

**FIRST AMENDMENT TO THE PROGRAMMATIC AGREEMENT AMONG
THE MISSISSIPPI DEVELOPMENT AUTHORITY,
AND
THE MISSISSIPPI STATE HISTORIC PRESERVATION OFFICER,
AND
THE MISSISSIPPI BAND OF CHOCTAW INDIANS
AND
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING THE MISSISSIPPI ELEVATION GRANT PROGRAM
OF THE HOMEOWNERS ASSISTANCE PROGRAM,
AND
THE SMALL RENTAL ASSISTANCE PROGRAM
IN RESPONSE TO HURRICANE KATRINA**

WHEREAS, the Mississippi Development Authority (MDA), the Mississippi State Historic Preservation Office (MS SHPO), the Mississippi Band of Choctaw Indians (MBCI) and the Advisory Council on Historic Preservation (ACHP) executed a Programmatic Agreement (PA) effective January 15, 2008, pursuant to Section 800.13 of the regulations (36 CFR Part 800) implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f) for planning, operating, managing and administering the above-listed MDA disaster recovery programs; and

WHEREAS, Stipulation XI.A. of the PA provides for its amendment if circumstances change, or where it appeared that the effects of the Undertakings were not fully considered and addressed by the agreement; and

WHEREAS, the signatories agree that the Council's regulations, effective on June 17, 1999, shall govern the development and interpretation of this Amendment; and,

WHEREAS, MDA, MS SHPO, MBCI and ACHP have participated in the consultation and have been invited to execute this Amendment to the PA;

NOW, THEREFORE, MDA, MS SHPO, MBCI and ACHP (the signatories) agree that the sections referenced below of the PA are superseded by the new stipulations in this Amendment, and further that this Amendment reaffirms the commitment of the signatories to perform all other applicable duties as previously set forth in the PA and acknowledge that these duties are incorporated by reference as if fully set forth herein.

I. STIPULATIONS

1. Stipulation III.B. of the PA is removed in its entirety.

2. Stipulation III.F. is added to the PA and reads as follows:

"MDA will provide funding in the amount of \$50,000 to MBCI. This funding is provided for equipment and for staff that will work under the direction of the MBCI Point of Contact, to assist MBCI with expedited reviews of the reports that will be submitted by MDA to MBCI for Section 106 evaluation."

3. Stipulation IV.B. is amended to read as follows:

“MDA will keep the SHPO, MBCI and Choctaw Nation of Oklahoma (CNO) informed on a regular basis on the progress of the EGP and SRAP projects. These updates shall be discussed, at minimum, at meetings held monthly between MDA’s cultural resource Point of Contact, the SHPO Point of Contact, the MBCI Point of Contact and the CNO Tribal Historic Preservation Officer, in a format, time and location to be jointly negotiated.”

4. Stipulation V.B(2). is amended to read as follows:

“UTM Coordinates in NAD27 Projection”

5. Stipulation V.D(1). is amended to read as follows:

1. MDA shall conduct a visual assessment of properties where the landowner has stated the intent to limit the boundaries of their structure to within three horizontal feet of the boundaries that existed for that structure prior to August 29, 2005 (a “Proposed Action 1 Site”). This assessment will apply to all Proposed Action 1 Sites that are not excluded by Stipulations I.A. or V.D(3) of the PA. Each project site will be examined by a SOI-qualified Archaeologist. The purpose of this assessment will be to visually ascertain through the use of systematic, closely spaced (10 m or less interval) transects whether NRHP-listed or NRHP-eligible historic properties are located within the project lands.

- A. If no evidence of a historic property is evident, the expedited review procedures that are described in Stipulation 6.E(1). of this Amendment will be followed.
- B. If a NRHP-listed or NRHP-eligible historic property is located within the project lands, the protocol that is outlined in Stipulation VII.D of the PA shall be followed. Any adverse effects that are identified at these historic properties shall be evaluated by the signatories on a case-by-case basis.
- C. If the visual assessment finds confirmation that the project footprint has, or will, extend more than three horizontal feet beyond its pre-Hurricane Katrina boundaries, the property will be assessed using the protocols described in Stipulation 6 of this Amendment.

6. Stipulation V.D(4). is amended to read as follows:

V.D(4). Where MDA determines that the construction of a project will result in the structure extending more than 3 horizontal feet outside of the pre-Katrina structural footprint, MDA shall conduct a Phase I terrestrial archaeological resources survey pursuant to applicable state and federal laws, regulations, and guidelines, including the Mississippi Department of Archives and History’s “Guidelines for Archaeological Investigations and Reports in Mississippi” (1999, revised 2001). This shall apply to all such projects that are not exempted by Stipulations I.A. or V.D(3) of the PA. Each project site will be examined by a SOI-qualified Archaeologist.

- A. If the proposed project structure is defined as extending more than three feet beyond the footprint that existed prior to August 29, 2005, (a “Proposed Action 2 Site”), the property will be visually inspected for archaeological materials that are present on the ground surface using closely spaced (10 m or less interval) transects. This will be supplemented, wherever the land boundaries allow, by the excavation of four shovel tests that surround the proposed or constructed structure.
- B. If the project applicant has indicated their intent to move or construct a new structure on an unspecified portion of the property (a “Proposed Action 3 Site”), the property will be visually inspected for archaeological materials that are present on the ground surface using closely spaced (10 m or less interval) transects. This will be supplemented, wherever the land boundaries allow, by the systematic excavation of shovel tests throughout the property at intervals not to exceed 30 m. A minimum of four shovel tests

will be excavated on the property unless extenuating circumstances are encountered. If fewer than four shovel tests are excavated, the circumstances must be presented in the report MDA will submit to the agencies.

- C. The size and depth of the subsurface tests are to be based on the project's position within the Gulf Coast floodplain, using the categories presented in the most recent digital flood insurance rate maps available for the four counties. For standardization, the categories will conform to the codes developed by the Federal Emergency Management Agency (as defined at http://www.fema.gov/plan/prevent/fhm/dfm_ovrw.shtm) The code definitions and the corresponding subsurface test size are as follows:
1. 0.2% annual chance flood hazard (500 Year Floodplain). The flood insurance rate zone that corresponds to unstudied areas where flood hazards are undetermined, but possible: shovel tests 30 cm diameter by 50 cm deep
 2. Zone X. Zone X is the flood insurance rate zone that corresponds to areas outside the 500-year floodplain, areas within the 500-year floodplain, and to areas of 100-year flooding where average depths are less than 1 foot, areas of 100-year flooding where the contributing drainage area is less than 1 square mile, and areas protected from the 100-year flood by levees. No base flood elevations or depths are shown within this zone: shovel tests 30 cm diameter by 50 cm deep
 3. Zone A. Zone A is the flood insurance rate zone that corresponds to the 100-year floodplains that are determined in the Flood Insurance System by approximate methods. Because detailed hydraulic analyses are not performed for such areas, base flood elevations or depths are not shown within this zone: shovel tests 50 cm diameter by 100 cm deep
 4. Zone AE. Zone AE is the flood insurance rate zone that corresponds to the 100-year floodplains that are determined in the Flood Insurance System by detailed methods. In most instances, whole-foot base flood elevations derived from the detailed hydraulic analyses are shown at selected intervals within this zone: shovel tests 50 cm diameter by 100 cm deep plus 100 cm deep soil hand probe from the bottom of each excavated shovel test
 5. Zone AH. Zone AH is the flood insurance rate zone that corresponds to the areas of 100-year shallow flooding (usually areas of ponding) where average depths are between 1 and 3 feet. Whole-foot base flood elevations derived from the detailed hydraulic analyses are shown at selected intervals within this zone: shovel tests 50 cm diameter by 100 cm deep plus 100 cm deep soil hand probe from the bottom of each excavated shovel test
 6. Zone AO. Zone AO is the flood insurance rate zone that corresponds to the areas of 100-year shallow flooding (usually sheet flow on sloping terrain) where average depths are between 1 and 3 feet. Average whole-depths derived from the detailed hydraulic analyses are shown within this zone: shovel tests 50 cm diameter by 100 cm deep plus 100 cm deep soil hand probe from the bottom of each excavated shovel test
 7. Zone VE. Zone VE is the flood insurance rate zone that corresponds to the 100-year coastal floodplains that have additional hazards associated with storm waves. Whole-foot base flood elevations derived from the detailed hydraulic analyses are shown at selected intervals within this zone: shovel tests 50 cm diameter by 100 cm deep plus 100 cm deep soil hand probe from the bottom of each excavated shovel test

- D. MDA agrees to retain a geo-archaeologist who will conduct testing of deep soil deposits within the MDA study area. The depth, number and placement of the geo-probes will be determined by joint agreement between MDA, SHPO and MBCI. The schedule for these tests shall be determined within 90 days of the acceptance of this Amendment.
- E. MDA shall generally report the findings of the archaeological field efforts to SHPO, MBCI and the Choctaw Nation of Oklahoma (CNO) on a weekly basis. The reports will be submitted electronically using the following procedure:
1. MDA shall group all project field reports by the type of investigation (Phase I or Phase II), by Proposed Action Site category (1, 2 or 3) and by MDA's management recommendation to the agencies (no further work or additional investigation). Each of these groupings shall receive a unique packet code that will be referenced in a cover letter and in an excel spreadsheet that will accompany the electronic project reports and which will detail which project applications are in each packet. The agencies shall use this packet number to reference their response to MDA.
 2. For Proposed Action 1 Site reports that recommend no further cultural resource studies, SHPO, MBCI and CNO shall respond with their determinations within 10 business days of receipt. If MDA does not receive an objection within this time frame, MDA can assume concurrence with their recommendations and proceed with the applications.
 3. For all other submitted packets, SHPO, MBCI and CNO shall respond with their determinations within 15 business days of receipt. If MDA does not receive an objection within this time frame, MDA can assume concurrence with their recommendations and proceed with the applications.
 4. MDA shall provide SHPO, MBCI and CNO with electronic GIS pmf files that show the location of the submitted EGP and SRAP applications along with the data layers representing the archaeological sensitivity map, historic districts, known cemeteries, archaeological sites and historic structures.

7. Stipulation V.D.(8) is amended to read:

Except for those properties eliminated from Section 106 Review according to Stipulations I.A. and V.D(3), MDA shall ensure compliance with the Lower-Impact Construction Stipulations in Appendix B and will require that these stipulations are made explicit in the certification documents signed by each property owner who receives funding under HAP and/or the SRAP. MDA shall stress this requirement through documents transmitted to each property owner receiving funding, to reinforce the legal obligation to comply with the Lower-Impact Construction Stipulations.

8. Stipulation VIII.A. of the PA is removed in its entirety.

9. Stipulation VIII.B(1)(a) of the PA is amended to read as follows:

SHPO, with the agreement of the participating tribes, shall develop a written description of this program, including a comprehensive list of eligible project activities that will be considered for funding. This description shall be developed within 45 days of the execution of this Amendment and transmitted to all signatories of the PA for review and comment. If requested by any of the signatories, a meeting or teleconference will be scheduled to discuss the program in greater detail.

10. Stipulation VIII.B(1)(b) of the PA is amended to read as follows:

A schedule for disbursement of funds from MDA to the SHPO will be developed and approved within 60 days of the completion of the written program description that is described in the previous Stipulation. MDA anticipates that these funds will be disbursed within three years of the SHPO's receipt of the funds. Upon disbursement of all funds, the SHPO will prepare a report on the grants awarded, and submit this to all signatories and concurring parties of the PA and this Amendment.

11. Stipulation VIII.B(2) of the PA is amended to read as follows:

MDA will provide funding to the SHPO to aid in their development of an internet or GIS-based system that will map archaeological sites, National Register properties and above-ground historic resources that are situated within the disaster area defined by Presidential declaration FEMA-1604-DR and its amendments. This system will improve the public's knowledge about the range and extent of historic and prehistoric sites within the Mississippi Gulf Coast region, and will provide the SHPO with a new tool to better evaluate and manage these cultural resources. SHPO shall produce a Scope of Work for this project within 90 days of the execution of this Amendment. MDA shall provide funding to the SHPO within 60 days of MDA's review and approval of the Scope of Work. MDA anticipates that this project will be completed within three years of the SHPO receiving the funding.

II. DISPUTE RESOLUTION

Should any of the signatories object to the manner in which the terms of this Amendment are implemented, the dispute resolution set out in Section XII of the PA shall be followed.

III. AMENDMENTS AND NONCOMPLIANCE

If any of the signatories to this Amendment believes that its terms cannot be carried out, or that an amendment to its terms must be made, that party shall immediately consult with the other signatory parties to develop further amendments to this First Amendment pursuant to 36 CFR §800.6(c)(7) and 800.6(c)(8).

IV EXECUTION OF AGREEMENT

This Amendment shall become effective immediately upon signature by all signatory parties. This Amendment may be executed in counterparts, with a separate page for each signatory, and MDA will ensure that each party is provided with a copy of the fully executed Amendment.

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SIGNATORIES:

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: 
John M. Fowler
Executive Director

Date: 8/26/08

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SIGNATORIES:

MISSISSIPPI DEVELOPMENT AUTHORITY

By: Charles L. Bearman
Charles L. Bearman
Chief Compliance Officer, Disaster Recovery Division

Date: 8/26/08