

APPENDIX E:

**Memorandum of Understanding between the
State Historical Society of Wisconsin and the
National Park Service**

**Programmatic Agreement
Between
the United States Department of the Interior,
Ice Age and North Country National Scenic Trails,
and
the Wisconsin State Historic Preservation Office**

Regarding § 106 of the National Historic Preservation Act
and Specific Provisions of the Advisory Council on Historic Preservation's
Implementing Regulations at 36 CFR Part 800

WHEREAS, the United States Department of the Interior, National Park Service, Ice Age and North Country National Scenic Trails provide financial assistance to private organizations, municipalities, counties, state, and other Federal agencies; and

WHEREAS, National Park Service (hereinafter "NPS") has determined that its Ice Age and North Country National Scenic Trails programs (hereinafter TRAILS) undertakings may result in effects to historic properties as defined at 36 CFR § 800.16(l); and

WHEREAS, the NPS and the Wisconsin State Historic Preservation Officer (hereinafter "SHPO") agree that this Programmatic Agreement (hereinafter "PA") represents an expedited consultation process between them, pursuant to 36 CFR § 800.3(g), and does not constitute a program alternative, per 36 CFR § 800.14; and

WHEREAS, the NPS and the SHPO agree that each has responsibilities under the National Historic Preservation Act (hereinafter "NHPA") and the Advisory Council on Historic Preservation (hereinafter "ACHP") implementing regulations at 36 CFR Part 800 that are neither referenced in nor incorporated into this programmatic agreement; and

WHEREAS, this programmatic agreement will apply to TRAILS undertakings throughout the state of Wisconsin; and

WHEREAS, the SHPO and NPS agree that this programmatic agreement does not pertain to any undertakings pursuant to the NHPA and the ACHP's implementing regulations at 36 CFR § 800 over which a Tribal Historic Preservation Officer, established pursuant to § 101(d)(2) of the National Historic Preservation Act of 1966 and further described at 36 CFR § 800.2I, retains jurisdiction; and

WHEREAS, the definitions given in 36 CFR Part 800.16 are applicable throughout this programmatic agreement; and

WHEREAS, "The Wisconsin NHPA § 106 Review Process" (located on the World Wide Web at: http://www.wisconsinhistory.org/hp/protecting/106_intro.asp, or such World Wide Web location as identified by the SHPO in writing to the NPS) (hereinafter "Wisconsin Process") is referenced in and applicable throughout this programmatic agreement.

NOW, THEREFORE the NPS and the Wisconsin SHPO agree that the TRAILS undertakings shall be carried out in accordance with the following stipulations:

Stipulations

I. Personnel

- A. The NPS shall designate a single staff person for each trail (hereinafter “Staff”) to coordinate per the Wisconsin Process, and to be the contact point with the SHPO for all matters concerning this programmatic agreement. The Superintendent of the Ice Age and North Country National Scenic Trails is the person responsible for ensuring that all provisions of the programmatic agreement are carried out. NPS Staff has designated cultural resources professional advisors to consult with at the NPS Midwest Region office in Omaha, Nebraska.
- B. The NPS shall notify the SHPO of any proposed Staff changes. If, at any time through the duration of this programmatic agreement, the NPS does not have Staff in place to carry out the review, then the NPS and the SHPO shall consult to develop alternative administrative procedures for implementing the programmatic agreement.

II. Categorical Exclusions: The following undertakings have been determined not to have the potential to affect historic properties and are exempt from § 106 of the NHPA and the ACHP’s implementing regulations in 36 CFR Part 800. With respect to categorically excluded undertakings, if the NPS finds reason to believe that a property may be eligible for or is listed on the National Register of Historic Places (hereinafter “NRHP”), then that individual undertaking shall not be categorically excluded and shall be reviewed pursuant to other applicable provisions of this programmatic agreement. The NPS shall retain comprehensive project files on categorically excluded undertakings so that it may provide adequate documentation should a request be received.

A. Specific Undertakings:

1. Mowing: cutting vegetation growth to facilitate pedestrian use, including manual (scythe, slingblade, weed wrench) and machine (push or riding mower, tractor with mower deck) techniques.
2. Certification of trail segments.
3. Blazing Trail: Trail marking and identification including painting on trees and affixing signs or other markers to trees.
4. Posts: Installation of posts for marking the trail (where blazing trees is not possible) or for marking property boundaries.
5. Seed Bed Preparation/Prairie Planting: Restoring prairie from previously cultivated cropland and limiting the ground disturbance to the depth of the existing plow zone.
6. Tree removal (3 inch diameter and greater): Any cutting, trimming, pruning, and harvesting of trees that does not involve removing stumps or roots.

7. Fill placed on upland locations: Spreading of fill excavated from wetland restoration areas on upland locations, where there is no associated ground disturbing activity at the upland locations.
8. Fencing: Repairing of fences.
9. Tile Breaks: Removing or disabling a section of drain tile in previously disturbed ground.
10. Ditch Plugs: Filling a ditch with soil that had been excavated previously from the ditch, or excavated from hydric soils.
11. Actions in Hydric Soils: All actions that occur exclusively within hydric soils.
Note: actions taken in wetland areas are restricted by other agencies.

B. Other Ground-Disturbing Undertakings

Any undertaking that may disturb ground that has been disturbed previously to a degree greater than currently proposed is exempt.

C. Non-Ground-Disturbing Undertakings:

1. Properties that are less than 50 years old are considered not eligible for listing on NRHP and are exempt from review under this programmatic agreement.
2. Undertakings that will only affect a property that is 50 years old or older but that previously has been determined not eligible for listing on the NRHP are exempt from review under this programmatic agreement.

III. Non-Excluded Activities

A. Corridor Planning Process – The NPS shall consult the Wisconsin Archeological and Historical Resources Database (hereinafter “WisAHRD”) and shall summarize the information derived from the WisAHRD into the specific corridor plan.

B. Construction

1. Ground-Disturbing Undertakings
 - a. For undertakings (including but not limited to trail construction, parking lot construction, fence installation, sign/post installation, tree stump removal, site furniture placement) that may disturb 20,000 square feet of ground or less, NPS personnel shall consult the WisAHRD, as described in Part III A. above, to determine whether there is a known historic or prehistoric archeological site within the Area of Potential Effect (hereinafter “APE”) for undertakings (including but not limited to trail construction, parking lot construction, fence

installation, sign/post installation, tree stump removal, site furniture placement). If there is no known archeological site within the APE, then the undertaking may proceed without forwarding a project submittal to the SHPO for review and comments.

- b. If NPS determines through consultation of the WisAHRD per planning requirements of Part III A. above, or through other means, that a known archeological site is located within the project area, then the undertaking must be submitted to the SHPO for review and comments pursuant to the provisions of the Wisconsin Process.
- c. The NPS shall ensure that trail construction personnel receive pertinent information derived from the WisAHRD, including specific historic property site location information, prior to any specific trail construction activity.
- d. For undertakings that may affect more than 20,000 square feet of ground, or that are not otherwise excluded from review pursuant to the terms of this programmatic agreement, the NPS shall carryout the provisions prescribed in the Wisconsin Process.

2. Non-Ground-Disturbing Undertakings

- a. Prior to commencing any undertaking that may affect a property either listed on the NRHP or eligible for listing on the NRHP the NPS shall comply with the following provisions and procedures and shall satisfy the provisions of the Wisconsin Process.
 - b. If the property within the project APE is recorded in the WisAHRD and has not been formally evaluated by the SHPO, then the NPS shall apply the NRHP criteria to determine whether the property is eligible for listing on the NRHP, and shall carryout the provisions prescribed in the Wisconsin Process.
 - c. If a property is listed on the NRHP, or previously was determined eligible for listing on the NRHP, or is determined eligible for listing on the NRHP through NPS's evaluation, then the NPS shall continue with the project review pursuant to the terms prescribed in the Wisconsin Process.
- B. The NPS shall retain comprehensive project files for all Part III Non-Excluded Activities projects so that it may provide adequate documentation of these undertakings should it receive a request for such documentation. Also, this documentation shall be made available to the SHPO upon request per Part IX below.

IV. SHPO Review of Project Submittals

- A. The SHPO shall review all project submittals pursuant to the terms outlined in this programmatic agreement and as prescribed in the Wisconsin Process.

B. If the SHPO believes that a specific undertaking, as defined in Part II(A) or Part II(B). above, may affect a property that is eligible for listing on the NRHP, then it shall notify NPS. Upon receipt of such notice from the SHPO, NPS shall review the project-specific undertaking pursuant the terms of this programmatic agreement and as described in the Wisconsin Process.

C. Emergencies

The NPS from time to time may conduct undertakings in response to natural and man-made disasters. Such undertakings may be exempt from Federal environmental review requirements, per 24 CFR 58.34(a)(10). If the NPS shall commence an undertaking resulting from such an emergency, then 36 CFR Part 800.12(b) through (d) shall apply.

D. Human Burials

In the event that a human burial site may be affected, or is discovered during project construction, the Wisconsin Burial Law, Wis. Stat. § 157.70, shall be implemented. The Wisconsin Burial Law has no standing on, or application to, Federal land where the Native American Graves Protection and Repatriation Act (NAGPRA) would apply.

VII. Documentation

A. Documentation required by the SHPO for consultation per the provisions of this programmatic agreement may include written descriptions of the project and affected historic properties, reports demonstrating that properties are eligible for listing in the NRHP, and maps showing APEs.

E. All documentation generated for review purposes under the terms of this programmatic agreement shall meet the requirements of the Wisconsin Process, and the provisions of 36 CFR Part 800.11.

F. Technical Assistance

The SHPO shall notify the NPS of training opportunities, provide technical assistance to the NPS, and help develop training for its partners in areas of mutual concern and need.

IX. Monitoring

A. The NPS shall retain documentation concerning all undertakings carried out pursuant to this programmatic agreement for a period of three years.

B. The NPS, when requested, shall provide the SHPO a report summarizing the undertakings carried out pursuant to this programmatic agreement.

C. After providing reasonable notice to the NPS, the SHPO may monitor specific undertakings.

D. The NPS shall make available to the SHPO upon request all historic-review related documentation for projects undertaken pursuant to the provisions of this programmatic agreement. This periodic review may be carried out to evaluate the adequacy of the provisions of this programmatic agreement and to assess NPS compliance with the terms of this programmatic agreement.

X. Other Laws, Rules, Regulations

A. No provision of this programmatic agreement, whether expressed or implied, is intended or designed to exempt either the NPS or the SHPO from their respective obligations, duties and responsibilities pursuant to any provisions of the NHPA § 106 and/or the ACHP's implementing regulations at 36 CFR Part 800 not specifically referenced herein, or the provisions of any other Federal, state, or local law, regulation, rule or ordinance not specifically referenced herein.

G. The NPS understands that it may be required to contact and/or consult with individuals, groups and/or units of government including Native American Nations or Tribes throughout the NHPA § 106 review process, consistent with and pursuant to provisions of the NHPA § 106 and the ACHP's regulations at 36 CFR Part 800 not otherwise referenced herein.

C. It is the responsibility of the NPS and the SHPO independently to recognize, understand and carryout each of their respective obligations, duties and responsibilities under the NHPA § 106 and the ACHP's regulations at 36 CFR Part 800 not otherwise referenced herein.

H. Amendments

This programmatic agreement may be amended if the NPS and the SHPO decide in consultation that the terms need to be revised, updated or changed for any reason.

XII. Termination

A. Either the NPS or the SHPO may terminate this programmatic agreement by providing written notice describing the reason(s) for termination to the other party. This programmatic agreement shall remain in effect for 30 days from receipt of notice to terminate. The NPS or the SHPO shall consult prior to actual termination to resolve the written reasons for termination and if possible, to amend the programmatic agreement accordingly or seek other actions that would prevent termination.

I. In the event that this programmatic agreement is terminated, then NPS shall comply with the NHPA, 36 CFR Part 800 and the Wisconsin Process for any undertakings that may affect historic properties.

XIII. Sunset Provision

- A. This programmatic agreement shall remain in force for five years from the date of the final signature unless the programmatic agreement is terminated or superceded by another programmatic agreement.
- J. Within six months prior to the expiration of this programmatic agreement, NPS and the SHPO agree to meet to negotiate terms for a new programmatic agreement, extension of the terms of the existing programmatic agreement, or reversion to the specific provisions of the NHPA and 36 CFR Part 800.

By: Thomas L. Gilbert Date: 3/19/04
Thomas Gilbert
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National Park Service

By: Michael E. Stevens Date: 3/19/04
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