PROGRAMMATIC AGREEMENT
AMONG
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
THE UNITED STATES DEPARTMENT OF AGRICULTURE FOREST SERVICE
SHAWNEE NATIONAL FOREST AND MIDEWIN NATIONAL TALLGRASS PRAIRIE,
AND THE ILLINOIS STATE HISTORIC PRESERVATION OFFICER
REGARDING THE PROCESS FOR COMPLIANCE
WITH SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT
FOR UNDERTAKINGS RELATED TO THE PRESCRIBED FIRE PROGRAMS ON THE
SHAWNEE NATIONAL FOREST AND MIDEWIN NATIONAL TALLGRASS PRAIRIE

WHEREAS, the United States Department of Agriculture Forest Service Shawnee National Forest (SHF) and Midewin National Tallgrass Prairie (MNTP) have a multiple-use mission to manage their public lands for a variety of "undertakings" that may have an effect on historic properties; and

WHEREAS, the SHF and MNTP as public land stewards are mandated to comply with Section 106 of the National Historic Preservation Act of 1966, as amended (NHPA) (16 U.S.C. 470), and its implementing regulations, entitled "Protection of Historic Properties" (36 CFR Part 800), and to comply with Section 110 of the NHPA; and

WHEREAS, the SHF and MNTP are responsible for federal, federally assisted, federally permitted, and federally licensed activities involved in the pursuit of the multiple-use mission that may involve historic properties in the State of Illinois; and

WHEREAS, the SHF and MNTP propose to administer their Heritage Programs pursuant to Section 106 and Section 110 of the NHPA; and

WHEREAS, pursuant to 36 CFR 800.6 (a) the SHF has consulted with the following Federally-recognized Indian Tribes regarding their views and interests in the development of this programmatic: the Peoria Tribe of Oklahoma, the Shawnee Tribe, the Absentee Shawnee Tribe, and the Eastern Shawnee Tribe; and has completed consultation with responses received from all these Federally-recognized Indian Tribes; and;

WHEREAS, pursuant to 36 CFR 800.6 (a) the MNTP has initiated consultation with the following Federally-recognized Indian Tribes regarding their views and interests in the development of this programmatic to comment on this Programmatic Agreement: the Citizen Potawatomi Nation, the Forest County Potawatomi Community, the Prairie Band Potawatomi Nation, the Hannahville Indian Community, the Kickapoo Tribe of Kansas, the Kickapoo Tribe of Oklahoma, and the Shawnee Tribe; and has completed consultation with responses received from the Citizen Potawatomi Nation, the Forest County Potawatomi Community, the Hannahville Indian Community, the Kickapoo Tribe of Kansas, and the Shawnee Tribe; and

WHEREAS, the SHF and MNTP have determined that their prescribed fire programs, policies, actions, and administration of lands under their jurisdictions meet the definition of an undertaking specified in Section 301(7) of the NHPA and may have an effect on historic properties either included in or eligible for inclusion in the National Register of Historic Places (NRHP); and

WHEREAS, the SHF and MNTP, the Illinois State Historic Preservation Officer (SHPO), and the Advisory Council on Historic Preservation (ACHP) have agreed that this programmatic agreement (PA) is applicable only to prescribed fire, and is not applicable to any other activities carried out by the SHF or MNTP, including wildland fire; and

WHEREAS, under the NHPA the responsibilities of the ACHP include advising and assisting Federal agencies in carrying out their historic preservation responsibilities and cooperating with Federal agencies to ensure that the effects of undertakings on historic properties are taken into consideration at all levels of planning and development; and

WHEREAS, under the NHPA the responsibilities of the SHPO include advising and assisting Federal agencies in carrying out their historic preservation responsibilities and cooperating with Federal agencies to ensure that the effects of undertakings on historic properties are taken into consideration at all levels of planning and development; and

WHEREAS, the SHF and MNTP have consulted with the ACHP and the SHPO pursuant to Part 800.14 of the regulations (36 CFR Part 800) implementing Section 106 of the NHPA and the SHPO and ACHP have chosen to participate in development of this PA; and

WHEREAS, the SHF and MNTP, as required by Section 101(d)(6) of the NHPA, have consulted with Indian tribes that attach religious and cultural significance to historic properties that may be affected by proposed federal undertakings subject to Section 106 consultation; and

WHEREAS, the parties to this agreement share a common desire and purpose to develop alternative procedures that would satisfactorily take into account the effects of SHF or MNTP undertakings related to their prescribed fire programs; increase efficiency; provide for effective and timely coordination among the SHF and MNTP, SHPO, and ACHP; ensure that historic properties relating to the prescribed fire programs are identified, protected, or otherwise managed and not neglected; and facilitate the SHF's and MNTP's progress towards meeting Section 110 responsibilities; and

WHEREAS, the SHF and MNTP both maintain heritage programs staffed by cultural resource management professionals that meet the Secretary of Interior's Guidelines on Historic Preservation, Professional Qualifications Standards (*Federal Register* 1983, Vol. 48, No. 190) or Office of Personnel Management's X118 standards, and have demonstrated substantial compliance with the provisions of 36 CFR Part 800; and

WHEREAS, the SHF and MNTP, SHPO, and ACHP agree that the SHF and MNTP have the authority to supercede cultural resource considerations when a potential life-threatening situation exists;

NOW, THEREFORE, the SHF and MNTP, SHPO, and ACHP agree that the prescribed fire programs covered by this PA shall be implemented in accordance with the following Prescribed Fire Protocol to take into account the effects of all undertakings associated with the prescribed fire programs on the SHF and MNTP, and that such implementation satisfies the SHF's and MNTP's Section 106 NHPA responsibilities for all individual actions of this prescribed fire program.

I. SCOPE AND OBJECTIVES

The purpose of this PA is to streamline compliance with the ACHP's regulations, *Protection of Historic Properties* (36 CFR Part 800), implementing Section 106 of the NHPA for undertakings whenever:

(1) there are no historic properties identified within an area of potential effects (APE);

(2) historic properties and/or unevaluated properties that are eligible for the NRHP until proven otherwise are within an APE and will be managed and maintained in such a way that they are protected and no adverse effects will result; or

(3) the nature of the undertaking is such that it is unlikely to affect historic properties and is therefore exempt from further review and consultation, or there are cultural resources that are not eligible for inclusion on the NRHP, as specified in this PA, and exempt from the provisions of 36 CFR Part 800.

If historic properties are present within an undertaking's APE and could be affected by an undertaking, and protection measures that would result in no adverse effect cannot or will not be implemented, then the SHF and MNTP will follow the procedures outlined in 36 CFR Part 800.5 through 800.6 regarding determination of effects, review, and consultation to resolve adverse effects.

II. COORDINATION AND INFORMATION EXCHANGE

(A) All efforts to identify, evaluate, and/or treat historic properties in connection with the planning of prescribed fire undertakings shall be carried out in accordance with the stipulations specified in this PA and the standards and guidelines of the SHF Land and Resource Management Plan (LRMP) (2006), and the MNTP Land and Resource Management Plan (LRMP) (2004).

(B) All reports that document identification, evaluation, determinations of effect, modifications to an undertaking to reach a no-adverse-effect determination, and/or efforts to resolve adverse effects shall be made available to the SHPO, and referenced in the annual reports from the SHF and MNTP, for integration in the statewide database.

(C) Consultation and coordination among the SHF and MNTP, the ACHP, the SHPO, and Native American Tribes with interest in National Forest System lands in Illinois, pursuant to this PA, shall be the responsibility of the MNTP Supervisor and the SHF Supervisor on their respective units, unless specified otherwise, and shall be documented through official correspondence. Individual project level consultation will also be the responsibility of the MNTP Supervisor and the SHF Supervisor on their respective units, and likewise, shall be documented through official correspondence.

(D) SHF Supervisors and MNTP Supervisors shall seek completion of separate Memoranda of Understanding (MOU) with the individual tribes. Individual project level consultation will be guided by the stipulations included in the Tribal MOU.

III. REVIEW OF UNDERTAKINGS RELATED TO PRESCRIBED FIRE PROGRAMS

(A) For each action that meets the definition of "undertaking," as defined at 36 CFR Part 800.16(y), and is the type of activity that has the potential to cause effects to historic properties, the SHF and MNTP shall establish the APE, as defined at 36 CFR Part 800.16(d), in accordance with the criteria of effect in 36 CFR Part 800.5.

(B) All efforts to identify, evaluate, and manage historic properties (heritage program activities) in connection with the planning of prescribed fire activities shall be carried out in accordance with the processes specified in this PA or 36 CFR Part 800.

C) Where the SHF or MNTP propose to carry out, or cause to be carried out, an identification of historic properties within the APE, it need not consult with the SHPO when determining the APE or prior to such identification efforts, but shall document the results of such efforts and provide this documentation to the SHPO for review and comment in accordance with this PA.

(D) EXEMPTIONS

(i) Prescribed fire management in the SHF and MNTP involves a number of routine and recurrent undertakings whose potential effects on historic properties are foreseeable and likely to be negligible, minimal or not adverse.

(ii) The signatories to this PA have agreed that the undertakings identified in Attachment B have little or no potential to affect historic properties. As a result of their limited-to-no potential to affect historic properties, these undertakings are exempt from case-by-case Section 106 review, and no further consultation with the SHPO and/or the public is required. The SHF and MNTP will maintain an annual record of undertakings exempt under the terms of this PA and provide this record in their annual report for this PA (see stipulation IX).

(iii) The list of exempt undertakings may be revised or updated following the submission of the annual report at the request of any of the signatories and by mutual written agreement of the same. If all signatories agree, a revised, dated and signed revised list of exempted undertakings shall be designated and appended to this PA.

(iv) Any discovery of an historic property or unanticipated effect made by the SHF or MNTP during the implementation of an exempt undertaking will be treated in accordance with this PA (see stipulations V and VI and Attachment B, Part III).

(E) SCREENED EXEMPTIONS

(i) Prescribed fire management in the SHF and MNTP involves some types of undertakings the potential effects of which on historic properties are usually foreseeable and historically have been minimal and not adverse, but may have the potential to effect historic properties under certain circumstances and contexts. The circumstances and contexts of such undertakings shall be reviewed (screened) by the appropriate heritage program manager (HPM) to determine whether further consultation and consideration of heritage preservation activities is necessary (Attachment B, Part IV). The SHF and MNTP will maintain annual records of undertakings screened under the terms of this PA and provide this record in their annual report for this PA (see stipulation X).

(ii) The list of screened undertakings may be revised or updated annually following the submission of the annual report at the request of the SHF and MNTP, and by mutual written agreement of the SHF and MNTP, SHPO, and ACHP. If all signatories agree, a revised, dated and signed list of screened activities shall be designated and appended to this PA (Attachment B, Part IV).

(iii) Any discovery of a historic property or unanticipated effect made by the SHF or MNTP during the implementation of a screened undertaking will be treated in accordance with this PA (see stipulations V and VI).

(F) NO HISTORIC PROPERTIES PRESENT
When no historic properties are identified in the APE for a prescribed-fire undertaking, the findings will be documented and included in the SHF and MNTP annual reports for this PA. No further consultation is required.

(G) NO HISTORIC PROPERTIES AFFECTED
When historic properties are identified in the APE for a prescribed-fire undertaking, but it is the determination of the SHF or MNTP that the undertaking will have no effect on these historic properties, the findings will be documented and included in the SHF and MNTP annual reports. No further consultation is required.

(H) HISTORIC PROPERTIES PRESENT AND NO ADVERSE EFFECTS
When historic properties are identified in an APE for a prescribed-fire undertaking, the appropriate HPM may require that agreed-to protection measures be implemented and adjustments made to the project design to protect historic properties (Attachment B, Part IV. Screened Undertakings, and Part V. Prescribed Fire Heritage Program Protocol). If, following the recommendations of the HPM, effects can be avoided to the satisfaction of the HPM, a no-adverse-effect finding will be documented and included in the annual report. No further consultation is required.

If an historic property to which a tribe ascribes cultural and religious significance has been identified on the SHF, the SHF will consult with that tribe and the Peoria Tribe of Oklahoma, the Shawnee Tribe, the Absentee Shawnee Tribe, and the Eastern Shawnee Tribe with regard to the adequacy of the avoidance measures.

If an historic property to which a tribe ascribes cultural and religious significance has been identified on the MNTP, the MNTP will consult with that tribe and the Citizen Potawatomi Nation, the Forest County Potawatomi Community, the Prairie Band Potawatomi, the Hannahville Indian Community, the Kickapoo Tribe of Kansas, the Kickapoo Tribe of Oklahoma Tribe, and the Shawnee Tribe with regard to the adequacy of the avoidance measures.

(I) ADVERSE EFFECTS ON HISTORIC PROPERTIES
When historic properties are identified upon which a proposed undertaking would have adverse effects, and the appropriate HPM determines that it is not possible to implement agreed-to protection measures, that undertaking may be excluded from implementation under the provisions of this PA. Compliance with Section 106 of NHPA for such undertakings will follow the process for resolving adverse effects described in 36 CFR Part 800.6.

IV. MONITORING
The SHF and MNTP shall conduct monitoring as necessary to ensure that identified protection measures are effective. The SHF's and MNTP's professional heritage program staff shall determine the schedule and requirements of any monitoring. A report shall be completed for each monitoring event and kept on file at the office of the appropriate HPM, and included in the annual report submitted to the SHPO. In addition, all monitoring related to the prescribed fire programs will be included in the SHF and MNTP annual LRMP monitoring reports. If major changes are noted in the integrity, condition, or appearance of an historic property, or new information is uncovered, the site forms shall be updated accordingly and this information forwarded for inclusion in the statewide inventory. If major changes are noted, the appropriate HPM will consult with the SHPO to review the protection measure(s) employed and discuss the need for any adjustments to the protection-measure protocols to better ensure their effectiveness and appropriate application. Inspection by the SHPO and

any of the consulting tribes may be performed during or after an undertaking with advance notice and arrangement among the SHPO, the appropriate HPM, and the SHF or MNTP Supervisor.

V. UNANTICIPATED DISCOVERIES AND INADVERTENT EFFECTS

(A) There is a small potential for encountering undiscovered sites during the course of a prescribed fire. Previously unrecorded high-risk properties (Attachment B, Part II) that are encountered during a prescribed fire will be protected in the same manner as specified in Attachment B, Part V (3). If affected properties are discovered after the burn, SHF and MNTP will document any damage, notify the ACHP, and consult the SHPO in order to develop further mitigation plans.

(i) If an unanticipated discovery of an historic property to which a tribe ascribes cultural and religious significance occurs on the SHF, the SHF will consult with that tribe and the Peoria Tribe of Oklahoma, the Shawnee Tribe, the Absentee Shawnee Tribe, and the Eastern Shawnee Tribe with regard to the adequacy of the avoidance measures and further mitigation.

(ii) If an unanticipated discovery of an historic property to which a tribe ascribes cultural and religious significance occurs on the MNTP, the MNTP will consult with that tribe and the Citizen Potawatomi Nation, the Forest County Potawatomi Community, the Prairie Band Potawatomi, the Hannahville Indian Community, the Kickapoo Tribe of Kansas, the Kickapoo Tribe of Oklahoma Tribe, and the Shawnee Tribe with regard to the adequacy of the avoidance measures and further mitigation

(iii) As a result of unanticipated discoveries or effects, the list of screened undertakings may be revised or updated following the submission of the annual report at the request of any of the signatories of this agreement, and by mutual written agreement of the same.

VI. UNANTICIPATED DISCOVERIES AND HUMAN REMAINS

In the event that human remains, funerary objects, sacred objects, or objects of cultural patrimony are inadvertently discovered during project implementation, all activities shall cease and the SHF or the MNTP shall attempt to determine the age and origins of the remains. If the remains are believed to be Native American, the SHF or MNTP shall comply with the provisions of the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA) as outlined in 43 CFR 10, Forest Service Manual sections 2361.3 and R9 Supplement dated 7/5/2006 2361.05 – Exhibit 01, as well as in Section 3 of the Illinois Human Skeletal Remains Act (Attachment E).

The SHF and the MNTP shall seek completion of separate Memoranda of Understanding with appropriate tribal governments to provide for the disposition of certain human remains and specific classes of cultural material discovered on National Forest System lands consonant with the requirements of NAGPRA and other direction as stated in the paragraph above. Such memoranda shall also address accidental-discovery contingencies. Information copies of such agreements shall be furnished to the SHPO and ACHP.

VII. PUBLIC PARTICIPATION

(A) The SHF and the MNTP shall use the public scoping process detailed in the National Environmental Policy Act (NEPA) (42 U.S.C. 4321-4346), and other means necessary, to comply with the provisions of 36 CFR Part 800 for public notification, public participation, and the identification of individuals and organizations with a demonstrated interest in the undertaking. The SHF and the MNTP shall use the NEPA scoping process to solicit information about identification of properties important for historic and cultural reasons, and about effects to those properties from proposed undertakings. The SHF and the MNTP policy and procedures for implementing NEPA

(Forest Service Manual 1950; Forest Service Handbook 1909.15; at 57 FR 43180-43213) include public notification and involvement of individuals and organizations with a demonstrated interest in the undertaking, beginning at the earliest stages of planning an undertaking, during the environmental analysis period, and after a decision is made. If no NEPA is conducted, the SHF and the MNTP will employ other means as necessary to comply with provisions for public participation in 36 CFR Part 800.

(i) The NEPA process allows individuals, organizations, or groups an opportunity to comment on SHF or MNTP undertakings, including those measures used for the identification, protection, and management of historic properties, and the effects of undertakings on historic properties. These comments are taken into account as part of the NEPA decision

(ii) The SHF and the MNTP shall use the NEPA scoping process and other means necessary to identify and recognize *any other parties entitled to be consulting parties* as required in 36 CFR Part 800.3(f).

(iii) The NEPA scoping process or other appropriate notification shall be used to meet 36 CFR Part 800 responsibilities to involve Native Americans, tribal governments, and other parties entitled to be consulting parties with a demonstrated interest in the undertaking on a project level basis.

(B) The SHF and the MNTP will consult with interested Indian Tribes throughout the Section 106 process to determine if they attach religious or cultural significance to cultural resources or historic properties eligible for or listed on the NRHP, and about effects to those properties from proposals for prescribed-fire undertakings subject to this PA.

VIII. ANNUAL REPORTING

The SHF and the MNTP will compile annual reports on their respective prescribed fire programs. These reports will include a tabular listing of projects treated under this PA and general information about annual programs of work, as well as detailed information on monitoring activities and project reviews, including standard exemptions, screened exemptions, no historic properties, or historic properties avoided through the application of protection measures. All determinations of eligibility of historic properties for the NRHP will be done in consultation with the SHPO. The annual reports will be submitted to the signatories of this agreement.

IX. DURATION

This agreement becomes effective upon the date of signature and shall remain in force for a period of ten years from the date of its execution, unless terminated or amended prior to the date of expiration. Within 12 months before the date of expiration, following the ninth annual report, the signatories will consult to determine if the agreement should be terminated or amended (amendment may include extension of the terms of the agreement). The extension of the PA will be executed in the same manner as the original PA.

X. DISPUTE RESOLUTION

Should any signatory or concurring party to this PA object to the manner in which the terms of this PA are implemented, the SHF or the MNTP, as appropriate, shall consult with such party to resolve the objection. If the SHF or the MNTP determines that such objection cannot be resolved, the SHF or the MNTP will:

(A) Forward to the ACHP all documentation relevant to the dispute, including the SHF's or the MNTP's proposed resolution. The ACHP shall provide the SHF or the MNTP with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the SHF or the MNTP shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories and concurring parties, and provide them with a copy of this written response. The SHF or the MNTP will then proceed according to its final decision.

(B) If the ACHP does not provide its advice regarding the dispute within the thirty (30)-day time period, the SHF or the MNTP may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the SHF or the MNTP shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the PA, and provide them and the ACHP with a copy of such written response.

(C) The SHF's and the MNTP's responsibility to carry out all other actions subject to the terms of this PA that are not the subject of the dispute remain unchanged.

XI. AMENDMENTS

This PA may be amended following the submission of the annual report, and amendments shall be developed and executed in the same manner as the original PA.

XII. TERMINATION

If any signatory to this PA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment per the Dispute Resolution Stipulation, above. If within thirty (30) days (or another time period agreed to by all signatories) an amendment cannot be reached, any signatory may terminate the PA upon written notification to the other signatories.

Nothing in this PA shall obligate the SHF or the MNTP to expend appropriations or to enter into any contract or other obligation. Specific work projects or activities that involve the transfer of funds, services or property among the parties to this PA will require the execution of separate agreements or contracts, contingent upon the availability of funds as appropriated by the Congress. Each subsequent agreement or arrangement involving the transfer of funds, services or property among the parties to this PA must comply with all applicable statutes and regulations, including those statutes and regulations applicable to procurement activities, and must be independently authorized by appropriate statutory authority.

XIII. EXECUTION & IMPLEMENTATION

Execution and implementation of this Programmatic Agreement as documented in the project records is evidence that the Midewin National Tallgrass Prairie and the Shawnee National Forest have satisfied their Section 106 responsibilities with respect to the administration of the prescribed fire program on National Forest System lands in Illinois.

LOCAL FOREST SERVICE CONTACTS

Shawnee National Forest

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SIGNATORIES

U.S. FOREST SERVICE - MIDEWIN NATIONAL TALLGRASS PRAIRIE

By: _____ Date: 3/10/08
Logan Lee, Prairie Supervisor

U.S. FOREST SERVICE - SHAWNEE NATIONAL FOREST

FOR By: _____ Date: 3/10/08
Hurston A. Nicholas, Forest Supervisor

U.S. FOREST SERVICE – EASTERN REGION

By: _____ Date: 3/12/08
For Kent P. Connaughton
Regional Forester

ILLINOIS STATE HISTORIC PRESERVATION OFFICE

By: _____ Date: 3-17-08
William L. Wheeler
State Historic Preservation Officer

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____ Date: 3/21/08
John M. Fowler
For Executive Director

ATTACHMENTS

Attachment A: USDA Forest Service Prescribed Fire Program

Attachment B: Heritage Resource and Prescribed Fire Management, Shawnee National Forest (SHF) and Midewin National Tallgrass Prairie (MNTP)

- Introduction
- Part I. Prescribed Fire Activities That May Affect Cultural Resources
- Part II. Cultural Resources That May Be Affected by Prescribed Fire
- Part III. Exempted Undertakings
- Part IV. Screened Undertakings
- Part V. SHF and MNTP Prescribed Fire Program Protocol

Attachment C: Definitions and Acronyms

Attachment D: Cultural Resources Not Considered To Be Eligible for Inclusion on the National Register of Historic Places (NRHP).

Attachment E: Illinois Human Skeletal Remains Protection Act (20 ILCS 3440)

Attachment A

USDA Forest Service Prescribed Fire Program

The USDA Forest Service seeks to improve overall forest health, restore healthy ecosystems and lessen the risk of high-intensity, destructive wildland fires by working with prescribed fire to bring National Forest System lands closer to the historic and natural ecological conditions identified as desired goals and objectives in land and resource management plans. Natural and cultural resource managers, including foresters, biologists, and archaeologists, use prescribed fire to remove thick brush, reduce hazardous fuel accumulations, restore and maintain ecosystems, improve habitats, and control unwanted or undesirable vegetation.

Fire has helped shape the land for thousands of years—its presence is essential for the survival of many plants and animals. Wildlife thrives in areas recently treated with prescribed fire. The fire recycles nutrients into the soil, increasing the elements needed to promote healthy plant growth. It also clears shrubs, undergrowth, and leaf litter, opening the forest floor and making it easier for wildlife to move, as well as providing increased sunlight for other plants. Flowering annuals and biennials are more visible and grow better in areas treated with fire, benefiting a variety of animals, including butterflies and birds. An increased number and variety of small plants provides diverse forage for a wealth of animal species in these places. Grasses grow rapidly in areas that have been treated with fire and are more nutritious and digestible for animals, particularly deer. Turkey, quail, and doves also benefit from the increased grasses and legumes following a burn.

People who enjoy the numerous recreational opportunities available on forests, or those living nearby, also benefit from the improved forest conditions. Prescribed burns remove downed limbs and other debris from the forest floor, improving visibility and reducing obstacles. The variety, quantity, and quality of the plants and animals that result from the treatments in these areas are noticeable not only to those enjoying activities in the forests, but also to people traveling through the forests. Those living in the wildland-urban interface, where the forest meets development and neighborhoods, have increased protection from the threat of destructive wildfires as prescribed burns reduce the amount of heavy underbrush and leaf litter that could fuel a destructive wildfire.

The Forest Service has set in place various coordination measures with conditions that must be met prior to implementing a prescribed burn. These include current fire plans, compliance with various state and federal regulations, safety and risk management, public affairs, community outreach and public involvement through the National Environmental Policy Act (NEPA) process, appropriate tribal consultation procedures, and appropriate staffing and training. These coordination measures illustrate the amount of planning and attention given to all facets of a prescribed burn activity. An important part of the pre-burn planning process involves considerations for threatened and endangered species, other sensitive resources and, of course, significant cultural resources.

The management of prescribed fires is conducted by highly trained specialists and wildland firefighters, who control the intensity of the fire and keep it within a defined area using a combination of natural fuel breaks and firelines that have been cleared of burnable material. These low-intensity fires leave some area inside the firelines untouched, creating a mosaic of burned and unburned patches. Safety and health are the top priorities during any prescribed fire and many requirements must be met before a prescribed fire can take place. Burn plans consider conditions such as the range of relative humidity, wind speed and direction, temperature, fuel moisture, and atmospheric conditions. Factoring in all these requirements limits the number of days in which a prescribed fire can take place. To complete prescribed burns in a safe, economical, and efficient manner, the Forest Service works with a variety of partners, including private, local, state, and federal entities.

Attachment B

Heritage Resource and Prescribed Fire Management, Shawnee National Forest (SHF) and Midewin National Tallgrass Prairie (MNTP)

Part I. Introduction

As noted in Attachment A, prescribed burning on the SHF and the MNTP is generally of low intensity and short duration. With few exceptions, prescribed fires will not burn hot enough to reach mineral soil. Temperatures are typically not high enough to cause heat alteration, exfoliation, or other damage to stone, concrete and mortar, or to glass, metal and ceramic artifacts. Given the low intensity of typical prescribed fires, controlled burning is not expected to adversely affect prehistoric and historic sites that do not contain aboveground combustible elements. With the exception of plastic artifacts, thermal alteration is expected to be limited to combustive residue deposits (soot), which generally is washed off in the rain. Plastic artifacts have a relatively low melting/deformation threshold. However, these effects would not affect the eligibility of the site for listing on the National Register of Historic Places (NRHP).

Part II. Cultural Resources/Historic Properties That May Be Affected by Prescribed Fire

Historic Sites with Aboveground Combustible Elements. Within the SHF and the MNTP there are a small number of cultural resources with aboveground combustible structures or elements. These include features related to past settlement occupations, such as log houses and the remains of log houses, log outbuildings (log smoke houses and barn remnants), milled-lumber frame structures (outbuildings and other structural ruins), fence posts and utility poles. Other burnable wooden features are related to past administrative uses, such as informal, single-pole-type fire lookouts and historic signage. This list is not exhaustive.

Historic Cemeteries. Burning in historic cemeteries is often recommended to encourage growth of native plant species and to keep the cemetery clear of non-native invasive species and other understory growth. However, heat may cause adverse impacts to the grave markers within the cemeteries, such as discoloration, heat spalling, and even fracturing.

Prehistoric Sites Potentially Affected by Prescribed Fire. Prehistoric sites have the potential to be affected by fire if they are in close proximity to areas of high fuel buildup. In such situations, artifacts and non-combustible aboveground features can be damaged by prescribed burning because the fire reaches a higher temperature and lasts longer, allowing the temperature of the soil to rise and affect artifacts buried in the soil.

Fire also has a potential to damage prehistoric Native American rock art. Although there are no specific temperature guidelines for rock art, fire effects include sooting, smudging and potential discoloration from smoke; degradation of the rock-art surface from spalling, exfoliation and weathering; thermal alteration of organic paints; and damage to rock-art varnish that would affect the potential to date the art.

Part III. Exempt Undertakings

An exempt undertaking is one for which the SHF or MNTP will not conduct Section 106 review or consultation under terms of this PA and 36 CFR Part 800. The following are exempt undertakings:

1. Prescribed burns where the area of potential effects (APE) is located entirely within former agricultural fields that do not contain aboveground surface features.

2. Revegetation using mechanical and/or manual planting. Revegetation of a project area would occur only in areas that have undergone agricultural modification or in areas of mechanically constructed firelines and waterbars. As a mitigation measure, mechanically constructed firelines and waterbars are also often seeded.

3. Revegetation via non-disturbing broadcast seeding and mulching. No earth-disturbing activities would occur during this activity.

4. Plowed firelines in previously plowed tracts or fields. As noted above, much of the SHF and the MNTP has been converted from old agricultural fields. Historically, plowed firelines do not extend below the historic plow zone and have no additional effects on buried cultural resources.

5. Fireline and waterbar construction on slopes greater than 20 percent. Ridges with slopes greater than 20 percent are not expected to contain buried cultural resources that would be affected by prescribed fire.

6. Use of mechanical equipment, such as bulldozers, discs and tractor plows, and construction of firelines in areas that have been previously surveyed and contain no identified cultural resources.

7. Travelways for mechanical equipment. Limited travel between unloading and/or staging areas and the point of fireline construction would not affect cultural resources.

8. Removal of ladder fuels from trees during fireline construction. Branches, small trees and shrubs would be removed with chain saws, hand saws, or loppers. In woodlands or areas that are not former agricultural fields, the stumps of trees would be left in place.

9. Felling of hazard and wind-thrown trees from burn units where deemed necessary for firefighter or post-burn public safety in a manner that will protect the cultural resource and the historical and archaeological integrity of the property or structure.

10. Use of fireline hoses and high-volume application of water in former agricultural fields.

11. Use of moderate- to low-volume sprinklers as fireline protection.

12. Use of foam or retardant on cultural resources with no aboveground surface features.

13. Removal or movement of modern trash that does not qualify as a historic property.

Part IV. Screened Undertakings

A screened undertaking is one that *may* be exempt from identification, evaluation, management protocols and Section 106 review under this PA. In general, the appropriate heritage program

manager (HPM) has reviewed the nature of the undertaking and determined that it has minimal potential to affect historic properties potentially located within the APE. However, an undertaking in this category may, on occasion, have the potential to affect historic properties. The HPM must review the specific circumstances of these undertakings and provide professional judgments to the SHF or MNTP Supervisor concerning cultural resource inventory and protection measures to preserve and protect historic properties that maybe located within the APE. The following are screened undertakings for which the SHF or MNTP will make a decision on whether or not they will undergo Section 106 review and consultation:

1. Fireline and waterbar construction on slopes between 10 and 20 percent.

2. Fire lines constructed with a mower, a leaf blower or by hand-raking. Mowing, raking and leaf blowing are not considered earth-disturbing activities and will not affect buried cultural resources.

3. Firelines constructed in previously burned tracts or other disturbed areas. As noted above, much of the SHF and MNTP has been converted from old agricultural fields. Mechanical construction, hand-raking and blown-in firelines would not further affect cultural resources.

4. Mechanical removal—using bulldozers, discs and tractor plows—of small trees and shrubs in former agricultural lands and woodlands. Mechanical removal with a bulldozer consists of pushing the tree or shrub with the flat blade at the ground surface where the roots join the stem/trunk. The shallow roots are pulled up and the larger roots snap off; the disturbance stays within the already-disturbed plow zone. In order to protect the historical and archaeological integrity of historic properties, mechanical removal will be prohibited near surface features of identified cultural resources within the APE.

5. Use of moderate- to high-volume sprinklers as a protection measure for cultural resources with aboveground features or sensitive surface features.

6. Prescribed-fire use in historic cemeteries.

7. Improvement of historic roads for use as firebreaks.

8. Staging of heavy equipment as contingency resources on burn-unit perimeters.

9. Removal of cultural resources during burn operations, with the resource being replaced after the burn operation is complete (e.g., historic signs, moveable structures, etc.).

10. Piling of downed fuels such as branches or logs into large burn piles. Burn piles will not be located on historic properties. Burn piles will be managed in a manner that will protect the archaeological or architectural integrity of any historic properties located within the APE.

11. On MNTP, projects that eliminate non-fixed hazards from burn units or firelines, such as removal of objects or hazardous waste from the site in a manner that will protect the archaeological or architectural integrity of the site.

Part V. <u>Prescribed Fire Heritage Program Protocol</u>

All efforts to identify, evaluate, and manage historic properties (heritage program activities) in connection with the planning of prescribed-burn activities shall be carried out in accordance with the stipulations specified in this PA and 36 CFR Part 800.

The HPM will work in accordance with this PA and review prescribed-burn plans to assess their potential for affecting cultural resources in the respective burn-unit APEs. The HPM will consult with the fire organization and other resource specialists prior to the approval of the burn plans to determine, according to available information and using professional judgment, if there is reasonable cause to believe that there is potential for cultural resources to be affected during the prescribed burn, and also to determine mitigation measures to ensure their continued protection. Variables to be considered in making this determination include:

- Types of cultural resources that are known to occur at the location;
- Potential for cultural resources, taking into consideration existing information and knowledge of the types and distribution of cultural resources in similar settings elsewhere;
- Potential for, and type of, ground disturbance related to the prescribed burn;
- Means of access and access routes;
- Indirect effects of the undertaking, such as erosion, trampling, or increased public visitation that could lead to vandalism or other resource degradation;
- Potential visual effects to cultural resources;
- Potential for effects on traditional cultural properties (TCPs); and
- Potential for an escaped fire which may require fire suppression activities and put cultural resources at risk.

Prescribed-Fire Activities That May Affect Cultural Resources

Fireline and Waterbar Construction: Existing roads, streams, and other natural firebreaks are used as firelines whenever possible, but it is often necessary to put in additional cross-country firebreaks to control the burn. However, much of the SHF and MNTP has been converted from old agricultural fields, as typified on the SHF by the ubiquitous ridge-top pine plantations planted by the Civilian Conservation Corps during the 1930s, and on MNTP as pre-World War II agricultural fields and pasture. These old fields have undergone agricultural manipulation from the 1850s to the 1930s.

Firelines are constructed using mechanical means as well as manual raking. Mechanical construction consists of blades, discs, plows, leaf blowers and mowers. Mowing, blowing and hand-raking are not considered to be earth-disturbing activities. Plowed and disked firelines do not extend below the plow zone and will not further affect buried cultural resources.

However, mechanical construction of firelines and waterbars using a bulldozer or similar equipment could have an impact on buried cultural resources. Mechanically constructed lines using a bulldozer or similar equipment are generally used where natural firebreaks do not occur. Mechanically constructed lines using a bulldozer or similar equipment are usually 7 feet wide and generally extend 1-2 inches below the ground surface, but may, on occasion, extend as far as 8 inches below the ground surface. Because mechanically constructed firelines using a bulldozer or similar equipment may cut into sub-plow zone cultural deposits at buried archaeological sites, firelines constructed by these types of mechanical means will be inventoried for cultural resources prior to project implementation.

Mop-up Activities: Mopping-up is the examination of the burned area for smoldering materials. This operation is carried out by firefighters with water and hand tools at the end of the prescribed fire. The aim is to secure the fire edge to prevent later flare-up and possible escape. Mopping-up in woodland and openlands/prairie requires extinguishing all smoldering logs and trees adjacent to the fireline. Damage can occur from ground-disturbing activities such as digging up burning stumps and roots, construction of waterbars, and revegetation.

Staging Areas and Heavy Equipment. Staging areas are designated locations where resources (firefighters and firefighting equipment, such as ATVs, fire engines, and other mechanical equipment) are placed while awaiting assignment. Concentrated areas of heavy equipment can cause rutting that could extend below the plow zone and affect sub-plow zone cultural deposits. Areas with recorded or a high potential for archaeological sites will be designated as resource-protection areas and will be avoided, or receive special attention and protection during prescribed burning activities.

Piling of Downed Fuels. Where fuels are piled for disposal, artifacts and non-combustible aboveground features can be damaged by prescribed burning because the fire reaches a higher temperature and lasts longer, allowing the temperature of the soil to rise. The appropriate HPM will review and approve burn pile locations to avoid any effects on cultural resources.

Upon review of the proposed undertaking and determination of the most appropriate category of undertaking under the terms of this PA (Exempt, Screened, or PA review), the SHF or MNTP will follow one of the following management protocols:

1. Protocol for Exempt Undertakings: The HPM has found that there is minimal potential to affect cultural resources. The prescribed-burn activity may be considered exempt from further review and heritage program investigation (management activities included in Attachment B, Part III).

2. Protocol for Screened Undertakings: If the HPM finds that the prescribed burn activity has little potential to affect cultural resources within the APE, then the prescribed burn activity shall be considered exempt from further review under the terms of this PA. If the HPM finds that the prescribed burn activity has the potential to affect cultural resources within the APE (management activities included in Attachment B, Part IV), then the prescribed-burn activity shall not be considered exempt and shall be subject to further consideration of cultural resources under the terms of this PA (PA Review, below).

3. Protocol for Archaeological Sites that may be Affected by Prescribed Fire (PA Review)

    a) Historic Cultural Resources with Aboveground Combustible Elements.

    Inventory Methods. These methods are not designed to locate all cultural resources that may be within the APE, but to locate those that could potentially be affected by the undertaking. This methodology, therefore, is applicable only to prescribed burning and is not applicable to any other activities carried out by the SHF or MNTP.

    A reasonable and good faith effort will be made to locate all cultural resources with aboveground combustible features within the entire APE. This will include a

search of previously documented site records, a literature search of historic acquisition maps and aerial photographs, as well as a pedestrian survey of known roads within the project area. Because historic sites are largely related to the historic transportation system, a cultural resource inventory using the old road system within the APE will allow the heritage program specialist to find and record historic sites with aboveground combustible elements.

Resource Protection Measures. If there is a potential to affect cultural resources with aboveground combustible features during prescribed fire operations, the site boundaries will be delineated sufficiently by heritage program staff on a map and in the APE (by flagging or tagging) to adequately protect the site, and the area will be avoided during prescribed fire activities. Cultural resources are generally designated by the nonspecific name "resource protection area" to protect the confidential locations of these sites. Firebreaks around the site will be constructed by hand with a rake or leaf blower, by mechanical means or, in certain instances, with fire-retardant foam. Other less frequently used protection measures include a "wet-line" surrounding the site, or burning-out around the site. Fire retardants should not be applied (dumped or sprayed) on the combustible feature, but rather around it. When possible, sites will be monitored during the proposed actions to ensure compliance.

If effects to cultural resources cannot be avoided with the protection measures recommended by the HPM, the site will be excluded from the burn unit, and firebreaks will be constructed around the outside and away from the perimeter of the site.

Monitoring. The appropriate HPM will be notified after the prescribed fire has occurred. All cultural resources with aboveground combustible features that were not monitored during the prescribed fire will be monitored to ensure protection measures were appropriate. A brief narrative report of the monitoring activity will be appended to the Forest Service site form, as well as included in the Forest Service Heritage Program INFRA database.

b) Historic Cemeteries.

Inventory Methods. Same as for Historic Cultural Resources with Aboveground Combustible Elements, above.

Cemetery Protection Measures. If there is a potential to disturb a historic cemetery during a prescribed burn, the boundaries will be delineated sufficiently by heritage program staff to adequately protect the cemetery, which will be avoided during the prescribed fire, if possible. In addition to avoidance, cemetery preservation treatments can also include protection with hand-constructed firebreaks or by wrapping tombstones with structural wrap material or fire shelters. These materials are specially designed to protect structures from wildfires or to withstand wildland fire temperatures. (These are portable fire shelters used by firefighters who may become entrapped during a wildland fire). When possible, cemeteries will be monitored during the proposed actions to ensure the cemetery is properly protected.

As with the treatment of historic cultural resources with aboveground combustible features, if there is the potential for a cemetery to be affected by high fuel buildup, the fuel can be removed from the site in a manner that will protect the archaeological or historical integrity of the cemetery.

Monitoring. The appropriate HPM will be notified after the prescribed burn has occurred and cemeteries that have not been previously monitored will be monitored to ensure that protective measures were appropriate and successful. A brief narrative report of the monitoring activity will be appended to the Forest Service site form and included in the Forest Service Heritage Program INFRA database.

c) Prehistoric Cultural Resources Potentially Affected by Prescribed Fire.

Inventory Methods. Prehistoric sites have the potential to be affected by fire if they are in close proximity to burn piles (piles of downed fuels, such as branches or logs, created through fuel manipulation that are to be ignited as part of the fuel treatment proposal). In areas within the APE in which burn piles are located or planned, a complete survey will be conducted following the Illinois SHPO Guidelines for Archaeological Reconnaissance Survey. Efforts will be made to locate prehistoric archaeological rock-art sites, including a search of previously documented site records and other appropriate literature. Burn piles will not be located on historic properties. At the MNTP, burn piles may also be made on concrete pads or in fields away from known cultural resources. They will be managed in a manner that will protect the archaeological integrity of any cultural properties located within the APE.

Protection measures. The project will be redesigned to protect cultural resources. Burn piles, or piles of downed fuels such as branches or logs, will be made at locations away from known archaeological sites. On the MNTP, burn piles may also be made on concrete pads away from known historic properties. If there is a potential to disturb archaeological sites containing prehistoric rock art, similar to the treatment of historic cultural resources with aboveground combustible features, fire breaks will be constructed around the site. However, fire retardants, slurry, foam and water are never to be applied (dumped or sprayed on) to rock art.

Monitoring. The appropriate HPM will be notified after the prescribed burn has occurred and all prehistoric sites that have not been previously monitored will be monitored to ensure that protective measures were appropriate. A brief narrative report of the monitoring activity will be appended to the Forest Service site form and the Forest Service Heritage Program INFRA database

d) Unanticipated Discoveries or Effects

There is a small potential for encountering undiscovered sites during the course of a prescribed fire. Previously unrecorded high-risk properties (Attachment B, Part II) that are encountered during a prescribed fire will be protected in the same manner as specified in Attachment B, Part V (3). If affected properties are discovered after the burn, the SHF and MNTP will document any damage, notify the ACHP and consult the SHPO in order to develop further mitigation plans.

If a historic property of traditional or cultural significance to a tribe is identified during the prescribed burn, the SHF will consult with that tribe and the Peoria Tribe of Oklahoma, the Shawnee Tribe, the Absentee Shawnee Tribe, and the Eastern Shawnee Tribe with regard to the adequacy of the avoidance measures and further mitigation. The MNTP will consult with the affected tribe and the Citizen Potawatomi Nation, the Forest County Potawatomi Community, the Prairie Band Potawatomi, the Hannahville Indian Community, the Kickapoo Tribe of Kansas, the Kickapoo Tribe of Oklahoma Tribe, and the Shawnee Tribe. In the event that human remains, funerary objects, sacred objects, or objects of cultural patrimony are discovered during project implementation, all activities shall cease and the SHF or MNTP shall comply with the provisions of the Native American Graves Protection and Repatriation Act of 1990, as outlined in 43 CFR 1, Forest Service Manual sections 2361.3 and R9 Supplement dated 7/5/2006 2361.05 – Exhibit 01,, as well as in Section 3 of the Illinois Human Skeletal Remains Act .

Attachment C

Definitions and Acronyms

The following definitions, and others included in 36 CFR Part 800.16, apply to this Programmatic Agreement (PA).

ACHP – Advisory Council on Historic Preservation; an ACHP member or ACHP employee designated to act for the ACHP.

APE – Area of potential effects

Consultation - Consultation means the process of seeking, discussing, and considering the views of others, and, where feasible, seeking agreement with them on how historic properties should be identified, considered, and managed. Consultation with Indian Tribes is a government to government process that is undertaken early and often and involves interaction and exchange of ideas that seeks to develop a mutually agreeable plan of action whenever actions are considered or planned that could affect Tribes or in which Tribes may have an interest. Consultation is built upon the exchange of ideas. Consultation at its best includes face to face interaction.

Cultural Resource – An object or definite location of human activity, occupation, or use identifiable through field inventory, historical documentation, or oral evidence. Cultural resources can be prehistoric, historic, archaeological, or architectural sites, structures, places, or objects and traditional cultural properties. Cultural resources include the entire spectrum of resources for which the Heritage Program is responsible, from artifacts to cultural landscapes, without regard to eligibility for listing on the NRHP.

Exempt Undertaking – An undertaking that, through this PA, is exempt from review or consultation under terms of this PA and 36 CFR Part 800 because it has little or no potential to affect historic properties.

Heritage Program Manager (HPM) – The position on the SHF or MNTP responsible for directing, planning, and administering the complex and multi-faceted Heritage Program; providing professional and technical advice to the MNTP Supervisor, the SHF Supervisor and district rangers as decision-makers; directing the Heritage Program internally, and with external agencies, organizations, and the public; and planning and developing the SHF or MNTP Heritage Program inventory, evaluation, and enhancement program. The HPM shall meet the professional standards established for archaeologist as outlined in 36 CFR 296.8, or in the *Secretary of the Interior's Standards and Guidelines for Professional Qualifications* (48 FR 44738-44739), or in the Forest Service OPM X118 series for Forest Archaeologist.

Historic property – Defined in the National Historic Preservation Act as "any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion on the National Register"; such term includes artifacts, records, and remains which are related to such district, site, building, structure, or object (16 U.S.C. Section 470[w][5]).

HPM – Heritage program manager

Inventory – A systematic, detailed examination of an area designed to gather information about the number, location, condition, and distribution of historic properties within an undertaking's APE.

MNTP – Midewin National Tallgrass Prairie

NEPA – National Environmental Policy Act

NHPA – National Historic Preservation Act of 1966, as amended

NRHP – National Register of Historic Places

Not Eligible for Inclusion on the National Register – Properties formally determined as such in accordance with regulations of the Secretary of the Interior, and all other properties that do not meet the NRHP criteria, including the property types agreed upon as not eligible by all parties to this PA, as listed in Attachment C.

PA – Programmatic Agreement

Prescribed Fire – A tool used by natural resource managers, including foresters and biologists, to help improve overall forest health for plants and animals. Prescribed fires are fires intentionally ignited under controlled situations conducted by highly trained specialists and wildland firefighters who control the intensity of the fire and keep it within a defined area using firelines that have been cleared of burnable material (Attachment A).

Screened Undertaking – An undertaking that *may* be exempt from formal identification, evaluation, management protocols and Section 106 review under this PA because the appropriate HPM has reviewed the nature of the undertaking and has determined that it has little potential to affect historic properties, if any such properties were present at the location of the undertaking. In cases in which an undertaking may have the potential to affect historic properties, the appropriate HPM must review the undertaking's specific circumstances, resulting in a professional judgment concerning heritage resource activities appropriate to ensure the identification and appropriate management of historic properties.

SHF – Shawnee National Forest

SHPO – (Illinois) State Historic Preservation Officer

Traditional Cultural Property – A cultural resource eligible for inclusion in the NRHP because of its association with cultural practices or beliefs of a living community that (a) are rooted in that community's history, and (b) are important in maintaining the continuing cultural identity of the community. The entity evaluated for eligibility for inclusion in the NRPH must be a tangible property, that is, a district, site, building, structure, or object as defined in 36 CFR Part 64.4.

Attachment D

Cultural Resources not Considered to be Eligible for Inclusion on the National Register of Historic Places

A number of historic and prehistoric site-types are not considered to be significant because they do not contain information that would add greatly to our knowledge of the history or prehistory of Illinois and are, therefore, not considered to be eligible for inclusion on the NRHP. Recording the location of these types of sites exhausts their research potential. As detailed in the listing of NRHP criteria, cemeteries and properties owned by religious institutions or used for religious purposes are not typically considered to be eligible for inclusion on the NRHP. Many of the following cultural resources are considered not eligible only when they are isolated features or isolated artifacts and are not identified in association with a historic property, historic district, traditional cultural property or rural cultural landscape. These include:

1. Abandoned county roads, unless part of early historic traces or a significant part of a rural cultural landscape;
2. Logging roads and trails less than 50 years old;
3. Common carrier railroad grades without architectural features, or railroad architectural features such as bridges and trestles less that 50 years old;
4. Isolated finds (a transportable artifact representing a single activity or episode)—recording their location exhausts their research potential;
5. Discard sites (dumps);
6. Fences, except as part of a site (such as a farmstead) that is eligible for the NRHP or a significant part of a rural cultural landscape;
7. Abandoned artificial ponds;
8. Historic rock piles resulting from field clearing that are not associated with a historic property;
9. Isolated wells or cisterns;
10. Fieldstone rock walls that are not associated with a historic property;
11. Land survey monuments less than 50 years old; and
12. Mine exploration pits or holes.

Attachment E

Human Skeletal Remains Protection Act (20 ILCS 3440)

Sec. 3. Any person who discovers human skeletal remains subject to this Act shall promptly notify the coroner. Any person who knowingly fails to report such a discovery within 48 hours is guilty of a Class C misdemeanor, unless such person has reasonable cause to believe that the coroner had already been so notified. If the human skeletal remains appear to be from an unregistered grave, the coroner shall promptly notify the Historic Preservation Agency prior to their removal. Nothing in this Act shall be construed to apply to human skeletal remains subject to "An Act to revise the law in relation to coroners."