(f) resource:

A letter from INDOT’s Office of Environmental Services was sent to Ms. Melody Sweat, Director of Washington Township Parks and Recreation on December 7, 2007. The letter requested responses from Ms. Sweat regarding applicability of the proposed park as a Section 4(f) resource. A response letter dated December 19, 2007 from Ms. Sweat provided answers regarding applicability and expressed an interest in working with INDOT to expedite the construction of the road to MacGregor Park. A second letter dated December 27, 2007 from Ms. Sweat stated that Washington Township Parks and Recreation is in concurrence with the FHWA’s intent to issue a *de minimis* finding. In a phone conversation on January 14, 2008, Ms. Sweat stated that the opening of the park has been delayed due to the weather.

Public Involvement

A legal notice was published in the Noblesville Daily Times on January 24, 2008, describing the 4(f) impacts and offering the public the opportunity to submit their comments and input to INDOT. The public was given thirty (30) days to respond. No comments were received.

Hazardous Materials:

A Red Flag Investigation was conducted on March 4, 2008. No hazardous materials concerns were found during the investigation.

Maintenance of Traffic: The majority of the proposed construction can be completed without impacting current traffic. During construction of the approach at SR 38, traffic on SR 38 will be shifted to the south to make the tie in.

INDOT Approval		Date	4-9-08
FHWA Section 4(f) Concurrence		Date	4/9/08

Memorandum

Date: October 9, 2008

To: Larry Heil, Federal Highway Administration

From: Ben Lawrence, Indiana Department of Transportation

Subject: *De minimis* finding for Monon Greenway Trail in Hamilton County

Project: New US 31 Hamilton County

Designation Number: 0710215

Project Location: City of Carmel, City of Westfield, Hamilton County, Indiana

Project Size: 12.5 miles

Project Cost: \$626 million (construction and right-of-way)

Type of NEPA Documentation: Environmental Impact Statement (EIS)

Under SAFETEA-LU provisions and the March 12, 2008 regulations, the requirements of Section 4(f) of the Department of Transportation Act will be considered satisfied if it is determined that a transportation project will have a *de minimis* impact on the 4(f) resource in question. A *de minimis* finding subsumes the requirements for all possible planning to minimize harm by reducing the impacts on the Section 4(f) property to a *de minimis* level.

This Memorandum provides information and documentation regarding plans and accommodations for temporary use of a Section 4(f) resources in the US 31 Hamilton County project area, the Monon Greenway Trail. The temporary use as described below represents a *de minimis* impact according to criteria set forth by the Federal Highway Administration (FHWA). The official with jurisdiction over the property was informed of FHWA's intent to make the *de minimis* impact finding. Their written concurrence that the project will not adversely affect the activities, features, and attributes that qualify the property for protection under Section 4(f) is attached. The public has been provided an opportunity to review and comment on the effect on the Section 4(f) resource and this *de minimis* finding via a public announcement and request for comments published in the Indianapolis Star and the Noblesville Ledger. The public comment period on this memorandum extends from October 13, 2008 to November 11, 2008.

All 4(f) resources used by the project include:

- **MacGregor Park**
- **Monon Greenway**
- **T.J. Lindley Farm**

Other 4(f) resources in the project area not used by the project include:

- **Westfield-Washington Township public school recreation facilities** – No Section 4(f) Evaluation is required for public use recreational areas associated with schools as there will be no permanent or temporary use from any of the school properties that currently are classified as a Section 4(f) property.
- **Westfield Historic District** – No Section 4(f) Evaluation is required as there will be no permanent or temporary use of the historic property associated with the proposed Westfield Historic District.
- **Natalie Wheeler (South Union) Trail** – The Natalie Wheeler Trail runs parallel to the existing US 31 facility on the east side from 151st Street to north of 161st Street. Construction of the Preferred Alternative (including grading and paving associated with the 161st Street interchange)

will stop west of the trail and therefore not impact the trail. No permanent or temporary use would be required from the Natalie Wheeler Trail as a result of the Preferred Alternative; therefore, no Section 4(f) Evaluation is required.

Listing of all *De minimis* Impacts:

- MacGregor Park – FHWA approved the “*de minimis*” finding for the MacGregor Park Primary Access Road from SR 38 on April 9, 2008. The new access to MacGregor Park will be completed prior to removal of the existing access road to MacGregor Park from US 31. This improvement will provide safer access to the future Park.
- T.J. Lindley Farm – A Memorandum of Agreement was prepared for the adverse effect finding to this property. The Executed MOA states that this project has a *net benefit* on the 4(f) resource and SHPO signature on October 10, 2008 serves as concurrence to the use of the Net Benefit Programmatic 4(f).
- Monon Trail – addressed in this Memorandum.

Construction Dates:

Monon Greenway Trail – Estimated construction timing is 2014

***De minimis* Impacts and Mitigation Measures**

The Monon Greenway Trail crosses the existing US 31 facility north of 136th Street (Figure 1, attached). Approximately 300 linear feet of the trail will be impacted during project construction. At this location, the Preferred Alternative will employ the following mitigation measures to avoid temporary impacts to the trail during construction:

- Construction of the US31 bridge over the Monon Greenway Trail will be phased to maintain pedestrian and bicycle traffic through the work area. This phasing may include temporary shifting of the trail while construction activities are underway on one side of the trail or the other. There will need to be temporary restrictions of pedestrian and bicycle traffic during overhead work like the demolition of the existing structure or the setting of beams for the new structure. The overhead work can be restricted to nighttime hours when the trail is closed with advanced public warning. Bridge demolition will probably require a full night of closure, while beam setting can probably be done in 20 minute increments. For all construction activities there will need to be physical barriers erected to prevent trail users from entering construction areas and to keep construction activities off of the trail.
- Any necessary construction activities that would result in complete closure of the trail will occur during non-use times, utilizing night construction commencing one hour after dusk and ending before dawn. The trail is closed during this time frame; therefore, temporary impacts would not adversely change the activities, features, or attributes of the trail.

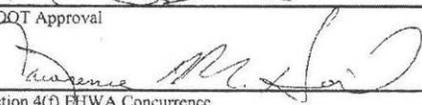
No permanent use would be required from the Monon Greenway Trail as a result of the Preferred Alternative.

The City of Carmel agrees that impacts to the Monon Greenway Trail are temporary, occurring only during construction activities. In accordance with Section 4(f) requirements, the City of Carmel agrees that the proposed temporary occupancy of the trail qualifies as a Temporary Construction Easement. The City of Carmel further agrees that the impacts associated with the project would: 1) be of short duration and less than the time needed for construction of the project; 2) not change the ownership or result in the long-term or indefinite interest in the land for transportation purposes; 3) not result in any temporary or permanent adverse change to the activities, features, or attributes which are important to the purposes or function that qualify the resource for protection under Section 4(f); and, 4) include only a minor amount of land.

Upon review of the Preferred Alternative, impacts to the trail as a result of this project will not adversely affect the activity, features, and attributes that qualify the Monon Greenway Trail for protection under section 4 (F). Therefore, a *de minimis* finding is appropriate.



INDOT Approval 11-17-08
Date



Section 4(f) FHWA Concurrence 11-18-2008
Date



THE NEW US 31
HAMILTON COUNTY

US 31 Over Monon Trail