

**Advisory
Council On
Historic
Preservation**

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

Reply to: 730 Simms Street, #401
Golden, Colorado 80401

July 25, 1990

BTM
Colonel Brink P. Miller
District Engineer
Galveston District
Corps of Engineers
P.O. Box 1229
Galveston, TX 77553-1229

REF: Programmatic Agreement regarding the Proposed Enlargement of
the Channel to Victoria, and Victoria and Calhoun Counties,
Texas

Dear Colonel Miller:

The enclosed Programmatic Agreement regarding the proposed enlargement of the channel to Victoria, and Victoria and Calhoun Counties, Texas, has been accepted by the Council. This action constitutes the comments of the Council required by Section 106 of the National Historic Preservation Act and the Council's regulations. Please forward a copy of this Agreement to the Texas State Historic Preservation Officer and your Federal Preservation Officer.

The Council appreciates your cooperation in reaching a satisfactory resolution of this matter, and we look forward to working with you in the future.

Sincerely,


Claudia Nissley
Director, Western Office
of Project Review

Enclosure

PROGRAMMATIC AGREEMENT

Among the Corps of Engineers, Galveston District,
the Texas State Historic Preservation Officer,
and the Advisory Council on Historic Preservation
Regarding the Proposed Enlargement of the
Channel to Victoria, Calhoun and Victoria Counties, Texas

WHEREAS, the Galveston District, Corps of Engineers (COE) has determined that proposed new construction on the Channel to Victoria, Calhoun and Victoria Counties, Texas may have an effect on properties included in or eligible for inclusion in the National Register of Historic Places and has requested the comments of the Advisory Council on Historic Preservation (Council) and the Texas State Historic Preservation Officer (SHPO) pursuant to Section 106 of the National Historic Preservation Act (16 U.S.C. § 470) and its implementing regulations, "Protection of Historic Properties," (36 CFR Part 800) and

WHEREAS, the COE proposes to administer the Channel to Victoria Project authorized by the River and Harbor Act of 1954, and

WHEREAS, the COE, the Texas State Historic Preservation Officer, and the Council agree that it is advisable to accomplish compliance with Section 106 and the Council's regulations through the development and execution of this Programmatic Agreement (PA) in accordance with 36 CFR Section 800.13;

NOW, THEREFORE, the COE, the Texas SHPO, and the Council agree that the undertaking shall be implemented and administered in accordance with the following stipulations in order to take into account the effect of the undertakings on historic properties and to satisfy the COE's Section 106 responsibilities for all individual undertakings of the project.

STIPULATIONS

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

I. Applicability of this Agreement:

The Agreement shall be applicable to all new construction actions related to or within the Channel to Victoria that are directly undertaken by the COE. Further, this Agreement shall be applicable to historic properties located outside of the geographic area of the Channel to Victoria if the character or use of these historic properties may be changed by COE-initiated new construction actions. This Agreement shall be applicable to areas to be dredged or otherwise altered due to COE new construction actions including all staging areas, the initiation of new or extension of existing disposal areas, existing facilities to be relocated, and areas affected by wildlife mitigation and the creation of freshwater marsh.

II. Project-Specific Historic Preservation Procedures

A. Identification of Historic Properties:

As soon as an action meeting the scope of stipulation I of this Agreement is proposed, the COE shall identify, in consultation with the Texas SHPO, historic properties potentially affected by the proposed action. All identification work including survey of all areas potentially affected by the undertaking shall be designed in consultation with the Texas SHPO and shall be in accordance with the Secretary of the Interior's "Standards and Guidelines for Archeology and Historic Preservation" (48 Federal Register 44716-44740; September 23, 1983) "Standard and Guidelines," hereinafter, particularly the "Standards and Guidelines for Identification" contained therein. Should the COE and the Texas SHPO fail to agree on identification efforts, the COE shall afford the Council a reasonable opportunity to comment in accordance with stipulation V of this Agreement.

B. Evaluation of Properties for Eligibility for Inclusion in the National Register of Historic Places:

The COE shall evaluate all identified properties that could be affected by proposed action, in consultation with the Texas SHPO, to determine which properties are eligible for inclusion in the National Register. The COE shall use the "Standards and Guidelines," particularly the "Standards and Guidelines for Evaluation" contained therein. Should the COE and the Texas SHPO agree that a property is or is not eligible, such consensus shall be deemed conclusive for the purposes of this Agreement. Should the COE and SHPO not agree regarding the eligibility of a property, the COE shall seek a formal determination of eligibility from the Keeper of the National Register in accordance with applicable National Park Service regulations. Within six months of the completion of the evaluation of properties for the purposes of this Agreement, the COE shall seek formal determinations of eligibility from the Keeper of the National Register.

C. Preservation Plan:

The COE shall ensure that a reasonable and good faith effort is made to design project activities on the Channel to Victoria to avoid damage to any historic property. This effort should include the development of a plan, in consultation with the SHPO, that specifies how historic properties in the project, including those already effected by the channel, will be preserved in place. It should also specify how avocational archaeologists and other interested parties are afforded an opportunity to participate in the implementation of survey, evaluation, and treatment efforts, as well as any monitoring and site stewardship activities that are appropriate. The plan, to be developed prior to new construction for proposed enlargement of the channel, will be submitted to the SHPO and the Council for review. Unless the parties to the Agreement object within 30 days after receipt of the plan, the COE shall ensure that the plan is implemented.

D. Treatment of Human Remains:

The COE shall ensure that any human remains and grave-associated artifacts encountered during any activity associated with the implementation of the PA are treated in a manner consistent with applicable Federal and State laws and regulations and the Council's "Policy Statement Regarding Treatment of Human Remains and Grave Goods".

E. Evaluation of the Potential Effects of a Proposed Action on Historic Properties:

The COE, in consultation with the Texas SHPO, shall evaluate the effects of a proposed action on properties included in or eligible for the National Register, using the criteria in 36 CFR Part 800. Disagreements between the COE and the Texas SHPO shall be resolved in accordance with stipulation V of this Agreement.

F. Treatment of Affected Historic Properties:

1. Development of a Data Recovery or Treatment Plan:

The COE shall, in accordance with the Texas SHPO, treat historic properties affected by proposed actions within the scope of this Agreement and the Preservation Plan. If the properties to be affected are eligible for inclusion in the National Register primarily for the potential to yield data important in history or prehistory, the COE shall develop and implement a Data Recovery Plan that is responsive to the principles in Part I of the Council's "Treatment of Archeological Properties: A Handbook" and that meets the standards of Part III of the Handbook and is consistent with the "Standards and Guidelines." If the historic properties to be affected are eligible for the National Register primarily for reasons other than potential to yield data, the COE, in consultation with the Texas SHPO, shall develop a plan and implement a plan consistent with the "Standards and Guidelines" that outlines means to avoid, minimize, or mitigate the adverse effects of the project. In general, the data recovery plans will include the following information: the property, properties, or portions of properties where data recovery is to be carried out; any property, properties, or portions of properties that will be destroyed or altered without data recovery; the research questions to be addressed through the data recovery, with an explanation of their relevance and importance; the methods to be used with an explanation of their relevance to the research questions; the methods to be used in analysis, data management, and dissemination of data, including a schedule; the proposed disposition of recovered materials and records; proposed methods for involving the interested public in the data recovery; proposed methods for disseminating results of the work to the interested public; proposed methods by which other interested parties (i.e., local governments, etc.) will be kept informed of the work and afforded the opportunity to participate; and a proposed schedule for the submission of progress reports to the SHPO and the Council.

2. Review of a Data Recovery or Treatment Plan:

The COE shall provide the Texas SHPO and the Council a 30-day opportunity to review and comment on the draft data recovery or treatment plan. Objections to the draft data recovery or treatment plan shall be dealt with in accordance with stipulation V of this Agreement.

III. Implementation

A. Technical Performance:

1. Technical Reports:

All work conducted pursuant to this Agreement shall be monitored by a COE staff archeologist. Copies of all final reports resulting from work conducted pursuant to this Agreement shall be provided to the signatories to this Agreement and to the Nation Park Service for possible submission to the National Technical Information Service. All reports shall be responsive to the professional standards and formats identified in the "Standards and Guidelines."

2. Professional Qualifications:

The COE shall ensure that all archeological, historical, or archival work carried out pursuant to this Agreement is carried out by or under the direct supervision of qualified persons who meet at minimum the Secretary of the Interior's Professional Qualifications Standards and/or the Certification Requirements of the Society of Professional Archaeologists.

3. Curation:

The COE shall ensure that all materials, except those subject to Stipulation, II.D, and records resulting from implementation of the PA are curated at a qualified facility in accordance with 36 CFR Part 79.

4. Periodic Reports:

The COE shall prepare a periodic report on implementation of the Channel to Victoria project as actions warrant and provide this report to the SHPO, Council, and other interested parties for review, comment, and consultation as needed.

B. Discovery:

If, after completion of the identification efforts required pursuant to this Agreement, previously unknown historic properties are discovered in a project area, the COE shall cause potentially damaging activities to cease until it has consulted with the Texas SHPO and complied with 36 CFR Section 800.11(b)(2)(ii).

IV. Review and Compliance

A. Project Monitoring:

The Council and the Texas SHPO may monitor activities pursuant to this PA, and the Council will review such activities if so requested. The COE will cooperate with the Council and the SHPO in carrying out their monitoring responsibilities.

B. COE Compliance:

If the COE does not carry out the terms of this Agreement, COE will not take or sanction any actions or make any irreversible commitment that would result in an adverse effect on properties eligible for inclusion in the National Register within the scope of this Agreement or would foreclose the Council's consideration of avoidance or mitigation alternatives until it has obtained the Council's comments, pursuant to the Council's regulations, for each individual action carried out as part of the overall undertaking.

V. Dispute Resolution:

If a dispute arises regarding implementation of this Agreement, the COE shall consult with the objecting party to resolve the dispute. If any consulting party determines that the dispute cannot be resolved, the COE shall request the further comments of the Council pursuant to the Council's regulations and shall forward all documents and information relevant to the dispute to the Council. Within 30 days after receipt of all relevant documentation, the Council shall either:

1. Notify the COE that it concurs in the COE's position regarding the matter;
2. Notify the COE of changes that would make their position acceptable to the Council and, provide that the COE agrees with the changes, the dispute would be resolved; or
3. Notify the COE that it will comment in accordance with 36 CFR Section 800.6(b).

VI. Programmatic Agreement Revision

The parties to this Agreement may consult at any time to review implementation of the terms of this Agreement and determine whether revisions are needed.

If any of the signatories to this Agreement determines that the terms of this Agreement cannot be met or believes that a change to it is necessary, that signatory shall request immediately the consulting parties to consider voiding, amending, or effecting an addendum or amendment to this Agreement. Such an amendment or addendum shall be executed in the same manner as this original Agreement. In the event of termination, the COE will comply with 36 CFR 800.4 through 800.6 with regard to individual undertakings covered by this Agreement.

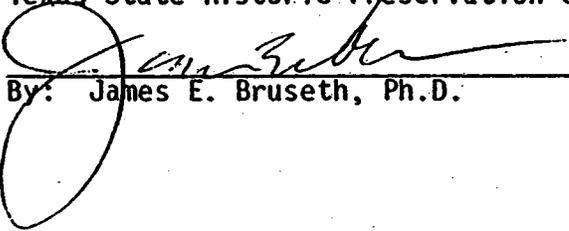
Execution and implementation of this Programmatic Agreement evidences that the COE has afforded the Council a reasonable opportunity to comment on undertakings and their effects on historic properties in the Channel to Victoria. The PA will become effective upon the latest date of execution by the COE, the Texas SHPO, and the Council signatories and will remain in effect until terminated by any party to the Agreement by 30 days prior written notice to the other parties.

U.S. Army Corps of Engineers, Galveston District


By: Brink P. Miller, Commander

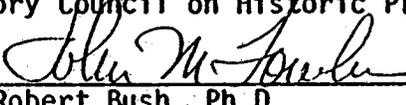
10 MAY 1990
(date)

Texas State Historic Preservation Officer


By: James E. Bruseth, Ph.D.

6/21/90
(date)

Advisory Council on Historic Preservation


By: Robert Bush, Ph.D.

2/16/90
(date)