

MAR 31 1995

Permitting

**Interagency Coordination Agreement
on
Section 106 Review and Enforcement
within the Regulatory Boundaries of
Chicago District, Corps of Engineers**

I. PURPOSE

The Chicago District of the U.S. Army Corps of Engineers (District) and the Illinois Historic Preservation Agency (IHPA), hereinafter referred to as the parties, pursuant to their statutory authorities, and in recognition of the need to comply with the National Historic Preservation Act of 1966, as amended, (NHPA) do hereby agree to establish and implement the foregoing interagency coordination procedures, as it would apply within the regulatory boundaries of the Chicago District. The counties within these boundaries include, Cook, DuPage, Kane, Lake, McHenry, and Will, in northeastern Illinois.

The parties agree that these procedures as described herein will fulfill all requirements as noted under Section 106 of the NHPA as amended by the Fowler Amendment, 1992. The Fowler Amendment to the NHPA requires Federal agencies to follow Federal historic preservation laws (Title 36 of the Code of Federal Regulations Part 800) even if they are inconsistent with the agencies' own regulations (Section 110 (a)(2)(e)(i)).

II. APPLICABILITY

This agreement shall apply to applications for permits to be issued by the Department of the Army under:

- a. Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403).
- b. Section 404 of the Clean Water Act (33 USC 1344).

III. DEFINITIONS

Department of the Army (DA) Permits. Authorizations for the discharge of dredged or fill material into waters of the United States, including wetlands, issued by the Army Corps of Engineers pursuant to Section 404 of the Clean Water Act and/or structures or work in navigable waters pursuant to Section 10 of the Rivers and Harbors Act of 1899.

Historic Property. A property listed on the National Register of Historic Places or agreed between the parties to be eligible for listing on the Register. Properties are listed on the National Register because of their age, architecture, historical associations, or potential for archaeological research. They may be of national, state, or local significance.

Archaeological Survey. Written review and summary by a specifically qualified archaeological consultant detailing the research and site inspections completed on a identified project area slated for construction, or other uses.

Project Area. Area to be affected by construction, or ground disturbance, made possible by the Department of the Army authorization. Example: if the requested permit authorization is for the placement of fill into two acres of wetlands for a sanitary sewer and the sewer is for a 350 acre subdivision, the project area is the entire 350 acre site. The permit for the sewer makes possible construction of the subdivision. The subdivision would not be built but for the authorization of work within waters of the United States.

Federally Authorized Activities. Activities authorized under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899.

IV. AUTHORITIES

The establishment and implementation of these procedures, as described herein, shall be in accordance with all applicable statutes, regulations, and policies, including the following:

- Title 33 of the Code of Federal Regulations Part 320-330: Final Rule for Regulatory Programs of the Corps of Engineers, 1986, 1991;
- National Historic Preservation Act of 1966, as amended;
- Title 36 of the Code of Federal Regulations Part 800 (Advisory Council on Historic Preservation Regulations, 1986;
- Fowler Amendment to the National Historic Preservation Act, 1992;
- Title 33 of the Code of Federal Regulations Part 325 (Appendix C), 1990.

V. PERMIT PROCESSING PROCEDURES

A. Purpose

Projects authorized by a Department of the Army permit are considered Federal undertakings, and must comply with the NHPA as amended. In short, the District must review all permit applications, including those eligible for nationwide general permits. The nationwide general permit program consist of a number of existing authorizations that apply to projects where

the impacts to wetlands and/or waters of the United States have been determined to be minimal by environmental assessment. Examples include maintenance activities to previously authorized or grandfathered structures or fill.

The information necessary to facilitate the IHPA review of District permit applications was determined to be the following:

- Description of the proposed undertaking
- Name of funding or licensing agency (state or Federal)
- Map of project location including site plan, if applicable
- Current photographs of all standing structures within the project area
- Project addresses
- Plans and specifications, if applicable.

B. Procedure

1. All permit applications are received and reviewed by the Enforcement & Compliance Section (E&C) for past and/or present enforcement activity.
2. Upon clearance by the E&C section, permit applications are assigned a log number by administrative personnel, and sent to the District Archaeologist for review.
3. The District Archaeologist reviews the applications, marking the project area on topographic maps. Based on knowledge of the area, survey maps and other relevant information, the District Archaeologist will recommend if a Phase I archaeological survey (survey) **is/is not** required for the proposed project site. The District Archaeologist will summarize the basis for the decision on data sheets (Attachment 1).
4. After the District Archaeologist completes this review, the Permit Section will then receive the applications for assignment, distribution, and acknowledgement. The data sheets will then be forwarded by mail to the IHPA for review. The IHPA will indicate their concurrence/non-concurrence with the District position by recording said information on the data sheet. The data sheets will then be returned to the District via facsimile within five (5) days after receipt by the IHPA. The IHPA shall notify the District Permit Section Chief via telephone or facsimile should the IHPA be unable to complete the project review within five (5) working days. The District Archaeologist will record the IHPA log number and then forward the data sheets to the District Permit Section for distribution to the appropriate project manager.

5. If the District receives a "survey required" confirmation from IHPA, the applicant will be notified in writing by the District that a survey is required. The language in the notification letter will indicate IHPA concurrence with District determination, reasons as to why the survey is required, definition of parameters that the survey is required to encompass, a list of qualified archaeological contractors, and a point of contact with the IHPA for all contacts, correspondence and submissions.

6. When the survey is complete, it will be the responsibility of the applicant to forward **one copy** of the survey with reference to the District application number to the District, and **two copies** to the IHPA for further review and coordination. The applicant will be so notified of this requirement by the District. **Original photographs** of the site and/or standing structures in question (no photocopies) must accompany **each** survey submitted. Compliance with this will be jointly insured by the District and IHPA.

7. For cases involving activities authorized under the DuPage County General Permit issued to DuPage County (County), the District will maintain Section 106 permit review processing as described until a decision is reached on the permit application by the County and/or by the District.

The foregoing procedures were developed prior to this agreement, and became effective District regulatory policy as of 1 September 1993. It was agreed between the parties that any applications received prior to this date (without determinations as to their authorization) would be considered on a case-by case basis.

VI. ENFORCEMENT/COMPLIANCE PROCEDURES

A. Purpose

This document will serve as the basis to establish and implement enforcement procedures for unauthorized activities in violation of applicable laws as noted in the **AUTHORITIES** section of this document.

B. Procedure

1. Upon receipt of the complaint, the parties will record all appropriate information on the Unauthorized Activities Report form (UAR)(Attachment 2). The IHPA will forward a copy of the UAR to the District (E&C Section or assigned project manager, with notification to the District Archaeologist) along with vicinity maps locating the archaeological or historic features at the project site. If the District receives a complaint regarding a site with possible archaeological or historic features, the

IHPA will be immediately notified, and will receive a copy of the UAR for their files.

2. The assigned District project manager (or E&C personnel) will investigate the alleged violation and document the inspection on the Suspected Violation Site Inspection Report (SVSR) (Attachment 3). The report narrative will include a description of the condition of the archaeological or historic site(s), as well as photographs of the area(s) condition. The SVSR will be completed within three (3) working days from the date of inspection. A copy of the report shall be forwarded to the IHPA along with original photographs for their review.

3. If the unauthorized action is related to an on-going permit application, all processing activity will immediately cease until such time as a decision regarding the unauthorized activity(s) is reached. The applicant will be so notified.

4. The District and IHPA will then discuss recommendation for action within ten (10) working days of the date of the SVSR. This will include the following:

a. Review by appropriate legal counsel to determine eligibility for possible prosecution. If eligible, forward recommendation to the Office of the United States Attorney.

b. Continued after-the-fact permit processing, with strong language in District and IHPA correspondence warning the applicant of consequences should activities of such nature continue or are repeated in the future. The offense(s) will be recorded for future references.

5. If the case is considered eligible for prosecution, the parties will jointly participate in the Federally filed case. With appropriate legal counsel, the parties will discuss the goals of the proposed civil/criminal case, and the disposition of any settlement or monies received upon successful prosecution prior to the filing of any legal action.

VII. COORDINATION PROCEDURES

A. Advisory Council Coordination

The parties will jointly participate in all agency initiated contact (oral and written) to the Advisory Council on Historic Preservation (ACHP) regarding Federally authorized activities located within the District boundaries. In accordance with Title 36 of the Code of Federal Regulations Part 800, the District will initiate written contact with the ACHP, with the IHPA serving as a participant in discussions or reviewing drafted correspondence prior to initiating contact with the ACHP.

B. Historic Preservation Organizations

The parties will jointly participate in all agency initiated contact (oral and written) to all historic preservation organizations regarding Federally authorized activities located within District boundaries. The District will attempt to notify any historic preservation organization regarding cases that involve project sites that may contain archaeological or historic features. The District will continue to provide notification to these organizations throughout the course of the permit process, and provide copies of any draft written agreements regarding the disposition of the identified archaeological or historic features found at the project site. The IHPA will serve as an advisor to the District, providing comment to drafted correspondence and/or serving as a participant in all discussions

C. Native American Tribal Coordination

The parties will jointly participate in all initiated contact (oral and written) with **Federally** recognized Native American tribes, and Native American support organizations for Federally authorized activities located within the District boundaries. Federally recognized tribes having interests (as documented in treaties judicially confirmed by the Indian Claims Commission or from historically documented villages) in the Chicago District are the Potawatomi, Sac/Fox/Mesquakie, Miami, and Kickapoo/Mascouten. The Chicago District will consult the IHPA and/or the Archaeological Assistance Division of the National Park Service for a list of current Federally recognized tribes. The District will take the lead in the attempts to locate and notify any pertinent Native American tribe or organization regarding cases that involve project sites that may be of cultural interest, or contain cultural items as defined by Federal historic preservation laws. The IHPA will serve as an advisor to the District, providing comment to drafted correspondence, and/or serving as a participant in all discussions.

VIII. POINT OF CONTACT

The District will designate a liaison from its office to serve as the main point of contact for policy and procedural issues for regulatory permit processing and enforcement activities. For information regarding a specific application, the IHPA reviewer may directly contact the designated District regulatory project manager. The IHPA will designate two (2) reviewers (archaeological matters and historic structures) for the counties as previously identified as being within the boundaries of the Chicago District, and a point of contact for all policy and procedural issues.

IX. ICA MODIFICATION/TERMINATION

This ICA may be modified at any time by the joint agreement of the parties. This ICA shall automatically expire within five (5) years of the date of the last signature of this document. A party may terminate its participation in this agreement upon thirty (30) days written notice to the other party.

Mitchell A. Isoe
MITCHELL A. ISOE
Chief, Regulatory Branch
U.S. Army Corps of Engineers
Chicago District

29 March 95
DATE

William L. Wheeler
WILLIAM L. WHEELER
State Preservation Officer
Illinois Historic Preservation Agency

4-12-95
DATE



DEPARTMENT OF THE ARMY
 CHICAGO DISTRICT, CORPS OF ENGINEERS
 111 NORTH CANAL STREET
 CHICAGO, ILLINOIS 60606-7206

(SURVEY REQUIRED)

TO: Haaker/Johnston/Sculle, IHPA
 FROM: Regulatory Branch (NCC-CO-R)
 Chicago District, Corps of Engineers

DATE:

1. The Chicago District archaeologist recommends Phase I survey for the following permit application:

APPLICATION # (CORPS POC)	COUNTY (CITY)	APPLICANT	PROPOSED ACTION
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aerial photos examined:
 standing structures:

2. A survey of _____ acres is recommended because

3. Application (if available) and project area map (_____
 USGS quad) are attached. If your staff concurs, please notify
 this office within 5 days of the date of this memorandum.

4. If we do not receive concurrence, alternative recommenda-
 tions, or request for more information within 5 days, we will
 assume that a survey is required for the project listed above.

5. Please FAX your reply to the Chicago District, Regulatory
 Branch/CO-R, at 312-353-2141.

Mitch Isoe
 Chief, Regulatory Branch
 312-353-6428

Attachments

IHPA LOG #:

K.Ryder reviewed on



DEPARTMENT OF THE ARMY
 CHICAGO DISTRICT, CORPS OF ENGINEERS
 111 NORTH CANAL STREET
 CHICAGO, ILLINOIS 60606-7208

(NO SURVEY)

TO: Haaker/Johnston/Sculle, IHPA
 FROM: Regulatory Branch (NCC-CO-R)
 Chicago District, Corps of Engineers

DATE:

1. The Chicago District archaeologist does not recommend Phase I survey for the following permit applications:

APPLICATION # (CORPS POC)	COUNTY (CITY)	APPLICANT	PROPOSED ACTION

aerial photos examined:
 standing structures:

2. No survey is needed because

3. Application (if available) and project area map (_____
 USGS quad) are attached. If your staff concurs, please notify
 this office within 5 days of the date of this memorandum.

4. If we do not receive concurrence, alternative recommenda-
 tions, or request for more information within 5 days, we will
 assume that no survey is required for project listed above.

5. Please FAX your reply to the Chicago District, Regulatory
 Branch/CO-R, at 312-353-2141.

Mitch Isoe
 Chief, Regulatory Branch
 312-353-6428

Attachments

IHPA LOG #:

K.Ryder reviewed on

ATTACHMENT #1----NO SURVEY DATA SHEET

1. **Caller's Name & Address** Anon. () **Phone #**

2. **Type of Activity** () **Sec 404** () **Sec 10** () **Other**

3. **Identity of suspected Violator(s) (Corporate and/or individual)**
Name(s) **Address** **Phone #**

4. **Date(s) Activity Observed:**

5. **Activity ongoing? (circle)** **Yes** **No** **Unknown**

6. **Location of Activity:**

County **City** **Address**

Section **Township** **Range**

7. **Type of Equipment Used by Violator(s) (tractor, backhoe, dumptruck, etc.)**

8. **Name of Waterway or Watershed Involved:**

9. **Detailed Description of Activity: (continue on back)**

Report Received by: **Unauthorized Report #**

description (cont'd)

10. Does the activity appear to be completed?



11. If not, what is currently taking place at the site?

12. When is the work being done? (weekends, weekdays)

13. Who else has information on the project? Agencies? Witnesses?

14. Is the work constant or intermittent?

15. Will the caller be available for additional questioning if necessary?



SUSPECTED VIOLATION
SITE INSPECTION REPORT

Suspected Violator: _____ UA Report No: _____ Waterway: _____ County: _____

Project Name: _____ Location: _____ 1/4 _____ Sec. _____ Twp. _____ Rge. _____

Persons present at inspection: _____ Date of inspection: _____

Waters of the U.S. at site: _____ name (if applicable) Navigable waters of the U.S.: YES NO

<input type="checkbox"/> Lake	<input type="checkbox"/> tributary to: _____
<input type="checkbox"/> Pond	<input type="checkbox"/> adjacent to: _____
<input type="checkbox"/> River	<input type="checkbox"/> isolated
<input type="checkbox"/> Stream	approximate size: _____
<input type="checkbox"/> Intermittant Stream or ditch	
<input type="checkbox"/> Wetland type: _____	Wetland determination attached <input type="checkbox"/>

General description of activities observed at site:

Approximate quantity and description of dredged or fill material discharged into waters of U.S. (how determined):

Additional comments:

Reported by: _____ (signature) Date of report: _____