

PROGRAMMATIC AGREEMENT

Among the
Chicago, Rock Island, and St. Louis Districts of the U.S. Army Corps of Engineers,
the State of Illinois Department of Natural Resources,
the Illinois State Historic Preservation Officer,
and the Advisory Council on Historic Preservation,
Regarding Implementation of the
Illinois River Ecosystem Restoration

WHEREAS, the Chicago, Rock Island, and St. Louis Districts of the U.S. Army Corps of Engineers (hereafter, Corps) and the State of Illinois Department of Natural Resources (hereafter DNR) determined that the Illinois River watershed exhibits loss of aquatic habitat and have entered into a partnership for the purpose of implementing the Illinois River Ecosystem Restoration (IRER) authorized by Section 216 of the 1970 Flood Control Act and Section 519 (Illinois River Basin Restoration) of the Water Resources Development Act of 2000; and

WHEREAS, the Corps and the DNR have determined that the implementation of the IRER may have an effect upon properties listed on, or eligible for listing on, the National Register of Historic Places (National Register), and have consulted with the Advisory Council on Historic Preservation (Council) and the Illinois State Historic Preservation Officer (SHPO) pursuant to Section 800.14(b) of the regulations (36 CFR Part 800) implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470[f]), and Section 110(f) of the same Act (16 U.S.C. 470h-2[f]); and

WHEREAS, the IRER study area encompasses the entire Illinois River watershed located in Illinois (54 counties) with two types of efforts: (1) system evaluations focused on assessing the overall watershed needs and general locations for restoration and (2) site-specific evaluations focused on developing detailed restoration options for possible implementation at specific sites by project planning, engineering, construction, and monitoring with interdisciplinary and collaborative planning for habitat restoration, protection, preservation, and enhancement. The Corps and the DNR will manage the IRER throughout all stages of individual habitat project development, restoration, and management. Several other Federal agencies, as well as non-government entities and individual citizens, also will regularly participate in the development of projects within the IRER; and

WHEREAS, the study area includes four IRER areas identified as (1) watershed stabilization, (2) side channel and backwater modification, (3) water level management, and (4) floodplain restoration and protection. The focus areas will be implemented by habitat creation (islands, ponds, wetlands, potholes, channels, backwaters, etc.), flow control structures (grade

controls, dams, dikes, detention basins, weirs, riffles, fish passage, levees, etc.), habitat enhancements (anchor trees, stumps, plantings, management of timber and forest stands, regulation of water levels, etc.), and structure removals/modifications (snagging, clearing, dikes, borrowing, trenching, dredging, etc.); and

WHEREAS, pursuant to Section 800.3 of the Council's regulations, and to meet the Corps' and DNR's responsibilities under the National Environmental Policy Act of 1969, the Corps has developed a **Consulting Parties List** which was developed in consultation with the SHPO/Tribal Historic Preservation Officers (THPOs), Tribes, and other parties that may have an interest in the effects of this undertaking on historic properties. Those on the **Consulting Parties List**, comprised of 325 parties, including 47 federally recognized Tribes, were asked to comment on earlier drafts of this Programmatic Agreement or be provided with study newsletters, public meeting announcements, special releases, and notifications of the availability of report(s), including all draft agreement documentation, as stipulated by 36 CFR Part 800.14(b)(ii) of the National Historic Preservation Act. Comments received by the Corps were taken under consideration in developing this Programmatic Agreement; and

WHEREAS, the Corps has provided scholarly evidence of stewardship in the recordation, protection, and management of historic properties along the Illinois Waterway System through systemic research and studies which have been finalized and approved, then placed in the permanent files of the Corps and SHPO as evidence of compliance promulgated under Section 106 of the National Historic Preservation Act, as amended, and its implementing regulations, 36 CFR Part 800: "Protection of Historic Properties." [These studies included: (1) archeological studies (management of documented and undocumented historic properties), (2) architectural and engineering studies (buildings, structures, and objects associated with Multiple Property National Register Districts), (3) erosion studies, (4) land form sediment assemblage studies (geomorphology) and (5) submerged historic property study (historic shipwrecks and other underwater or previously inundated historic properties)]; and

NOW, THEREFORE, the Corps, the DNR, the SHPO, and the Council agree that the undertakings authorized under Section 216 of the 1970 Flood Control Act and Section 519 (Illinois River Basin Restoration) of the Water Resources Development Act of 2000 shall be implemented in accordance with the following stipulations:

I. IDENTIFICATION AND EVALUATION OF HISTORIC PROPERTIES

The Corps will ensure that the following measures are implemented:

A. The Corps will take all measures necessary to discover, preserve, and avoid significant historic properties listed on, or eligible for listing on, the National Register, burials, cemeteries, or sites likely to contain human skeletal remains/artifacts and objects associated with interments or religious activities, and provide this information, studies, and/or reports to the SHPO/THPO.

Under consultation with the SHPO/THPO(s) and the other consulting parties, the Corps will describe and define the Area of Potential Effect (hereafter referred to as the APE) in accordance with the definition contained in 36 CFR Part 800.16(d). The APE may be modified upon consultation with the appropriate SHPO(s)/THPO(s) through avoidance documented through the implementation of historic property surveys and testing, documentary research, recordation, and other investigation data.

B. Unless recent and modern ground surface disturbances and/or historic use can be documented and a determination made by the Corps, in consultation with the SHPO/THPO(s) and the other consulting parties, that there is little likelihood that historic properties will be adversely affected, the Corps will then conduct a historic property (reconnaissance) survey in (1) areas with the potential for containing submerged or deeply buried historic properties and (2) areas indirectly and directly affected by construction, use, maintenance, and operation during the implementation of the IRER program.

C. The Corps will ensure that all reconnaissance surveys and subsurface testing are conducted in a manner consistent with the Secretary of the Interior's Standards and Guidelines for Identification and Evaluation (48 FR 44720-23) and take into account the National Park Service publication The Archaeological Survey: Methods and Uses (1978) and any extant or most recent version of appropriate SHPO(s)/THPO(s) guidelines for historic properties reconnaissance surveys/reports, related guidance, etc. The reconnaissance surveys and subsurface testing will be implemented by the Corps and monitored by the SHPO/THPO(s).

D. In consultation with the SHPO, the appropriate THPO(s), and the other consulting parties, the Corps will evaluate for eligibility all significant historic properties by applying the National Register criteria (36 CFR Part 60.4). The Corps will use its archival documentation as a context in which to make National Register evaluations of historic properties.

1. For those properties that the Corps, the SHPO/THPO(s), and the other consulting parties agree are not eligible for inclusion on the National Register, no further historic properties investigations will be required, and the project may proceed in those areas.

2. If the survey results in the identification of properties that the Corps, the SHPO/THPO(s), and the other consulting parties agree are eligible for inclusion on the National Register, the Corps shall treat such properties in accordance with Part II below.

3. If the Corps, the SHPO/THPO(s), and the other consulting parties do not agree on National Register eligibility, or if the Council or the National Park Service so request, the Corps will request a formal determination of eligibility from the Keeper of the National Register, National Park Service, whose determination shall be final.

4. Relative to the treatment of historic properties and the identification of traditional cultural properties, the Corps will continue to provide the appropriate Tribe(s), the THPO(s), and the other consulting parties information related to treatment measures proposed by the Corps. Consideration of comments received by the Corps can be considered by the signatories to be measures to assist the Corps in meeting its responsibilities under the National Historic Preservation Act of 1966, as amended (Public Law 89-665), and the regulations of the Advisory Council on Historic Preservation, "Regulations for the Protection of Historic and Cultural Properties" (36 CFR, Part 800).

II. TREATMENT OF HISTORIC PROPERTIES

Those individual historic properties and multiple property districts that the Corps, the SHPO/THPO(s), and the other consulting parties agree are eligible for nomination to, or that the Keeper has determined eligible for inclusion on, the National Register, will be treated by the Corps in the following manner:

A. Archival Documentation of the Construction and Operation of the Historic Locks and Dams and Management of Historic Properties: The Corps has provided scholarly evidence of stewardship in the recordation, protection, and management of historic properties along the Illinois Waterway System through systemic research and studies which have been finalized and approved, then placed in the permanent files of the Corps and SHPO. These studies included: (1) archeological studies (management of documented and undocumented historic properties), (2) architectural and engineering studies (buildings, structures, and objects associated with Multiple Property National Register-eligible **Illinois Waterway Navigation System Facilities**, (3) land form sediment assemblage studies (geomorphology), and (4) submerged historic property study (historic shipwrecks and other underwater or previously inundated historic properties).

B. Treatment of Archaeological Historic Properties:

1. If the Corps determines, in consultation with the SHPO/THPO(s) and the other consulting parties, that no other actions are feasible to avoid and minimize effects to archaeological historic properties, then the Corps will develop a treatment plan, which may include various levels of data recovery, recordation, documentation, and active protection measures. The Corps will implement the treatment plan in consultation with the SHPO/THPO(s) and the other consulting parties.

2. If data recovery is the agreed upon treatment, the data recovery plan will address substantive research questions developed in consultation with the SHPO/THPO(s) and the other consulting parties. The treatment plan shall be consistent with the Secretary of the Interior's Standards and Guidelines for Archaeological Documentation (48 FR 44734-37) and take into

account the Council's publication, Treatment of Archaeological Properties (Advisory Council on Historic Preservation, 1980) and SHPO/THPO(s) guidance. It will specify, at a minimum, the following:

- a. The property, properties, or portions of properties where the treatment plan is to be carried out;
- b. The research questions to be addressed, with an explanation of research relevance and importance;
- c. The methods to be used, with an explanation of methodological relevance to the research questions;
- d. Proposed methods of disseminating results of the work to the interested public; and,
- e. A proposed schedule for the submission of progress reports to the SHPO/THPO(s).

3. The Corps will submit the treatment plan to the SHPO/THPO(s) and the other consulting parties for 30 days' review and comment. The Corps will take into account SHPO/THPO(s) and the other consulting parties' comment(s), and will ensure that the data recovery plan is implemented. The SHPO/THPO(s) and the other consulting parties may monitor this implementation.

4. The Corps will ensure that the treatment plan is carried out by or under the direct supervision of an archaeologist(s), architectural historian(s) and/or other appropriate cultural resource specialist that meets, at minimum, the Secretary of the Interior's Professional Qualifications Standards (48 FR 44738-9).

5. The Corps will ensure that adequate provisions, including personnel, time, and laboratory space are available for the analysis and curation of recovered materials from historic properties.

6. The Corps will develop and implement an adequate program in consultation with the SHPO/THPO(s) and the other consulting parties to secure archaeological historic properties from vandalism during data recovery.

III. TREATMENT OF HUMAN REMAINS, FUNERARY OBJECTS, SACRED OBJECTS, OR OBJECTS OF CULTURAL PATRIMONY, AND CURATED ITEMS

A. When human remains, funerary objects, sacred objects, or objects of cultural patrimony are encountered or collected, the Corps will comply with all provisions outlined in the appropriate state acts, statutes, guidance, provisions, etc., and any decisions regarding the treatment of human remains will be made recognizing the rights of lineal descendants, Tribes, and other Native American Indians and under consultation with the SHPO/THPO(s) and the other consulting parties, designated Tribal Coordinator, and/or other appropriate legal authority for future and expedient disposition or curation. When finds of human remains, funerary objects, sacred objects, or objects of cultural patrimony are encountered or collected from Federal lands or federally recognized tribal lands, the Corps will coordinate with the appropriate federally recognized Native American Tribes, pursuant to the Native American Graves Protection and Repatriation Act of 1990 (25 U.S.C: § 3001 *et seq.*) and its implementing regulations (43 CFR Part 10).

B. Cemeteries.

1. Any project activities that affect burials shall comply with state and local burial and cemetery laws. The county coroner shall be notified of the discovery of any human remains within 48 hours (5ILCS 5/2 and 20 ILCS 3440). The City shall notify the SHPO in order to obtain the proper permit prior to removal of remains. Burials, grave markers, and burial artifacts will not be disturbed or removed without this authorization.

2. Burials in cemeteries registered with the State Comptroller's Office are subject to the Cemetery Care Act (760 ILCS 100). A number of state laws may apply to burials that are less than 100 years old but that are not in registered cemeteries. These laws include, but are not limited to, the Cemetery Protection Act (765 ILCS 835), the Public Graveyards Act (50 ILCS 610), and several laws applying to municipalities (see 65 ILCS 5/11-49 through 65 ILCS 5/11-52.2). Authorization for removal of burials shall be as required under the applicable statute.

3. Burials over 100 years old that are not in registered cemeteries are subject to the Human Skeletal Remains Protection Act (HSRPA) (20 ILCS 3440 and its rule 17 Ill. Adm. Code 4170). This agreement constitutes authorization under Section 16 of HSRPA for removal of any burials that will be affected by the project at locations the SHPO agrees cannot be easily avoided. However, review and approval of specific data recovery plans are still required under 17 Ill. Adm. Code 4170.300(d)(3).

4. Disposition of any discovered human skeletal remains, burial markers, burial artifacts, and documentation of the removal project shall be completed as required by the applicable statute and shall be fully coordinated with the SHPO pursuant to 17 IAC 4147.

C. Collected artifacts, samples, and other physical objects shall be returned to the landowner as real estate upon request. Owners can donate or transfer their ownership rights to the Corps. In consultation with the SHPO/THPO(s), the Corps will ensure that all donated artifacts, samples, and other physical objects with related and associated research materials and records resulting from the historic properties studies are curated at repositories within the State of Illinois in accordance with 36 CFR Part 79.

IV. REPORTS

The Corps will ensure that all final historic property reports resulting from the actions pursuant to this Agreement will be provided in a format acceptable to the appropriate SHPO(s)/THPO(s). The Corps will ensure that all such reports are responsive to contemporary standards, and to the Department of the Interior's Format Standards for Final Reports of Data Recovery (42 FR 5377-79). Precise locations of significant historic properties may be provided only in a separate appendix if it appears that the release of this data could jeopardize historic properties. Locations of traditional cultural properties or sacred sites, consisting of architectural, landscapes, objects, or surface or buried archaeological sites, identified in coordination with Tribes and THPO(s), will be considered to be sensitive information and, pursuant to Section 304 of the National Historic Preservation Act, the Corps will not make this information available for public disclosure. The Corps will make available for publication and public dissemination the reports and associated data, minus precise aforementioned locations and sensitive information.

V. PROVISION FOR POST-REVIEW DISCOVERIES

In accordance with 36 CFR Section 800.13, if previously undetected or undocumented historic properties are discovered during project activities, the Corps will cease, or cause to stop, any activity having an effect and consult with the SHPO/THPO(s) to determine if additional investigation is required. If further archaeological investigations are warranted or required, the Corps will perform any treatment plan in accordance with Part II - TREATMENT OF HISTORIC PROPERTIES, Part III - TREATMENT OF HUMAN REMAINS, FUNERARY OBJECTS, SACRED OBJECTS, OR OBJECTS OF CULTURAL PATRIMONY, AND CURATED ITEMS, Part IV - REPORTS, and Part V - PROVISION FOR POST-REVIEW DISCOVERIES, all of this Agreement. If the Corps and the SHPO/THPO(s) determine that further investigation is not necessary or warranted, activities may resume with no further action required. Any disagreement between the Corps and the SHPO/THPO(s) concerning the need for further investigations will be handled pursuant to Part VI - DISPUTE RESOLUTION of this Agreement.

VI. DISPUTE RESOLUTION

Should the SHPO/THPO(s) or the Council object within 30 days to any plans or actions provided for review pursuant to this Agreement, the Corps will consult with the objecting party to resolve the objection. If the Corps determines that the disagreement cannot be resolved, the Corps will request further comment from the Council in accordance with the applicable provisions of 36 CFR Part 800.7. The Corps, in accordance with 36 CFR Part 800.7(c)(4), will take any Council comment provided in response into account, with reference only to the subject of the dispute. The Corps' responsibility to carry out all actions under this Agreement that are not the subjects of the dispute will remain unchanged.

VII. TERMINATION

Any of the signatories to this Agreement may request a reconsideration of its terms or revoke the relevant portions of this Agreement upon written notification to the other signatories, by providing 30 days' notice to the other signatories, provided that these signatories will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. In the advent of termination, the Corps will comply with 36 CFR Parts 800.3 through 800.7 with regard to individual undertakings covered by this Agreement.

VIII. AMENDMENTS

Any signatories to this Agreement may request that it be amended, whereupon the other signatories will consult in accordance with 36 CFR, Parts 800.6(c)(7) and 800.14(b)(3), to consider such amendment.

IX. REPORTING AND PERIODIC REVIEW

The Corps will provide the SHPO/THPO(s) with evidence of compliance with this Agreement by letter on January 30, 2003, and once every 2 years thereafter said date. This documentation shall contain the name of the project, title of the documents that contained the Agreement, historic properties identified, determinations of effect, avoidance procedures, level of investigation(s) and/or mitigation(s) conducted with titles of all project reports related to such investigation(s) and/or mitigation(s) which have been completed. Every 5 years starting from the date of January 30, 2003, the Corps will provide the SHPO/THPO(s) a review report of the overall IRER to determine this Agreement's effectiveness, accuracy, and economy. Based upon this review, the Corps, the SHPO/THPO(s), and the Council will determine whether the Agreement shall continue in force, be amended, or be terminated.

X. EXECUTION AND IMPLEMENTATION

A. Nothing in this Agreement is intended to prevent the Corps from consulting more frequently with the SHPO/THPO(s) or the Council concerning any questions that may arise or on the progress of any actions falling under or executed by this Agreement.

B. The undersigned concur that the Corps has satisfied its Section 106 responsibilities for all individual undertakings through this Agreement regarding the implementation of IRER.

C. The stipulations of this Agreement are limited solely to undertakings authorized under Section 216 of the 1970 Flood Control Act and Section 519 (Illinois River Basin Restoration) of the Water Resources Development Act of 2000.

XI. SIGNATORIES TO THIS AGREEMENT

A. CHICAGO DISTRICT, U.S. ARMY CORPS OF ENGINEERS:

BY: *Mark A Roncoli* Date: 4 SEP 02
Colonel Mark A. Roncoli
District Engineer
U. S. Army Corps of Engineers
Chicago District

B. ROCK ISLAND DISTRICT, U.S. ARMY CORPS OF ENGINEERS:

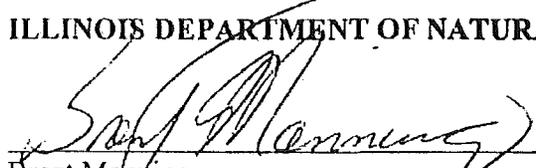
BY: *W. J. Bayles* Date: 30 Aug 2002
Colonel William J. Bayles
District Engineer
U. S. Army Corps of Engineers
Rock Island District

C. ST. LOUIS DISTRICT, U.S. ARMY CORPS OF ENGINEERS:

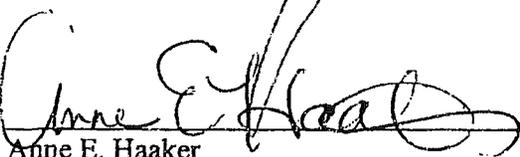
BY: *C. Kevin Williams* Date: 2 OCT 02
Colonel C. Kevin Williams
District Engineer
U. S. Army Corps of Engineers
St. Louis District

XI. SIGNATORIES TO THIS AGREEMENT (Continued)

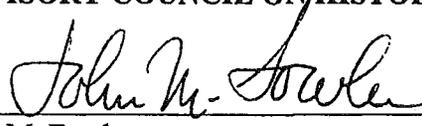
D. ILLINOIS DEPARTMENT OF NATURAL RESOURCES:

BY:  Date: 11-12-02
Brent Manning
Director
Illinois Department of Natural Resources

E. ILLINOIS STATE HISTORIC PRESERVATION OFFICER:

BY:  Date: 11-14-02
Anne E. Haaker
Illinois Deputy State Historic Preservation Officer
Illinois Historic Preservation Agency

F. ADVISORY COUNCIL ON HISTORIC PRESERVATION:

BY:  Date: 1/21/03
John M. Fowler
Executive Director
Advisory Council on Historic Preservation