

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,
CHICAGO DISTRICT, ST. LOUIS DISTRICT,
MEMPHIS DISTRICT, AND OMAHA DISTRICT,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
THE ILLINOIS STATE HISTORIC PRESERVATION OFFICER, AND
THE IOWA STATE HISTORIC PRESERVATION OFFICER
REGARDING THE IMPLEMENTATION
OF
REGIONAL PERMITS NUMBER 26 AND NUMBER 27

WHEREAS, the U.S. Department of the Army, Corps of Engineers (Corps), Rock Island District, as lead Corps District, proposes to issue Regional Permits Number 26 and Number 27 (Regional Permits) for emergency reconstruction and repair activities for flood damaged areas in all waters of the United States in the counties declared flood disaster areas in the states of Illinois and Iowa as authorized by Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) and Section 404 of the Clean Water Act (33 U.S.C. 1344); and,

WHEREAS, the Chicago District, the St. Louis District, the Memphis District, and the Omaha District (Districts) propose to approve individual activities within their jurisdictions under these Regional Permits; and,

WHEREAS, the Corps has determined that the Regional Permits 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) and the Iowa State Historic Preservation Officer (IASHPO) 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,

WHEREAS, the provisions of this Agreement will become effective within a District's jurisdiction when that District executes this Agreement; and,

WHEREAS, the provisions of this Agreement will become effective within a state when that SHPO executes this Agreement;

NOW, THEREFORE, the Corps, the Council, the Illinois SHPO, and the Iowa SHPO agree that the Regional Permits shall be implemented in accordance with the following stipulations to satisfy the Corps' Section 106 responsibility for all individual actions under the Regional Permits in Illinois and Iowa.

Stipulations

The Corps will ensure that the following measures are carried out for individual projects under Regional Permits Number 26 and Number 27:

1. The Corps will consult the National Register of Historic Places, the SHPO 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). 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:

- 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 is very unlikely to contain archeological sites based on other geomorphological criteria which must be fully documented; 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; or,
- d. the area has been previously surveyed with no historic properties identified; or,
- e. the area has been previously surveyed with all identified historic properties determined not to be eligible by the appropriate SHPO (documentation must include written comments of the SHPO); or,
- f. projects are limited to the placement of shoreline protection (riprap) over the existing shoreline with minimal bank shaping (not bank line realignment).

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 5 days of receipt of the notice, the Corps may proceed with the permit approval notification.

3. If the Corps concludes that an area has the potential to contain historic properties, or such properties have been identified within the project's area of potential effects, and such properties have not been previously considered pursuant to Stipulation 1(e), the Corps will require the applicant to conduct

a survey to identify historic properties. The survey will be conducted by, or under the direct supervision of, a person 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.

a. If the SHPO does not object within 5 days of receipt of the notice, the Corps may notify the applicant to proceed with the project.

b. If no properties are discovered, the Corps may immediately notify the applicant to proceed with the project.

4. If the Corps identifies a property that may be eligible for listing on the National Register of Historic Places, or if the SHPO objects to the Corps' determination pursuant to Stipulation 3, the Corps will require the applicant to 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 documentation.

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

6. If, the Corps determines, in consultation with the applicant that the historic property cannot be avoided, and the property is an archeological site, and, is not a mound, and is not likely to contain human remains or to be a grave or cemetery, then the Corps will require the applicant to 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 for submittal of the final report;

- 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 review within 15 days. Unless the SHPO objects within 15 days after receipt of the plan, the Corps will require the applicant to implement the plan prior to the Corps' notification to proceed under the terms of the permit. The Corps will take as assurance of implementation, a signed contract between the applicant and a firm or individual qualified to conduct and report upon the work.

8. The Corps will ensure that a final report resulting from the data recovery will be provided by the applicant, within the time specified in the data recovery plan. The Corps will provide the final report to the SHPO for review and to interested parties upon request. Locational data may be withheld if the Corps determines that such disclosure might jeopardize the integrity of the property. 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 Corps determines, in consultation with the applicant, that the historic property cannot be avoided, and the property is not an archeological site, the Corps shall notify the Council and comply with the provisions of 36 CFR § 800.5(e) and also § 800.10, if the property is a National Historic Landmark. The Corps will notify interested parties that consultation has been initiated, and will solicit their views.

10. 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 have the applicant avoid the historic property. If, in consultation with the applicant, the Corps determines that the property cannot be avoided, the Corps and the applicant will comply with the provisions of the Native American Graves Protection and Repatriation Act (NAGPRA).

11. If the historic property is located on non-federal or non-tribal land, and the Corps determines that the applicant cannot avoid the historic property, the Corps shall require the applicant to comply with the state burial laws as applicable. Proposed plans developed by the Corps, or by the applicant at the direction of 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).

12. By December 31, 1994, 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. By December 1994, the Corps will also provide the Council with informational copies of these reports. The Corps will make these reports available for public inspection.

13. 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.

14. Should the Council, the SHPO with responsibility for reviewing a project, or any member of the public 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.

15. The Corps, the Council, or either of the SHPOs may terminate the Programmatic Agreement for that state, or a District, by providing 30 days written notice to the relevant 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 within the relevant state, or District, covered by this Programmatic Agreement.

16. In the event that the Corps does not carry out the terms of this Programmatic Agreement, or in the event that a District declines to sign this Agreement, the Corps will comply with 36 CFR Sections 800.4 through 800.6 with regard to individual undertakings covered by this Programmatic Agreement.

17. The Corps shall ensure that all historic preservation work carried out pursuant to this Programmatic Agreement is carried out by or under the direct supervision of a person or persons meeting at a minimum the Secretary of the Interior's Professional Qualifications Standards (48 FR 44738-9).

Execution and implementation of this Programmatic Agreement evidences that the Corps has satisfied its Section 106 responsibilities for all individual undertakings under the Regional Permits in Illinois and Iowa.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: Robert D. Bush Date: 8/19/93
Robert D. Bush, Executive Director

U.S. ARMY ENGINEER DISTRICT, ROCK ISLAND

By: Albert J. Kraus Date: 8/20/93
Colonel Albert J. Kraus, District Engineer

U.S. ARMY ENGINEER DISTRICT, CHICAGO

By: _____ Date: _____
Lieutenant Colonel David M. Reed, District Engineer

U.S. ARMY ENGINEER DISTRICT, ST. LOUIS

By: _____ Date: _____
Colonel James D. Craig, District Engineer

U.S. ARMY ENGINEER DISTRICT, MEMPHIS

By: _____ Date: _____
Colonel Theodore C. Fox, III, District Engineer

U.S. ARMY ENGINEER DISTRICT, OMAHA

By: _____ Date: _____
Colonel Michael S. Meuleners, District Engineer

ILLINOIS STATE HISTORIC PRESERVATION OFFICER

By: William L. Wheeler Date: 8/26/93
William L. Wheeler, State Historic Preservation Officer

IOWA STATE HISTORIC PRESERVATION OFFICER

By: David Crosson Date: 9/3/93
David Crosson, State Historic Preservation Officer