

**PROGRAMMATIC AGREEMENT  
CONCERNING THE  
ZOAR LEVEE & DIVERSION DAM – DAM SAFETY MODIFICATION STUDY  
LOCATED IN ZOAR VILLAGE, LAWRENCE TOWNSHIP, TUSCARAWAS COUNTY, OHIO  
AMONG THE U.S. ARMY CORPS OF ENGINEERS, HUNTINGTON DISTRICT, THE OHIO STATE  
HISTORIC PRESERVATION OFFICE AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION**

**RECITALS**

**WHEREAS**, Zoar Levee & Diversion Dam is a Dam Safety Action Classification (DSAC) III Project, with incremental flood risks that have a moderate urgency as defined in Engineering Regulation (ER) 1110-2-1156;

**WHEREAS**, using the authority provided to operate and maintain Zoar Levee & Diversion Dam in Section 4 of the Flood Control Act (FCA) of 1939 (P.L. 76-396) the U.S. Army Corps of Engineers (USACE), Huntington District (Huntington District) is conducting a Dam Safety Modification Study (DSMS) for Zoar Levee & Diversion Dam located in Zoar Village, Lawrence Township, Tuscarawas County, Ohio (Zoar Village) for the purpose of identifying a risk management plan for incremental flood risks as defined in ER 1110-2-1156. This plan shall be approved at the completion of the DSMS, and prior to the initiation of Pre-Construction Engineering and Design;

**WHEREAS**, the approval of a risk management plan, as defined by ER 1110-2-1156, constitutes an undertaking, as defined by 54 U.S.C. 306108, Section 106 of the National Historic Preservation Act of 1966 (as amended) (Section 106) and its implementing regulations, 54 USC 300320, 36 CFR 800.16(y);

**WHEREAS**, once a risk management plan is approved, an area of potential effects (APE) will be delineated by Huntington District and appropriate historic property identification efforts shall be finalized. However, extant information indicates that the undertaking has the potential to cause effects to historic properties;

**WHEREAS**, Zoar Levee & Diversion Dam were built as appurtenances to Dover Dam to keep significant portions of Zoar Village out of Dover's flowage easement, because of Zoar Village's significant history and potential to become a recreational and heritage asset;

**WHEREAS**, after the construction of Zoar Levee & Diversion Dam, in 1941 the Ohio History Connection acquired the first of what eventually would be 14 historic properties in Zoar, which are now managed as Zoar Village Historic Site. The Zoar Historic District was listed on the National Register of Historic Places in 1969 with a subsequent boundary adjustment in 1975. In 2013, another boundary adjustment was made which focused on the nationally

significant properties. (ATTACHMENT 1: MAPS SHOWING VARIOUS HISTORIC BOUNDARIES);

**WHEREAS**, Huntington District has conducted extensive baseline condition studies on Zoar Village in support of the DSMS to comply with ER 1110-2-1156, ER 1105-2-100, the National Environmental Policy Act (NEPA) and other specific resource laws, regulations and policies;

**WHEREAS**, baseline condition studies also indicate that resources not identified in the 1975 or the 2013 boundary adjustments may be determined to contribute to the Zoar Historic District with respect to local and regional significance, and that other historic properties are likely to exist in proximity to Zoar Levee & Diversion Dam (ATTACHMENT 1);

**WHEREAS**, baseline condition studies indicate that Zoar Village, Zoar Historic District and the Zoar Village Historic Site are highly valued nationally, regionally and locally as a significant historic property and recreational and heritage asset that relies on an active resident and business community, investment by private and governmental organizations, and tourism to maintain its historical integrity and significant character defining features;

**WHEREAS**, Huntington District, in accordance with requirements of ER 1110-2-1156 and other pertinent regulations for Civil Works Water Resources Development has identified several risk management alternatives (ATTACHMENT 2) that generally have similar potentials to cause adverse effects to historic properties, as defined by 36 CFR 800.5;

**WHEREAS**, in accordance with Section 106, the Huntington District has consulted with the Advisory Council on Historic Preservation (ACHP) and the Ohio State Historic Preservation Office (SHPO) who are required signatories to this agreement, as well as other Consulting Parties (Section 106 Consulting Parties) (ATTACHMENT 3), for the purpose of taking into account the potential effects of the undertaking on historic properties;

**WHEREAS**, Huntington District and Section 106 Consulting Parties have agreed that until a risk management plan is approved and subjected to more detailed design, the actual extent of effects to historic properties cannot be fully determined prior to the approval of the undertaking. Huntington District and Section 106 Consulting Parties have collaboratively identified potential impacts, including but not limited to effects to historic properties, that could occur as a result of the implementation of any of the risk management plans and have documented those potential effects in an Effects Risk Register (ATTACHMENT 4);

**WHEREAS**, in accordance with 36 CFR 800.14(b)(1)(ii) "Use of programmatic agreements", and Paragraph C-4.d(5)(C) of Appendix C "Environmental Evaluation and Compliance" of ER 1105-2-100 "USACE Planning Guidance Notebook" the parties hereinto have agreed that

development of a programmatic agreement is the appropriate process for addressing potential effects that cannot be fully determined prior to approval of an undertaking;

**WHEREAS**, the Effects Risk Register was designed to identify potential effects that could affect the integrity or significance of historic properties, including but not limited to Zoar Village / Zoar Village Historic Site / Zoar Historic District;

**WHEREAS**, Huntington District and Section 106 Consulting Parties agree that potential direct, indirect and cumulative effects to the Zoar Village's resident and business community, investment by private and governmental organizations and tourism must be considered, as each plays a role in the maintenance of Zoar Village / Zoar Village Historic Site / Zoar Historic District's historical integrity and significant character defining features;

**WHEREAS**, Huntington District has invited Section 106 Consulting Parties (ATTACHMENT 3) to concur with this agreement, including the Village of Zoar, the Zoar Community Association, the Historic Sites and Facilities Division of the Ohio History Connection (incorporated as the Ohio Historical Society) and the National Trust for Historic Preservation (ATTACHMENT 3);

**WHEREAS**, it is likely that the Muskingum Watershed Conservancy District (MWCD) would be the Non-Federal Sponsor on implementing a long-term risk management plan requiring a cost sharing agreement; and

**WHEREAS**, if no action is approved under the DSMS, there is no undertaking and, therefore, this agreement shall not apply.

**NOW THEREFORE**, the Signatories agree that the following stipulations shall be implemented to take into account effects to historic properties following approval of the undertaking and implementation of this agreement fulfills Huntington District's obligations under Section 106.

### **KEY DEFINITIONS**

**CONTRACTOR(s)**: Vendor(s) under contract with Huntington District to implement the Plans and Specifications (P&S) developed during the Pre-construction, Engineering and Design (PED) Phase.

**CONSTRUCTION PHASE**: The Construction Phase is defined as that period of time encompassing project activities required to implement the approved risk management plan. The Construction Phase is initiated by either purchase or transfer of the first parcel/tract of property that supports construction of the alternative described in the Pre-construction, Engineering and Design (PED) phase above or award of the first construction contract that supports the alternative described in the PED phase above. This phase is

defined as being complete when the final as-built construction drawings from the last construction contract are accepted by Huntington District and all contracted activities are completed to the satisfaction of Huntington District. This phase shall rely on construction documents, including but not limited to, the final Plans and Specifications (P&S), bid forms, and notice to bidders.

DESIGN DOCUMENTATION REPORT (DDR): The DDR is a design document that provides the technical basis for the Plans and Specifications (P&S). It serves mainly as a summary of the design to be used by the Project Delivery Team (PDT) during development of the P&S. The DDR is used for reviewing the design and the P&S and is available for future reference. The DDR is primarily an engineering document developed by the Lead Engineer (LE) in cooperation with the PDT.

DAM SAFETY ACTION CLASSIFICATION (DSAC) SYSTEM: The DSAC system is intended to provide consistent and systematic guidelines for appropriate actions to address the dam safety issues and deficiencies of U.S. Army Corps of Engineers (USACE) dams. USACE dams are assigned a DSAC class informed by their incremental flood risk considered as a combination of probability of failure and potential life safety, economic, environmental, and other consequences. The DSAC table presents different levels and urgencies of actions that are commensurate with different levels of incremental flood risk associated with USACE dams. These actions range from immediate recognition of a very high urgency requiring extraordinary and immediate action for dams considered critically near failure or dams with very high incremental flood risk through normal level of urgency for the operations and dam safety activities for dams with very low incremental flood risk and that meet all essential USACE guidelines.

DAM SAFETY MODIFICATION STUDY (DSMS): The DSMS is the safety case that presents the investigation, documentation, and rationale for modifications for dam safety at completed USACE projects. The report presents the formulation and evaluation for a full range of risk reduction alternatives with preliminary level cost estimates. A detailed risk assessment is required to look at incremental risk reduction alternatives that together meet the tolerable risk guidelines and cost effectiveness of reducing the risk to and below the minimum safety criteria. The resultant DSMS decision document will present a comparison of alternatives and the recommended risk management plan to include actions, components, risk reduction by increments or states, implementation plan, detailed cost estimate.

EFFECTS MANAGEMENT OPTIONS: Options formulated during the development of and to be applied throughout this document to reduce, minimize or eliminate the adverse effects including those to be implemented throughout design and construction.

EFFECTS RISK REGISTER: Register developed by Section 106 Consulting Parties to identify potential effects that could result from implementation of any one of the final array of

alternatives. In addition, this register developed potential management options to avoid, minimize, or otherwise mitigate for the potential effects (ATTACHMENT 4).

HUNTINGTON DISTRICT: Huntington District is an installation within USACE, and Major Command within the Department of the Army that encompasses 45,000 square miles in parts of five states including portions of Ohio. Huntington District has primary responsibility to operate and maintain Zoar Levee & Diversion Dam.

LEAD ENGINEER (LE): The USACE LE is the point of contact (POC) for the Pre-construction, Engineering and Design (PED) Phase. The LE is responsible for developing the Design Documentation Report (DDR) and Plans and Specifications (P&S) in accordance with the approved risk management plan, applicable laws, regulations and policies regarding Federal construction.

LEAD PLANNER (LP): The USACE LP is the primary advisor to the Project Manager (PM), Lead Engineer (LE), Resident Engineer (RE), and Public Affairs Officer (PAO) in assuring that the stipulations contained within this agreement, and resulting requirements placed in the Design Documentation Report (DDR) and the Plans and Specifications (P&S) and all obligations made during the feasibility phase are implemented during the Pre-construction, Engineering and Design (PED) and Construction Phases. The LP will rely on persons with the appropriate qualifications associated with the tasks required. For example, when appropriate, the LP shall rely on persons meeting or exceeding the National Park Service professional qualification standards set forth at 62 Fed. Reg. 33,708 (June 20, 1997) regarding qualifications for preservation professionals in the areas of architecture, architectural history, historic preservation and archeology.

MUSKINGUM WATERSHED CONSERVANCY DISTRICT (MWCD): MWCD is a political subdivision of the State of Ohio organized to develop and implement a plan to reduce the effects of flooding and conserve water for beneficial public uses under Ohio Revised Chapter 6101 (commonly called the Conservancy Act). The MWCD is a partner with USACE in the operation of the system of dams and reservoirs in the Muskingum Watershed, including Dover Dam, of which Zoar Levee & Diversion Dam is an appurtenance.

PLANS AND SPECIFICATIONS (P&S): The P&S is one product completed during the Pre-construction, Engineering and Design (PED) Phase and the key output of the Design Documentation Report (DDR) process. The P&S are a portion of the legal construction documents that display in graphic and text form the construction features, materials, and techniques that form the basis for USACE estimated project cost, are the basis for Contractor(s) bids on the project, guide the selected construction Contractor(s) to accomplish the approved project and the legal documents by which the USACE resident engineer inspects the sufficiency and quality of the completed work and approves payment of Contractor's invoices for work completed.

PRECONSTRUCTION, ENGINEERING AND DESIGN (PED) PHASE: The Huntington District shall initiate the Pre-construction, Engineering and Design (PED) Phase of the project subsequent to approval of the undertaking and/or the receipt of PED funding (Federal funds and non-Federal matching funds). This phase shall include preparation of the Design Documentation Report (DDR) and the Plans and Specifications (P&S) for the undertaking. The PED phase will be completed when final P&S have been incorporated into the project construction documents and all internal and external reviews have been completed. Preparation of P&S during development of the DDR will occur in phases.

PROJECT DELIVERY TEAM (PDT): The USACE PDT is a multi-disciplinary team composed up of specialists in the fields of engineering, construction, planning, real estate and other related fields specifically assigned to the undertaking. The PDT works to support all activities conducted during the Pre-construction, Engineering and Design (PED) and Construction Phases and will assist the Project Manager (PM), Lead Engineer (LE), Resident Engineer (RE), Lead Planner (LP) and Public Affairs Officer (PAO) in completing the undertaking.

PROJECT MANAGER (PM): The USACE PM is the primary point of contact for the undertaking and is responsible for managing the overall delivery of the project.

PUBLIC AFFAIRS OFFICER (PAO): The USACE PAO is the technical point of contact for media relations, public information, and community engagement strategies.

RESIDENT ENGINEER (RE): The USACE RE is the primary Huntington District POC during the Construction Phase. The RE is responsible for enforcement of the P&S and applicable laws, regulations and policies regarding Federal construction.

SUBJECT MATTER EXPERT (SME): An individual and/or organization with the experience, expertise, training and education required to perform a specialized job task or skill.

ZOAR HISTORIC DISTRICT: The Zoar Historic District includes those portions of the Zoar Village, the Zoar Village Historic Site and the surrounding areas that have been listed, determined eligible, or considered eligible for listing in the National Register of Historic Places (ATTACHMENT 1).

ZOAR VILLAGE: Zoar Village is defined as the municipal jurisdiction in Lawrence Township, Tuscarawas County, Ohio (ATTACHMENT 1).

ZOAR VILLAGE HISTORIC SITE: Zoar Village Historic Site is defined as that portion of Zoar Village which is owned by the State of Ohio, the Ohio History Connection, Zoar Village and the Zoar Community Association which is operated as an interpretative historic site open to public (ATTACHMENT 1).

## **STIPULATIONS**

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

**QUALIFICATIONS:** Huntington District shall ensure that tasks required by, or resulting from, this Programmatic Agreement shall be completed by person(s) meeting the appropriate standards set forth for the work required. Subject Matter Experts (SMEs) shall be selected by Huntington District, which shall define the specific qualifications associated with education, expertise and experience. When appropriate, qualification standards will rely upon statutory or regulatory requirements, or standards set forth by governmental, professional or certifying organizations, including but not limited to the proposed Secretary of the Interior's Historic Preservation Professional Qualification Standards, at 62 Fed. Reg. 33,708 (June 20, 1997). Huntington District reserves all rights to exclusively determine and select any SME's and professionals required, but will consult with the SHPO regarding the development of scopes of work.

The Effects Risk Register (ATTACHMENT 4) was utilized as the basis for the development of the following stipulations. Specifically, the Effects Risk Register directly influenced Stipulations I and II.

Huntington District shall ensure that the stipulations set forth below shall be carried out to resolve its obligations under Section 106. This Programmatic Agreement, and any resulting effects management options agreed upon due to the implementation of its stipulations, shall be appended to any pre-construction, engineering and design and/or construction documents and contracts associated with the design and implementation of the approved undertaking. Huntington District shall also provide appropriate instruction and training for contractors to ensure that contractors are aware of all relevant provisions. Huntington District may seek comments from SHPO and other Section 106 Consulting Parties to ensure that any agreed upon measures to avoid or minimize effects are clearly stated in such documents.

### **I. STRATEGIES TO AVOID, MINIMIZE OR MITIGATE POTENTIAL EFFECTS THAT COULD OCCUR FROM ANY ALTERNATIVE**

The following defines activities that shall be accomplished during the PED and Construction Phases to avoid, minimize or mitigate for potential effects identified in the Effects Risk Register that could occur from the implementation of any of the risk

management alternatives identified during the DSMS, with the exception of No Action, and are not specific to one alternative or another.

**1) GENERAL COORDINATION**

Consultation completed to date and the Effects Risk Register indicate that regular and meaningful coordination with Section 106 Consulting Parties and the public is required during the PED and Construction Phases to help avoid, minimize, and mitigate for potential effects to historic properties. Therefore, Huntington District shall ensure that the following shall be accomplished regardless of what risk management plan is approved.

- a. Project Coordinator(s): As described in the definitions, the PM, LE, RE and LP play key roles in the development and execution of the DSMS during the PED and Construction phases. The following provides more specifics to facilitate the coordination during these phases.
  - i) The PM shall remain the primary point of contact for the overall delivery of the project during all phases.
  - ii) For the purposes of implementation of all stipulations included herein during the PED phase, the LP shall remain the technical point of contact. At the initiation of the PED phase, Huntington District shall provide the LP's contact information to Section 106 Consulting Parties and the Zoar Levee Citizens Panel (ZLCP) identified in Stipulation I.1.iii.
  - iii) During the Construction Phase, Huntington District shall provide a dedicated email and phone number for residents or any other interested party to be able to contact in case of any issue that requires Huntington District's attention. This email and phone number will be directed to the RE.
    - a) Huntington District shall provide cards with this contact information to all residents within Zoar Village
    - b) Huntington District shall insure that this contact information is visibly posted in locations deemed appropriate by Zoar Village and on pamphlets and signage discussed in Stipulation I.5.
- b. Development Of PED & Construction Phases Schedules: When first developed, Huntington District shall provide Project Implementation Schedules (Schedules) to Section 106 Consulting Parties as a reference point for implementing the terms of this Agreement, including milestones that must be met. Schedules shall be structured so as to provide sufficient time to complete the stipulations within. Huntington District shall provide Section 106 Consulting Parties draft Schedules for

review and comment. Huntington District shall take those comments into account before finalizing Schedules and redistributing them to Section 106 Consulting Parties. At a minimum, two (2) Schedules will be developed:

- i) At the initiation of the PED Phase, when the LE is the point of contact for overall project implementation, and the LP remains the technical point of contact for the purposes of implementation of all stipulations included herein, Huntington District shall maintain a schedule for all activities and clearly highlight the activities included herein for distribution to all stakeholders;
  - ii) At the initiation of the Construction Phase, when the RE becomes the point of contact for overall project implementation, and the LP remains the technical point of contact for the purposes of implementation of all stipulations included herein, Huntington District shall maintain a schedule for all activities in the construction contract and clearly highlight the activities included herein for distribution to all stakeholders.
- c. Zoar Levee Citizens' Panel (ZLCP): Huntington District shall maintain the ZLCP established for the DSMS throughout the PED and Construction Phases. The ZLCP is made up of governmental, community and institutional leaders, as well as citizens interested in working closely with Huntington District on the project. The ZLCP shall be relied upon to advise Huntington District on appropriate management practices during the design and implementation of the approved risk management plan required to avoid, minimize or mitigate for effects to historic properties and other impacts to community or recreational assets that could lead to effects on historic properties. The ZLCP will be open to any and all members of the public and public notices inviting anyone to join the already established ZLCP will be re-issued upon initiation of the PED.
- i) The general goal of the ZLCP will be to meet monthly, or as needed, to address potential issues of effects from the approved risk management plan and ensure the public has the opportunity to continue to comment on the development of the approved risk management plan, it's potential to affect historic properties, and any proposals to resolve adverse effects to historic properties. At a minimum, Huntington District shall utilize the ZLCP to coordinate the following issues identified in the Effects Risk Register (ATTACHMENT 4), as deemed applicable for the approved risk management plan:
    - a) Accommodating access for emergency responders, residents, businesses and tourists during construction activities using effect management options identified in the Effects Risk Register
    - b) Helping to reduce impacts to festivals, speakers' series, education classes and other cultural events using effect management options identified in the Effects Risk Register.

- c) Helping to visually/functionally integrate required alternative features into the existing landscape, using effect management options identified in the Effects Risk Register.
  - d) Conducting two (2) workshops prior to beginning construction to educate the public about various conditions that will accompany construction activities and provide strategies for dealing with any temporary but unavoidable conditions.
  - e) Advising of upcoming construction activities or changes in construction activities.
- ii) Huntington District shall document and utilize the results of ZLCP meetings to develop the DDR and P&S, and inform consultation that occurs during Stipulation II.
    - a) At a minimum, the Mayor of Zoar Village, or his/her designated representative, and a delegate of the Zoar Community Association shall also represent the ZLCP during consultation outlined in Stipulation II to ensure that results of ZLCP meetings are accurately represented and utilized in developing any mitigation required into the DDR and P&S.
    - b) Huntington District shall also invite Section 106 Consulting Parties to attend all ZLCP meetings.
- d. SECTION 106 CONSULTATION: Huntington District shall consult with the Section 106 Consulting Parties (ATTACHMENT 3) for the Zoar Levee & Diversion Dam, DSMS regarding the consideration of effects to historic properties from the approved risk management plan.
    - i) Huntington District shall maintain regular and meaningful consultation with Section 106 Consulting Parties throughout the PED and Construction Phase.
      - a) The nature of this consultation is discussed in more detail in Stipulation II.
    - ii) As discussed above, Huntington District shall invite the Section 106 Consulting Parties to all ZLCP meetings.
- 2) BEST MANAGEMENT PRACTICES: In addition to any requirements laid out in required National Pollutant Discharge Elimination System (NPDES) or other related permit requirements, Huntington District shall require that the Contractor(s) employ all best management practices designed to avoid or minimize impacts to Zoar Village, the Zoar Village Historic Site, and Zoar Historic District during the Construction Phase. Minimum requirements are outlined in ATTACHMENT 5.
- 3) PRE AND POST-CONSTRUCTION ASSESSMENTS: To enhance the baseline understanding of existing structural conditions of buildings that could be impacted by construction activities, Huntington District shall ensure the following activities are

completed. As discussed in Stipulation I.1, Huntington District shall use this information to coordinate and consult with the ZLCP to facilitate comment on the development of the approved risk management plan, its potential to affect historic properties, and any proposals to resolve adverse effects to historic properties. Per Stipulation II.1, Huntington District shall provide this information to Section 106 Consulting Parties for review and comment.

- a. Vibration Assessment: At the initiation of the PED Phase, Huntington District shall consult a Subject Matter Expert (SME) to establish a monitoring procedure to include strategies to measure ambient vibration levels, and establish monitoring procedures during and immediately following construction. The procedure shall be scaled appropriately based on the nature of the approved risk management plan.
  - i) The scope, extent and nature of these activities shall be determined by the appropriate SME. The SME shall consult industry-accepted data on ground vibration levels generated by equipment types (including excavation, trenching, compaction, drilling, vehicle movements and both loading and unloading equipment) necessary to construct project features and include that information in the development of the procedure.
  - ii) Huntington District shall accomplish measurement of ambient vibration levels during development of the DDR to help develop the P&S.
  - iii) As determined necessary by the SME, Huntington District shall establish procedures for vibration monitoring during and immediately following construction, which shall be attached and incorporated, into the P&S.
  - iv) If unanticipated adverse effects to historic properties are incurred by the construction activities, Huntington District shall utilize the procedures outlined in Stipulation III.
  
- b. Structural Stability Assessment: At the initiation of the PED Phase, Huntington District shall consult a SME to establish an area appropriate to the undertaking within which an assessment will be made of existing structural conditions of all buildings within the survey area. This conditions assessment will be conducted by an appropriate SME and will inventory all existing structural issues and also make recommendations if any structures may require stabilization prior to the initiation of construction. A procedure to include strategies to monitor the structural stability during and following construction shall also be developed. The procedure shall be scaled appropriately based on the nature of the approved risk management plan.
  - i) The scope, extent and nature of these activities shall be determined by the appropriate SME. The SME shall rely upon industry-accepted methods for structural condition assessments.
  - ii) The existing structural conditions assessment shall be accomplished during development of the DDR to help develop the P&S.

- iii) The established procedures for monitoring the structural stability during and immediately following construction shall be attached and incorporated into the P&S.
- iv) If unanticipated adverse effects to historic properties are incurred by the construction activities, these will be dealt with using the procedures outlined in Stipulation III.

4) **ARCHEOLOGICAL INVESTIGATIONS:** At the initiation of the PED Phase, Huntington District shall carry out the investigations to have a better understanding if the approved risk management plan will have an effect on significant or substantial archeological resources. Per Stipulation II.1, this information shall be provided to Section 106 Consulting Parties for review.

- a. **Phase I Archeological Survey.** Phase I work will be designed to provide descriptions of the field work and any recovered artifacts, and offer, if appropriate, recommendations concerning National Register eligibility and any additional survey work proposed. This work shall be performed in accordance with professionally accepted methods and will be consistent with SHPO guidelines. The level of effort will depend on existing conditions, archeological potential, consultation with local experts and readily available local information, and professional judgment. Areas where the extent depth and nature of previous disturbance can be demonstrated to have previously disturbed soils and sediments that would be affected by the proposed action need not be investigated for archeological sites as described below.

Prior to initiation of Phase I work, Huntington District shall notify Section 106 Consulting Parties of its intention to carry out field studies. In addition to providing specific methods for investigations, justifications for areas where archeological investigations are not needed shall also be documented. Huntington District shall provide an updated research design to SHPO and any interested Section 106 Consulting Parties. Huntington District shall also provide the proposed schedule for archaeological fieldwork. The SHPO and Section 106 Consulting Parties shall have 30 days to review and provide comment on the scope of work.

Following resolution of comments on the scope of work, Huntington District shall carry out these investigations on areas proposed for ground disturbance. Management summaries can be prepared following the completion of field work during all phases of archeology. These documents can be utilized to consult in the interim while awaiting receipt of final reports. Management Summaries shall briefly describe and chart the location of investigations, the methods used, encountered archeological sites, and/or negative findings. Summary recommendations and preliminary conclusions shall also be provided. All identified and investigated

archeological sites shall be formally documented on Ohio Archeological Inventory (OAI) forms.

b. Outreach to Indian Tribes: Huntington District invited all federally recognized Indian tribes that expressed concern with the effects of this undertaking on historic properties, or that may have had ancestral connection to lands within Huntington District to be Section 106 Consulting Parties (ATTACHMENT 6) at the initiation of the DSMS. The Seneca Nations of Indians, Wyandotte Tribe of Oklahoma, and the Oneida Indian Nation accepted this invitation and have been included on all Section 106 consultation and meeting invites. Huntington District shall continue to consult with federally recognized tribal nations, including re-inviting federally recognized tribal nations on ATTACHMENT 6 to be Section 106 Consulting Parties at the initiation of PED.

i) This outreach shall include an invitation to participate in a virtual meeting to learn more about the undertaking. At a minimum, Huntington District shall provide a history of dam safety problems, go over the DSMS, the approved risk management plan, this Programmatic Agreement and historic property efforts conducted to date. This virtual meeting shall be held within 2 months of initiating PED to ensure that federally recognized tribal nations shall have an opportunity to meaningfully participate in consultation.

ii) Continued consultation shall focus on the potential for the undertaking to affect archeological resources or sacred and religious sites that are eligible for inclusion in the National Register of Historic Places or that may have religious and cultural significance to any federally recognized Indian tribe.

iii) This consultation shall occur using the Section 106 consultation outlined in Stipulation II.

5) REPORTING: Huntington District shall ensure that reports adequately documenting all assessments and investigations discussed in Stipulations I.3-4 are prepared.

a. The final results of research, assessments, investigations and data analysis shall then be incorporated into technical reports meeting applicable professional standards. Minimally, full technical reports shall: Describe and chart project locations and elements;

ii) Provide summary information from the background research;

iii) Provide a clear and comprehensive discussion of methods utilized, citing appropriate standards;

iv) Provide a justifiable research design;

v) Provide precise locational information on all assessments and investigations and reported findings;

vi) Provide detailed descriptions of project conditions. Measured drawings and

- photography shall be utilized to enhance these descriptions, as deemed appropriate;
- vii) Provide justifiable conclusions; and
  - viii) Provide concluding statements concerning the need for, if any, additional assessments or investigations.

**6) OUTREACH COMMITMENTS RELATED TO MINIMIZATION OF INDIRECT EFFECTS DURING CONSTRUCTION:**

During the PED Phase, Huntington District shall consult with Zoar Village, Zoar Community Association and Ohio History Connection to develop a public outreach plan to help educate the public about the purpose and duration of DSMS construction activities and Zoar Levee & Diversion Dam in general, as well as make clear that Zoar Village and Zoar Village Historic Site are still open and accessible during construction. The PAO shall take primary responsibility for developing, implementing and evaluating public outreach plans. To meet these objectives Huntington District shall:

- a. Design, host, maintain, and manage a dedicated web page with social media support during the life of the Construction Phase to communicate the purpose of Zoar Levee & Diversion Dam as well as provide regular updates on construction.
- b. Create a color flyer or brochure to inform the public of the purpose and duration of construction activities and make clear that Zoar Village and Zoar Village Historic Site is still open during construction. Up to 6,000 copies of this flyer or brochure shall be produced. How and where this information will be distributed shall be determined with Section 106 Consulting Parties during consultation outlined in Stipulation II.
- c. Huntington District shall also provide, as requested, updates on construction activities for newsletters or other media (e.g. websites) maintained and operated by Zoar Village, Zoar Community Association and Ohio History Connection or any other Section 106 Consulting Parties, media outlet or organizations, including but not limited to appropriate tourism and recreation organizations or chambers of commerce.
- d. Create, erect and maintain durable but temporary outdoor interpretive exhibits including two large banners or two panel displays and two poster boards to be installed during construction that educate the public with information about the purpose of Zoar Levee & Diversion Dam.
- e. Create and disseminate four informational video news releases to update the public on the purpose and duration of the Construction Phase. These video news releases shall be generally be 4-6 minutes in length and shall be developed to be included on Huntington District and Section 106 Consulting Party websites.
- f. Staff kiosks at the Zoar Harvest Festival and Civil War Days held during construction to engage and inform members of the public about the purpose of Zoar Levee & Diversion Dam and related construction activities.

- g. Create and disseminate media advisories and press releases to various media outlets; host media open houses, press conferences, and media round tables when deemed appropriate by Huntington District personnel.
- h. Engage in up to eight educational/ informational/ outreach activities such as serving as guest speakers at civic events and/or guest lecturers at schools, as invited.
- i. Offer two training workshops (no longer than 4 hours each) to Zoar Community Association docents who give tours of the Zoar Village Historic Site to help educate the public about the purpose of Zoar Levee & Diversion Dam and related construction activities.

## **II. PROGRAMMATIC PROCEDURES TO CONSIDER EFFECTS TO HISTORIC PROPERTIES DURING PED & CONSTRUCTION PHASES**

The following defines activities that shall be accomplished during the PED and Construction Phases to consider potential effects once a specific risk management plan has been selected and approved by the USACE Dam Safety Officer. The Effects Risk Register (ATTACHMENT 4) identifies possible effects that could occur during the implementation and potential effect management options associated with the final array of alternatives (ATTACHMENT 4). However, it was determined by Section 106 Consulting Parties that until a risk management plan was approved and subject to PED activities, the actual extent of effects to historic properties cannot be fully considered. Therefore, the following stipulations shall be accomplished to ensure compliance with 36 CFR 800 and 54 U.S.C. 306108.

### **1) IDENTIFICATION OF HISTORIC PROPERTIES:**

- a. As early as practicable during PED Phase, Huntington District will prepare documentation that describes the undertaking and establishes an Area of Potential Effects (APE), as defined in 36 CFR 800.16(d), along with the basis for its selection. This documentation shall be provided to Section 106 Consulting Parties for a period of 30 days (upon receipt) for review and comment. Within this documentation, graphical representation of the undertaking shall be provided to convey the extent, depth and nature of the undertaking in the relation to the APE. Following this review period, Huntington District may convene a Charrette with Section 106 Consulting Parties.
- b. During the 30 day review period, Section 106 Consulting Parties may advise Huntington District on what additional efforts, if any, may be required to identify or evaluate historic properties, as defined by 36 CFR 800.16(l), in the APE. If a Charrette is held, Section 106 parties shall have up to 15 days following the Charrette to provide this feedback.

- c. Huntington District shall take these comments into account and then present its final determination on the APE and what additional identifications efforts, if any, are necessary to Section 106 Consulting Parties.
- d. Huntington District shall then implement all efforts necessary to identify or evaluate historic properties in the APE.
- e. If access to private property is required to conduct historic property identification efforts, Huntington District shall seek a right-of-entry from the owner to accomplish the required work.

## **2) REVIEW OF COMPLETED HISTORIC PROPERTY IDENTIFICATION EFFORTS**

- a. Completed historic property identification efforts, including but not limited to archeological surveys, vibration and structural assessments, and Baseline Studies completed during the DSMS, shall be provided to Section 106 Consulting Parties for review and comment. Huntington District shall provide a summary of findings regarding historic properties located within the APE to accompany these identification efforts.
- b. Section 106 Consulting Parties shall have 30 (upon receipt) days to review and provide comment on these assessments and summaries.
- c. Huntington District shall take those comments into account and seek to reach concurrence with SHPO regarding the final identification of historic properties. At the discretion of Huntington District, additional time may be allowed to complete this step and a Charrette can be held to discuss substantive issues with Section 106 Consulting Parties.
- d. Any disagreements between Huntington District and SHPO regarding whether or not a resource qualifies as a historic property shall be resolved through a request made by Huntington District to the Keeper of the National Register of Historic Places, pursuant to 36 CFR 800.4(c)(2) and 36 CFR 63.

## **3) APPLICATION OF CRITERIA OF ADVERSE EFFECTS**

- a. Following resolution of comments provided on identification efforts, Huntington District shall submit a finding of effects to Section 106 Consulting Parties that describes how they have applied the Criteria of Adverse Effects, as defined by 36 CFR 800.5(a)(1) to the undertaking. This effect determination shall be supported by information required to understand its basis.
- b. Section 106 Consulting Parties shall have 30 days (upon receipt) to review the finding of effects and provide comments for consideration. Huntington District will ask the SHPO to concur with the effects determinations that are proposed; all Section 106 Consulting Parties may request additional information to support consultation regarding the effect determinations within this time period.

- c. SHPO concurrence with a finding of no adverse effect, as defined by 36 CFR 800.5(b), and consideration of comments from Section 106 Consulting Parties may successfully conclude consultation regarding the effects to historic properties from the approved risk management plan. Even if an objection is not made under Stipulation VI, Huntington District shall seek to resolve any concerns expressed about a finding of no adverse effect by Section 106 Consulting Parties.
- d. In the event that Huntington District finds that there may be adverse effect(s) to historic properties or if SHPO does not agree with the initial effect determination, and this disagreement cannot be resolved, Huntington District shall hold a Charrette with Section 106 Consulting Parties to discuss ways to resolve any potential adverse effects. This Charrette will occur after the initial 30 day review period has elapsed and the comments of Section 106 Consulting Parties have been considered by Huntington District. Continued consultation will seek concurrence between Huntington District and SHPO regarding any "no adverse effect" determination(s), or seek to resolve any potential adverse effects through consultation between Section 106 Consulting Parties.
- e. If adverse effects are identified, consultation shall determine if the Effects Risk Register has adequately captured the scope and nature of these effects or if additional effects need to be considered. In consultation with Section 106 Consulting Parties, Huntington District shall determine if potential effect management options in the Effects Risk Register are appropriate to take into account the effects to historic properties. Consultation may also consider whether other options to avoid, minimize, or mitigate for effects need to be considered or added.

#### **4) RESOLUTION OF ADVERSE EFFECTS**

- a. Huntington District shall incorporate proposed effect management options into the DDR and P&S for review and comment by Section 106 Consulting Parties.
- b. Prior to finalizing the DDR and P&S, Section 106 Consulting Parties shall be given 30 days (upon receipt) to review and comment on resulting effect management options included in DDR and P&S
- c. At the end of this review and comment period, Huntington District may hold a Charrette with Section 106 Consulting Parties to resolve comments and finalize the effect management options to be included in the DDR and P&S to resolve adverse effects to historic properties. Huntington District may also propose to mitigate for adverse effects and shall provide information to the Section 106 Consulting Parties describing additional mitigation commitments that were not otherwise provided for in the Effects Risk Register.
- d. Section 106 Consulting Parties shall be provided finalized effect management and mitigation options prior to completing the DDR and P&S to review.

- e. Section 106 Consulting Parties shall be provided 30 days to review the finalized effect management options.
- f. If substantial changes are still required, Huntington District may hold a second Charrette to seek to resolve disagreement between signatories.
- g. Resolution of adverse effects to historic properties will be formalized by a letter agreement that summarizes all actions to be taken, including effect management options and any additional mitigation commitments included in the DDR and P&S. The District shall consult and seek concurrence from the Ohio History Connection (SHPO) to the resolution proposed. If after consultation, SHPO does not concur the District shall seek resolution as defined under Section VI (Dispute Resolution).

#### **5) IMPLEMENTATION OF THE UNDERTAKING**

- a. Huntington District shall ensure that all effect management options and mitigation commitments that are made in the letter agreement, DDR and P&S are fully implemented.

### **III. UNANTICIPATED DISCOVERIES OR IMPACTS TO HISTORIC PROPERTIES**

In accordance with 36 CFR 800.13, a process to resolve adverse effects on any post-review discovery of historic properties or unanticipated impacts to historic properties during the construction or implementation of the undertaking must be considered. A process to consider these possibilities will be better informed following the selection of the long-term risk management plan and by activities accomplished during Stipulation II.

After selection of the long-term risk management plan and prior to initiation of construction activities, Huntington District shall prepare a more detailed plan for consultation about post-review discovery of historic properties or unanticipated impacts. The detailed plan will be provided to consulting parties for a period of 30 days for review and comment. After taking such comments into account, Huntington District shall treat the agreed upon procedures as an effect management option and therefore, incorporate it in the DDR and P&S and fully implemented per Stipulations II.3 and II.4.

#### **1) Post Review Discovery Of Archeological Sites**

If previously unidentified archaeological sites are discovered after the completion of the Section 106 review and during the Construction Phase, construction activities in and immediately surrounding the post review discovery will stop immediately at the direction of the USACE RE. No further construction in the area of the discovery will proceed until the requirements of 36 CFR Section 800.13 have been satisfied, including consultation with federally recognized Indian Tribes that may attach traditional cultural and religious significance to the discovered site.

To fulfill this requirement, Huntington District will consult with SHPO and federally recognized Indian Tribes, as appropriate, to record, document, and evaluate the site for its eligibility to the NRHP, its relationship to the existing historic district and to determine if the undertaking may have an effect on the property. If the Huntington District finds that it is not practical to conduct a sufficiently comprehensive study to determine the eligibility of the property, then the District may opt to consult with the SHPO and with other consulting parties and tribes, as appropriate, to develop a plan to meaningfully preserve or otherwise document the property. If it is determined that that undertaking shall adversely affect the property, Huntington District will consult with SHPO and federally recognized Indian Tribes, as appropriate, to design a plan for avoiding, minimizing, or mitigating adverse effects on the property. If neither the SHPO nor a federally recognized Indian Tribe files a timely objection to the Huntington District's plan for addressing the discovery, Huntington District may carry out the requirements of 36 CFR Section 800.13 and the ACHP need not be notified.

## 2) Unanticipated Discoveries of Human Remains

Human remains are subject to protection under Ohio Revised Code Sections 2909.05 and 2927.11 may also be subject to provisions of 33 U.S.C. 3001 (Native American Graves Protection and Repatriation Act of 1990) (NAGPRA), depending on the antiquity and context of the remains.

If previously unidentified human remains' (as defined under NAGPRA) are inadvertently discovered, the construction activities within a 20 ft. buffer surrounding the post review discovery will stop immediately at the direction of the RE or RE designee. The remains will be covered and/or protected in place in such a way as to minimize further exposure of, or damage to, the remains. The RE shall immediately notify appropriate local law enforcement and/or the Tuscarawas County Coroner. Within 72 hours of the discovery of human remains, the PM or LP will notify the SHPO.

If the remains are determined to be archeological, and not forensic in origin, Huntington District will consult with SHPO, federally recognized Indian Tribes (if appropriate), local authorities, and appropriate Section 106 Consulting Parties, to develop a plan for treating the human remains. If the human remains qualify as an inadvertent discovery defined by Section 3(d) of NAGPRA, Huntington District shall follow the processes set forth in 43 CFR 10.4 and 10.5. Construction at and immediately surrounding the discovery shall not proceed until these obligations are resolved.

If the remains are determined to be forensic in nature, construction at and immediately surrounding the discovery, shall not proceed until cleared by the appropriate law enforcement authorities.

### 3) Emergency Actions

Huntington District may draw upon the project documentation that was generated for the purposes of this project review in order to more effectively consult with SHPO for any emergency actions that are necessary to ensure public safety before the implementation of this project has been completed. Huntington District may consult during the PED phase to develop more detailed emergency consultation procedures that relate to specific actions in the project's P&S.

## **IV. DURATION OF PROGRAMMATIC AGREEMENT**

This Programmatic Agreement shall expire eight years after the date of its execution (date last signatory has signed the agreement). Prior to such time, Huntington District may consult with signatories to reconsider the terms of the agreement or to amend it in accordance with Stipulation V. If the implementation of the undertaking and all mitigation has not yet been completed, and if no party objects, this Programmatic Agreement shall automatically be extended for another three years, at the request of any signatory.

Throughout the duration of this agreement, Huntington District shall hold an annual teleconference and invite Section 106 Consulting Parties to discuss the status of undertaking and implementation of this agreement.

## **V. AMENDMENTS TO PROGRAMMATIC AGREEMENT**

This agreement may be amended when such amendment is agreed to in writing by all signatories. The amendment will be effective on the date when all signatories have signed it.

## **VI. DISPUTE RESOLUTION**

Should any signatory to this agreement, or a Section 106 Consulting Party, object at any time to any actions proposed, or the manner in which the terms of this agreement are implemented, Huntington District shall consult with such party to resolve the objection. If Huntington District determines that such objection cannot be resolved, Huntington District shall:

Forward all documentation relevant to the dispute, including Huntington District's proposed resolution, to the ACHP. The ACHP shall provide Huntington District 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, Huntington District shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, and provide the objecting party and all signatories

with a copy of this written response. Huntington District shall then proceed according to its final decision.

If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, Huntington District may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, Huntington District shall prepare a written response that takes into account any timely comments regarding the dispute and provide the objecting party, all signatories, and the ACHP with a copy of such written response.

Huntington District's responsibilities to carry out all other actions subject to the terms of this agreement that are not the subject of the dispute remain unchanged.

## **VII. PROGRAMMATIC AGREEMENT TERMINATION**

If any signatory of this agreement determines that its terms will not, or cannot, be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment per Stipulation VI above. If within forty-five (45) days an amendment cannot be reached, any signatory may terminate the PA upon written notification to the other signatories.

Once the PA is terminated, Huntington District must either (a) execute a new PA pursuant to 36 CFR Section 800.14(b) or (b) follow the process outlined in 36 CFR Section 800.3 through 800.6 to consider the effects on historic properties. Huntington District shall notify the signatories as to the course of action it will pursue.

## **VIII. ANTI-DEFICIENCY ACT COMPLIANCE**

All stipulations requiring expenditure of funds are subject to the availability of funds. If sufficient funds are not made available to fully execute this agreement, Huntington District shall consult with other signatories to either amend or terminate this agreement per Stipulations VI and VII.

## **SIGNATORIES:**

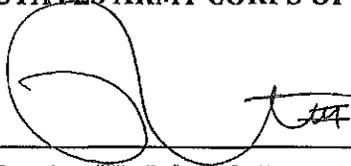
Execution of this agreement by the signatories (Advisory Council on Historic Preservation, Ohio State Historic Preservation Office (SHPO) and the Huntington District), and implementation of its terms evidences that Huntington District has afforded the signatories and the consulting parties a reasonable opportunity to comment on Zoar Levee & Diversion Dam, DSMS and Huntington District has taken into account the effects that the Zoar Levee & Diversion Dam, DSMS may have on historic properties.

**PROGRAMMATIC AGREEMENT  
CONCERNING THE  
ZOAR LEVEE & DIVERSION DAM – DAM SAFETY MODIFICATION STUDY  
LOCATED IN ZOAR VILLAGE, LAWRENCE TOWNSHIP, TUSCARAWAS COUNTY, OHIO  
AMONG THE U.S. ARMY CORPS OF ENGINEERS, HUNTINGTON DISTRICT, THE OHIO STATE  
HISTORIC PRESERVATION OFFICE AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION**

**SIGNATORY**

**THE UNITED STATES ARMY CORPS OF ENGINEERS, HUNTINGTON DISTRICT**

By: \_\_\_\_\_



Date: 21 Apr 2016

(Philip M. Secrist, III, Colonel, Corps of Engineers, District Engineer)

**PROGRAMMATIC AGREEMENT  
CONCERNING THE  
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HISTORIC PRESERVATION OFFICE AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION**

**SIGNATORY**

**THE UNITED STATES ARMY CORPS OF ENGINEERS, HUNTINGTON DISTRICT**

**By: \_\_\_\_\_ Date: \_\_\_\_\_**  
(Philip M. Secrist, III, Colonel, Corps of Engineers, District Engineer)

**PROGRAMMATIC AGREEMENT  
CONCERNING THE  
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HISTORIC PRESERVATION OFFICE, AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION**

**SIGNATORY**

**OHIO STATE HISTORIC PRESERVATION OFFICE - OHIO HISTORY CONNECTION**

By:  Date: 7/22/16  
(Amanda Schraner Terrell, Deputy State Historic Preservation Officer)

**PROGRAMMATIC AGREEMENT  
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HISTORIC PRESERVATION OFFICE, AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION**

**SIGNATORY**

**OHIO STATE HISTORIC PRESERVATION OFFICE - OHIO HISTORY CONNECTION**

**By:** \_\_\_\_\_ **Date:** \_\_\_\_\_  
(Amanda Schraner Terrell, Deputy State Historic Preservation Officer)



**PROGRAMMATIC AGREEMENT  
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HISTORIC PRESERVATION OFFICE, AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION**

**SIGNATORY**

**THE ADVISORY COUNCIL ON HISTORIC PRESERVATION**

By: John M. Fowler Date: 4/25/16  
John M. Fowler, Executive Director



**PROGRAMMATIC AGREEMENT  
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HISTORIC PRESERVATION OFFICE AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION**

**CONCURRING**

**OHIO HISTORY CONNECTION**

**By:** \_\_\_\_\_ **Date:** \_\_\_\_\_  
(George Kane, Director of Historic Sites & Facilities)



**PROGRAMMATIC AGREEMENT  
CONCERNING THE  
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HISTORIC PRESERVATION OFFICE AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION**

**CONCURRING**

**THE VILLAGE OF ZOAR**

**By:** \_\_\_\_\_ **Date:** \_\_\_\_\_  
(Mayor)



**PROGRAMMATIC AGREEMENT  
CONCERNING THE  
ZOAR LEVEE & DIVERSION DAM – DAM SAFETY MODIFICATION STUDY  
LOCATED IN ZOAR VILLAGE, LAWRENCE TOWNSHIP, TUSCARAWAS COUNTY, OHIO  
AMONG THE U.S. ARMY CORPS OF ENGINEERS, HUNTINGTON DISTRICT, THE OHIO STATE  
HISTORIC PRESERVATION OFFICE, AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION**

**CONCURRING**

**THE ZOAR COMMUNITY ASSOCIATION**

**By:** \_\_\_\_\_ **Date:** \_\_\_\_\_  
(Jon Elsasser, President)