

COMMISSIONER'S ORDER NO. 161-92

Natural Resources

A Commissioner's Order authorizing approval of Mille Lacs Band of Chippewa Indians Department of Natural Resources to enter into a Programmatic Agreement for the implementation of Section 106 of the National Historic Preservation Act (16 U.S.C. 470f)

WHEREAS: the Commissioner of Natural Resources has the power to regulate natural resources within the jurisdiction of the Mille Lacs Band of Chippewa Indians through Band Statute 1162-MLC-50, Section 3; and

WHEREAS: the historical site on the Mille Lacs Reservation are a resource under the jurisdiction of the Mille Lacs Band of Chippewa Indians; and

WHEREAS: the protection of historical sites is a responsibility designated to the Commissioner of Natural Resources; and

WHEREAS: the priority for the protection of historical sites will be the preservation of such sites; and

WHEREAS: the United States Department of Interior, Bureau of Indian Affairs has through Self-Governance provided a review this agreement, and

WHEREAS: nothing herein or the application thereof shall be construed by any government, agency, person or circumstance as a waiver by the Mille Lacs Band of Chippewa Indians of the solemn, special trust obligation of the United States of America; and

WHEREAS: pursuant to the provisions of Band Statutes 1162-MLC-50, Section 3 the Commissioner of Natural Resources is empowered to execute the said Programmatic Agreement for the Mille Lacs Band of Chippewa Indians Department of Natural Resources.

NOW THEREFORE, by the authority vested in me by the Mille Lacs Band of Chippewa Indians under tribal law, I, Don Wedll, Commissioner of Natural Resources for the Mille Lacs Band of Chippewa Indians hereby concur with the following Programmatic Agreement for the preservation of historic sites.

PROGRAMMATIC AGREEMENT
AMONG
THE FARMERS HOME ADMINISTRATION,
THE ECONOMIC DEVELOPMENT ADMINISTRATION, THE ADVISORY COUNCIL ON
HISTORIC PRESERVATION
AND THE MINNESOTA STATE HISTORIC PRESERVATION OFFICER
REGARDING IMPLEMENTATION OF THE MILLE LACS LAKE MASTER PLAN
MILLE LACS INDIAN RESERVATION, MINNESOTA

WHEREAS, the Farmers Home Administration (FmHA) proposes to provide financial assistance through its Community and Business Programs and Rural Housing Programs pursuant to Title V of the Housing Act of 1949 as amended to assist the Mille Lacs BAND of Chippewa Indians (BAND) in implementing the approved Mille Lacs Master Plan of April 7, 1992 for the development of the west shore of Mille Lacs Lake; and

WHEREAS, the Economic Development Administration (EDA) also proposes to provide financial assistance through the Public Works Act of 1965 as Amended to assist in the implementation of the Master Plan; and

WHEREAS, FmHA and EDA have determined that the implementation of the Master Plan may have an effect upon the Kathio National Historic Landmark, a property listed on the National Register of Historic Places, and has consulted with the Advisory Council on Historic Preservation (council) and the Minnesota State Historic Preservation Officer (SHPO) 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); and,

WHEREAS, the U.S. Army Corps of Engineers (CORPS) may be required to issue a Section 404 Permit to the BAND for activities implemented under the Master Plan which will have an effect on wetlands; and,

WHEREAS, the Mille Lacs BAND of Chippewa Indians (BAND) participated in the consultation and has been invited to concur in this Programmatic Agreement;

NOW, THEREFORE, FmHA, EDA, the BAND, the Minnesota SHPO and the Council agree that the Program shall be administered in accordance with the following stipulations to satisfy FmHA's and EDA's Section 106 responsibilities for all individual activities funded by the Master Plan.

1. If there are no prudent and feasible alternatives to avoiding impacts to historic sites in the project area, a data recovery plan will be developed in consultation with the SHPO. The plan will be consistent with the BAND's statutes and with the Secretary of the Interior's Standards and Guidelines for Archaeological Documentation, and must include the following:

- *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/altered/transferred 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 of involving the interested public in the data recovery;

- *proposed methods for disseminating results of the work to the interested public;

- *proposed methods by which Indian tribes, local governments, and/or other specific groups will be kept informed of the work and afforded the opportunity to participate;

- *a proposed schedule for the submission of progress reports to the SHPO/agency/Council; and

- *other provisions specific to the project or situation

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STIPULATIONS

FmHA and EDA, in consultation with the BAND, will ensure that the following measures are carried out.

I. ACTIVITIES COVERED BY THE PROGRAMMATIC AGREEMENT

A. The Mille Lacs Master Plan adopted 4/7/92 includes the following activities either funded by FmHA or potentially funded by FmHA:

1. sewage treatment expansion
2. water and sewer main extensions
3. new municipal wells
4. a water treatment plant
5. water tower
6. multi-family housing
7. single family housing loans and grants
8. government center
9. clinic
10. roads
11. school

B. EDA potentially funded projects include:

1. a recreational vehicle park
2. water and sewer system improvements.

II. COORDINATION OF PROJECT REVIEWS

A. The BAND will administer Section 106 reviews on behalf of FmHA and EDA as outlined herein. The responsibility for the administration of these reviews will be with the Commissioner of Natural Resources for the BAND.

B. The Master Plan will be implemented in a phased approach over the next 5 years.

C. The BAND shall work with prospective homeowners to ensure that FmHA meets the Section 106 responsibilities for its single family home programs. The Band will submit reviews for each homeowner. This includes but is not limited to the implementation of its Section 502 and 504 loan and loan and grant programs.

D. The BAND will submit an annual activities report by each October 1 to the Council, Minnesota SHPO, FmHA, EDA and the CORPS outlining the activities which will be covered under the next phase scheduled for that fiscal year. Appropriate supporting documentation (i.e. site plans, locational maps, and engineering and architectural drawings will be provided).

III PROJECT PLANNING, IDENTIFICATION AND TREATMENT OF HISTORIC PROPERTIES

A. At the outset of planning for each individual project as defined under Section I, above, the BAND shall complete a historic properties survey of the area of potential effect for the project. The survey will include districts, sites, buildings, structures, and/or objects. Each historic property identified in the survey will be evaluated to determine 1) if it constitutes a contributing element to the existing National Historic Landmark, or 2) if it meets the National Register criteria of eligibility.

B. For each project, the BAND will submit a report of the survey of the area to the SHPO for review. The SHPO will review the survey report, including determinations of contributing status and/or eligibility, within 30 days of receipt. If the BAND and SHPO agree that a property constitutes a contributing element of the National Landmark or meets the National Register criteria of eligibility, it shall be treated as eligible for the purposes of the review. If the BAND and SHPO do not agree on the eligibility/contributing status or if the Council or NPS so request, the BAND shall request a formal determination of eligibility from the Keeper of the National Register.

C. If the survey of a project area determines that there are no properties in the area which are contributing elements to the National Historic Landmark or which meet the National Register criteria of eligibility, and if the SHPO concurs that the survey effort is adequate, no further review for that specific project is necessary.

D. If the survey of a project area identifies any properties in the area that are contributing elements to the National Historic Landmark or meet the National Register criteria of eligibility, plans for the project will be developed with the primary objective of avoiding impacts to those properties. Plans for projects in areas where the survey identified historic properties will be submitted to the SHPO for review.

2. If there are no prudent and feasible alternatives to avoiding impacts to historic buildings, structures, or objects in the project area, an appropriate treatment plan will be developed in consultation with the SHPO. This treatment may include Historic American Building Survey/Historic American Engineering Record (HABS/HAER) documentation, design considerations, rehabilitation according to the Secretary of the Interior's Standards, and other measures to mitigate the impacts.

3. Any data recovery plans or treatment plans developed under provisions #1 or #2 above will be submitted by the BAND to the SHPO, Council, FmHA, EDA, and CORPS for review. Unless the SHPO or the Council, FmHA, EDA, or Corps objects within 30 days after receipt of the plan, the BAND will ensure that it is implemented.

4. The BAND shall ensure that all final archaeological reports resulting from actions pursuant to this agreement will be provided to the SHPO, the Council and to NPS for possible peer review and submission to the National Technical Information Service (NTIS). The BAND shall ensure that all such reports are responsive to BAND guidelines, contemporary professional standards, and to the Secretary of the Interior's Standards for Archaeological Documentation and Format Standards for Final Reports of Data Recovery Programs (42 FR 5377-79). The BAND shall also ensure that reports of activities outlined under any treatment plans are provided to the SHPO on a regular basis.

IV TREATMENT OF HUMAN REMAINS

A. The BAND will ensure that a reasonable buffer zone is established around the burial mounds located within the Master Plan area so that they are not affected by development activities.

B. If burials are disturbed, the BAND must notify the SHPO and comply with Native Americans Grave Protection and Repatriation Act (NAGPRA) and BAND Statute 102i-MLC-9.

C. The Council and the NPS shall be notified of the disturbance and disposition of human remains.

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V SECTION 404 PERMIT APPLICATIONS

A. The CORPS will condition all permits issued to the BAND for activities conducted under the master plan with the requirement that the terms of the Programmatic Agreement will be or have been met and approved in writing by MN SHPO.

VI DISPUTE RESOLUTION

A. The parties to this agreement shall consult annually to review implementation of the terms of this agreement and determine whether revisions are needed. If revisions are needed, the parties to this agreement will consult in accordance with 36 CFR part 800 to make revisions.

B. Should the parties object within 30 days to any plans provided for review pursuant to this agreement, the BAND shall consult with the objecting party to resolve the objection. If the BAND determines that the objection cannot be resolved, the BAND shall request the further comments of the Council pursuant to 36 CFR 800.6(b). Any Council comment provided in response to such request will be taken into account by the BAND in accordance with 36 CFR 800.6(c)(2) with reference only to the subject of the dispute; the BAND's responsibility to carry out all actions under this agreement that are not subjects of the dispute will remain unchanged.

C. At any time during the implementation of the measures stipulated in this agreement, should an objection to any such measure or its manner of implementation be raised by the public, the BAND shall take the objection into account and consult as needed with the objecting party or the Council to resolve the objection.

VII Monitoring

A. The council and the SHPO may monitor activities carried out pursuant to this Programmatic Agreement, and the council will review such activities if so requested. The BAND will cooperate with the Council and the SHPO in carrying out their monitoring and review responsibilities and will provide the council, Minnesota SHPO, FmHA, EDA, and CORPS with an annual status report summarizing actions taken under the PA until the entire Master Plan is implemented. This report shall be submitted by the 1st of October each year.

B. The BAND will arrange site visits for any of the consulting parties upon receipt of a written request.

VIII Amendments and termination of PA

A. Any party to this Programmatic Agreement may request that it be amended, whereupon the parties will consult in accordance with 36CFR 800.13 to consider such amendment.

B. Any party to this Programmatic Agreement may terminate it by providing thirty(30) days notice to the other parties, provided that the parties consult during the period prior to termination to seek agreement and amendments or other actions that would avoid termination. In the event of termination, the FmHA and EDA shall comply with 36 CFR 800.4 through 800.6 with regard to individual undertakings covered by this Programmatic Agreement.

C. In the event the BAND does not carry out the terms of this Programmatic Agreement, FmHA and EDA will comply with 36 CFR 800.4 through 800.6 with regard to remaining activities covered by this Programmatic Agreement.

D. Execution and implementation of this Programmatic Agreement evidences that FmHA and EDA have afforded the Council a reasonable opportunity to comment on the program and that they have taken into account the effects of the program on historic properties.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

MAY 26 1996

By: _____ Date: _____

MILLE LACS BAND OF OJIBWE

By: _____ Date: _____

MINNESOTA STATE HISTORIC PRESERVATION OFFICER

By: _____ Date: _____

FARMERS HOME ADMINISTRATION


By: _____ Date: _____

DATED at Vineland, Minnesota this First day of June in the year one thousand nine hundred and ninety-two.



Don Wedll
Commissioner of Natural Resources

APPROVED AND NUMBERED AS TO
FORM AND EXECUTION



James F. Pence
Solicitor General

OFFICIAL SEAL OF THE BAND