



PROGRAMMATIC AGREEMENT

AMONG THE
U.S. ARMY CORPS OF ENGINEERS, KANSAS CITY DISTRICT; U.S. FISH AND
WILDLIFE SERVICE; STATE OF MISSOURI; IOWA TRIBE OF KANSAS AND
NEBRASKA; OSAGE NATION; OTOE-MISSOURIA TRIBE; PAWNEE NATION OF
OKLAHOMA; PONCA TRIBE OF OKLAHOMA; AND THE MISSOURI STATE
HISTORIC PRESERVATION OFFICE;
REGARDING THE GRAND RIVER AND TRIBUTARIES IN MISSOURI FEASIBILITY
STUDY

WHEREAS, the U.S. Army Corps of Engineers, Kansas City District (Corps) in partnership with the U.S. Fish and Wildlife Service (USFWS), and Missouri Departments of Conservation and Natural Resources (State of Missouri) is developing a Grand River and Tributaries Feasibility Study (GRTFS) that will result in ecosystem restoration projects within the Grand River basin that include but are not limited to actions to reduce sediment deposition on significant habitat within and around Pershing State Park, dredging of Locust and Muddy creeks to restore flow conveyance; various actions to enhance wetlands through improved water management and habitat development at Fountain Grove Conservation Area; a levee setback on Swan Lake National Wildlife Refuge; and approximately 300 bank stabilization projects in the Locust Creek watershed

WHEREAS, the general APE for the GRFTS includes federal land, state land, and private land within the active Grand River basin in the state of Missouri (Appendix A); however, individual Projects undertaken by the Corps, USFWS, and State of Missouri as a result of the GRTFS would occur at project locations that have not yet been determined or are located in environmentally dynamic areas that may require project redesign in the event of a flooding, and will require a specific area of potential effects (APE) to be determined prior to project implementation; and

WHEREAS, the Corps is the lead federal agency for purposes of the National Environmental Policy Act of 1969 (NEPA) and the National Historic Preservation Act (NHPA) (54 U.S.C. §§ 300101 et seq.) and in accordance with 36 C.F.R. §§ 800.2(a)(2) and 800.8; and

WHEREAS, the Corps has determined that the Projects implemented under the GRTFS constitute a Federal Undertaking that may have adverse effects on historic properties and has consulted with the Missouri State Historic Preservation Officer (SHPO) pursuant to 36 CFR Part 800, the regulations implementing Section 106 of the NHPA; and

WHEREAS, in accordance with 36 C.F.R. §§ 800.4(b)(2) and 800.5(a)(3), the Corps has elected to use a phased process to conduct identification and evaluation of historic properties, and for application of the criteria of adverse effect, respectively, because the scope and programmatic nature of the GRTFS make it unreasonable to identify historic properties or determine the effects of site-specific Projects at this time; and

WHEREAS, 36 C.F.R. § 800.14, allows the Corps to negotiate a programmatic agreement (PA) to govern the implementation of a particular program or the resolution of adverse effects from complex project situations or multiple undertakings; and,

WHEREAS, in this PA, “Signatories” is defined in 36 C.F.R. § 800.6(c)(1) and “Invited Signatories” is defined in 36 C.F.R. § 800.6(c)(2); and

WHEREAS, in accordance with 36 C.F.R. § 800.6(a)(1)(i)(C), the Advisory Council on Historic Preservation (ACHP) has been provided the required documentation and invited to participate in this PA, but notified the Corps in a letter dated July 29, 2019 that it has chosen not to participate in accordance with 36 C.F.R. § 800.6(a)(1)(iv); and

WHEREAS, the Corps, USFWS, and State of Missouri, as the proponents of the undertaking, are Signatories to this PA; and

WHEREAS, letters describing the Project and its objectives and inviting participation were sent to eighteen (18) Federally-recognized Native American Tribes (listed in Appendix B); and

WHEREAS, of those Indian Tribes invited to participate the Iowa Tribe of Kansas and Nebraska, Osage Nation, Otoe-Missouria Tribe, Pawnee Nation of Oklahoma, and Ponca Tribe of Oklahoma (Indian Tribes) have chosen to participate in Section 106 consultation and to be Invited Signatories to this PA, in accordance with 36 C.F.R. 800.2 and 800.6; and

WHEREAS, the Missouri Alliance for Historic Preservation was invited to participate, but declined; and

NOW THEREFORE, the Corps, USFWS, the State of Missouri, Missouri SHPO, Iowa Tribe of Kansas and Nebraska, Osage Nation, Otoe-Missouri Tribe, Pawnee Nation of Oklahoma, and the Ponca Tribe of Oklahoma, agree that the Projects under the GRTFS shall be implemented in accordance with the following stipulations in order to take into account the effect of the individual undertakings on historic properties.

STIPULATIONS

The Corps shall ensure that the following measures are carried out:

I. STANDARDS

A. All cultural resource investigations including site identification, National Register of Historic Places (NRHP) eligibility evaluations and, as appropriate, mitigation measures for adverse effects to historic properties required under the terms of this PA will be carried out by or under the direct supervision of appropriate professional(s) or by contractors who meet, at a minimum, the *Secretary of the Interior’s Historic Preservation Professional Qualification Standards* (48 FR 44716, September 29, 1983).

PROGRAMMATIC AGREEMENT AMONG THE U.S. ARMY CORPS OF ENGINEERS, KANSAS CITY DISTRICT; U.S. FISH AND WILDLIFE SERVICE; STATE OF MISSOURI; IOWA TRIBE OF KANSAS AND NEBRASKA; OSAGE NATION; OTOE-MISSOURIA TRIBE; PAWNEE NATION OF OKLAHOMA; PONCA TRIBE OF OKLAHOMA; AND THE MISSOURI STATE HISTORIC PRESERVATION OFFICE; REGARDING THE GRAND RIVER AND TRIBUTARIES, MISSOURI AND IOWA FEASIBILITY STUDY

B. In developing scopes of work for identification, evaluation studies, treatment measures, and stewardship activities required under the terms of this PA, the Corps will take into account the following guidance:

1. ACHP's guidance on conducting archaeology under Section 106 (2007);
2. ACHP's *Policy Statement Regarding the Treatment of Burial Sites, Human Remains and Funerary Objects* (February 23, 2007);
3. Guidance from the Osage Nation *National Historic Preservation Act Section 106 Protocol and Standards, Archaeological Survey Standards, and Archaeological Resources Protection Act Violation Procedures* (Appendix C);
4. Guidance from the Missouri SHPO (Appendix D);
5. Secretary of the Interior's *Standards and Guidelines for Archaeology and Historic Preservation* (48 FR 44716-42, September 29, 1983); and
6. "Treatment of Archaeological Properties" (ACHP 1983).

II. CONFIDENTIALITY

The Corps will safeguard information about historic properties of religious and cultural significance to Indian Tribes, including location information, or non-public information provided by Indian Tribes to assist in the identification of such properties, to the extent allowed by Section 304 of NHPA (54 U.S.C. § 307103), and other applicable laws.

III. POINTS OF CONTACT

A. The Signatories and Invited Signatories will each designate a primary and secondary point of contact. The primary contact is the contact to which all initial and formal correspondence is sent. If the individual designated as the primary point of contact is not available, communications shall be directed to the secondary contact.

B. Each Signatory and Invited Signatory of this PA shall provide all of the other parties to the PA with the phone numbers, email addresses, and mailing addresses for the primary and secondary contacts (see Appendix E). Similarly, when a point of contact changes, all Signatories and Invited Signatories shall be notified in writing (hardcopy or email) within thirty (30) days of the change. Such changes shall not require an amendment to this PA.

IV. CONSULTATION STANDARDS

A. Consultation among all Signatories and Invited Signatories to this PA will continue throughout the implementation of this PA. Consultation is mutual, meaningful dialogue regarding the fulfillment of this PA, the process of Section 106 compliance, and the treatment of historic properties that may be affected by Corps undertakings.

B. The Corps will consult with any Indian Tribe whether a signatory to this PA or not on a government-to-government basis in recognition of their sovereign status, throughout any activity or undertaking that might affect historic properties, particularly Tribal cultural sites.

C. The Corps will notify/consult with the appropriate SHPO, Indian Tribes, and other consulting parties. Consultations may include face-to-face meetings, as well as communications by mail, electronic mail, facsimile, and/or telephone. Times and places of meetings, as well as an agenda for meetings, will be developed with mutual acceptance and done in a timely manner.

V. HISTORIC PROPERTY IDENTIFICATION

A. In consultation with SHPO, Indian Tribes, and other consulting parties, the Corps will determine the Area of Potential Effect (APE) for each Project implemented under the MRRMP. The APE will be defined as all areas to be impacted by construction activities and areas of associated ground disturbance including but not limited to haul roads, borrow areas, staging areas, and visual impacts. The APE will also include any areas of anticipated erosion resulting from the construction activities.

B. In consultation with the SHPO, Indian Tribes, and other consulting parties the Corps will complete the identification and evaluation of historic properties within the APE for each project prior to the initiation of construction, in accordance with 36 C.F.R. § 800.4(a), (b) and (c).

C. The Corps will also take appropriate measures necessary to identify historic properties within the APE including but not limited to archeological sites; historic structures; shipwrecks; human burials, cemeteries, or other sites likely to contain human skeletal remains and funerary objects; and Traditional Cultural Properties, which are cultural resource sites that are eligible for inclusion in the NRHP based on associations with the cultural practices, traditions, beliefs, lifeways, arts, crafts, or social institutions of a living community. The Corps will provide the appropriate documentation for these identification efforts to the SHPO, the Indian Tribes, and other consulting parties.

D. The Corps will conduct cultural resource surveys to identify historic properties in the APE in accordance with Section 106 of the NHPA and in consultation with SHPO, Indian Tribes, and other consulting parties

1. Cultural resource identification (survey) methods must be adequate to identify cultural resource sites, if present. As appropriate, methods may include but are not limited to pedestrian survey, shovel testing, coring, mechanical trenching, geomorphic evaluations, and remote sensing, historic structure surveys, and traditional cultural property surveys.

2. In consultation with Indian Tribes, survey methods may appropriately exclude land shown to be recently accreted or disturbed to an extent that it is unlikely that cultural resources would be present in the area. Documentation for excluding such land will be provided in the cultural resource survey report.

3. The Corps will ensure that all surveys and field studies are conducted in a manner consistent with the Secretary of the Interior's *Standards and Guidelines for Identification and Evaluation* (https://www.nps.gov/history/local-law/arch_stnds_0.htm); the National

Park Service publication *The Archaeological Survey: Methods and Uses* (National Park Service 1978); and appropriate state and tribal guidelines.

4. All cultural resource surveys will be implemented by the Corps on a schedule established to accommodate all archaeological field investigations and appropriate Signatory and Invited Signatory review prior to the initiation of Project construction.

5. The results of all surveys will be subject to a review and comment period no less than thirty (30) business days by the appropriate Signatories and Invited Signatories prior to the initiation of archaeological fieldwork.

F. The Corps will notify SHPO, Indian Tribes, and other consulting parties of proposed undertakings and provide them with cultural resource reports, maps, and documents related to the Project, prior to the initiation of the undertaking. Submissions will conform to the requirements of each respective Signatory and Invited Signatory in accordance with Stipulation I.B.

G. Once SHPO, Indian Tribes, and other consulting parties have received the completed survey report and supporting documentation, they shall have forty-five (45) business days from the receipt of all documentation by the Point of Contacts in which to review and provide comments to Corps.

VI. HISTORIC PROPERTY EVALUATION

A. In consultation with SHPO, Indian Tribes and other consulting parties, and within the APE of each Project, the Corps will evaluate cultural resource sites as defined in V.C. above for historic properties that are eligible to be listed pursuant to NRHP criteria (36 C.F.R. Part 60.4).

1. For those historic properties that SHPO, Indian Tribes, and other consulting parties agree are not eligible for inclusion in the NRHP, the Corps will reach a determination of No Historic Properties Affected and no further consultation is required.
2. If the survey results in the identification of historic properties that SHPO, Indian Tribes, and other consulting parties agree are eligible for inclusion on the NRHP (historic properties), the Corps shall treat such properties in accordance with Stipulation VIII below.
3. If, after consulting, SHPO, Indian Tribes, and other consulting parties do not agree on NRHP eligibility the Corps will request a formal determination of eligibility from the Keeper of the NRHP, whose determination shall be final.

VII. TREATMENT OF HISTORIC PROPERTIES

A. Those cultural resources sites determined to be eligible or potentially eligible for listing on the NRHP, absent a formal determination of eligibility from the Keeper of the NRHP, will be treated by the Corps in the following manner:

1. The Corps will first attempt to resolve adverse effects or potential adverse effects to historic property by determining if avoidance is feasible through redesign of the project or altering the project for a finding of no adverse effect.
2. If the Corps determines that avoidance is impracticable or not feasible, the Corps will reach a determination of adverse effect and develop an appropriate plan, in consultation with SHPO, Indian Tribes and other consulting parties, to minimize and treat the impacts.
 - a. If data recovery is the agreed upon treatment, then the stipulations in Section IX will be followed.
 - b. If other mitigation measures including alternative measures are agreed upon as appropriate:
 - i. The Corps shall submit the treatment plan to SHPO, Indian Tribes, and other consulting parties, or a thirty (30) business day review and comment period to determine whether the measures are sufficient to reduce, mitigate, or treat adverse effects to the cultural resource site. The Corps will take into account the comments, and shall ensure that appropriate plans are implemented. Any disagreement among the Corps, Signatories, and Invited Signatories will be resolved, in accordance with Stipulation XIII of this PA.
 - ii. The Corps will ensure that the treatment plan is carried out by qualified personnel including archaeologist(s), architectural historian(s) and/or other appropriate cultural resource specialist that meets, at a minimum, the Secretary of Interior's *Professional Qualifications Standards* (48 FR 44738-9), and the guidelines mentioned in Stipulation I.B.
3. As appropriate and if feasible, protective measures may be developed in consultation with SHPO, Indian Tribes and other consulting parties, on a case by case basis to avoid or minimize adverse effects.

VIII. DATA RECOVERY AS TREATMENT OF HISTORIC PROPERTIES

A. If data recovery is the agreed upon treatment for archaeological sites, the data recovery plan will address substantive research questions developed in consultation with the Signatories and Invited Signatories.

B. The data recovery plan shall be consistent with the Secretary of the Interior's *Standards and Guidelines for Identification and Evaluation* (https://www.nps.gov/history/local-law/arch_stnds_0.htm), and take into account the Council's publication *Treatment of Archaeological Properties* (ACHP 1980). It shall specify, at a minimum, the following:

1. The property, properties, or portions of properties where the data recovery plan is to be carried out;
2. The research questions to be addressed, with an explanation of research relevance and importance;
3. The methods to be used, with an explanation of methodological relevance to the research questions;
4. Proposed methods of disseminating results of the work to the interested public; and
5. A discussion of the property's significance within the appropriate historic context.

C. The Corps shall submit the treatment plan to the SHPO, Indian Tribes, and other consulting parties, for a thirty (30) business day review and comment period to determine whether the measures are sufficient to reduce, mitigate, or treat adverse effects to the cultural resource site. The Corps will take into account the comments, and shall ensure that appropriate plans are implemented. Any disagreement among the SHPO, Indian Tribes, and/or other consulting parties will be resolved in accordance with Stipulation XIII of this PA.

D. The Corps will ensure that the treatment plan is carried out by an archaeologist(s), architectural historian(s), and/or other appropriate cultural resource specialist that meets, at a minimum, the Secretary of Interior's *Professional Qualifications Standards* (48 FR 44738-9), and the guidelines mentioned in Stipulation I.B.

E. The Corps will ensure that adequate provisions, including personnel, time, and laboratory space, are available for the analysis of recovered archaeological material.

F. The Corps will ensure that artifacts from federal lands are curated in a facility meeting federal standards for curation of artifacts as required per 36 C.F.R. § 79.

G. The Corps will ensure that no artifacts are collected from private lands. Artifacts will be noted and recorded in the field, then returned to the excavation hole from which they were recovered and reburied.

H. The Corps will develop and implement an adequate program in consultation with the Indian Tribes and SHPO to secure historic properties from vandalism during data recovery.

IX. TREATMENT OF HUMAN REMAINS AND ITEMS OF RELIGIOUS AND CULTURAL IMPORTANCE

A. If human remains, funerary objects, sacred objects, or objects of cultural patrimony are encountered during project field investigations or laboratory work or during construction activities, the Corps will comply with all provisions outlined below.

1. The Corps will ensure consultation with appropriate Federally-recognized Indian Tribes for any human remains, funerary objects, sacred objects, or objects of cultural patrimony recovered from Federal lands as required by the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA), as amended (25 U.S.C. §§ 3001-3014) and its implementing regulations (43 C.F.R. Part 10).
2. The Corps will ensure applicable state laws will be followed for discoveries on state or private lands in accordance with the Missouri Unmarked Human Burial Sites Act (Mo. Rev. Stat. §§ 194.400-410).

B. If items of religious and cultural importance to Indian Tribes are encountered or collected, the Corps will comply with all provisions outlined in the appropriate federal acts, statues, guidance, provisions, etc. and any decisions regarding the treatment of items of religious and cultural importance will be made in consultation with Indian Tribes.

X. REPORTS

A. The Corps will ensure that all reports and other documents resulting from the actions pursuant to this PA will be provided in a format acceptable to SHPO, Indian Tribes, and other consulting parties. The Corps will ensure that all such reports (e.g., identification surveys, evaluation reports, treatment plans, and data recovery reports) meet or exceed the Department of the Interior's *Format Standards for Final Reports of Data Recovery* (42 FR 5377-79) and the standards identified in Stipulation I.B.

B. Where a project is determined not to affect cultural resource sites, documentation shall include the following:

1. A description of the project area location, type of activity proposed, and defined APE;
2. A discussion of the vertical and horizontal extent, type of ground disturbance and/or historic use, including river channel changes over time, and time frame/duration of ground disturbance;
3. A map showing the extent and type of ground disturbance and/or historic use and the APE; and
4. A summary statement identifying specific reasons that the proposed project activity will have no effect on historic properties.

C. Sensitive information on historic properties will be protected per Section 304 of the NHPA. Precise locations of historic properties shall be provided only in a separate appendix if it appears that the release of this data could jeopardize the physical integrity of historic properties (i.e., through looting and vandalism).

D. Precise locational data of traditional cultural properties or sacred sites, consisting of architectural, landscapes, objects, or surface or buried archaeological sites, identified in accordance with the Indian Tribes, will be considered to be sensitive information pursuant to Section 304 of the NHPA (54 U.S.C. § 307103). The Corps will comply with the requirements of Section 304 with regard to disclosure of such data.

E. The Corps will make available for publication and public dissemination the reports and associated data, minus precise aforementioned locational data and sensitive information.

XI. PROVISIONS FOR POST-REVIEW DISCOVERIES

A. Plan for Discovery of Unanticipated Cultural Resources Sites and Artifacts Encountered During Construction: The following procedures shall be used in the event that previously unreported and unanticipated cultural resource sites encountered during the construction or maintenance activities. The procedures are intended to ensure that the Project is in compliance with all applicable federal and state laws and regulations, including Section 106 of the NHPA. The Corps will inform all construction contractors of the following procedures.

1. All work within a one hundred (100) meter radius must stop immediately. The Corps will notify the SHPO, THPO, and Indian Tribes that might attach religious and cultural significance to the affected property, and the Council pursuant to 36 C.F.R. § 800.13 as well as any other affected party, of the discovery, and implement interim measures to protect the discovery from looting and vandalism. Construction may continue outside the one hundred (100) meter radius. Within forty-eight (48) hours of receipt of notification of the discovery, the Kansas City District Corps Archaeologist or District Tribal Liaison, as appropriate, shall:

- a. inspect the work site to determine the extent of the discovery and ensure that work activities have halted within the one hundred (100) meter radius buffer zone;
- b. clearly mark the area of the discovery;
- c. implement additional measures, as appropriate, to protect the discovery from looting and vandalism; and
- d. provide an initial assessment of the site's condition and eligibility to the Indian Tribes and SHPO; and
- e. notify other consulting parties, if applicable, of the discovery.

2. The notified SHPO, Indian Tribes, and other consulting parties will have seven (7) business days following notification to concur or disagree with the Corps' determination of the NRHP eligibility of the discovery.

3. If the Corps determines that the cultural resource site or artifact is or may be eligible, the Corps will consult with the SHPO, Indian Tribes, and other consulting parties regarding appropriate measures for site treatment pursuant to 36 C.F.R. § 800.6(a). The Indian Tribes and SHPO will have seven (7) business days to provide their objections or concurrence on the proposed actions. These measures may include:

- a. formal archaeological evaluation of the site;
- b. visits to the site by the Indian Tribes and/or SHPO;
- c. exploration of potential alternatives to avoid the site;
- d. preparation and implementation of a mitigation plan by the Corps in consultation and concurrence with the Indian Tribes and SHPO.

4. If the Corps archaeologist, in consultation with SHPO, Indian Tribes, and other consulting parties, determines the site is either isolated, completely disturbed by construction activities, or will not be further disturbed by construction activities, construction may resume within the one hundred (100) meter radius buffer zone.

B. Plan for Inadvertent Discoveries of Human Remains, Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony: The following procedures shall be used in the event that previously unreported and unanticipated human remains, funerary objects, sacred objects, and objects of cultural patrimony are encountered during construction or maintenance activities. The procedures are intended to ensure that the Project is in compliance with all applicable Federal and State laws and their implementing regulations, including NAGPRA; Archeological Resources Protection Act of 1979 (ARPA) (16 U.S.C. § 470aa-mm); and Section 106 of the NHPA. The Corps will inform all construction contractors of the following procedures.

1. In the case of the post-review discovery of human remains, funerary objects, sacred objects or objects of cultural patrimony on Federal land, the Corps will follow the procedures outlined by NAGPRA regulations (43 C.F.R. Part 10, Subpart B), and ARPA (43 C.F.R. Part 7). If the human remains are not American Indian, the Corps will comply with the appropriate state unmarked burial laws as cited in Stipulation VIII of this PA.
2. In the case of post review discoveries of human remains or funerary objects on State or private lands during construction or maintenance activities, the Corps will comply with the Missouri unmarked burial laws as cited in Stipulation VIII of this PA.
3. Any Corps employee, contractor, or subcontractor who knows or has reason to know that he or she has inadvertently discovered human remains, funerary objects, sacred objects, or objects of cultural patrimony on Federal lands or human remains or funerary objects on State or private lands must provide immediate telephone notification of the inadvertent discovery, with written confirmation, to the Corps.
4. The Corps will immediately notify local law enforcement by telephone of the discovery of unmarked human remains and accompany local law enforcement personnel during all field investigations.

5. All work must stop immediately within a one hundred (100) meter radius around the point of discovery. The Corps will implement measures to protect the discovery from looting and vandalism. Any human remains or other items in the immediate vicinity of the discovery must not be removed or otherwise disturbed.
6. If remains are discovered on Federally-owned land and local law enforcement determines that the remains are not involved in a legal investigation, the protocol implementing NAGPRA apply. If the discovery occurs on State or private land, the appropriate state burial law will apply.
7. The Corps will notify SHPO, Indian Tribes, and other consulting parties by telephone and email within forty-eight (48) hours of the discovery of human remains, funerary objects, sacred objects, items of cultural patrimony, or burial furniture and inform them of the steps already taken to address the discovery. This step is not intended to substitute the requirements of 43 C.F.R. 10.4(d)(iii).
8. The Corps will take immediate steps, if necessary, to further secure and protect inadvertently discovered human remains, funerary objects, sacred objects, or items of cultural patrimony, including, as appropriate, stabilization, or covering the find location.
9. The Corps, when on Federal lands, in consultation with the Indian Tribes, whether they are Signatories to this PA or not, and other interested parties such as living descendants, may consult with a qualified physical anthropologist, forensic scientist, or other experts as may be needed to examine and assess the inadvertent discovery. Unless the remains were inadvertently removed, the evaluation will be conducted at the site of discovery. Other than for crime scene investigation, no excavation, examination, photographs, or analysis of American Indian human remains or remains suspected of being American Indian will be conducted or allowed by the Corps archaeologists or any other professional without first consulting with and securing permission from the appropriate Indian Tribes, whether they are Signatories to this PA or not. The consulting expert will be allowed to draw and measure the exposed remains and associated funerary objects. Drawings and other records will be curated at a State-approved curation facility in the state of discovery. Drawings cannot be published in any form or shown as part of scholarly presentations without the written permission of the Indian Tribes or nearest living descendant.
10. The Corps in consultation with the appropriate SHPO, Indian Tribes, and other consulting parties will have seven (7) business days to determine if the skeletal remains are human, the degree to which they were disturbed, and, if possible using reasonable measures to, assess their potential age, cultural affiliation, and identity, if possible, without any further disturbance. Upon making their determination or at the end of the seven (7) business days, whichever comes first, the Corps will notify the Indian Tribes, whether they are Signatories to this PA or not, of its findings. This notification must include pertinent information as to kinds of human remains, funerary objects, sacred objects, or items of cultural patrimony discovered, their condition, and the circumstances

of their inadvertent discovery. The Corps will also inform the Indian Tribes of any involvement the relevant SHPO plans to have in the process.

11. The Indian Tribes, whether they are Signatories to this PA or not, will have seventy-two (72) hours to respond verbally followed by written response via U.S. mail and electronic mail. The response should specify the intent of the Indian Tribes to conduct or decline further consultation.

12. The Corps will consult with the Indian Tribes, whether they are Signatories to this PA or not, or identified lineal descendant regarding additional measures to avoid and protect or mitigate the adverse effect of the project on the human remains and grave site. These measures may include:

- a. formally evaluate the archaeological site for NRHP-eligibility;
- b. visits to the site by SHPO, Indian Tribes, and other consulting parties;
- c. explore potential alternatives to avoid the human remains or grave;
- d. develop a mitigation plan by the Corps in consultation and concurrence with SHPO, Indian Tribes, and other consulting parties, including procedures for disinterment and re-interment; and
- e. Implementation of the mitigation plan.

13. A report of findings describing the background history leading to and immediately following the reporting and resolution of an inadvertent discovery will be prepared within thirty (30) business days of the resolution of each inadvertent discovery. This report must meet the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (49 FR 44716) and guidelines in Stipulation IB.

C. The Corps will communicate the procedures to be observed under Parts A and B of this Stipulation with its contractors and personnel.

XII. DISPUTE RESOLUTION

A. Should any Signatory or Invited Signatory to this PA object at any time to any actions proposed or the manner in which the terms of this PA are implemented, the Corps shall consult with such party to resolve the objection. If Corps determines that such objection cannot be resolved, the Corps will forward all documentation relevant to the dispute, including the Corps' proposed resolution, to the ACHP. The ACHP shall provide Corps 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 Corps shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, Signatories, and Invited Signatories, and provide them with a copy of this written response. The Corps 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 Corps may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, Corps shall prepare a written response that takes into account any

timely comments regarding the dispute from the Signatories and Invited Signatories to the PA, and provide them and the ACHP with a copy of such written response.

C. The Corps' responsibility to carry out all other actions subject to the terms of this PA that are not the subject of the dispute remain unchanged.

XIII. TERMINATION

Any Signatory or Invited Signatory to this PA may request a reconsideration of its terms or revoke the relevant portions of this PA upon written notification to the other Signatories or Invited Signatories, by providing a notice of thirty (30) business days to the other Signatories or Invited Signatories, provided that Signatories or Invited Signatories consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. Once the PA is terminated, and prior to work continuing on Undertakings cover by the PA, the Corps must either (a) execute a new PA pursuant to 36 CFR § 800.14 or comply with 36 CFR part 800.4 through part 800.6 for all Undertakings that would otherwise be reviewed under this PA. The Corps shall notify the Signatories and Invited Signatories as to the course of action it will pursue

XIV. AMENDMENTS

This PA may be amended when such an amendment is agreed to in writing by all Signatories and Invited Signatories. The amendment will be effective on the date a copy signed by all of the Signatories and Invited Signatories is filed with the ACHP.

XV. PERIODIC REVIEW

A. The Corps will provide the SHPO, Indian Tribes, and other consulting parties evidence of compliance with this PA in site-specific reports pursuant to NEPA and Section 106 of the NHPA. This documentation shall contain the name of the project, historic properties identified, determinations of effect, avoidance procedures, and level of investigation and/or mitigation conducted with titles of all project reports related to such investigation and/or mitigation which have been completed.

B. The PA shall expire ten (10) years from the date of the last signature. One (1) year prior to the expiration of the PA, the Corps shall review the PA in order to determine whether it should be reissued or allowed to expire. If the PA requires reissue, the Corps shall consult with the Signatories and Invited Signatories, as well as amend the PA in order to ensure compliance with the most current version of the Federal regulations implementing the NHPA.

XVI. ANTI-DEFICIENCY ACT

The Corps' and USFWS obligations under this PA are subject to the availability of appropriated funds, and the stipulations of this PA are subject to the provisions of the Anti-Deficiency Act. The Corps shall make reasonable and good faith efforts to secure the necessary funds to implement this PA in its entirety. If compliance with the Anti-Deficiency Act alters or impairs

the Corps' ability to implement the stipulations of this PA, the Corps shall consult in accordance with the amendment procedures found at Stipulation XII and termination procedures found at Stipulation XI.

XVII. COMMUNICATION

The Corps will provide the SHPO, THPOs, and Indian Tribes with public meeting announcements, special releases, and notifications of the availability of report(s); comments received by the Corps will be taken into account in finalizing plans for each Project.

XVIII. EXECUTION AND IMPLEMENTATION

A. Nothing in this PA is intended to prevent the Corps from consulting more frequently with the Signatories and Invited Signatories concerning any questions that may arise or on the progress of any actions falling under or executed by this PA.

B. Execution of this PA by the Signatories and Invited Signatories and implementation of its terms evidence that the Corps has taken into account the effects of this Undertaking on historic properties and afforded the ACHP an opportunity to comment.

C. The Corps will file a copy of the executed PA with the ACHP.

D. This PA may be executed in counterparts.

SIGNATORIES

U.S. ARMY CORPS OF ENGINEERS, KANSAS CITY DISTRICT

BY: _____ Date: _____

William C. Hannan
Colonel, Corps of Engineers
District Commander

U.S. FISH AND WILDLIFE SERVICE

BY: _____ Date: _____

Regional Director

MISSOURI STATE HISTORIC PRESERVATION OFFICE

BY: _____ Date: _____

Dr. Toni M. Prawl, Ph.D., Director and Deputy State Historic Preservation Officer,

INVITED SIGNATORIES

IOWA TRIBE OF KANSAS AND NEBRASKA

BY: _____ Date: _____

Lance Foster
Vice Chairman

KAW NATION

BY: _____ Date: _____

Ms. Lynn Williams
Chair

OSAGE NATION

BY: _____ Date: _____

Geoffrey M. Standing Bear
Principle Chief

OTOE-MISSOURIA TRIBE

BY: _____ Date: _____

John R. Shotton
Chairman

PAWNEE NATION OF OKLAHOMA

BY: _____ Date: _____

W. Bruce Pratt
President

PONCA TRIBE OF NEBRASKA

BY: _____ Date: _____

Larry Wright Jr.
Chairperson

PONCA TRIBE OF OKLAHOMA

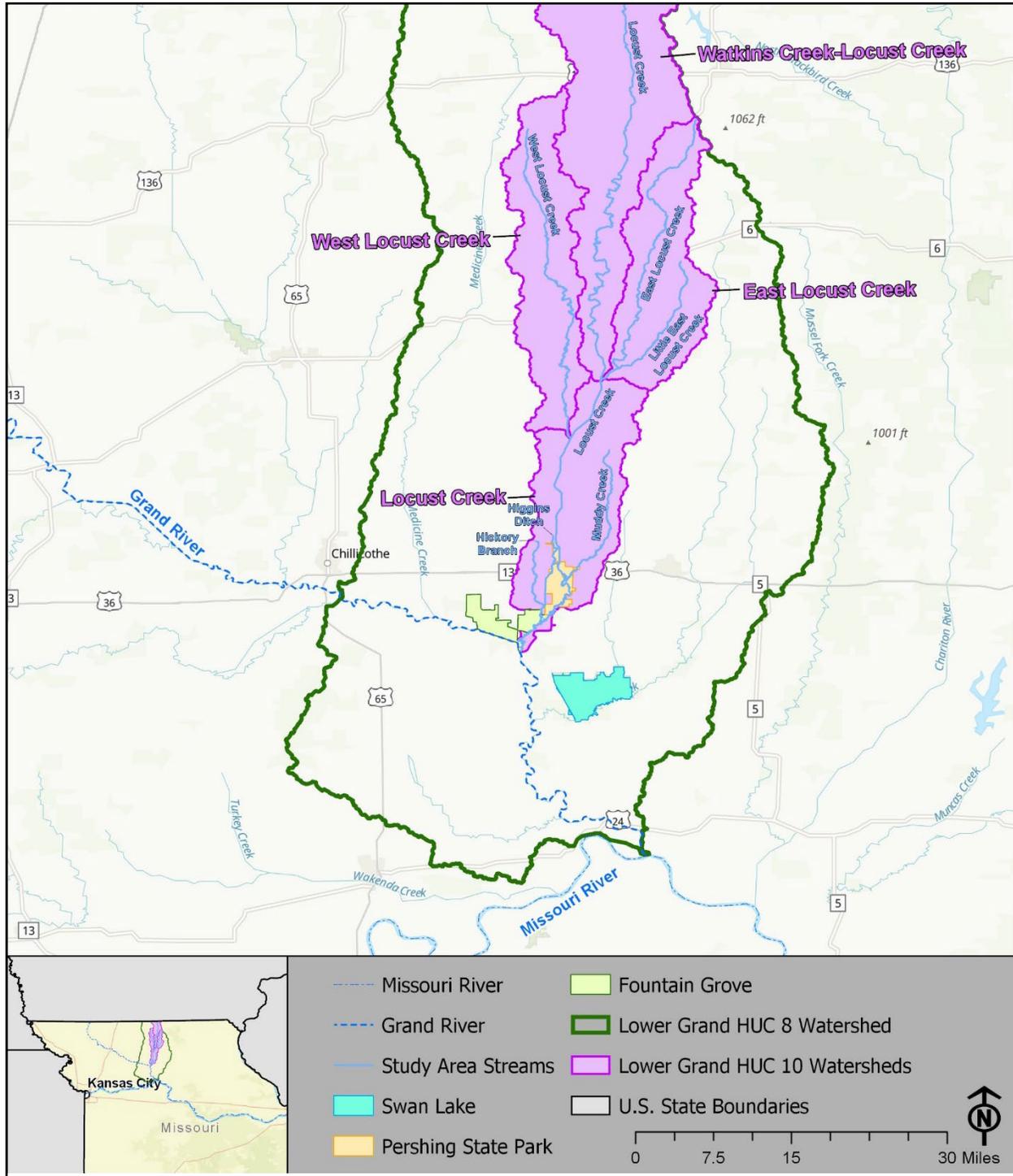
BY: _____ Date: _____

Douglas Rhodd
Chairman

DRAFT

APPENDIX A

THE GRAND RIVER AND TRIBUTARIES, MISSOURI AND IOWA FEASIBILITY STUDY AREA



PROGRAMMATIC AGREEMENT AMONG THE U.S. ARMY CORPS OF ENGINEERS, KANSAS CITY DISTRICT; U.S. FISH AND WILDLIFE SERVICE; STATE OF MISSOURI; IOWA TRIBE OF KANSAS AND NEBRASKA; OSAGE NATION; OTOE-MISSOURIA TRIBE; PAWNEE NATION OF OKLAHOMA; PONCA TRIBE OF OKLAHOMA; AND THE MISSOURI STATE HISTORIC PRESERVATION OFFICE; REGARDING THE GRAND RIVER AND TRIBUTARIES, MISSOURI AND IOWA FEASIBILITY STUDY

APPENDIX B

NATIVE AMERICAN TRIBES CONTACTED BY CORPS

President Wilfrid Cleveland
Ho-Chunk Nation
P.O. Box 667
Black River Falls,
Wisconsin 54615

Chairperson Tim Rhodd
Iowa Tribe of Kansas and Nebraska
3345 B Thrasher Road
White Cloud, Kansas 66094

Chairperson Lynn Williams
Kaw Nation
Drawer 50
Kaw City, Oklahoma 74641

Chairperson Lester Randall
Kickapoo Tribe of Kansas
1107 Goldfinch Road
Horton, Kansas 66439

Chief Douglas G. Lankford
3410 P Street NW
Miami, Oklahoma
74355

Chairperson Vernon Miller
Omaha Tribe
P.O. Box 368
Macy, Nebraska 68039

Principal Chief Geoffrey M. Standing Bear
Osage Nation
627 Grandview
Pawhuska, Oklahoma 74056

Chairman John R. Shotton
Otoe-Missouria Tribe
8151 Highway 77
Red Rock, Oklahoma 74651

President W. Bruce Pratt
Pawnee Nation of Oklahoma
P.O. Box 470
Pawnee, Oklahoma 74058

Chairperson Larry Wright Jr.
Ponca Tribe of Nebraska
P.O. Box 288
Niobrara, Nebraska 6786

Chairman Douglas Rhodd
Ponca Tribe of Oklahoma
20 White Eagle Drive
Ponca City, Oklahoma 74601

Chairperson Joseph Rupnick
Prairie Band Potawatomi Nation
16281 Q Road
Mayetta, Kansas 66509

Chairwoman Tiauna Carnes
Sac and Fox Nation of Missouri
305 N. Main Street
Reserve, Kansas 66434

Chairperson Troy Wanatee
Sac and Fox Tribe of Mississippi
349 Meskwaki Road
Tama, Iowa 52339

Principal Chief Kay Rhoads
Sac and Fox Nation of Oklahoma
920883 S. Hwy 99 Bldg. A
Stroud, Oklahoma 74079

Chairperson Frank White
Winnebago Tribe of Nebraska
P.O. Box 687
100 Bluff Street
Winnebago, Nebraska 68071-0687

APPENDIX C

GUIDANCE FROM THE OSAGE NATION



OSAGE NATION

Historic Preservation Office

National Historic Preservation Act Section 106 Protocol and Standards

The Osage Nation Historic Preservation Office (ONHPO) has developed the following procedures for Section 106 consultation required by the Historic Preservation Act, (NHPA) [54 U.S.C. § 300101 et seq.] 1966.

Please submit all of the following information for all NHPA Section 106 consultation requests (additional formatting and information requested in standards for cultural resource survey reports below):

- A. To initiate consultation with the Osage Nation Historic Preservation Office submit a 1-page cover letter with the following included:
- Federal agency name, district, or department
 - Point of contact information: individual's name, address, phone, fax, and email
 - Project name and number, or other designation (if for tracking)
 - Project location information: **USPLSS** (quadrangle, quarter section, section, township, and range) and **UTM (WGS84) coordinates are required**
Projects will not be reviewed until both USPLSS and UTM coordinates are submitted
 - Total area surveyed in acres
- B. Professional cultural resource survey report. At a minimum, **all field surveyors** must possess a **BA or BS in anthropology** with an emphasis in archaeology (exception- see page 4). At a minimum, the **supervisor who is in the field and supervises the field survey**, interprets the results of the field survey, determines the cultural resource recommendation, and produces the cultural survey report **must possess an MA or MS in anthropology** with an emphasis in archaeology. **Supervisors must accompany and oversee all field surveyors during the fieldwork.** With the first cultural resource survey report, include curriculum vitae for all project archaeologists and identify work

performed. See page 3 for an outline of the documentation required in a standard cultural resource survey report.

- C. USGS topographic and/or aerial maps locating project area within the: 1) state, 2) county, 3) quadrangle, and 4) section. USGS topographic and/or aerial maps specifically locating: 1) project APE, 2) project staging areas outside of APE, 3) access road, and 4) location of all archaeological and historic sites in and in close vicinity of the project APE. Please do not submit hand drawn or hand annotated maps.
- D. GLO maps for project area, please include both late 19th century and early 20th century maps and identify project APE on maps.
- E. Project site plan map indicating location of screened shovel tests (please label shovel tests with identification number on maps). Please do not submit hand drawn or hand annotated maps. **Shovel test minimum width is 30 cm. Shovel test minimum depth is sterile soil. If terminated before sterile soil is reached, please provide an explanation either in the text or in the shovel test log. Excavated shovel tests must be screened using a 0.25 in mesh screen, dug in stratigraphic or 10 cm levels, and measurements must be recorded in centimeters.**
- F. Shovel Test Log, table listing shovel test locations, width (cm), depth (cm), soils, and results.
- G. Site photographs in color, specifically images depicting exact location of 1) project marked by stakes or flagging (if possible), 2) access roads, 3) utility easement (if applicable), 4) staging areas, and 5) identified archaeological/historic sites.
- H. Copy of the review letter from the State Historic Preservation Office.

Please do not email documentation; it will be deleted without being opened. Mail one printed color copy of all documentation accompanied with a CD version.

Please use only the following contact and address information:

Dr. Andrea A. Hunter, THPO
Osage Nation Historic Preservation Office
627 Grandview
Pawhuska, OK 74056

Phone: 918-287-5328
Fax: 918-287-5376

Standards for Cultural Resource Survey Reports

The following outlines the documentation required in a cultural resource survey report that will enable the Osage Nation Tribal Historic Preservation Office to efficiently evaluate the information gathered for a proposed project in a coherent, standardized format. Please include in all reports:

1. Abstract
Executive summary of project, survey results, and recommendations
2. Introduction
Introduce project and project design
3. Environmental Setting
Specific location, legal description, composition of project site
General location, geomorphology, landform, soils, vegetation, hydrology
4. Cultural History
Brief overview of cultural occupation represented in locale
5. File Search and Previous Research
Results of file search in state database for previously recorded archaeological sites and review of previous archaeological investigations, NRHP listings, GLO records and maps, late 19th and early/mid-20th century maps, and mid-20th and current aerial photographs. For projects in Osage County, OK include: Osage tribal allotment records and maps, late 19th and early/mid-20th century maps such as the Oklahoma State Highway Department's General Highway and Transportation Map of Osage County, and mid-20th and current aerial photographs such as those at the Oklahoma Petroleum Research Library in Norman, Oklahoma.
6. Field Methods and Analytical Techniques
How field survey and analysis were conducted
7. Results of Archaeological Field Investigations
Review findings and identification of National Register of Historic Places
8. Recommendations
Summarize archaeological sites identified, NRHP determinations, and project recommendations
9. References Cited

Minimum Qualifications for Archaeology Personnel*

The minimum professional qualifications for archaeology field survey assistants are:

- BA or BS in anthropology with an emphasis in archaeology

Or with prior approval from the ONHPO by providing the following documentation:

- BA or BS in Applied Indigenous Studies, Native American Studies, Geology, Geography, History, Architectural History, Historic Preservation plus:
- at least one year of full-time professional archaeology experience or equivalent specialized training in archaeological research, administration, or management;
- at least four months of supervised field experience in general North American archaeology; and
- demonstrated ability to carry fieldwork to completion.

The minimum professional qualifications for personnel who supervises and conducts the archaeological field survey, interprets the results of the field survey, determines the cultural resource recommendation, and produces the cultural survey report are:

- Graduate degree in archaeology or anthropology with an emphasis in archaeology; and
- One year of full-time professional experience at a supervisory level in the study of archaeological resources of the prehistoric period.

* With the first cultural survey report, please submit the curriculum vitae for the field survey personnel and for the archaeological supervisor. When personnel change, please submit their curriculum vitae.



OSAGE NATION

HISTORIC PRESERVATION OFFICE

ARCHAEOLOGICAL SURVEY STANDARDS

The following archaeological survey standards are the minimum amount of work acceptable for archaeological surveys conducted on the Osage Nation Reservation/Osage County and throughout Osage Nation ancestral territory as determined by the Osage Nation Historic Preservation Office (ONHPO). Additional archaeological work (i.e. more shovel tests or transects) or methods (backhoe trenches) can always be incorporated into the research design to help locate and identify archaeological sites depending on the area or potential for encountering significant cultural resources.

Professional Qualifications:

Archaeological investigations must be conducted by an archaeologist who meets the U.S. Secretary of the Interior's *Professional Qualification Standards for Archeology* (36 CFR Part 61; 48 FR 44716). At a minimum, all field surveyors must possess a BA or BS in anthropology with an emphasis in archaeology. At a minimum, the supervisor who is in the field and supervises the field survey, interprets the results of the field survey, determines the cultural resource recommendation, and produces the cultural survey report must possess an MA or MS in anthropology with an emphasis in archaeology. Supervisors must accompany and oversee all field surveyors during the fieldwork. With the first cultural resource survey report, include curriculum vitae for all project archaeologists and identify work performed.

Background Research:

Archaeologists must conduct a background literature search prior to field investigations. At a minimum this shall include searches of the SHPO's databases for previously recorded archaeological sites and historic properties, and previous archaeological work in the vicinity. For projects in Osage County, OK, the archaeologists would also include searches of the Osage Allotment Maps, Oklahoma Geological Survey Archives (Norman, Oklahoma) for early USGS 7.5 and 15-minute topographic maps and aerial photographs, plus the GLO map archive available online (www.gloreCORDS.blm.gov).

Deeply Buried Cultural Deposits:

Archaeologists must assess the potential for deeply buried cultural deposits within the block area prior to starting field investigations. At a minimum, this shall include a review of the USDA soil surveys and geologic maps. If there is a potential for deeply buried cultural deposits within the block survey area, deeper subsurface investigations (to be determined in consultation with the ONHPO) will be required.

Survey Report:

Archaeologists must submit the results of their investigation in a report to the ONHPO that follows the Secretary of the Interior’s *Standards for Archeological Documentation*. The ONHPO will complete its review within 30 days of receipt of the archaeology survey report and the SHPO review letters. For Oklahoma this would include review letters by the Oklahoma Archaeological Survey and the Oklahoma Historical Society.

Fieldwork:

MINIMUM BLOCK SURVEY STANDARDS		
Transect Interval		
Project Areas	<u>Size</u> All	<u>Interval width</u> Not greater than 30 meters
Shovel Tests ¹		
Project Areas	<u>Size</u> 1 to 10 acres 11 to 100 acres > 100 acres	<u>Shovel test density</u> 1 per acre 1 every 2 acres 1 every 3 acres
Linear Projects	≤100' (30 m) wide corridor:	16 per mile or 1 every 100 meters
Number of Shovel Tests required to define site boundaries:		minimum 6 – more for larger sites

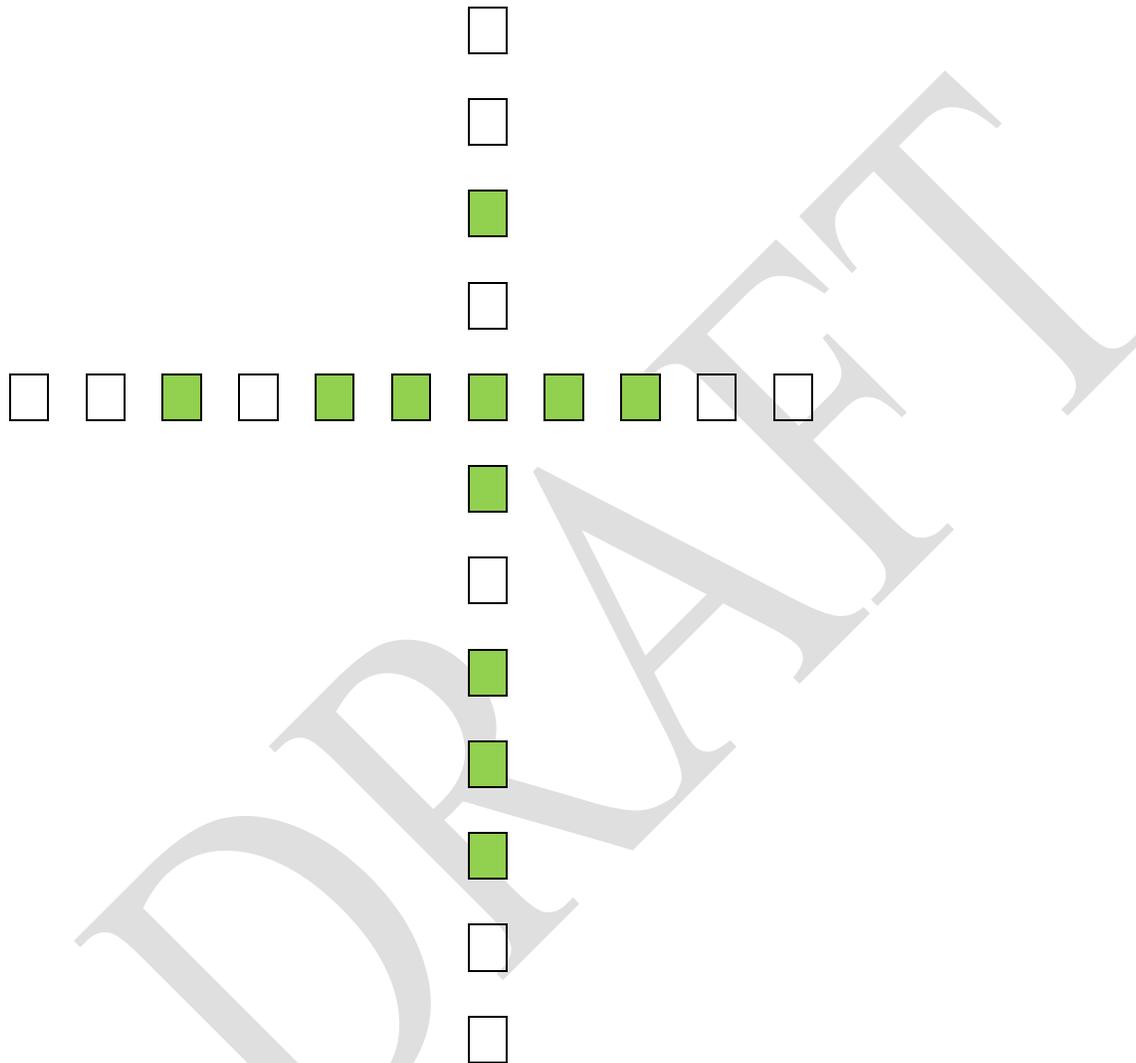
¹Shovel tests must be dug, except on slopes greater than 20 percent. Shovel tests are 30 cm in diameter and are excavated to the bottom of Holocene deposits, if possible. They are dug in 10 cm levels with sediments screened through ¼-inch mesh unless high clay or water content requires that they be troweled through.

Determining Site Boundary:

Shovel testing is required to determine site boundaries.

A minimum of nine (9) shovel tests must be placed in a + pattern that is perpendicular extending from the center of the artifact discovery location.

A shovel test must be placed every five (5) meters until two (2) negative shovel tests are sequentially excavated.



-  Positive shovel test
-  Negative shovel test



Osage Nation Historic Preservation Office

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Archaeological Resources Protection Act Violation Procedures

Federal agencies must conduct consultation and cooperation with Federally-recognized Tribes (Tribes) regarding Federal Acts and Orders including, but not limited to the Archaeological Resources Protection Act of 1979 (ARPA), as amended (16 U.S.C. §470aa-470mm), the Native American Graves Protection and Repatriation Act (NAGPRA, 25 U.S.C. §3001 et seq.), Presidential Executive Order 13007 (“Indian Sacred Sites”), Presidential Executive Order 13175 (“Consultation and Coordination with Indian Tribal Governments”), and the American Indian Religious Freedom Act, 42 U.S.C. § 1996 (AIRFA). Further, Federal agencies are required to use staff who meet the Secretary of Interior’s *Professional Qualifications Standards* for archaeology (48 FR 44738k-9).

The Osage Nation has a deep concern for the identification, treatment, and protection of its properties of cultural, historic, and religious significance throughout its Ancestral Territory. Of particular concern to the Osage Nation are its sacred sites. Federal agencies with land-management responsibilities have a responsibility to accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and to avoid adversely affecting the physical integrity of sacred sites (Executive Order 13007). Sacred sites may be further endangered during ARPA investigations particularly when sites are assessed for damages and also by public outreach activities conducted by law enforcement personnel. Although the Osage Nation understands the lands owned by the Federal government are managed for the benefit of the American people, places of significance to the Osage people belong to the Osage people. The treatment of sacred sites is of grave concern to the Osage Nation, particularly when they have been desecrated and are subject to investigations pursuant to ARPA. Federal agencies are encouraged to coordinate with the Osage Nation in developing specific protocols in response to violations of ARPA (looting, vandalism, etc.) as well as providing support in the investigation, trying, and, if a conviction is obtained, sentencing of parties responsible for these abhorrent acts. Federal agencies do not know what is culturally sensitive and must consult with Tribes so that they may interpret these places while respecting its concerns. Federal agencies must work with the Osage Nation as partners in increasing their capacity for, and compliance with, Section 10(c) of ARPA, as codified at 16 U.S.C. 470ii(c); Section 14 of ARPA, as codified at 16 U.S.C. 470mm; and Section 14(c) of ARPA, as codified at 16 U.S.C. 470mm(c). It is, perhaps, not possible to prevent such crimes entirely, but the Osage Nation contends that, through coordination, we can mitigate the risk of and appropriately address such crimes when they do occur. The Osage Nation considers these places to be invaluable and irreplaceable; no assessment of the damage will appropriately reflect the true damage that has been done. The Osage Nation anticipates consulting with each of its Federal partners on this matter. It is the responsibility of each Federal agency to identify and maintain persistent relationships with Tribes that have an interest in the lands they manage and communicate with those Tribes through their identified representatives. The Osage Nation and each Federal Agency shall designate a primary and secondary point of contact for ARPA-related matters. Each party shall

provide the other parties with the phone numbers, email addresses, and mailing addresses for the primary and secondary point of contact. Each party shall notify the other parties in writing when the primary point of contact changes. All inquiries and correspondence shall be directed to the primary point of contact. If the individual designated as the primary point of contact is not available, communications should be directed to the secondary point of contact. Please note, in light of the confidential nature of criminal investigations, representatives of the Osage Nation are subject to Tribal confidentiality law, specific Non-Disclosure Agreements entered into as a condition of their employment, Federal confidentiality laws, professional ethical codes governing their behavior, and their own personally held beliefs, morals, and convictions concerning the dissemination of information that may endanger places of sacred and historical significance to the people of the Osage Nation.

The Archeological Resource Protection Act (ARPA), as well as other laws, protect and provide for consultation procedures on Federal lands. The respectful treatment of these sites is of paramount concern to the Osage Nation. The purpose of these procedures is to ensure the respectful treatment of these sites and to ensure that views of affiliated Tribes are fully considered in the decision-making process. The treatment of human remains, graves, and funerary objects shall be conducted according to the provisions of NAGPRA and previously executed agreements between the Osage Nation and Federal agencies. In the event of a violation of ARPA, Federal agencies shall do the following:

- 1) Upon the discovery that a violation of ARPA has occurred, Federal agency (Agency) personnel will immediately notify the Agency Archaeologist and appropriate Law Enforcement official of the discovery. This will initiate a criminal investigation under the management of the Agency.
- 2) The responding Agency official will implement interim measures to protect the site from additional looting and vandalism as well as inadvertent disturbance to the crime scene.
- 3) Following notification of the discovery, the Agency Archaeologist will immediately, within twenty-four (24) hours inspect the site and ensure that no further disturbance will occur.
- 4) If deemed necessary, immediate surveillance measures, including persistent physical presence by Agency Law Enforcement personnel, will be taken.
- 5) Treatment of the crime scene and evidence will proceed as stipulated by the Agency's ARPA plan, as approved and established in consultation with the Osage Nation.
- 6) Prior to dissemination of information regarding the violation and the location of the violation, the Osage Nation must be afforded the opportunity to provide input on the content of that information.
- 7) Artifacts that have been removed from their primary context and where that context may be in question may be retained in a secure location, pending further decisions on treatment and disposition. Artifacts held as evidence in an ARPA or other legal cases will remain in the chain of custody until released by the Agency Law Enforcement official to the Agency Archaeologist.
- 8) If the Agency Archaeologist determines that the site is affiliated or potentially affiliated with the Osage Nation or the Osage Nation has elected to take responsibility for earlier period cultures, the Agency Official will notify the Osage Nation within twenty-four (24) hours. The notification shall include law enforcement findings, if applicable and permissible, along with

general location information, and other details or written descriptions of the artifacts. The Osage Nation will respond verbally within seventy-two (72) hours, followed by response via U.S. mail or electronic mail. The response will specify the Tribe's intention to conduct or decline further consultation and coordination.

- 9) Once an initial consultation meeting is established, a mutually-agreed upon agenda will be provided to all anticipated participants. Through consultation between the Agency and the Osage Nation, a determination of cultural affiliation of the site should be made, if possible, and a draft treatment plan developed. The Osage Nation shall be able to visit the site with the Agency Archeologist.
- 10) At the completion of consultation, a draft treatment plan shall be completed to clearly designate the decisions that have been agreed upon by each party. The treatment plan will outline procedures, restrictions, and timelines. Said plan will be submitted by the Agency to the Osage Nation for comment and shall be approved by the Osage Nation prior to implementation. The final treatment plan will be signed by the Osage Nation and the Agency.
- 11) Treatment plan elements may include but are not limited to:
 - a) Future monitoring of the site(s);
 - b) Periodic access to the site by the Osage Nation;
 - c) Restrictions including, but not limited to, proposed changes from current land use in the area, maintenance activities, restrictions regarding marking the site, and public access;
 - d) Additional, long-term security measures including signage and electronic surveillance;
 - e) Long-term coordination with the Osage Nation;
 - f) A confidentiality agreement stipulating that the location and Tribal significance of the site not be disclosed to the public or to Agency personnel without a demonstrated need to know;
 - g) Travel and Per Diem for Agency personnel and Tribal representatives;
 - h) Public outreach, as appropriate; and
 - i) The opportunity to conduct religious ceremonies with regard to the site itself.
- 12) Additional considerations made in the development of the Treatment Plan may include but are not limited to:
 - a) A map of the area;
 - b) A description of the site area including topography, soil type, flora, fauna, and distance to roads and public areas;
 - c) Known historic properties and other cultural resources in the general vicinity of the site;
 - d) Need for field investigations;
 - e) Accounts of any Tribal consultation or coordination regarding the violations that may have already occurred;
 - f) Flood susceptibility and location above the flood pool level;
 - g) Current restrictions on public access;
 - h) Current land use;
 - i) Anticipated future land use;
 - j) Access potential;
 - k) Viewshed;
 - l) Photographs and/or other media, as appropriate; and
 - m) Proximity to areas with a history of ARPA violations.

- 13) The Agency shall maintain a current list of monitoring attempts, reports on observations made during those monitoring attempts, and additional consultation between the Osage Nation and the Agency. As this list is updated, it will be forwarded to the Osage Nation. This information will be housed with the Agency Archaeologist in a secure location protected from public access. The list and its contents shall be disclosed only to authorized Osage Nation representatives and, upon prior notification to the Osage Nation, to other Federally recognized Tribes and Agency personnel who have a need to know the information.
- 14) No photography of human remains will be permitted except in cases in which criminal activity is involved and photographic documentation is essential for investigative and prosecutorial needs. Associated photographs, drawings, and other records will be held at the Agency and made available only to those involved with the case, including Special Agents, Law Enforcement Specialists, Law Enforcement Rangers, Assistant United States Attorney, and Archaeologists assigned to this case, and as necessary by direction of the court to the defense and jury. Photographs and drawings cannot be published in any form or shown as part of scholarly presentations without the written permission of the Osage Nation. Subsequent to the closure of a case, any photographs taken in the course of the investigation will be destroyed if the human remains are unrelated to a crime and they can be identified as Native American or potentially Native American. It is understood that some photographs will become part of a permanent record as they pertain to the case and retained by the courts and Agency as documentation of the case. Archaeological Damage Assessment reports that include images of human remains or other culturally sensitive objects will contain a page identifying the sensitive nature of the images with any stipulations necessary to protect and preserve their integrity.
- 15) Additional requests and comments may be provided through subsequent consultation between the Osage Nation and Federal agencies including but not limited to:
 - a) Damage assessment;
 - b) Forensic testimony; and
 - c) Letters of support for submission to the court.

APPENDIX D

GUIDANCE FROM THE MISSOURI STATE HISTORIC PRESERVATION OFFICER

DRAFT

MISSOURI GUIDELINES FOR PHASE I ARCHAEOLOGICAL SURVEYS AND REPORTS

INTRODUCTION

Please note that the following “Guidelines for Phase I Archaeological Surveys / Reports in Missouri” are just that, guidelines. They are designed to provide baseline procedures for field methodology and budgeting so that adequate information can be provided to the Missouri Department of Natural Resources, State Historic Preservation Office (SHPO) staff for their review and comment on a project.

We fully expect that “field decisions” will need to be made to allow for individual situations. We will accept reports that vary from the following guidelines so long as an adequate justification is provided as to why the variations in methodology were made. For example a project corridor crosses several small drainages with a high likelihood for archaeological sites and then crosses into a large area of uplands with less likelihood for archaeological sites, it would be appropriate to widen out the shovel probe interval in the upland areas. Or, areas with slopes, wetlands, or other aspects that would make previous habitation unlikely were not surveyed and are described in the report as such. Use professional judgment when considering methodology variations and expect to provide the justification in the report.

To avoid having requests for clarification or additional information, keep in mind that this is likely the only information on the project the SHPO reviewer has and they were not involved during the fieldwork, analysis and write-up of the project. We recommend that prior to submission, if possible, you pass the report by a cold reader (a person familiar with the following procedure, who was not involved in the fieldwork, analysis and write-up).

In addition, please bear in mind that these are guidelines for *archaeological* surveys. Do not confuse the project footprint and the Area of Potential Effect (APE) for an archaeological project with the footprint and the APE for a project that also includes an architectural component (i.e. cell tower) when reading and dealing with the standing structures and photographs section.

Thank you,

MISSOURI DEPARTMENT OF NATURAL RESOURCES
STATE HISTORIC PRESERVATION OFFICE

Archaeological Review Staff

Survey Procedures

A. Pedestrian survey of previously plowed / disturbed and high surface visibility areas:

Pedestrian survey of project areas is the most archaeologically thorough and cost effective technique presently available. Pedestrian survey can be employed in areas with good surface visibility. Visibility must equal 25 percent or greater of the ground surface area to use pedestrian survey techniques. The appropriate transect interval is 5 meters.

The exception to this is areas that have never been plowed or otherwise disturbed in the past because it is unlikely that artifacts would be found on the surface regardless of surface visibility (see Systematic shovel testing).

B. Systematic shovel testing of low surface visibility and previously undisturbed / unplowed areas:

In areas that have not been previously plowed, or areas with less than 25 percent surface visibility, systematic shovel testing should be employed. The appropriate transect interval is 15 meters. Such shovel testing involves the excavation of holes at least 25cm in diameter down to archaeologically sterile soil (usually the B-horizon) if possible. If it is not possible to get to archaeological sterile soil using the standard method being employed then every third test hole should be augured to a sufficient depth. The excavated material from each shovel probe should be screened through a minimum of ½ inch mesh.

Where cultural materials are encountered the grid interval should close to 5 meters to more accurately delineate the actual site boundaries (i.e. do not “Swiss cheese” the entire site, just locate an accurate boundary).

C. Deep testing:

When dealing with areas that potentially contain deeply buried cultural remains it will be necessary to utilize techniques that can investigate deep strata. Usually such techniques include hand or mechanical systematic deep coring, or deep trenches using heavy equipment (typically a backhoe). Examples of geomorphic features requiring such testing are floodplains, alluvial fans, and occasionally some uplands and terraces where post-Pleistocene loess deposition has occurred.

D. Photographic Requirements for Structures:

Photographs must be provided for all structures located within the project area and the Area of Potential Effect (APE). This includes all structures regardless of the condition. For example, a 40-acre subdivision development project that contains 3 former farmsteads on the property will require photographs of all structures.

Be sure to provide a statement regarding eligibility and effect in the “Recommendations” portion of the report for each structure or district (see example – Section C Recommendations below).

E. Collection Strategy and Curation:

At a minimum, samples of artifacts observed during Phase I survey should be collected and curated. If artifact collection is not feasible due to lack of landowner permission, then field photographs of diagnostic artifacts (scale included) and a sample of non-diagnostic artifacts should be included in the report along with a signed statement from the landowner indicating the desire to retain the artifacts.

Until the development of a state curation facility is completed, artifacts should be curated either with the consulting firm or with the Museum Support Center at the University of Missouri.

Survey Report

At the completion of the field survey a report of the archaeological findings and recommendations must be sent to the SHPO for evaluation. Please keep in mind, that when submitting reports to the SHPO for review, all project reports submitted will be considered final and therefore should be thorough and complete. Draft reports will be reviewed only if agreed upon during consultation prior to project initiation.

For most projects we recommend that the Section 106 Survey Memo be completed for the report. When determining if the Survey Memo or a full text report is appropriate, bear in mind that other researchers (including yourselves) will be using the report in future and it will need to convey the information regarding the survey and sites located clearly.

If you are submitting a full text report, a Section 106 Survey Memo must be completed and included. Staff uses the Section 106 Survey Memo to compile a bibliographic index of archaeological investigations throughout the state. And in this situation it should be noted that maps and attachments will not be required (as they are already in the report) and many of the fields on the form, such as "Cultural Material Recovered" will be completed as "please see the following report".

To assist in this evaluation and to avoid delays in processing, the full text reports should contain, at a minimum, a discussion of the following topics:

A. Background Information:

1. Full, detailed description of project for which the survey was conducted. This must include the name of the applicable federal agency.
2. Previous archaeological research within a minimum of one mile from the maximum extent of the archaeological Area of Potential Effects (which includes areas such as construction limits and access roads) for the project area. This must be based on examination of published and unpublished literature at the Cultural Resource Inventory in Jefferson City, Missouri and other regional and local repositories as appropriate.

This must include, but not be limited to the following: the site files, CRM reports, Determinations of Eligibility, historic architectural surveys, etc. A thorough examination of historical documents to ascertain presence and extent of historical occupation/land use of project area should also be included. At a minimum, copies of relevant plat maps and atlases that document historic habitation with a discussion of length of occupation and use must be included. These topics need to be addressed in the report of investigations in addition to the ASM site file check.

3. Delineation of important regional research questions based on cultural history and past investigations. This should include, but not be limited to, referencing The Master Plan for Archaeological Resource Protection in Missouri (1987).
4. Thorough discussion and description of present and past environment and the implications for interpreting the local archaeological record should be included. Such topics as topography, soils, and discussion of relevant periods of prehistory should also be included. Discuss only the periods of prehistory and history that are relevant to the current project based on the background research.

B. Survey Information:

1. Complete description of project area including acreage, ground cover, topography, and any other factors that are important to interpreting the survey results.
2. Relevant portion of the 7.5 minute topographic map delineating the project area.
3. Survey techniques thoroughly described and documentation of consultation for alternative procedures.
4. Sketch maps should be included with each report. While maps do not have to be to scale and can be hand drawn, they must be legible and include the following information:
 - Land use / ground cover (including percentage surface visibility).
 - Survey limitations (a description and justification for any areas that could not be surveyed. For example: 0.2 acres of pasture could not be surveyed because landowner could not be contacted to turn off electric fence and remove livestock.) These areas should be clearly labeled on Figure 2, the sketch map.
 - Survey techniques employed in relation to individual areas of land use / ground cover (i.e. pedestrian survey or shovel probes)

- Location of testing procedures (i.e. backhoe trenches, test units, etc.) and site limits (if applicable).

5. Any additional photographs, maps, or other relevant materials that would contribute to the understanding of the project.

C. Recommendations:

This section must include the consultant's recommendations determined by consulting the appropriate National Register Bulletin(s) available from the National Park Service. At a minimum, National Register Bulletin 15 - "How to Apply the National Register Criteria for Evaluation" must be employed to make determinations of eligibility and recommendations.

Other bulletins are available for specific topics and should be consulted and used appropriately for topics such as:

cemeteries*
shipwrecks*
historic archaeological sites
historic landscapes
rural historic landscapes
traditional cultural properties

* Missouri state laws also protect these resources. Refer to <http://www.moga.mo.gov/statutesearch/> for the revised Missouri Statutes concerning protection of these resources.

Recommendations in the report must include one of the following statements with regard to the project as a whole *in addition to determinations of eligibility for the individual sites / structures*:

a) No Historic Properties Located.

For projects that failed to locate historic properties

b) No National Register Eligible Historic Properties Located.

Historic properties were located; however they do not meet the eligibility standards for listing on the National Register of Historic Places.

c) National Register Eligible Historic Properties Located.

Historic properties were located which meet the eligibility standards for listing on the National Register of Historic Places.

d) Historic Properties May Meet Requirements For National Register Listing; Phase II Testing Is Recommended

Historic properties were located which may meet the eligibility standards for listing on the National Register of Historic Places. However, not enough information was collected during the Phase I. Phase II Testing is therefore needed to make the eligibility determination.

For example: *Survey located twelve archaeological sites, 23XX001 through 23XX012. Sites 23XX001, 23XX002, and 23XX003 are small, low-density prehistoric scatters that do not appear to meet requirements for National Register Eligibility (see site form for details). Sites 23XX004 – 23XX011 are small historic period scatters which do not appear to meet requirements for National Register eligibility. One site, 23XX012 appears to be eligible. Mid-range dates for the ceramics collected suggest a mid-1800s occupation, but the site terminus post quem and terminus ante quem are 1874 and 1895 respectively, as based on an indicated structure in historic atlases. It therefore appears that the ceramics may have been curated. The site may meet requirements for National Register Eligibility, and avoidance or Phase II testing is recommended for this resource.*

In addition, the survey located 4 buildings over 50 years old. Buildings A, B, and C (see photograph log) have had several recent additions and had vinyl siding added and do not appear to be eligible for listing in the National Register of Historic Places. Building D (see photograph log), is a Greek Revival I - house that appears to be eligible under Criterion C for Architecture. As planned, the proposed project will have no adverse effect on this historic property because it will have no direct impact to the physical structure of the building.

“Potentially Eligible” *This term is not acceptable.* Resources will be considered eligible until proven otherwise. Recommendations of eligibility should clearly state that the site/structure “is eligible for listing on the National Register of Historic Places” or the site/structure “is not eligible for listing on the National Register of Historic Places”.

D. Site Information (if present):

1. A full description of the site location, material recovered (including curation facility), and a preliminary interpretation of its place in the local culture history must be included.
2. A completed site form with topographic map and sketch map must be submitted to the SHPO for each site. **Site forms should be included only in the SHPO copy of the reports.** These site forms are not to be included in any reports that may be disseminated to the general public. Reports must include the citation *Section 304 of the National Historic Preservation Act of 1966* on the confidentiality of site location information.
3. Recommendations for each site are required. These will consist of either: “the site is not eligible”, “further testing will be required”, or mitigation alternatives for the site. Any suggestions concerning site disposition should be stated in terms of their relationships to relevant regional research questions and The Master Plan for Archaeological Resource Protection in Missouri (1987).

E. Archaeological Contractor's Vita:

All contract archaeologists working in Missouri must either have a current vita on file with the SHPO or submit one with each report.

F. Project Correspondence:

Project correspondence must be included as an appendix. This should include such letters as the initial SHPO survey request, and any other relevant correspondence. Please do not include budget information.

DRAFT

APPENDIX E

CONTACT LIST

MISSOURI RIVER RECOVERY PLAN/ LOWER MISSOURI RIVER

U.S. ARMY CORPS OF ENGINEERS-KANSAS CITY DISTRICT

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