PROGRAMMATIC AGREEMENT

among

UNITED STATES ARMY,
ILLINOIS STATE HISTORIC PRESERVATION OFFICER,
and ADVISORY COUNCIL ON HISTORIC PRESERVATION

for the

Closure and Disposal of Savanna Army Depot Activity, Illinois

August 2000

Whereas the United States Army (Army) is responsible for implementation of applicable provisions of the Defense Base Closure and Realignment Act of 1990 (P.L. 101-510) as amended, and is proceeding with the closure of Savanna Army Depot Activity (SVDA), and consequent disposal of excess and surplus property in a manner consistent with the requirements of the applicable Defense Base Closure and Realignment Commission recommendation; and

Whereas the Army has determined that leasing, licensing and/or disposal of all or portions of SVDA, in Illinois, may have an effect upon historic properties that have been designated as eligible for listing in, the National Register of Historic Places, and has consulted with the Illinois State Historic Preservation Officer (SHPO), and the Advisory Council on Historic Preservation (Council) pursuant to 36 C.F.R. Part 800, regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. Section 470(f), Section 110(f) of the same Act (16 U.S.C. Section 470h-2[f]), and Section 111 of the same Act (16 U.S.C. Section 470h-3); and

Whereas after real estate screening activities were conducted it was determined that SVDA surplus lands will be divided between the U.S. Fish and Wildlife Service, the U.S. Army Corps of Engineers, the Illinois Department of Natural Resources, and the Jo Carroll Depot Local Reuse Authority; and

Whereas the Army will conduct cultural resource inventory activities only for those lands to be transferred to non-federal entities; and

Whereas the Army has completed a number of historic architectural and archeological surveys (listed in Attachment A) to support

disposal of portions of the BRAC property to non-federal entities; and

Whereas none of the SVDA buildings to be conveyed to non-federal entities, examined by the 1997 architectural inventory study, were determined to be eligible for the National Register of Historic Places; and

Whereas a number of archeological sites located within those SVDA BRAC excess lands scheduled for disposal to non-federal entities have been determined to be eligible or potentially eligible for the National Register of Historic Places (listed in Attachment B); and

Whereas not all BRAC lands to be disposed of to non-federal entities can be surveyed for archeological resources until the lands have been examined for and, if necessary, cleared of unexploded ordnance (UXO); and

Whereas interested members of the public, including the Jo Carroll Depot Local Redevelopment Authority, and Native Americans, have been provided opportunities to comment on the effects this base closure may have on historic properties at SVDA through public hearings, consultation meetings, and other means; and

Whereas in carrying out the disposal of excess and surplus property the Army will comply with all applicable laws and regulations, including 36 C.F.R. Part 79, Curation of Federally-Owned and Administered Archeological Collections;

Whereas the Jo Carroll Depot Local Redevelopment Authority has been invited to concur in this agreement document; and

NOW, THEREFORE, the Army, the SHPO, and the Council agree that the undertaking described above shall be implemented in accordance with the following stipulations to take into account the effect of the undertaking on historic properties.

STIPULATIONS - The Army will ensure that the following measures are carried out:

I. Identification and Evaluation

A. The Army will conduct Phase I archeological site location surveys for those SVDA lands that are to be transferred to non-federal entities and that have not been previously surveyed for archeological resources (Appendix C map

displays those SVDA lands that will be surveyed for archeological resources).

B. For lands that must be examined for potential UXO contamination, archeological surveys will be conducted only after the area has been examined for UXO and has been determined as being safe for subsurface archeological testing. Due to explosive ordnance qualification requirements and safety factors, no archeologists will be made part of the actual UXO field survey and disposal teams. However, archeologists associated with the UXO contractor and the U.S. Army Corps of Engineers (USACE) will be available for consultations and to examine any archeological finds that may be made in the course of the UXO investigations. The following procedures will be followed by the UXO disposal teams that will conduct the UXO surveys.

1. Prior to the initiation of field investigations at SVDA, UXO survey personnel will receive a cultural resources orientation concerning known cultural resource sites within the project area and recognition of cultural resource artifactual materials that could be encountered by the UXO investigations.

2. UXO surveys will involve location of metallic objects by metal detectors and hand excavation of these metallic objects by UXO disposal experts. Non UXO related metallic objects and any other cultural items encountered by the investigators will be left on the ground surface adjacent to the hole from which they were removed for later examination and, if appropriate, collection during subsequent archeological surveys.

3. UXO field survey personnel will notify the SVDA BRAC Environmental Coordinator (BEC) and the contract or USACE archeologist of any cultural materials or human skeletal materials encountered during the UXO investigations. If human skeletal remains are encountered, UXO investigations will be immediately halted for that sampling grid and the SVDA BEC and USACE archeologist will make arrangements to determine the origin of the human remains and whether the requirements of the Native American Graves Protection and Repatriation Act (NAGPRA) should be enacted.

4. UXO related items encountered by the UXO disposal experts may be removed from the location where they are encountered for disposal or may be exploded *in situ,* if removal is considered to be too hazardous.

C. The Army will coordinate the findings and recommendations for all SVDA archeological surveys with the Illinois SHPO as the survey reports are completed.

II. Caretaker Maintenance of Historic Properties

During the caretaker period prior to transfer of SVDA properties out of Federal ownership, the Army will ensure the protection of SVDA archeological sites determined to be on, or eligible for inclusion on the National Register. In furtherance of this effort, the Army will develop a plan to protect these sites, and will provide the SHPO with a copy of the archeological site protection plan for comment.

III. Licenses and Leases

Licenses or leases, to other than federal agencies, of historic properties will include language provided in Attachment D of this agreement as appropriate.

IV. Disposal of SVDA Properties

A. Transfer of Real Property That Does Not Contain Historic Properties

In leasing or disposing of real property and improvements--for which identification and evaluation have been completed in consultation with the SHPO--that do not contain historic properties, any portion of an historic property, archeological sites, or any portion of an archeological site, no further action is necessary under this agreement. The Army will, however, promptly notify the SHPO that such a transfer has been completed.

B. Assignments to Other Federal Agencies

In assigning historic property (ies) directly to another Federal agency by a transfer authority such as The Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. § 471 et seq.), the receiving Federal agency will be deemed responsible for compliance with 36 C.F.R. Part 800 and any other applicable state or Federal laws and regulations with respect to the maintenance and disposal of these properties. The Army will promptly notify the SHPO and Council in writing of each Federal agency that has requested and been assigned such property.

C. Public Benefit Conveyances to Non-Federal Recipients

In disposing of historic property(ies) directly to a non-Federal recipient - at the request of a sponsoring Federal agency, and pursuant to the Public Benefit Conveyance authorities contained in the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. § 471 et seq.), and other applicable authorities - an appropriate preservation covenant (found at Attachment E) will be incorporated in the transfer instrument(s). The Army will promptly notify the SHPO and Council in writing of each such transfer of an archeological-site property.

D. Economic Development Conveyances to LRAs

In disposing of historic property(ies) to a Local Redevelopment Authority (LRA) pursuant to the Economic Development Conveyance authority contained in the Defense Base Closure and Realignment Act of 1990 (Public Law 101-510, as amended), an appropriate preservation covenant (found at Attachment E) will be incorporated in the transfer instrument(s). The Army will promptly notify the SHPO and Council in writing of each such transfer of an archeological-site property.

E. Competitive Sales

In disposing of historic properties via a competitive sale transfer authority, the Army's bid solicitation will contain the following information:

(1) Information on the property's archeological significance, identifying elements, or other characteristics of the property that should be given special consideration in planning;

(2) Information on financial incentives for preservation of archeological properties;

(3) Information indicating that an appropriate preservation covenant will be incorporated in the instrument transferring title to the property, and that this covenant will be substantively identical to the one contained in Attachment E of this agreement (as appropriate), unless modifications are authorized pursuant to the process described in paragraph IV. G, below, and as required to accord the covenants with state law.

In developing the above information for inclusion in its initial bid solicitation document, the Army will solicit the advice and

assistance of the SHPO. The Army need not solicit such advice and assistance in preparing subsequent solicitation documents, unless such documents contain historic properties information that materially differs from that included in the initial solicitation document. The Army will notify the SHPO and Council in writing of each such transfer of an archeological-site property.

F. Negotiated Sales

In disposing of historic properties via a negotiated sale transfer authority, the Army will provide a written document ("negotiation document") to the negotiating party that sets forth the same information described in subparagraphs IV. E (1), (2) & (3), above. In developing this information for inclusion in the negotiation document to be provided to the initial negotiating party, the Army will solicit the advice and assistance of the SHPO. The Army need not solicit such advice and assistance in preparing negotiation documents for subsequent negotiating parties, unless such documents contain historic properties information that materially differs from that included in the document provided to the initial negotiating party. The Army will notify the SHPO and Council in writing of each such transfer of an archeological-site property.

G. Covenant Modification to Facilitate Transfer

If the Army cannot transfer the property or properties that contain National Register eligible archeological sites pursuant to the provisions set forth in paragraphs IV. C, D, E, and F above, then the Army will consult with the SHPO, the Council, and (with respect to transfers pursuant to paragraphs IV. C, D, and F) the prospective transferee(s) to determine appropriate modifications to the preservation covenant contained in Attachment E that are necessary in order to complete transfer of the property(ies) within established disposal timelines. Such modifications shall be limited to those that are reasonably necessary in order to effect transfer of, or effectively market, the concerned property within established timelines.

V. Environmental Remediation

A. UXO identification and removal will be handled as described in Stipulation I.B of this agreement document. As they are developed, the plans for other proposed environmental remediation activities will be reviewed by the SVDA BRAC Environmental Coordinator (BEC) to identify any effects to historic properties, known or yet to be discovered. If the Army determines that a proposed remediation activity will take place

less than 100 feet from a historic property and has the potential to affect that property, the Army will consult with the SHPO to determine what steps, if any, should be taken with respect to those effects.

B. Proposed remediation plans that the Army determines may affect historic properties will be submitted to the SHPO for review and comment in accordance with the following procedures:

(1) Proposed remediation plans or supplemental documentation furnished by the Army will provide descriptions of any potential conflicts between remediation and preservation of historic properties;

(2) In situations where the Army determines that there is an immediate threat to human health, safety, or the environment, and that remediation must proceed without first taking steps to preserve historic properties, then the Army's reasons for so determining will be fully described;

(3) In situations where the Army determines that there is not an immediate threat to human health, safety, or the environment, and that implementation of its proposed remediation plan will result in the destruction or substantial alteration of any historic property, then the Army shall either modify its remediation plan to avoid the adverse effect or implement data recovery and/or recordation in consultation with the SHPO, taking into account health and safety constraints inherent in properties containing hazardous materials, resource availability, and any other relevant constraints.

VI. Anti-Deficiency Act

The stipulations of this agreement are subject to the provisions of the Anti-Deficiency Act. If compliance with the Anti-Deficiency Act alters or impairs the Army's ability to implement the stipulations of this agreement, the Army will consult in accordance with the amendment and termination procedures found at Sections IX. and X. of this agreement.

VII. Status Reports

Until such time as all SVDA archeological properties have been transferred from Army control in accordance with the terms of this agreement, the Army will provide an annual status report

to the Council and Illinois SHPO to review implementation of the terms of this agreement and to determine whether amendments are needed. If amendments are needed, the signatories to this agreement will consult, in accordance with Stipulation IX. of this agreement, to make such revisions.

VIII. Dispute Resolution

A. Should the Illinois SHPO and/or the Council object within thirty (30) days to any plans or other documents provided by the Army or others for review pursuant to this agreement, or to any actions proposed or initiated by the Army pursuant to this agreement, the Army shall consult with the objecting party to resolve the objection. If the Army determines that the objection cannot be resolved, the Army shall forward all documentation relevant to the dispute to the Council. Within thirty (30) days after receipt of all pertinent documentation, the Council will either:

(1) Provide the Army with recommendations, which the Army will take into account in reaching a final decision regarding the dispute; or

(2) Notify the Army that it will comment pursuant to 36 C.F.R. 800.7(c), and proceed to comment.

Any Council comment will be taken into account by the Army in accordance with 36 C.F.R. 800.7(c)(4) with reference to the subject of the dispute.

B. Any recommendations or comment provided by the Council pursuant to Stipulation VIII. A above will pertain only to the subject of the dispute; the Army's responsibility to carry out all other actions under this agreement that are not the subjects of the dispute will remain unchanged.

C. At any time during implementation of the measures stipulated in this agreement by the Army, if an objection to any such measure or its manner of implementation is raised by interested persons, then the Army shall consider the objection and consult, as appropriate, with the objecting party, the SHPO, and the Council to attempt to resolve the objection.

IX. Amendments

A. The Army, Illnois SHPO, and/or Council may request that this PA be revised, whereby the parties will consult to consider whether such revision is necessary.

B. If it is determined that revisions to this PA are necessary, then the Army, the Council, and the SHPO shall consult pursuant to 36 C.F.R. 800.6(c)(7), as appropriate, to make such revisions. Except that, reviewing parties must comment on, or signify their acceptance of, the proposed changes to the PA in writing within 30 days of their receipt.

X. Termination of Agreement

A. The Army, Illnois SHPO, and/or Council may terminate this PA by providing thirty (30) days written notice to the other signatory parties. During the period after notification and prior to termination the Army, the Council, and the SHPO will consult to seek agreement on amendments or other actions that would avoid termination. In the event of termination, the Army will comply with 36 CFR Part 800.6(c)(8) with regard to individual undertakings associated with the BRAC disposal action.

Execution and implementation of this PA evidences that the Army has afforded the Council a reasonable opportunity to comment on the closure and disposal of excess and surplus property at SVDA, and that the Army has taken into account the effects of the undertaking on historic properties. Execution and compliance with this programmatic agreement fulfills the Army's Section 106 responsibilities regarding the closure and disposal of Savanna Army Depot Activity.

DEPARTMENT OF THE ARMY

By: Charles S. Mahan Jr. Date: 21 August 2000
Charles S. Mahan, Jr.
Major General, USA
Chief of Staff

ILLINOIS STATE HISTORIC PRESERVATION OFFICER

By: Anne E. Haaker Date: 9-20-00
Anne Haaker
Deputy State Historic Preservation Officer

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____ Date: _____
John Fowler
Executive Director

Concur:

JO CARROLL DEPOT LOCAL REDEVELOPMENT AUTHORITY

By: _____ Date: _____
John A. Morehead
Executive Director

DEPARTMENT OF THE ARMY

By: Charles S. Mahan Jr. Date: 21 August 2000
Charles S. Mahan, Jr.
Major General, USA
Chief of Staff

ILLINOIS STATE HISTORIC PRESERVATION OFFICER

By: Date: 9-20-00
Anne Haaker
Deputy State Historic Preservation Officer

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: John M. Fowler Date: 10/13/00
John Fowler
Executive Director

Concur:

JO CARROLL DEPOT LOCAL REDEVELOPMENT AUTHORITY

By: John A. Morehead Date: 9-25-00
John A. Morehead
Executive Director

ATTACHMENT A

Bibliography of Cultural Resource Studies Conducted to Support BRAC Disposal of Savanna Army Depot Activity Properties

Ball, Donald B.
1997 *A Cultural Resources Reconnaissance of A Proposed 164 Acre Prison Site, Savanna Army Depot Activity, Jo Daviess County, Illinois*. Report prepared by the U.S. Army Corps of Engineers, Louisville District.

Hardlines
1997 *Architectural Inventory of a Portion of the Savanna Army Depot Activity, Carroll and Jo Daviess Counties, Illinois*. A report prepared for the U.S. Army Corps of Engineers, Louisville District by Hardlines: Design and Delineation, a subcontractor of International Technology, Inc.

Miller, Orloff G., Sarah Adams, and E. Jeanne Harris
1999 *Phase I Archaeological Survey of ca. 212 Acres (85.8 hectares) at the Savanna Army Depot Activity, Carroll County Illinois*. A report prepared for the U.S. Army Corps of Engineers, Louisville District by Gray and Pape, Inc.

Whitman, Linda G. and Nathan Young
1998 *Phase I Literature Review and Archaeological Cultural Resource Survey of 210 Acres (85 ha) at Savanna Army Depot Activity, Carroll County, Illinois*. A report prepared for the U.S. Army Corps of Engineers, Louisville District by ASC Group, Inc., a subcontractor of the IT Corporation.

ATTACHMENT B

Savanna Army Depot Activity, Illinois
Known Historic Properties on or Eligible for
the National Register of Historic Places
that will be Disposed of to Non-Federal Entities

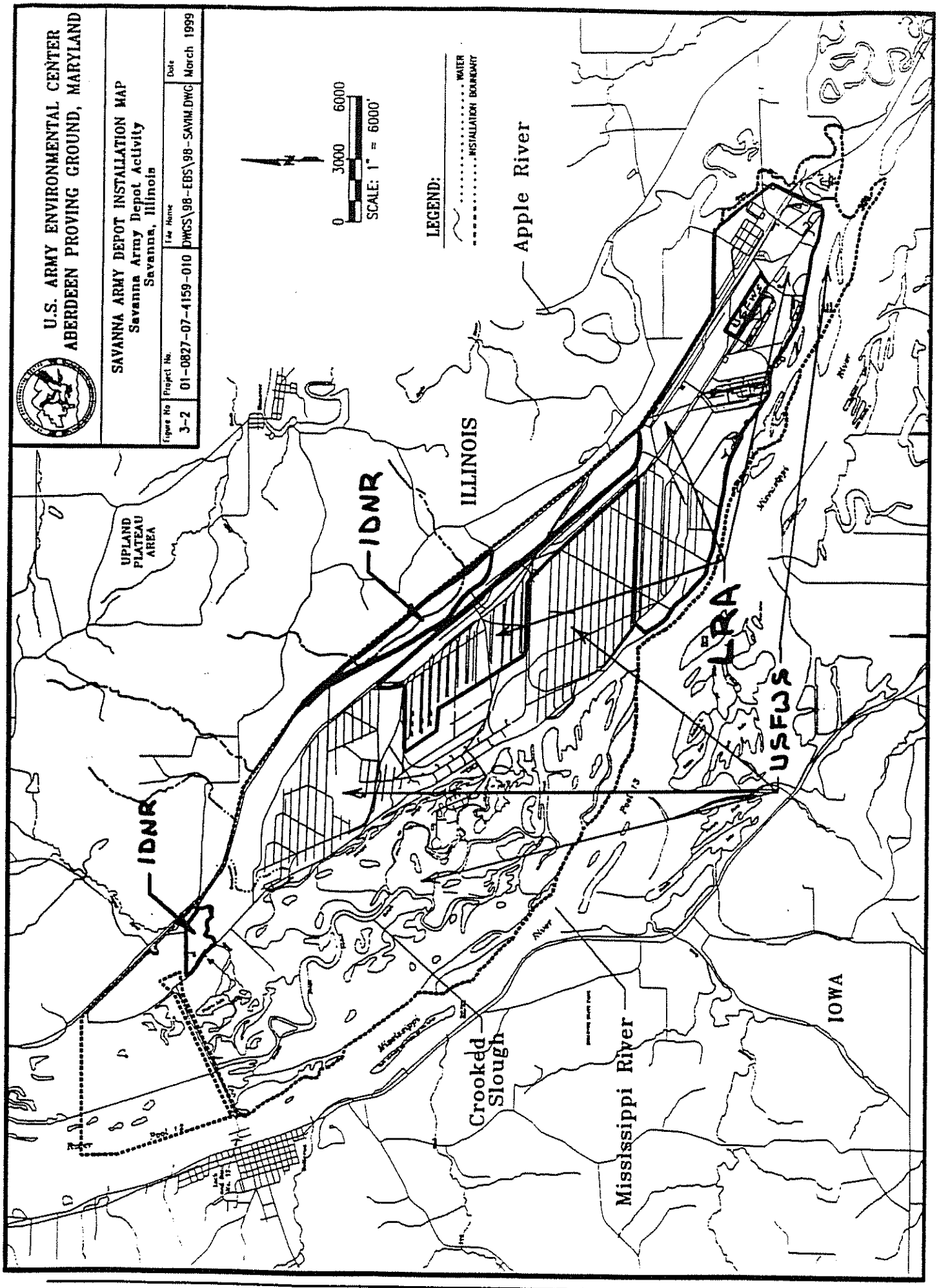
11CA1*
11CA2
11CA3+
11CA139*
11CA142
11CA143*
11CA147
11CA148
11CA149

* Lands making up this archeological site lie within two BRAC disposal parcels, one to be acquired by the local reuse authority and the other by the U.S. Fish and Wildlife Service.

+ The mounds formerly associated with this site have been destroyed, but the site may still have the potential to possess subsurface burials.

ATTACHMMENT C

Map Displaying the Location of
Savanna Army Depot Activity Lands to be
Transferred to Federal and
Non-Federal Entities


U.S. ARMY ENVIRONMENTAL CENTER
ABERDEEN PROVING GROUND, MARYLAND
SAVANNA ARMY DEPOT INSTALLATION MAP
Savanna Army Depot Activity
Savanna, Illinois
Figure No. 3-2
Project No. 01-0827-07-4159-010
File Name DWGS\98-EBS\98-SAVIM.DWG
Date March 1999
0 3000 6000
SCALE: 1" = 6000'
LEGEND:
WATER
INSTALLATION BOUNDARY
Apple River
ILLINOIS
IDNR
IDNR
UPLAND PLATEAU AREA
USFWS
USFWS
Crooked Slough
Mississippi River
IOWA

ATTACHMENT D - **Language to be included in lease and license agreements when archeological sites are present.**

Archeological Property(ies) Lessee (License) Language

Archeological property(ies)XXX is/are (eligible for inclusion in/listed in) the National Register of Historic Places. The Lessee (Licensee) shall ensure that the property(ies) remain(s) undisturbed. The Lessee (Licensee) will notify the Army of any proposed ground disturbance to the archeological property prior to undertaking said ground disturbance. Notification will include a detailed description of the proposed undertaking. If the Army does not object to the proposal within 30 days of receipt of such notification and adequate supporting documentation, the Army will, with the assistance of the Lessee (Licensee), initiate consultation with the Illinois SHPO in accordance with Section 106 of the National Historic Preservation Act and its implementing regulations, "Protection of Historic Properties" (36 C.F.R. Part 800). The Lessee (Licensee) will not undertake the proposed action until the Army notifies the Lessee (Licensee) that the requirements of Section 106 have been fulfilled and the Lessee (Licensee) may proceed. If the Army objects to the Lessee's (Licensee's) proposed ground disturbance, the Lessee shall not undertake the proposed action.

ATTACHMENT E: STANDARD PRESERVATION COVENANT FOR CONVEYANCE OF PROPERTY THAT INCLUDES ARCHEOLOGICAL SITES

1. In consideration of the conveyance of the real property that includes the [official number(s) designation of archeological site(s)] located in the County of [name of county], Illinois, which is more fully described as [insert legal description], [Name of property recipient] hereby covenants on behalf of [himself/herself/itself], [his/her/its] heirs, successors, and assigns at all times to the Illinois State Historic Preservation Officer (SHPO), to maintain and preserve [official number(s) designation of archeological site(s)], in accordance with the provisions of paragraphs 2 through 11 of this covenant.

2. (Name of property recipient) will notify the Illinois SHPO in writing prior to undertaking any disturbance of the ground surface or any other action on [official number(s) designation of archeological site(s)] that would affect the physical integrity of this/these site(s). Such notice shall describe in reasonable detail the proposed undertaking and its expected effect on the physical integrity of [official number(s) designation of archeological site(s)].

3. Within thirty (30) calendar days of the Illinois SHPO's receipt of notification provided by (name of property recipient) pursuant to paragraph 2 of this covenant, the SHPO will respond to (name of property recipient) in writing as follows:

(a) That (name of property recipient) may proceed with the proposed undertaking without further consultation; <u>or</u>

(b) That (name of property recipient) must initiate and complete consultation with the Illinois SHPO before (he/she/it) can proceed with the proposed undertaking.

If the Illinois SHPO fails to respond to the (name of property recipient)'s written notice within thirty (30) calendar days of the SHPO's receipt of the same, then (name of property recipient) may proceed with the proposed undertaking without further consultation with the SHPO.

4. If the response provided to (name of property recipient) by the Illinois SHPO pursuant to paragraph 3 of this covenant requires consultation with the SHPO, then both parties will so consult in good faith to arrive at mutually-agreeable and appropriate measures that (name of property recipient) will employ to mitigate any adverse effects associated with the proposed undertaking. If the parties are unable to arrive at such mutually-agreeable mitigation measures, then (name of property recipient) shall, at a minimum, undertake recordation

for the concerned property--in accordance with the Secretary of Interior's standards for recordation and any applicable state standards for recordation, or in accordance with such other standards to which the parties may mutually agree--prior to proceeding with the proposed undertaking. Pursuant to this covenant, any mitigation measures to which (name of property recipient) and the SHPO mutually agree, or any recordation that may be required, shall be carried out solely at the expense of (name of property recipient).

5. [Name of recipient] shall make every reasonable effort to prohibit any person from vandalizing or otherwise disturbing any archeological site determined by the Illinois SHPO to be eligible for inclusion in the National Register of Historic Places. Any such vandalization or disturbance shall be promptly reported to the Illinois SHPO.

6. The Illinois SHPO shall be permitted at all reasonable time to inspect [parcel designation] in order to ascertain its condition and to fulfill its responsibilities hereunder.

7. In the event of a violation of this covenant, and in addition to any remedy now or hereafter provided by law, the Illinois SHPO may, following reasonable notice to [name of recipient], institute suit to enjoin said violation or to require the restoration of any archeological site affected by such violation.

8. [Name of recipient] agrees that the Illinois SHPO may, at its discretion, after 30 days notice to [name of recipient], convey and assign all or part of its rights and responsibilities contained in this covenant to a third party.

9. This covenant is binding on [name of recipient], [his/her/its] heirs, successors, and assigns in perpetuity. Restrictions, stipulations, and covenants contained herein shall be inserted by [name of recipient] verbatim or by express reference in any deed or other legal instrument by which [he/she/it] divests [himself/herself/itself] of either the fee simple title or any other lesser estate in [parcel designation] or any part thereof.

10. The failure of the Illinois SHPO to exercise any right or remedy granted under this instrument shall not have the effect of waiving or limiting the exercise of any other right or remedy or the use of such right or remedy at any other time.

11. The covenant shall be a binding servitude upon the real property that includes [official number(s) designation of archeological site(s)] and shall be deemed to run with the land. Execution of this covenant shall constitute conclusive evidence

that [name of recipient] agrees to be bound by the foregoing conditions and restrictions and to perform the obligations herein set forth.