

Advisory Council On Historic Preservation

The Old Post Office Building
1100 Pennsylvania Avenue, NW, #809
Washington, DC 20004

PROGRAMMATIC AGREEMENT AMONG

THE U.S. ARMY CORPS OF ENGINEERS, ROCK ISLAND DISTRICT;
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
THE ILLINOIS STATE HISTORIC PRESERVATION OFFICER,
THE IOWA STATE HISTORIC PRESERVATION OFFICER,
AND THE MISSOURI STATE HISTORIC PRESERVATION OFFICER
REGARDING THE IMPLEMENTATION
OF THE
PUBLIC LAW 84-99 PROGRAM IN THOSE STATES

WHEREAS, the U.S. Department of the Army, Corps of Engineers, Rock Island District (Corps), proposes to administer a program of emergency repair and restoration of damaged flood control works in Illinois, Iowa, and Missouri as authorized by Public Law 84-99; and,

WHEREAS, the Corps has determined that the Public Law 84-99 Program (Program) may have an effect upon properties included in or eligible for inclusion in the National Register of Historic Places and has consulted with the Advisory Council on Historic Preservation (Council), the Illinois State Historic Preservation Officer (ILSHPO), the Iowa State Historic Preservation Officer (IASHPO), and the Missouri State Historic Preservation Officer (MOSHPO) pursuant to Section 800.13 of the regulations (36 CFR Part 800) implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f); and,

NOW, THEREFORE, the Corps, the Council, the Illinois SHPO, Iowa SHPO, and the Missouri SHPO agree that the Program shall be implemented in accordance with the following stipulations to satisfy the Corps' Section 106 responsibility for all individual emergency repair and restoration projects involving damaged flood control works in Illinois, Iowa, and Missouri.

Stipulations

The Corps will ensure that the following measures are carried out for each emergency repair and restoration project:

1. The Corps will consult the National Register of Historic Places, the state site files in the appropriate state, and other pertinent sources for information on historic properties in the area of potential effect, as defined in the Council's regulations at 36 CFR § 800.2(c) and shall include the levee to be repaired and sources of borrow for such repairs. Based on this information, the Corps will assess the potential for the existence of historic properties in the project's area of potential effects. An area may be considered to have low potential for historic properties if no properties are suspected within the project's area of potential effects and:

- a. the area is low and so prone to flooding that it is not likely to have been used, or,
- b. the area was created by modern alluvium; or,
- c. the area has been extensively disturbed by modern activities to such an extent that additional disturbance will not impact any remaining historic properties.

2. If the Corps concludes that an area has a low potential for historic properties, the Corps will provide notice of its conclusion, including a brief discussion of why this conclusion was reached, to the appropriate SHPO. Unless the SHPO objects within 10 days of receipt of the notice, the Corps may proceed with the project.

3. If the Corps concludes that an area has potential to contain historic properties, or such properties are known within the project's area of potential effects, the Corps will conduct an archaeological investigation to identify historic properties. The survey will be conducted by, or under the direct supervision of, an archeologist meeting the "Secretary of the Interior's Professional Qualifications Standards" (48 FR 44738-39). The survey will be conducted in a manner consistent with the "Secretary of the Interior's Standards and Guidelines for Identification" (48 FR 44720-23) and take into account NPS publication, "The Archeological Survey: Methods and Uses" (1978: GPO stock # 024-016-00091). If the Corps determines that identified properties are not eligible for the National Register, the Corps will provide notification of its determination to the appropriate SHPO. If the SHPO does not object within 5 days of receipt of the notice, the Corps may proceed with the project. If no properties are discovered, the Corps may proceed with the project.

4. If the Corps identifies a property that may be eligible, or if the SHPO objects to the Corps determination pursuant to

Stipulation 3, the Corps will evaluate the property against the National Register Criteria (36 CFR Part 60.4) and will request the SHPO's comments within 5 days of receipt of the evaluation.

5. If a property is determined eligible, the Corps will attempt to relocate the project to avoid affecting the property.

6. If the Corps cannot avoid a historic property, and the property is not a mound, and is not likely to contain human remains or to be a grave or cemetery, then the Corps will develop a data recovery plan. The plan will be consistent with the Secretary of the Interior's "Standards and Guidelines for Archeological Documentation" (48 FR 44734-37) and take into account the Council's publication, "Treatment of Archeological Properties" (Advisory Council on Historic Preservation, 1980), subject to any revisions the Council may make. It shall specify, at a minimum:

- o the property, properties, or portions of properties where data recovery is to be carried out;

- o any property, properties, or portions of properties that will be destroyed without data recovery;

- o the research questions to be addressed through the data recovery, with an explanation of their relevance and importance;

- o the methods to be used, with an explanation of their relevance to the research questions;

- o the methods to be used in analysis, data management, and dissemination of data, including a schedule;

- o the proposed disposition of recovered materials and records; and,

- o proposed methods for disseminating results of the work to the interested public.

7. The data recovery plan will be submitted by the Corps to the appropriate SHPO for 15 days review. Unless the SHPO objects within 15 days after receipt of the plan, the Corps will ensure that the plan is implemented.

8. The Corps will ensure that a final report resulting from the data recovery will be provided, within a time agreed upon by the Corps and the appropriate SHPO, to the SHPO for review. The report will be responsive to contemporary professional standards, and to the Department of the Interior's "Format Standards for Final Reports of Data Recovery Program" (42 FR 5377-79).

9. If the historic property is located on federal, or tribal, land, and is likely to contain human remains, grave-associated goods, or items of cultural patrimony, the Corps will make every attempt to avoid the historic property. If the property cannot be avoided, the Corps will comply with the provisions of the Native American Graves Protection and Repatriation Act (NAGPRA). If the historic property is located on non-federal or non-tribal land, and the Corps cannot avoid the historic property, the Corps shall comply with the state burial laws as applicable. Proposed plans developed by the Corps, in compliance with either NAGPRA or a state burial law, will be fully coordinated with the Council and the appropriate SHPO pursuant to 36 CFR Section 800.5(e).
10. Once a year, and within four (4) months following the end of the Fiscal Year, the Corps will provide each of the SHPOs with a report documenting all activities carried out in the appropriate state pursuant to this Programmatic Agreement to determine if revisions to the Programmatic Agreement are needed. The Corps will also provide the Council with informational copies of these reports. If revisions to the Programmatic Agreement are needed in a particular state, the Corps, the Council, and the appropriate SHPO will consult in accordance with 36 CFR Section 800 to make such revisions.
11. The Council and the SHPOs may monitor activities carried out pursuant to this Programmatic Agreement, and the Council will review such activities if so requested. The Corps will cooperate with the Council and each SHPO in carrying out their monitoring and review responsibilities.
12. Should the Council or the appropriate SHPO object within the time frames provided for in this Programmatic Agreement to any plans provided for review or any proposed actions pursuant to this Programmatic Agreement, the Corps will consult with the objecting party to resolve the objection. If the Corps determines that the objection cannot be resolved, the Corps will request the further comments of the Council. Any Council comment provided in response to such a request will be taken into account by the Corps in accordance with 36 CFR Section 800.6(c)(2) with reference only to the subject of the dispute; the Corps' responsibility to carry out all actions under this Programmatic Agreement that are not the subjects of the dispute will remain unchanged.
13. The Corps, the Council, or a SHPO may terminate the Programmatic Agreement for a particular state by providing 30 days written notice to the other parties, provided that the parties will 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 Corps will comply with 36 CFR Sections 800.4 through 800.6 with regard to

individual undertakings in that state covered by this Programmatic Agreement.

14. In the event that the Corps does not carry out the terms of this Programmatic Agreement, the Corps will comply with 36 CFR Sections 800.4 through 800.6 with regard to individual undertakings covered by this Programmatic Agreement.

Execution and implementation of this Programmatic Agreement evidences that the Corps has satisfied its Section 106 responsibilities for all individual undertakings of this PL 84-99 program in Illinois, Iowa, and Missouri.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: Robert D. Bush Date: July 19, 1993
Robert D. Bush, Executive Director

U.S. ARMY ENGINEER DISTRICT, ROCK ISLAND

By: Albert J. Kraus Date: 21 July 1993
Albert J. Kraus, District Engineer

ILLINOIS STATE HISTORIC PRESERVATION OFFICER

By: William L. Wheeler Date: 7/20/93
William L. Wheeler, State Historic Preservation Officer

IOWA STATE HISTORIC PRESERVATION OFFICER

By: David Crosson Date: 7/22/93
David Crosson, State Historic Preservation Officer

MISSOURI STATE HISTORIC PRESERVATION OFFICER

By: Claire F. Blackwell Date: 29 July 93
Claire F. Blackwell, Deputy State Historic Preservation Officer