



**US Army Corps  
of Engineers®**

**PROGRAMMATIC AGREEMENT AMONG  
THE U.S. ARMY CORPS OF ENGINEERS, THE FLORIDA STATE HISTORIC PRESERVATION  
OFFICER, AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION REGARDING THE LAKE  
OKEECHOBEE WATERSHED RESTORATION PROJECT, GLADES, HIGHLANDS, OKEECHOBEE, AND  
MARTIN COUNTIES, FLORIDA**

**WHEREAS**, the U.S. Army Corps of Engineers, Jacksonville District (Corps), plans to construct the Lake Okeechobee Watershed Restoration Project (Project) with project Components located in Glades, Highlands, Okeechobee, and Martin counties, Florida, as a component of the Comprehensive Everglades Restoration Plan (CERP); and

**WHEREAS**, the Project is the only CERP project in development north of Lake Okeechobee designed to increase water storage capacity in the watershed, and improve Lake Okeechobee water levels and distribution of flood control releases to the Northern Estuaries (Caloosahatchee River Estuary and St. Lucie River Estuary), increase accessibility of water supply, and to restore the south Florida ecosystem while providing for water-related needs of the regions pursuant to the 2000 Water Resources Development Act (WRDA 2000); and

**WHEREAS**, the South Florida Water Management District (SFWMD) is the non-Federal sponsor for the project; and

**WHEREAS**, the Corps has determined that the Project constitutes an undertaking, as defined in 36 C.F.R. § 800.16(y), and therefore, is subject to Section 106 of the National Historic Preservation Act of 1966 (Section 106 of the NHPA), 54 U.S.C. § 306108; and

**WHEREAS**, the Corps has drafted a feasibility report in the form of an integrated Project Implementation Report (PIR) and Environmental Impact Statement (EIS) wherein the Recommended Plan includes the construction of a Wetland Attenuation Feature (WAF), wetland restoration areas, and Aquifer Storage and Recover (ASR) wells; and

**WHEREAS**, Section 1001 of the Water Resources Reform and Development Act of 2014 (Public Law 113-121) mandates that, to the extent practicable, final feasibility reports will be completed in three years and will have a maximum Federal cost of \$3 million; therefore, Project designs and impacts are preliminary and may be subject to change. Due to these timing and budgetary constraints, the size of the Project, and inability to gain access to private property, the Corps cannot conduct the necessary surveys to identify and evaluate cultural resources and determine effects of the Project prior to completing the appropriate National Environmental Policy Act (NEPA) documentation (PIR/EIS); and

**WHEREAS**, the Corps, has determined a preliminary area of potential effects (APE) for the direct effects of the Project which includes the construction footprint of WAF (including seepage canal, levee embankments, outlet canal, and water control structures), areas within the Kissimmee River Center and Paradise Run Wetland Restoration Sites, and ASR well cluster sites located within WAF, and located around Lake Okeechobee as depicted on maps in Attachment A to this Programmatic Agreement (Agreement); and

**WHEREAS**, the preliminary APE will be refined in the Preliminary Engineering and Design (PED) phase of the Project. Implementation of PED is contingent on authorization of the Project by Congress in a WRDA. The Corps may implement PED in phases as funding is appropriated and construction authority

**PROGRAMMATIC AGREEMENT REGARDING THE LAKE OKEECHOBEE WATERSHED RESTORATION  
PROJECT, GLADES, HIGHLANDS, OKEECHOBEE, AND MARTIN COUNTIES, FLORIDA**

is provided and, as a result, efforts to identify and evaluate historic properties and the determination of effects from Project features and related consultation may be conducted over a period of multiple years when a design for each Project phase and/or feature is known; and

**WHEREAS**, the Project will be constructed on property that is currently owned, or will be acquired by the SFWMD prior to construction; and

**WHEREAS**, the Corps has determined that the Project has the potential to affect properties eligible for listing in the National Register of Historic Places (NRHP) and has consulted with the Florida State Historic Preservation Officer (SHPO), the Seminole Tribe of Florida, the Seminole Nation of Oklahoma, the Miccosukee Tribe of Indians of Florida, and the Thlopthlocco Tribal Town pursuant to Section 106 of the NHPA; and

**WHEREAS**, the Corps has conducted a cultural resources survey of a portion of the preliminary APE which is documented in the report *Cultural Resource Assessment Survey for the Lake Okeechobee Watershed Restoration Project Glades and Okeechobee Counties, Florida* (Southeastern Archaeological Research, Inc. 2018), a manuscript on file at the Florida Master Site File Office; and

**WHEREAS**, the Corps has identified eight archaeological sites within the preliminary APE as depicted on maps in Attachment B to this Agreement, including 8GL72, 8GL77, 8GL492, 8GL494, 8GL495, 8GL496, 8GL497, and 8OB365, that may be affected by a Project phase and/or feature; and

**WHEREAS**, portions of the preliminary APE have been partially surveyed as depicted on maps in Attachment B, and additional cultural resources surveys and evaluations are necessary to identify the presence of archaeological sites and determine if these sites are eligible for listing in the NRHP; and

**WHEREAS**, the Corps, with the concurrence of SHPO, has decided to comply with Section 106 of the NHPA for the undertaking, including all Project phases and/or features through the execution and implementation of this Agreement, following 36 C.F.R. § 800.14(b); and

**WHEREAS**, in accordance with 36 C.F.R. § 800.14(b)(3), the Corps, in a letter dated May 10, 2019, notified the Advisory Council on Historic Preservation (ACHP) of the Agreement per 36 C.F.R. § 800.6(a)(1)(C), and the ACHP has elected to participate; and

**WHEREAS**, in accordance with 36 C.F.R. § 800.14(b)(3), the Corps, in a letter dated May 10, 2019, notified and invited the Seminole Tribe of Florida, the Seminole Nation of Oklahoma, the Miccosukee Tribe of Indians of Florida and the Thlopthlocco Tribal Town per 36 C.F.R. § 800.6(a)(1)(C) to participate in this Agreement, and they have declined to participate in this Agreement and will remain Consulting Parties; and

**WHEREAS**, SHPO, ACHP, and interested Tribe(s) hereinafter are referred to as Consulting Parties; and

**WHEREAS**, in accordance with 36 C.F.R. § 800.6(a)(4) and 36 C.F.R. § 800.14(b)(2)(ii), the Corps has notified the public of the Project and provided an opportunity for members of the public to comment on the Project and the Section 106 process as outlined in this Agreement; and

**PROGRAMMATIC AGREEMENT REGARDING THE LAKE OKEECHOBEE WATERSHED RESTORATION  
PROJECT, GLADES, HIGHLANDS, OKEECHOBEE, AND MARTIN COUNTIES, FLORIDA**

NOW, THEREFORE, the Signatories agree that the undertaking, including all Project phases and/or features, shall be implemented in accordance with the following stipulations, which establish the process the Corps shall follow for compliance with Section 106, taking into consideration the views of the Consulting Parties; in order to take into account the potential effects of the specific Project phase or feature on historic properties.

**STIPULATIONS**

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

**I. TIME FRAMES AND REVIEW PROCEDURES**

For all final documents and deliverables produced in compliance with this Agreement, the Corps shall provide a hard copy of documents via mail to the Consulting Parties for review. If Consulting Parties agree, draft documents may be sent electronically for formal review and for communications amongst themselves for activities in support of this Agreement. Any written comments provided by the Consulting Parties within 30 calendar days from the date of receipt shall be considered in the revision of the document or deliverable. The Corps shall document and report the written comments received for the document or deliverable and how comments were addressed. The Corps shall provide a revised final document or deliverable to the Consulting Parties. The Consulting Parties shall have 30 calendar days to respond. Failure of the Consulting Parties to respond within 30 calendar days of receipt of any document or deliverable shall not preclude the Corps from moving to the next step in this Agreement. A copy of the final document shall be provided to the Consulting Parties subject to the limitations in Stipulation VII (Confidentiality).

**II. AREA OF POTENTIAL EFFECTS**

- A. Determination of the Preliminary Area of Potential Effects. The preliminary APE for the Project was determined by the Corps in consultation with the Consulting Parties. During the Lake Okeechobee Watershed Restoration study, the Corps screened approximately 30 alternatives to select the least-costly plan that reasonably maximized environmental benefits for the proposed project. Scoring for each alternative was based on the results of hydrologic modeling, percentage of already existing public land ownership within the footprint, co-location opportunities with proposed ASR wells and/or wetlands, and the cost in dollars per acre foot of water storage. Based on these criteria, the Corps selected the Recommended Plan and the construction footprint of the Recommended Plan is comprised within the preliminary APE. Design and construction of the project will occur in phases in which various components of the Project shall be funded for development separately. The Corps shall continue to refine and consult on the development of each phase of project, and consult on the APE for each project feature through PED. The preliminary APE includes the footprint of the WAF (including seepage canal, levee embankments, and inundated areas of the WAF), outlet canal, water control structures, areas within the Kissimmee River Center and Paradise Run Wetland Restoration Sites, and ASR well cluster sites located within the WAF and within the ASR cluster locations around Lake Okeechobee as depicted on maps in Attachment A to this Agreement.
- B. If the Corps revises the APE or an individual component of the APE, the Corps shall consult with the Consulting Parties on that revision in accordance with Stipulation I (Timeframes and Review

**PROGRAMMATIC AGREEMENT REGARDING THE LAKE OKEECHOBEE WATERSHED RESTORATION  
PROJECT, GLADES, HIGHLANDS, OKEECHOBEE, AND MARTIN COUNTIES, FLORIDA**

Procedures). The Corps shall determine the potential for Project activities to affect historic properties in a revised APE in consultation with the Consulting Parties pursuant to 36 C.F.R. §§ 800.3 - 800.5. The Corps will inform the Consulting Parties of the final APE regardless of changes for each project feature or component. If the Corps determines that changes to the APE will affect historic properties, the Corps shall consult on this finding of effect in accordance with Stipulation I (Timeframes and Review Procedures). Revisions to the APE will not necessitate amendments to this Agreement.

**III. TREATMENT OF HISTORIC PROPERTIES**

**A. IDENTIFICATION AND EVALUATION**

The Corps shall complete additional identification and evaluation of historic properties as early as practical, following Project authorization and funding, to assist in the avoidance and minimization of historic properties well in advance of Project construction.

1. Identification of historic properties. An inventory of properties within the final APE, agreed to under Stipulation II, consistent with the Secretary of Interior's (SOI's) *Standards and Guidelines for Archeology and Historic Preservation* (48 F.R. 44716–44740) will be initiated for each Project phase or feature as construction details become available. The Corps shall submit research designs for proposed surveys including areas excluded from survey due to previous ground disturbance to Consulting Parties for review and comment consistent with Stipulation I (Timeframes and Review Procedures).
  - a. All cultural resources surveys and associated reporting will comply with all applicable guidelines and requirements specified in Florida Division of Historical Resources' (DHR's) Module Three, *Guidelines for Use by Historic Preservation Professional*. Survey recordation shall include features, isolates, and re-recordation of previously recorded sites, as necessary. The survey shall ensure that historic properties such as historical structures and buildings, historical engineering features, landscapes, viewsheds, and traditional cultural properties (TCPs), are recorded, in addition to archaeological sites. Recordation of historic structures, buildings, objects, and sites shall be prepared using the Florida SHPO Site File forms.
  - b. Cultural resources surveys will include those locations without substantial ground disturbance that have not been previously surveyed for historic properties. The Corps shall document and consult on areas of ground disturbance excluded from surveys during Consulting Party review of the survey research design.
  - c. The Corps shall submit identification and evaluation reports to Consulting Parties for review and comment consistent with Stipulation I (Timeframes and Review Procedures).
2. Determinations of Eligibility. The Corps shall determine NHRP eligibility based on identification and evaluation efforts, and consult with Consulting Parties regarding these determinations. Should any Consulting Party(s) disagree in writing to the Corps' findings of NRHP eligibility and/or findings of effect within a final document or deliverable, the Corps will immediately notify the Consulting Parties of the objection and proceed to consult with the objecting Party for a period of time, not to exceed 30 calendar days, to resolve the objection. Should the objecting Party(s) and the Corps be unable to agree on the issues to which the Consulting Party(s) has objected, the Corps shall proceed in accordance with Stipulation VIII (Dispute Resolution); or
  - a. Through mutual agreement of the Signatories, elect to consult further with the objecting Party(s) until the objection is resolved, or dispute resolution is exercised through the

**PROGRAMMATIC AGREEMENT REGARDING THE LAKE OKEECHOBEE WATERSHED RESTORATION  
PROJECT, GLADES, HIGHLANDS, OKEECHOBEE, AND MARTIN COUNTIES, FLORIDA**

- process set forth in Stipulation VIII (Dispute Resolution);
- b. Treat the property as eligible for the National Register; or
- c. Obtain a formal determination of eligibility from the Keeper of the National Register. The Keeper's determination will be final in accordance with 36 C.F.R. § 63.4.

**B. DETERMINATION OF EFFECTS**

The Corps may implement the Project in a phased approach as funding is appropriated and construction authority is provided and, as a result, multiple identification surveys, historic property evaluations, and determinations of effects may result for each Project phase, and or feature. The Corps reserves the right to make separate determinations of effects for each Project phase, and or feature. As necessary, the Corps will hold face-to-face consultations, and provide technical expertise to assist Consulting Party review in the results of the cultural resource investigations, modifications to the APE, determination of effects, engineering details, and hydrological impacts of the Project or Project phase.

**1. Findings of No Historic Properties Affected.**

- a. **Basis for Finding.** The Corps shall make findings of "no historic properties affected" for each Project phase or construction feature under the following circumstances:
  - i. If no historic properties are present in the APE; or
  - ii. The Project phase or feature shall avoid effects to historic properties (including cumulative effects).
- b. The Corps shall notify Consulting Parties of each finding and provide supporting documentation in accordance with 36 C.F.R. § 800.11(d). Unless a Consulting Party objects to a finding within 30 days, the Section 106 of the NHPA review of the specific Project phase or feature will have concluded.
- c. If a Consulting Party objects within 30 days to a finding of "no historic properties affected," the Corps shall consult with the objecting Party to resolve the disagreement.
  - i. If the objection is resolved, the Corps either may proceed with the specific Project phase or feature in accordance with the resolution or reconsider effects on the historic property by applying the criteria of adverse effect pursuant to 36 C.F.R. § 800.5(a)(1).
  - ii. If the Corps is unable to resolve the disagreement, it will forward the finding and supporting documentation to ACHP and request that ACHP review the Corps' finding in accordance with the process described Section VIII (Dispute Resolution). The Corps shall prepare a summary of its decision that contains the rationale for the decision and evidence of consideration of the ACHP's opinion, and provide this to the Consulting Parties. If the Corps' final determination is to reaffirm its "no historic properties affected" finding, the Section 106 of the NHPA review of the specific Project phase or feature will have concluded. If the Corps revises its finding then it shall proceed to Stipulation III.B.2 or Stipulation III.B.3 (below).

**2. Findings of No Adverse Effect.** If the Corps determines that an specific Project phase or feature does not meet the adverse effect criteria, the Corps shall propose a finding of "no adverse effect" and consult with Consulting Parties in accordance with 36 C.F.R. § 800.5(b) and following steps a-c below.

- a. The Corps shall notify all Consulting Parties of its finding(s); describe any project specific conditions and/or modifications required to the Project phase or feature to avoid or minimize effects to historic properties; and provide supporting documentation pursuant to 36 C.F.R. §800.11(e).

**PROGRAMMATIC AGREEMENT REGARDING THE LAKE OKEECHOBEE WATERSHED RESTORATION  
PROJECT, GLADES, HIGHLANDS, OKEECHOBEE, AND MARTIN COUNTIES, FLORIDA**

- b. Unless a Consulting Party objects within 30 days, the Corps will proceed with its “no adverse effect” determination and conclude the Section 106 of the NHPA review.
  - c. If a Consulting Party objects within 30 days to a finding of “no adverse effect,” the Corps will consult with the objecting Party to resolve the disagreement.
    - i. If the objection is resolved, the Corps shall proceed with the Project phase or feature in accordance with the resolution; or
    - ii. If the objection cannot be resolved, the Corps shall request that ACHP review the findings in accordance with 36 C.F.R. § 800.5(c)(3)(i)-(ii) and submit the required supporting documentation. The Corps shall, pursuant to 36 C.F.R. § 800.5(c)(3)(ii)(B), prepare a summary of its decision that contains the rationale for the decision and evidence of consideration of the ACHP’s opinion, and provide this to the Consulting Parties. If the Corps’ final determination is to reaffirm its “no adverse effect” finding, the Section 106 of the NHPA review of the specific Project phase or feature will have concluded. If the Corps will revise its finding then it shall proceed to Stipulation III.B.3 below.
  - d. Avoidance and Minimization of Adverse Effects. Avoidance of adverse effects to historic properties is the preferred treatment approach. The Corps will consider redesign of elements of the Project phase or feature in order to avoid and/or minimize historic properties and Project effects that may be adverse. If the Corps determines that the Project phase or feature cannot be modified to avoid or minimize adverse effects, the Corps will make a determination of “adverse effect”.
3. Determination of Adverse Effects. If the Corps determines that a specific Project phase or feature may adversely affect a historic property, it shall notify the Consulting Parties of the determination, document why the effect cannot be avoided, and outline the alternatives considered to avoid and to minimize adverse effects, and consult to resolve the effects as outlined in Section III.C Historic Properties Treatment Plan.

**C. HISTORIC PROPERTIES TREATMENT PLAN**

If the Corps determines that Project activities will result in adverse effects to historic properties, the Corps, in coordination with the Consulting Parties, shall develop a Historic Properties Treatment Plan (HPTP) to resolve adverse effects resulting from the Project or a specific Project phase or feature. If necessary, a HPTP will also provide recommendations for the management of historic properties that are identified during this Project and which are located within long-term routine operations and maintenance areas for the Project. A HPTP would be developed after the Corps notifies the Consulting Parties of a determination of “adverse effect” for a particular Project feature or phase, but before construction of the feature or phase. With written acknowledgement by the signatories, a HPTP would be appended to this Agreement without amending the Agreement. The use of a HPTP to resolve adverse effects resulting from the Project shall not require the execution of an individual Memorandum of Agreement or Programmatic Agreement.

A HPTP shall identify the historic properties including any TCPs, located within the APE. A HPTP shall only apply to historic properties that have been evaluated for eligibility for inclusion in the NRHP. A HPTP shall outline the minimization and mitigation measures necessary to resolve the adverse effects to historic properties. Proposed mitigation measures may include, but are not limited to, historic markers, interpretive brochures, data recovery, and publications, and other forms of creative mitigation depending on their criterion for eligibility. Development of appropriate measures shall include consideration of historic property types and provisions for avoidance or

**PROGRAMMATIC AGREEMENT REGARDING THE LAKE OKEECHOBEE WATERSHED RESTORATION  
PROJECT, GLADES, HIGHLANDS, OKEECHOBEE, AND MARTIN COUNTIES, FLORIDA**

protection of historic properties where possible. The HPTP shall include a general schedule of work for each Project phase or feature, and provide a schedule of key project milestones, and decision points at which to discuss opportunities for Project modification(s) with Consulting Parties.

A HPTP shall define the process and conditions under which archaeological site monitoring is appropriate. A HPTP will outline the curation process and storage criteria for all artifacts and data recovered from historic properties listed in this document. A HPTP will detail the means and methods of public outreach and dissemination of the results of data recoveries excavations to the general public. Where possible, and when agreed upon by Consulting Parties, the Corps shall avoid excavation of known burial locations, and utilize creative or non-traditional means to mitigate adverse impacts to burial sites if they cannot be avoided. A HPTP will confirm the process for managing discovery of human remains per the *Burial Resource Agreement between the Jacksonville District, U.S. Army Corps of Engineers, and the Seminole Tribe of Florida Regarding Proposed Actions that May Adversely Affect American Indian Burial Resources* (See Attachment C) and/or the procedures outlined in Florida Statute Chapter 872 (2018), as appropriate.

1. **Review.** The Corps shall submit a draft HPTP to the Consulting Parties for review and comment pursuant to Stipulation I (Timeframes and Review Procedures).
2. **Concurrence.** The Corps shall provide a revised final document or deliverable to Consulting Parties for review and comment pursuant to Stipulation I (Timeframes and Review Procedures). Following Signatory concurrence with the HPTP, all Consulting Parties will be provided with final HPTPs which will be appended to this Agreement and implemented in a manner consistent with the procedures outlined in this Agreement and the HPTP.
3. **Reporting.** Reports and other data pertaining to the treatment of effects to historic properties will be distributed to Consulting Parties and other members of the public, consistent with Stipulation VII (Confidentiality) of this Agreement, unless a Consulting Party indicated through consultation that they do not want to receive a report or data. Reports will be consistent with the procedures outlined in the guidelines and requirements specified in Florida DHR's Module Three, *Guidelines for Use by Historic Preservation Professional*.
4. **Amendments/Addendums/Revisions.** If a historic property that is not covered by an existing HPTP is discovered within the APE subsequent to the initial inventory effort, or if there are previously unanticipated effects to a historic property, or if the Consulting Parties agree that a modification to the HPTP is necessary, the Corps shall prepare an addendum to the HPTP. If necessary, the Corps shall then submit the addendum to the Consulting Parties and follow the provisions of Stipulation I (Timeframes and Review Procedures). The HPTP may cover multiple discoveries for the same property type.
5. **Data Recovery.** When data recovery is proposed, the Corps, in consultation with the Consulting Parties, shall ensure that specific Research Designs are developed consistent with the SOI's *Standards and Guidelines for Archaeology and Historic Preservation*, follow guidelines and requirements specified in Florida DHR's Module Three, *Guidelines for Use by Historic Preservation Professional*, and the ACHP's "Recommended Approach for Consultation on Recovery of Significant Information from Archaeological Sites" (ACHP, May 18, 1999).
6. **Final Report Documenting Implementation of the HPTP.** Within one year after the completion of all construction for the Project, the Corps shall submit to the Consulting Parties a Final Report documenting the results of all work prepared under the HPTP, and the information learned from each of the historic properties. The Corps may extend this period through written consent of the Consulting Parties. The submittal of the Final Report shall be in

**PROGRAMMATIC AGREEMENT REGARDING THE LAKE OKEECHOBEE WATERSHED RESTORATION  
PROJECT, GLADES, HIGHLANDS, OKEECHOBEE, AND MARTIN COUNTIES, FLORIDA**

accordance with Stipulation I and VII (Timeframes and Review Procedures and Confidentiality).

**IV. QUALIFICATIONS**

- A. Professional Qualifications. All key personnel for technical work and specialized analysis (i.e. Principal Investigator, Project Manager, Bioarchaeologist/Osteologist, and Field Director) required for historic preservation activities implemented pursuant to this Agreement shall be carried out by or under the direct supervision of a person or persons meeting, or exceeding the SOI's *Historic Preservation Professional Qualification Standards* as specified in 36 C.F.R. Part 61 for archeology or history, as appropriate (48 F.R. 44739). In addition, at least one individual supervising in the field will have a graduate degree in archaeology, anthropology, or a closely related field or equivalent, and substantive experience in conducting archaeological research and fieldwork in the state of Florida. This individual will have at least one year of experience or specialized training in the type of activities the individual will supervise. "Technical work" here means all efforts to inventory, evaluate, and perform subsequent treatment such as data recovery excavation or recordation of potential historic properties that is required under this Agreement. This stipulation shall not be construed to limit peer review, guidance, or editing of documents by SHPO and associated Project consultants.
- B. Historic Preservation Standards. Historic preservation activities carried out pursuant to this Agreement shall meet the SOI's *Standards and Guidelines for Archaeology and Historic Preservation* (48 F.R. 44716-44740, September 29, 1983), as well as standards and guidelines for historic preservation activities established by the Florida SHPO. The Corps shall ensure that all reports prepared pursuant to this Agreement will be provided to the Consulting Parties, and are distributed in accordance with Stipulation VII (Confidentiality), and meet published standards of the Florida SHPO, specifically, Module Three, *Guidelines for Use by Historic Preservation Professional*.

**V. TREATMENT OF HUMAN REMAINS**

Human remains and grave goods encountered during any Project phase or component that are located on non-federal lands will be treated in accordance with the requirements in the *Agreement Between the Jacksonville District, U.S. Army Corps of Engineers, and the Seminole Tribe of Florida Regarding Proposed Actions that May Adversely Affect American Indian Burial Resources* (See Attachment C) and/or procedures outlined in Florida Statute Chapter 872 (2018), as appropriate. No portion of this Project will be constructed on Federal lands.

**VI. PUBLIC COORDINATION AND PUBLIC NOTICE**

The interested public will be invited to provide input during the implementation of this Agreement. The Corps shall carry this out through letters of notification, public meetings, environmental assessment/environmental impact statements, site visits and/or other appropriate methods. The Corps shall ensure that any comments received from members of the public are taken under consideration and incorporated where appropriate. Review periods shall be consistent with Stipulation I (Timeframes and Review Procedures). In seeking input from the interested public, locations of historic properties will be handled in accordance with Stipulation VII (Confidentiality). In cases where the release of location

**PROGRAMMATIC AGREEMENT REGARDING THE LAKE OKEECHOBEE WATERSHED RESTORATION  
PROJECT, GLADES, HIGHLANDS, OKEECHOBEE, AND MARTIN COUNTIES, FLORIDA**

information may cause harm to the historic property, this information will be withheld from the public in accordance with Section 304 of the NHPA (54 U.S.C. § 307103).

**VII. CONFIDENTIALITY**

Signatories to this Agreement acknowledge that historic properties are subject to the provisions of Section 304 of the NHPA (54 U.S.C. § 307103) and 36 C.F.R. § 800.11(c), relating to the disclosure of information about the location, character or ownership of a historic property, and will ensure that any disclosure of information under this Agreement is consistent with the terms of this Agreement and with Section 304 of the NHPA, 36 C.F.R. § 800.11(c), and the Freedom of Information Act (5 U.S.C. § 552), as amended. Confidentiality regarding the specific nature and location of the archaeological sites and any other cultural resources discussed in this Agreement shall be maintained to the extent allowable by law. Dissemination of such information shall be limited to appropriate personnel within the Corps (including their contractors), the Signatories, Consulting Parties and those parties involved in planning, reviewing, and implementing this Agreement. When information is provided to the Corps by SHPO or others who wish to control the dissemination of that information more than described above, the Corps will make a good faith effort to do so, to the extent permissible by federal law.

**VIII. DISPUTE RESOLUTION**

- A. Should any Consulting Party to this Agreement object in writing to any action proposed or carried out pursuant to this Agreement, the Corps will immediately notify the Consulting Parties of the objection and proceed to consult with the objecting Party for a period of time, not to exceed 30 calendar days, to resolve the objection. If the objection is resolved through consultation, the Corps may authorize the disputed action to proceed in accordance with the terms of such resolution. If the Corps determines that such objection cannot be resolved, the Corps will:
1. Forward all documentation relevant to the dispute, including the Corps' proposed resolution, to the ACHP. The ACHP shall provide the Corps with its advice on the resolution of the objection within 30 days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the Corps shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the Consulting Parties, and provide them with a copy of the written response. The Corps will then proceed according to its final agency decision.
  2. If the ACHP does not provide its advice regarding the dispute within the 30 day time period, the Corps may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the Corps shall prepare a written response that takes into account any timely comments regarding the dispute from the Consulting Parties to the Agreement, and provide them and the ACHP with a copy of such written response.
  3. The Corps' responsibility to carry out all other actions subject to the terms of this Agreement that are not the subject of the dispute remain unchanged.
- B. Objection by the Public. At any time during implementation of the measures stipulated in this Agreement, should an objection pertaining to the Agreement be raised by a member of the public, the Corps shall notify the Consulting Parties and take the objection under consideration, consulting with the objecting Party and, should the objecting Party request, any of the Consulting Parties to this Agreement, for no longer than 15 calendar days. The Corps shall consider the objection, and in reaching its decision, will consider all comments provided by the other

**PROGRAMMATIC AGREEMENT REGARDING THE LAKE OKEECHOBEE WATERSHED RESTORATION  
PROJECT, GLADES, HIGHLANDS, OKEECHOBEE, AND MARTIN COUNTIES, FLORIDA**

Consulting Parties. Within 15 calendar days following closure of the comment period, the Corps will render a decision regarding the objection and respond to the objecting Party. The Corps will promptly provide written notification of its decision to the other Consulting Parties, including a copy of the response to the objecting Party. The Corps' decision regarding resolution of the objection will be final. Following issuance of its final decision, the Corps may authorize the action that was the subject of the dispute to proceed in accordance with the terms of that decision. The Corps' responsibility to carry out all other actions under this Agreement shall remain unchanged.

**IX. NOTICES**

All notices, demands, requests, consents, approvals or communications from all parties to this Agreement to other parties to this Agreement shall be either personally delivered, sent by United States Mail, or electronic mail, and all Parties shall be considered in receipt of the materials five (5) calendar days after deposit in the United States mail or on the day after being sent by electronic mail.

If Consulting Parties agree in advance, in writing or by electronic mail, facsimiles, copies, or electronic versions of signed documents may be used as if they bore original signatures.

If Consulting Parties agree, electronic documents and/or electronic communications may be used for formal communication amongst themselves for activities in support of Stipulation I (Time Frames and Review Procedures).

**X. AMENDMENTS, TERMINATION, AND DURATION**

- A. Amendment. Any Signatory Party to this Agreement may propose that the Agreement be amended, whereupon the Corps shall consult with the Signatories to consider such amendment. This Agreement may be amended when such an amendment is agreed to in writing by all Signatories. The amendment will be effective on the date a copy signed by all of the Signatories is filed with the ACHP.

All appendices to this Agreement, and other instruments prepared pursuant to this Agreement including, but not limited to, the maps of the APE, may be revised or updated by the Corps through consultation consistent with Stipulation I (Timeframes and Review Procedures) and agreement in writing of the Signatories without requiring amendment of this Agreement, unless the Signatories through such consultation decide otherwise. In accordance and Stipulation VI (Public Coordination and Public Notice), the Signatories and interested members of the public, will receive amendments to the Project's APE as appropriate, and copies of any amendment(s) to the Agreement.

- B. Termination. Any Signatory to this Agreement may terminate this Agreement. If this Agreement is not amended as provided for in Stipulation X.A., or if any Signatory proposes termination of this Agreement, the Signatory proposing termination shall notify the other Signatories in writing, explain the reasons for proposing termination, and consult with the other Signatories to seek alternatives to termination, within 30 calendar days of the notification.
1. Should such consultation result in an agreement on an alternative to termination, the Signatories shall proceed in accordance with that agreement and amend the Agreement as required.

**PROGRAMMATIC AGREEMENT REGARDING THE LAKE OKEECHOBEE WATERSHED RESTORATION  
PROJECT, GLADES, HIGHLANDS, OKEECHOBEE, AND MARTIN COUNTIES, FLORIDA**

2. Should such consultation fail, the Signatory proposing termination may terminate this Agreement by promptly notifying the other Signatories in writing.
  3. Beginning with the date of termination, the Corps shall ensure that until and unless a new agreement is executed for the actions covered by this Agreement, such Project phase and/or feature shall be reviewed individually in accordance with 36 C.F.R. § 800.4-800.6.
- C. Duration. This Agreement shall remain in effect for a period of 30 years after the date it takes effect and shall automatically expire and have no further force or effect at the end of this 30-year period unless it is terminated prior to that time. No later than 90 calendar days prior to the expiration date of the Agreement, the Corps shall initiate consultation to determine if the Agreement should be allowed to expire automatically or whether it should be extended, with or without amendments, as the Signatories may determine. Unless the Signatories unanimously agree through such consultation on an alternative to automatic expiration of this Agreement, this Agreement shall automatically expire and have no further force or effect in accordance with the timetable stipulated herein.

**XII. EFFECTIVE DATE**

This Agreement shall take effect on the date that it has been fully executed by the Corps, the SHPO, and the ACHP.

**XIII. EXECUTION**

Execution and the implementation of its terms of this Agreement by the Corps, the SHPO, and the ACHP evidence that the Corps has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.

**PROGRAMMATIC AGREEMENT REGARDING THE LAKE OKEECHOBEE WATERSHED RESTORATION  
PROJECT, GLADES, HIGHLANDS, OKEECHOBEE, AND MARTIN COUNTIES, FLORIDA**

**SIGNATORIES TO THE LAKE OKEECHOBEE WATERSHED RESTORATION PROJECT, GLADES,  
HIGHLANDS, OKEECHOBEE, AND MARTIN COUNTIES, FLORIDA PROGRAMMATIC AGREEMENT:**

U.S. ARMY CORPS OF ENGINEERS, JACKSONVILLE DISTRICT

BY: \_\_\_\_\_

DATE: \_\_\_\_\_

Andrew Kelly  
Colonel, U.S. Army  
District Commander

DRAFT

**PROGRAMMATIC AGREEMENT REGARDING THE LAKE OKEECHOBEE WATERSHED RESTORATION  
PROJECT, GLADES, HIGHLANDS, OKEECHOBEE, AND MARTIN COUNTIES, FLORIDA**

**SIGNATORIES TO THE LAKE OKEECHOBEE WATERSHED RESTORATION PROJECT, GLADES,  
HIGHLANDS, OKEECHOBEE, AND MARTIN COUNTIES, FLORIDA PROGRAMMATIC AGREEMENT:**

FLORIDA STATE HISTORIC PRESERVATION OFFICE

BY: \_\_\_\_\_

DATE: \_\_\_\_\_

Timothy A. Parsons,  
State Historic Preservation Officer

DRAFT

**PROGRAMMATIC AGREEMENT REGARDING THE LAKE OKEECHOBEE WATERSHED RESTORATION  
PROJECT, GLADES, HIGHLANDS, OKEECHOBEE, AND MARTIN COUNTIES, FLORIDA**

**SIGNATORIES TO THE LAKE OKEECHOBEE WATERSHED RESTORATION PROJECT, GLADES,  
HIGHLANDS, OKEECHOBEE, AND MARTIN COUNTIES, FLORIDA PROGRAMMATIC AGREEMENT:**

ADVISORY COUNCIL ON HISTORIC PRESERVATION

BY: \_\_\_\_\_

DATE: \_\_\_\_\_

John M. Fowler  
Executive Director

DRAFT

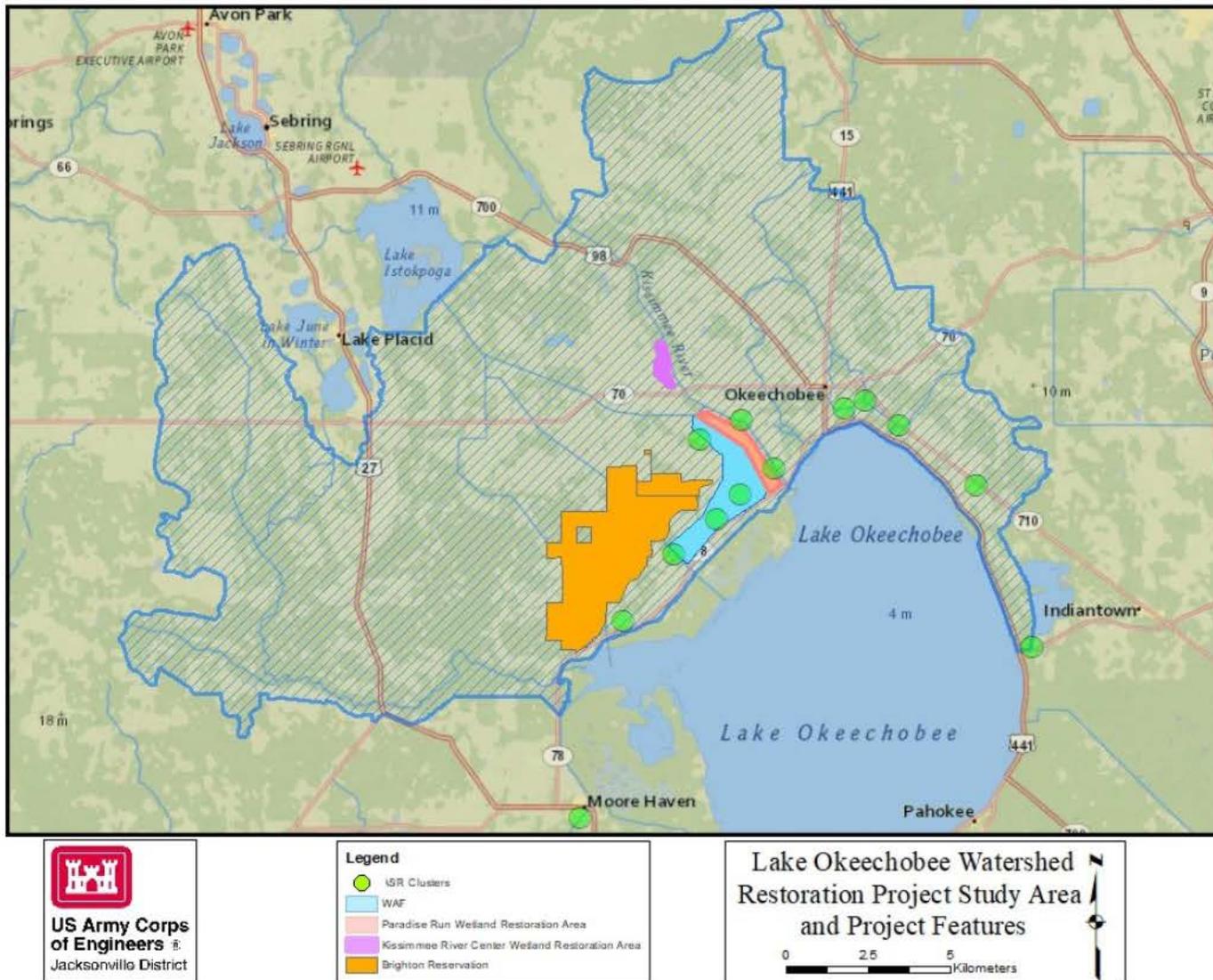
**PROGRAMMATIC AGREEMENT REGARDING THE LAKE OKEECHOBEE WATERSHED RESTORATION  
PROJECT, GLADES, HIGHLANDS, OKEECHOBEE, AND MARTIN COUNTIES, FLORIDA**

**Attachment A**

Map of the Overall Project APE

DRAFT

**PROGRAMMATIC AGREEMENT REGARDING THE LAKE OKEECHOBEE WATERSHED RESTORATION PROJECT, GLADES, HIGHLANDS, OKEECHOBEE, AND MARTIN COUNTIES, FLORIDA**



Lake Okeechobee Watershed Restoration preliminary APE includes ASR clusters, WAF, Paradise Run Wetland Restoration Area, and Kissimmee River Center Wetland Restoration Area.

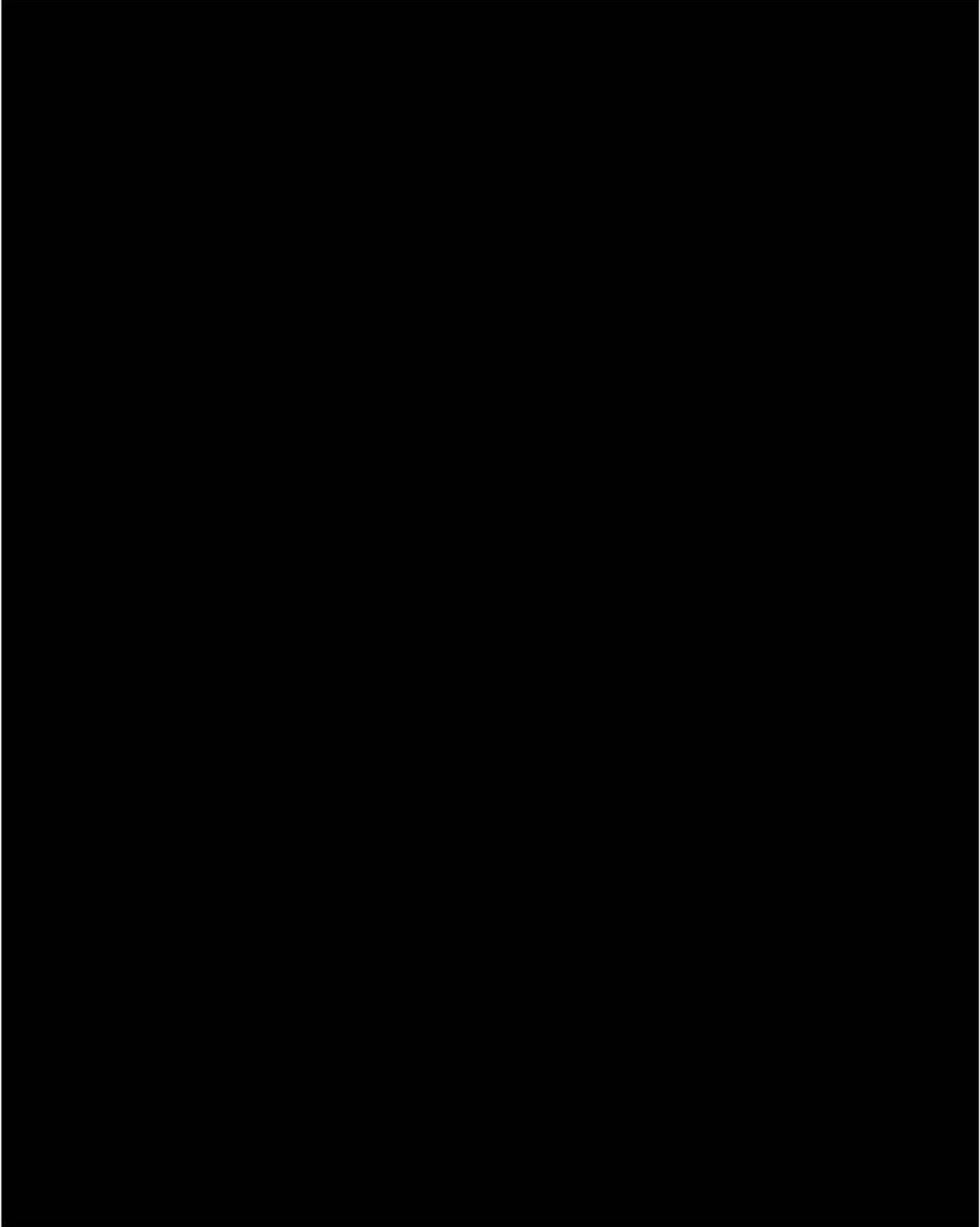
**PROGRAMMATIC AGREEMENT REGARDING THE LAKE OKEECHOBEE WATERSHED RESTORATION  
PROJECT, GLADES, HIGHLANDS, OKEECHOBEE, AND MARTIN COUNTIES, FLORIDA**

**Attachment B**

Locations of Archaeological Sites and Cultural Resources Surveys in the APE

DRAFT

**PROGRAMMATIC AGREEMENT REGARDING THE LAKE OKEECHOBEE WATERSHED RESTORATION  
PROJECT, GLADES, HIGHLANDS, OKEECHOBEE, AND MARTIN COUNTIES, FLORIDA**



**PROGRAMMATIC AGREEMENT REGARDING THE LAKE OKEECHOBEE WATERSHED RESTORATION  
PROJECT, GLADES, HIGHLANDS, OKEECHOBEE, AND MARTIN COUNTIES, FLORIDA**

**Attachment C**

*Agreement Between the Jacksonville District, U.S. Army Corps of Engineers, and the  
Seminole Tribe of Florida Regarding Proposed Actions that May Adversely Affect  
American Indian Burial Resources*

DRAFT

**AGREEMENT**  
**Between the Jacksonville District, U.S. Army Corps of Engineers,**  
**and the Seminole Tribe of Florida**  
**Regarding Proposed Actions That May Adversely Affect American Indian Burial Resources**

---

The Jacksonville District of the U.S. Army Corps of Engineers (Jacksonville District) and the Seminole Tribe of Florida (Seminole Tribe) as Parties to this Agreement hereby acknowledge and declare as follows:

**I. Purpose**

This Agreement establishes a framework that will serve as the basis for consultation regarding the presence of burial resources within the Jacksonville District's area of action and jurisdiction for the Civil Works and Regulatory Programs, respectively, and sets forth procedures that will ensure culturally sensitive treatment of burial resources pursuant to the U.S. Army Corps of Engineers' (USACE) Trust Responsibility. The Jacksonville District and the Seminole Tribe agree that it is in both Parties' interests to adhere to the principles and procedures described herein in order to maintain their Government-to-Government relationship, to promote the timely recognition and consideration of each Parties' interests, and to foster meaningful and open lines of communication.

The following Agreement is the product of multiple project-specific and policy-oriented consultations with the Jacksonville District's federal, state, and tribal partners and is intended to address broad ranging potential impacts to burial resources arising from the execution of the Civil Works and Regulatory missions. This agreement is not intended to clarify or interpret the responsibilities of either the Civil Works or the Regulatory Missions pursuant to Section 106 of the National Historic Preservation Act (NHPA), nor does it guide investigations required by Section 106 of the NHPA. Rather it is intended to set forth procedures that will ensure the consideration of the culturally sensitive treatment of burial resources pursuant to the Jacksonville District's obligations to the Seminole Tribe including the Trust Responsibility.

**II. Authority**

The Parties have entered into this Agreement pursuant to the USACE Trust Responsibility as outlined in the November 1, 2012 Chief of Engineers Memorandum, "Tribal Consultation Policy." The USACE Tribal Consultation Policy identifies numerous statutes, regulations, and Executive Orders which define the scope of the USACE Trust Responsibility,

including, but not limited to, the NHPA, the Archaeological Resources Protection Act, the Native American Graves Protection and Repatriation Act (NAGPRA), Executive Order 13007 (May 24, 1996), Department of Defense American Indian and Alaska Native Policy (Oct. 20, 1998), Executive Order 13175 (Nov. 6, 2000), Department of Defense Instruction No. 4710.02 (Sep. 14, 2006), and USACE Tribal Policy Principles (Feb. 18, 1998 and May 10, 2010). Other federal regulations, Executive Orders, Departmental policies, Agreements, treaties, United States Constitutional provisions, and judicial decisions may also apply to the Jacksonville District's implementation of its Trust Responsibility.

### **III. Definitions**

Terms used in this Agreement shall have meanings as defined in Appendix A or when not specifically defined in Appendix A shall have their ordinary meaning within the context of this Agreement and are not intended to create a conflict when the USACE implements its responsibilities under existing laws and regulations including the NHPA and/or NAGPRA.

### **IV. Background and Guiding Principles for Consultation on Burial Resources**

The Jacksonville District executes two primary missions – the Civil Works Program, which carries out specific congressionally authorized projects, and the Regulatory Program, which regulates certain activities in waters of the United States and oceans. In executing these missions within the Programs' respective areas of jurisdiction, the Jacksonville District is required to consider the effect of its actions on cultural resources under Section 106 of the NHPA. Additionally, in recognizing the unique Government-to-Government relationship between the U.S. Government and American Indian Tribes, the Jacksonville District has a Trust Responsibility to give special consideration to the environmental and cultural/religious resource interests of Federally-recognized American Indian Tribes. The Jacksonville District holds its Trust Responsibility to American Indian Tribes in the highest regard.

The Jacksonville District recognizes its responsibility to conduct government-to-government consultations with American Indian Tribes on actions that have tribal implications. Consultation also serves as the most common means to facilitate implementation of the Trust Responsibility with the Federally-recognized tribes who have ancestral connections within the boundaries of the Jacksonville District's geographic area of operation (Appendix B). These include the two Federally-recognized tribes currently residing within the State of Florida as well as several relocated and removed tribes located in Oklahoma, Alabama, and Texas. In implementing its mission responsibilities, the Jacksonville District is sensitive to the various tribal concerns regarding the impact that its Civil Works and Regulatory duties have on the

respective tribes' environmental and cultural resources, particularly with respect to burial resources. The Jacksonville District views its Trust Responsibility as a means to consult on and protect these burial resources in addition to the framework established by Section 106 of the NHPA.

The unique legal relationship that exists between Indian tribes and the United States government was born out of the first treaties entered into by the government and the tribes. "In these treaties, the United States pledged to 'protect' Indian tribes, thereby establishing one of the bases for the federal Trust responsibility in our Government-to-Government relations with Indian tribes" (DOJ, 1995). The Trust Responsibility is the cornerstone of the USACE relationship with Federally-recognized American Indian tribes. It is a special, fiduciary obligation that carries the duty to act in good faith and in the best interests of American Indian tribes. It is a fiduciary obligation to protect tribal lands and cultural and natural resources for the benefit of the American Indian tribes and individual tribal members. The Department of Defense implemented its *American Indian and Alaska Policy* in October 1998 ("Department of Defense American Indian Policy"), recognizing the significance that American Indian tribes "ascribe to certain natural resources and properties of traditional or customary religious or cultural importance." Specifically, the USACE has stated that it "will act to fulfill obligations to preserve and protect trust resources." See *Memorandum for Commanders, Major Subordinate Commands, and District Commands*, dated February 18, 1998 as reaffirmed on May 10, 2010. The Supreme Court, Congress, and Executive Orders have, over the years, reaffirmed this Trust Doctrine or Trust Responsibility and directed federal agencies to honor this policy in all activities that may impact tribal resources, tribal rights/interests, and Indian lands.

In 2008, Jacksonville District recognized and acknowledged that Section 106 of the NHPA did not address all of the cultural/religious significance that Native American Tribes attributed to burial resources. Therefore, Jacksonville District concluded that burial resources will be treated as a Trust resource protected under the Federal Trust Responsibility. This approach of treating burial resources as Trust resources was further developed by the Jacksonville District in connection to its Everglades Restoration efforts. By treating burials as part of the USACE's Trust relationship with Sovereign Indian Nations, the Jacksonville District concluded that it could satisfy both its Trust Responsibility and NHPA obligations while also acting in a manner consistent with Florida Statutes. In 2008, the Jacksonville District committed, pursuant to its Trust relationship with Sovereign Indian Nations, to protecting burials from unnatural inundation to the greatest extent possible. The Seminole Tribe's cultural/religious beliefs define unnatural inundation to represent hydroperiods that are at variance, due to anthropogenic influences, to those hydroperiods that existed at the time of interment. The

Jacksonville District will make a good faith effort to respect the Seminole Tribe's views on unnatural inundation in applying its Trust Responsibility.

Throughout this document, meaningful consultation between the Jacksonville District, the Seminole Tribe, and appropriate parties is stressed. The Jacksonville District and the Seminole Tribe acknowledge that each burial resource is unique, that each burial resource will require consultation between interested parties, and that unique procedures may be required for each burial resource. Therefore, the Jacksonville District and the Seminole Tribe acknowledge that the procedures set forth herein should be implemented in a flexible manner when it is best for the protection of burial resources. After consultation with all interested parties and with due consideration of the effects of the proposed action and of the terms of this Agreement, the District Engineer will make a final decision. The Jacksonville District acknowledges and understands that tribal representatives may legitimately refuse to discuss matters involving possible burial resources based on traditional cultural/religious beliefs concerning these subjects. It is the Jacksonville District's principle intent to avoid adverse effects to sites with burial resources to the greatest extent possible when carrying out its Civil Works and Regulatory missions.

The Seminole Tribe has expressed that its cultural/religious beliefs are rooted in historic traditions and that, as a result of colonialism and encroachment of non-indigenous ideology, the Seminole Tribe is challenged to protect these historic traditions and beliefs while adapting to a colonized world. For the Seminole Tribe of Florida there is no distinction between culture and religion, both concepts are synonymous especially with regards to burial resources which are sacred to the Seminole Tribe. Therefore, cultural/religious decision-making should be understood against the background that these decisions are often time-consuming and formative for the Seminole Tribe. Changes in cultural/religious positions should be expected and viewed in this context as decisions are made case-by-case due to the unique nature of each site. Further, for many situations there is no cultural/religious precedent in addressing impacts to burial resources (Tribal beliefs would dictate that no impact of burial resources occur). Therefore, tribal decision-making on one project or action should not be interpreted as precedent for future projects or actions.

#### **V. Early Identification of Burial Resources**

Employing appropriate measures to identify burial resources and/or the likelihood of burial resources is critical to a meaningful implementation of this Agreement. The Jacksonville District and the Seminole Tribe will consult early in the Civil Works planning or Regulatory permitting process to ensure project-specific site identification methodologies are sufficient.

Additionally, and pursuant to the USACE definition of consultation in Appendix A of this document, the Parties acknowledge that consultation includes communication such as (i) Civil Works Annual Project Meetings, (ii) Regulatory Bimonthly Status Meetings, (iii) scoping of National Environmental Policy Act (NEPA) documents and/or feasibility studies, and (iv) reconnaissance studies. The Civil Works Annual Project Meeting will include a list of all projects anticipated to be undertaken during the year to include an identification of those projects determined to be high priority by the Jacksonville District. However, the Jacksonville District further acknowledges that the level of coordination above will not substitute for the Three-Step Process as described below.

## **VI. Process for Identification and Treatment of Burial Resources**

The Jacksonville District will actively consult with the Seminole Tribe to: (i) determine if the Seminole Tribe desires to have impacts to specific burial resources avoided, minimized or mitigated; and (ii) develop culturally/religiously acceptable, feasible, and prudent avoidance, minimization and mitigation measures, which may include operational changes, construction of structures (i.e., berms), or relocation of burial resources. The Jacksonville District and the Seminole Tribe are committed to exploring an array of alternatives to protect burial resources from impacts, including but not limited to, impacts to resources of cultural/religious significance to the Seminole Tribe.

Upon request by the Seminole Tribe, the Jacksonville District will develop with the Seminole Tribe's Tribal Historic Preservation Officer (THPO) a brief summary of the potential impacts of the proposed action on burial resources. This summary will be written in layman's terminology without overly technical language or acronyms so that the tribal government can relay the cultural information to tribal members. The summary will include, factoring the sensitive/confidential nature of such information, at a minimum:

- The geographic location of the burial resource.
- The context of the burial resource to include estimated temporal affiliation, environmental setting, and whether the find is singular or associated with other finds as well as any other information considered valuable to the Seminole Tribe.
- Specific information regarding how the proposed project may affect the burial resource.

The Jacksonville District will timely implement the following Three-Step Process for each activity that it determines, through consultation with the Seminole Tribe, may impact burial resources. It is critical to emphasize that this process is intended to ensure: (i) that consideration of avoidance alternatives that protect the resources in situ from man-induced

disturbances is fully explored and documented in detail; and (ii) that consideration of minimization and mitigation measures such as excavation or relocation of burial resources is only contemplated after full consideration of avoidance measures are exhausted or the avoidance measures are unsuccessful. Therefore, the resolution of effects to burial resources will be accomplished through the Three-Step Process whereby avoidance is the first priority and minimization or mitigation is only considered as a last resort.

**The following Three-Step Process is also illustrated in Appendix C to this agreement.**

**Step 1:** The Jacksonville District will develop, in consultation with the Seminole Tribe and other appropriate consulting parties (e.g., other Federally-recognized Tribes, SHPO, non-federal sponsor, permit applicant and State Archeologist): (i) identification methods for burial resources; (ii) treatment alternatives that avoid man-induced impacts; and (iii) proposed consultation schedule. The Jacksonville District will carefully evaluate, in consultation with tribal representatives and other appropriate parties, these avoidance alternatives. The Jacksonville District will document the factors considered, how they were considered, and feasibility and prudence determinations relative to cultural/religious values in a memorandum for the record (MFR). As part of this MFR, the Jacksonville District and the Seminole Tribe will develop a proposed consultation schedule and protocols for sharing information. The Jacksonville District will provide the Seminole Tribe an opportunity to review the draft MFR and verify its understanding of the consultation efforts through a concurring signature. If the Jacksonville District and the Seminole Tribe cannot agree on the feasibility and prudence of the alternatives relative to cultural/religious values or the alternatives fail to avoid man-induced impacts, this process will proceed to Step 2.

**Step 2:** The Jacksonville District will circulate the MFR developed in Step 1 to all appropriate consulting parties for a 30 calendar day commenting period. After 30 calendar days, the Jacksonville District will finalize the MFR and provide a copy to the appropriate consulting parties' leadership. Jacksonville District staff will coordinate a meeting date for the District Engineer and Deputy Project Management (DPM) to meet with leadership of the Seminole Tribe and the Seminole Tribe of Florida's THPO and other appropriate consulting parties to discuss the alternatives considered during Step 1 with the goal of facilitating a meaningful avoidance alternative. The Jacksonville District will prepare a second MFR memorializing the meeting between leadership to provide guidance to staff on how to proceed. The Jacksonville District will provide the Seminole Tribe an opportunity to review the draft MFR and verify its understanding of the meeting through a concurring signature. If the leadership of the respective parties concludes there are no feasible and prudent

avoidance alternatives relative to cultural/religious values, then the staff for the respective parties will proceed to Step 3.

**Step 3:** The Jacksonville District will develop, in coordination with the Seminole Tribe and other appropriate consulting parties, mitigation measures to address impacts to burial resources that cannot be avoided. These measures could include minimization efforts and possible relocation of burial resources. The Jacksonville District, in coordination with the Seminole Tribe, will prepare a third MFR discussing the feasibility and prudence relative to cultural/religious values of the mitigation measures comparing the mitigation measures to the alternatives developed in Steps 1 and 2. This MFR will include, at a minimum, the alternatives that were considered, the factors considered for each alternative and how they were considered, the determination of feasibility and prudence relative to cultural/religious values for each alternative, and any differing opinions on feasibility and prudence relative to cultural/religious values. The Jacksonville District will circulate the final MFR to the leadership of the appropriate consulting parties. After the MFR is circulated, the leadership of the Jacksonville District and the Seminole Tribe will meet again to determine the best course of action or treatment. Though the Jacksonville District will make the ultimate decision considering the interests of all stakeholders, it will make a good faith effort to honor any requests by the Seminole Tribe for the appropriate treatment and acknowledges that such decisions are on a case-by-case basis.

Where a proposed USACE or USACE regulated activity is undertaken to respond to an emergency, the Jacksonville District will immediately contact the Seminole Tribe to discuss consultation procedures. The Seminole Tribe will make a good faith effort to meet the request in a timely manner.

In order to meaningfully implement this Agreement, including the process outlined above, the Jacksonville District Civil Works program will make a good faith effort to budget for funding necessary for identification, evaluation, and treatment of burial resources and historic properties consistent with ER 1105-2-100, 22 Apr 2000. Further, the USACE acknowledges that the Seminole Tribe of Florida has limited staff and resources and will coordinate with the Seminole Tribe to overcome these limitations when implementing this Agreement. The Jacksonville District Regulatory program determines the level of investigations associated with permit applications; however, all cultural resource or archeological work performed for a regulatory project is hired, funded and directed by the permit applicant. The Jacksonville District Regulatory program does not design or fund projects for permit applicants and is not responsible for paying costs for curation, repatriation, or compliance work.

Note, the Corps will normally be “lead agency” when undertaking a Civil Works project. Determination of “lead agency” for Regulatory permit applications will be made pursuant to 40 C.F.R. § 1501.5(c). However, where the Jacksonville District is not the “lead agency,” it will adhere to this policy to the extent commensurate with its role and responsibility.

The Jacksonville District notes for purposes of this Agreement that avoidance includes, but is not limited to, protection from unnatural inundation in situ. Further, the Jacksonville District acknowledges that it is the cultural/religious significance that the Seminole Tribe attributes to burial resources that makes burial resources important Trust resources. As such, the Jacksonville District acknowledges that the ultimate cultural valuation of a burial resource can only be made by the Indian Tribes that are culturally affiliated with the burial resource.

## **VII. Basic Tenets of Jacksonville District Treatment of Burial Resources**

When burial resources are likely to be affected by a proposed action under either the Civil Works or Regulatory Programs, the Jacksonville District agrees to adhere to the following principles in addition to the Principles set forth in the Advisory Council on Historic Preservation’s Policy Statement Regarding Treatment of Burial Sites, Human Remains and Funerary Objects.

1. In recognizing the unique Government-to-Government relationship between the U.S. Government and American Indian Tribes, the Jacksonville District will continue to give special consideration to the Tribes’ environmental and cultural resources, pursuant to its Trust Responsibility. The Jacksonville District holds its Trust Responsibility to American Indian Tribes in the highest regard; and
2. The Jacksonville District will direct that no photographs or other form of data collection be taken of burial resources. Analysis of burial resources will not be permitted beyond that necessary to identify the remains as human and temporal affiliation if necessary. Any analysis that occurs must be non-destructive. All discoveries must be reported to the THPO immediately; and
3. The Jacksonville District will work collaboratively with the Seminole Tribe, and other Federally Recognized Tribes culturally affiliated with Florida that would like to participate, to develop a cultural sensitivity training program. Until such time, for purposes of Civil Works Programs, the Jacksonville District will require that all cultural resource contractors view “Working Effectively with Tribal Governments,” an online training course located at <http://www.tribal.golearnportal.org/>. The Jacksonville District may require completion of a

cultural sensitivity course administered by the Seminole Tribe. For purposes of Regulatory Program, the Jacksonville District will recommend that all cultural resource contractors, to include those working at the direction of a permit applicant or permittee, view “Working Effectively with Tribal Governments,” an online training course located at <http://www.tribal.golearnportal.org/> and will recommend completion of a cultural sensitivity course administered by the Seminole Tribe.

### **VIII. Adaptive Management**

Adaptive management means the development of a management strategy that anticipates likely challenges associated with a project and provides for the implementation of actions to address those challenges, as well as unforeseen changes to those projects. It requires consideration of the risk, uncertainty, and dynamic nature of some projects and guides modification of those projects to optimize performance. It includes the selection of appropriate measures that will ensure that performance standards are met and involves analysis of monitoring results to identify potential problems of a project and the identification and implementation of measures to rectify those problems.

The Jacksonville District’s Civil Works and Regulatory authorities allow for coordination and development of appropriate adaptive management measures, also known as contingency measures, if warranted, as a result of site conditions or as the plan/design, construction and operations are refined and implemented. The Jacksonville District and the Seminole Tribe acknowledge the importance of developing adaptive management plans for activities or projects where impacts to cultural resources, including burial resources, are not fully known. In such cases, the Jacksonville District, in consultation with the Seminole Tribe, will develop adaptive management plans to address uncertainty in the effect of a proposed action on burial resources. For the Jacksonville District’s Civil Works mission, the development of such adaptive management plans should occur during the Planning, Engineering and Design (PED) phase when sufficient detail regarding the proposed project is available. For the Jacksonville District’s Regulatory mission, the development of adaptive management plans should occur during the development of special conditions related to issuance of a Department of the Army permit.

In a situation where an adverse effect to burial resources is anticipated, it will be the Jacksonville District's responsibility to monitor to affirm that the predicted conditions prove accurate and that the avoidance and/or mitigation measures (which include minimization measures) were successful. Such monitoring plans will include the development of “triggers” or thresholds as part of the monitoring plan. The triggers or thresholds will represent changed site condition unanticipated by the Corps monitoring team. Actuation of the established triggers will necessitate re-initiation of consultation with the Seminole Tribe and other

consulting parties. If analysis of trigger actuation is found to be within the Corps' control and the result of anthropogenic activities (i.e., would not have occurred but for the man-induced activities), the Jacksonville District will evaluate the mitigating opportunities, developed in the Adaptive Management Plan, to address the situation. If the range of available adaptive management measures is not feasible, prudent, or effective, then the Jacksonville District and the Seminole Tribe will enter into the Three-Step Process in accordance with this Agreement.

#### **IX. Restriction on the Release of Certain Information to the Public**

To the extent authorized by Federal law (Section 304 of the NHPA, 16 U.S.C. 470w-3, Section 9 of the Archaeological Resources Protection Act, 16 U.S.C. 470-hh, and the Freedom of Information Act, 5 U.S.C. 552), the Jacksonville District will not provide information concerning the location, character or ownership of human burial resources, other cultural resources items, historic properties, Traditional Cultural Properties, or sacred sites to the public. Before the Jacksonville District releases such information to the public, the Jacksonville District will first provide the Seminole Tribe advanced notice. Where the Jacksonville District is not the lead Federal agency for a proposed action, the Jacksonville District will coordinate with the appropriate lead Federal agency to protect such information to the extent of the Jacksonville District's authority.

#### **X. Administration of the Agreement**

- A. **Effective Date.** This Agreement will be in effect until such time as it is superseded by another agreement developed and agreed upon by the Jacksonville District and the Seminole Tribe. The effective date of this Agreement is the date of the last required signature on the signature page of this Agreement.
- B. **Applicability.** This Agreement will apply to all consultations with the Seminole Tribe initiated after the effective date. For projects that are in consultation with the Seminole Tribe at the effective date, the parties to this Agreement will make a good faith effort to apply this Agreement to the consultation process where appropriate.
- C. **Dispute Resolution.** While retaining ultimate responsibility for making determinations and exercising individual responsibilities in accordance with existing statutory and regulatory responsibilities, the Jacksonville District and the Seminole Tribe will consult with one another to resolve disputes using existing dispute resolution methods in accordance with this Agreement. If no agreement can be reached, either party may refer the matter to a higher

management level within its organization. The Jacksonville District reserves the right to make a final decision on any matter within its authorities.

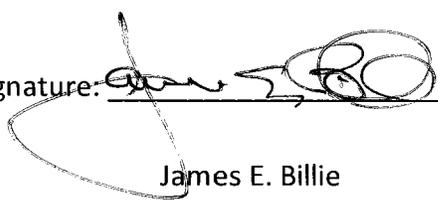
- D. Modification and Termination. This Agreement may be modified or amended at any time upon written request of either the Jacksonville District or the Seminole Tribe and the subsequent written concurrence of the other. This Agreement may be terminated by either the Jacksonville District or the Seminole Tribe upon providing sixty (60) days advance written notice. Any changes, amendments, corrections, or additions to this Agreement, shall be in writing; shall be executed and approved by the same positions (or their designees) of the Jacksonville District and Seminole Tribe who execute and approve this original Agreement and in accordance with applicable law; and shall become effective upon signature by both the Jacksonville District and the Seminole Tribe.
- E. Acknowledgement that the authority and responsibilities of the parties under their respective jurisdictions are not altered by the Agreement.
1. This Agreement is not a final agency action by the Jacksonville District and is not intended to, and does not grant, expand, create, or diminish any legally enforceable rights or benefits, substantive or procedural, not otherwise granted or created under existing law or equity by any person or party against the United States, its agencies, its officers, or any other person. Nor shall this Agreement be construed to alter, repeal, interpret, or modify tribal sovereignty, any treaty rights, or other rights of any Indian Tribe, or to preempt, modify or limit the exercise of any such right.
  2. This Agreement neither enlarges nor diminishes the U.S. Army Corps of Engineers' legal obligations with respect to the Seminole Tribe, nor does this Agreement provide an independent cause of action against the U.S. Army Corps of Engineers beyond any existing legal responsibilities.
  3. This Agreement does not, and is not intended to, impose any legally binding requirements on other Federal agencies, States, or the public, and does not restrict the authority of the employees of the Jacksonville District or the Seminole Tribe to exercise their discretion in each case to make decisions based on their judgment about the specific facts and application of relevant statutes and regulations.
  4. While this Agreement is intended to be implemented in addition to the framework established by Section 106 of the NHPA and NAGPRA, this Agreement is not intended to create a conflict when the USACE implements its responsibilities under existing laws and

regulations including the NHPA and/or NAGPRA. Therefore, this Agreement should be construed in a manner to avoid conflicts with existing laws and regulations. The potential for this Agreement to enhance the level of protection for burial resources above that prescribed by existing laws and regulations shall not be considered a conflict.

5. This Agreement does not direct or apply to any party outside of the Jacksonville District and the Seminole Tribe.
6. This Agreement is neither a fiscal nor funds obligation document. It does not obligate, commit or authorize the expenditure of funds and cannot be used as the basis for the transfer of funds. Any endeavor involving the reimbursement or contribution of funds between the Jacksonville District and the Seminole Tribe will be in accordance with applicable laws, regulations, and procedures. Such endeavors, if any, will be outlined in separate agreements that shall be made in writing by representatives of the Jacksonville District and the Seminole Tribe and shall be independently authorized by appropriate statutory authority. This Agreement does not provide such authority.
7. Nothing in this Agreement, in and of itself, requires the Jacksonville District or the Seminole Tribe to enter into any contract, grant, or interagency agreement.
8. All provisions in this Agreement are subject to the availability of funds.

*Accordingly*, the Jacksonville District and the Seminole Tribe have signed this Agreement on the dates set forth below, to be effective for all purposes as of the date last signed. The signatures may be executed using counterpart original documents.

SEMINOLE TRIBE OF FLORIDA

Signature:  Date: 12-5-14

James E. Billie  
Chairman  
Seminole Tribe of Florida

U.S. ARMY CORPS OF ENGINEERS, JACKSONVILLE DISTRICT

Signature: Alan M. Dodd Date: 2 Feb 15

Alan M. Dodd  
Colonel, U.S. Army  
District Commander

## Appendix A

### Definitions

“Adverse Effect” means, for purposes of this Agreement, an impact that alters, directly or indirectly, any characteristic of a burial resource that makes it culturally/religiously significant to the Seminole Tribe of Florida in a manner that would diminish the significance to the Seminole Tribe of Florida and/or diminish the integrity of the burial resource’s location, design, setting, materials, workmanship, feeling, or association. For purposes of the NHPA, the term means an effect of an undertaking that “may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property’s location, design, setting, materials, workmanship, feeling or association. Consideration shall be given to all qualifying characteristics of an historic property, including those that may have been identified subsequent to the original evaluation of the property’s eligibility for the National Register. Adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative.” 36 C.F.R. § 800.5(a)

“Burial resource” includes

- *Human remains*, meaning all physical remains of a human body of a person of American Indian ancestry, even if in fragmentary form unless it is determined that the human remain had been freely given or naturally shed by the individual from whose body they were obtained, such as hair made into ropes or nets or individual teeth. For the purposes of determining cultural affiliation, human remains incorporated into a funerary object, sacred object, or object of cultural patrimony, as defined below, must be considered as part of that item and as a cultural resource item.
- *Burial/Burial Site*, meaning any physical location whether originally below, on, or above the surface of the earth, into which as a part of the death rite or ceremony (as understood by the Seminole Tribe traditions) of a culture, individual human remains are deposited. This term includes locations no longer with tangible material evidence as recorded or culturally documented.
- *Funerary objects*, meaning items that, as part of the death rite or ceremony of a culture, are reasonably believed to have been placed intentionally at the time of death or later with or near individual human remains.

- *Objects of cultural patrimony*, meaning items having ongoing historical, traditional, or cultural importance central to the Indian tribe itself rather than property owned by an individual tribal or organization member. Such objects must have been considered inalienable by the culturally affiliated Indian tribe at the time the object was separated from the group.

“Consultation” means “an open, timely, meaningful, collaborative and effective deliberative communication process that emphasizes trust, respect, and shared responsibility. To the greatest extent practicable and permitted by law, consultation works toward mutual consensus and begins at the earliest planning/permitting stages before decisions are made and actions are taken so as to provide the Seminole Tribe of Florida meaningful input in the decision-making process; an active and respectful dialogue concerning actions taken by the Jacksonville District that may appreciably affect tribal resources, tribal rights (including treaty rights) or Indian lands.” 2013 USACE Tribal Consultation Policy (modified).

“Cultural affiliation” means “that there is a relationship of shared group identity which can be reasonably traced historically or prehistorically between a present-day Indian tribe ... and an identifiable earlier group.” 43 C.F.R. § 10.2(e)(1).

“Cultural resources” means (1) any product of human activity culturally or historically significant to the Seminole Tribe of Florida; (2) any object or place culturally or historically significant to the Seminole Tribe of Florida; and any flora, fauna, scenery, landscape, or other product of nature culturally or historically significant to the Seminole Tribe of Florida. This term includes the location containing cultural resources. This term may include archaeological resources, historical resources, burial resources, and Historic Properties (i.e., National Register of Historic Places listed or eligible properties as defined at 36 CFR Part 60).

“Feasible and prudent” means available and capable of being done after taking into consideration cost, existing technology, and logistics in light of project purpose.

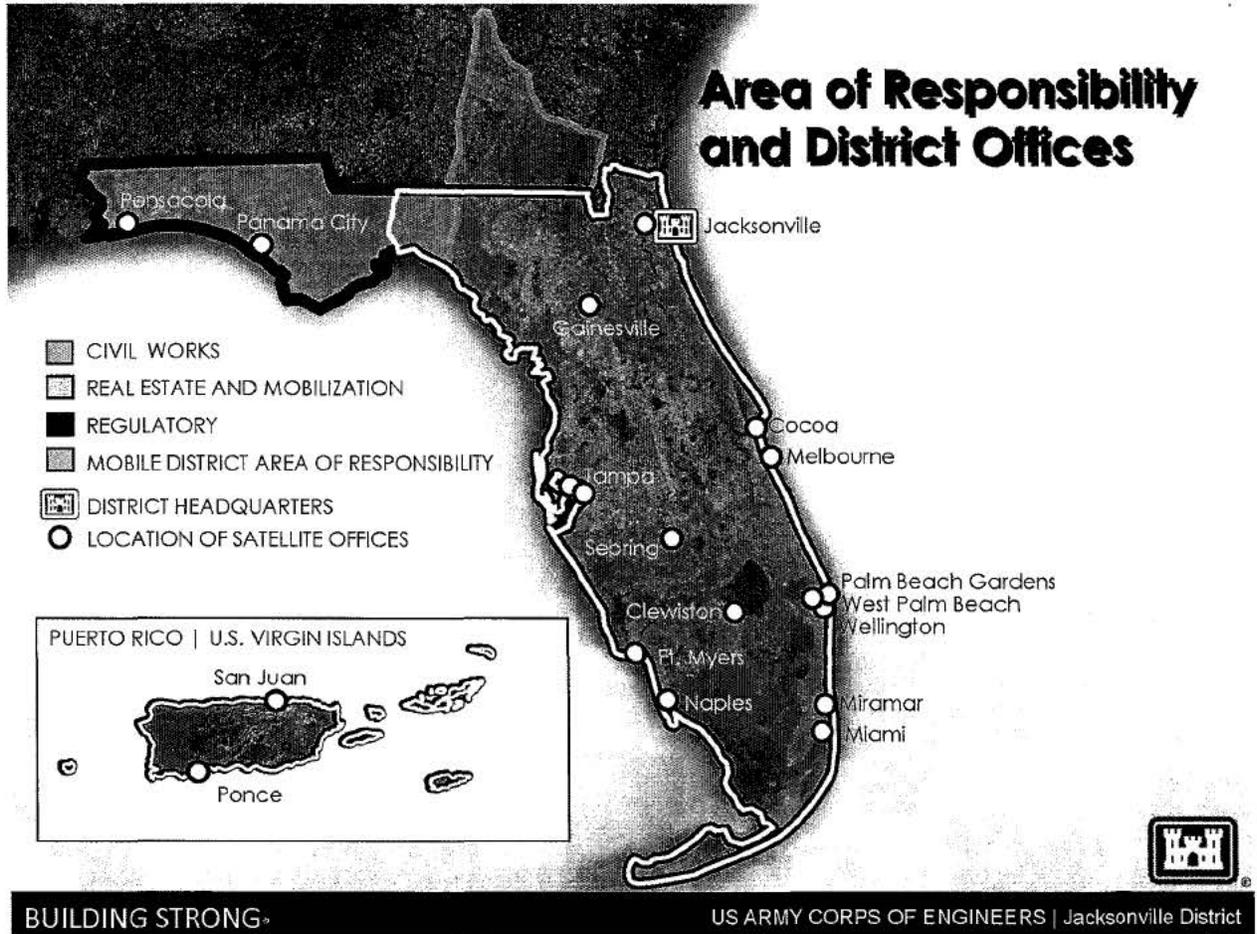
“Good Faith” means faithfulness to an agreed common purpose and consistency with the justified expectations of the other party to this Agreement.

“Indian tribe,” or “tribe,” means “an Indian tribe, band, nation, or other organized group or community, including Native village, Regional corporation or Village Corporation, as those terms are defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. § 1602), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.” 16 U.S.C. § 470w(4).

“Tribal Historic Preservation Officer (THPO)” means the official appointed or designated by an Indian tribe to implement the Tribal Historic Preservation Program. The term applies only for tribes on the National Park Service list that, in accordance with Section 101(d)(2) of NHPA, have formally assumed the responsibilities of the SHPO for purposes of Section 106 compliance on their tribal lands.

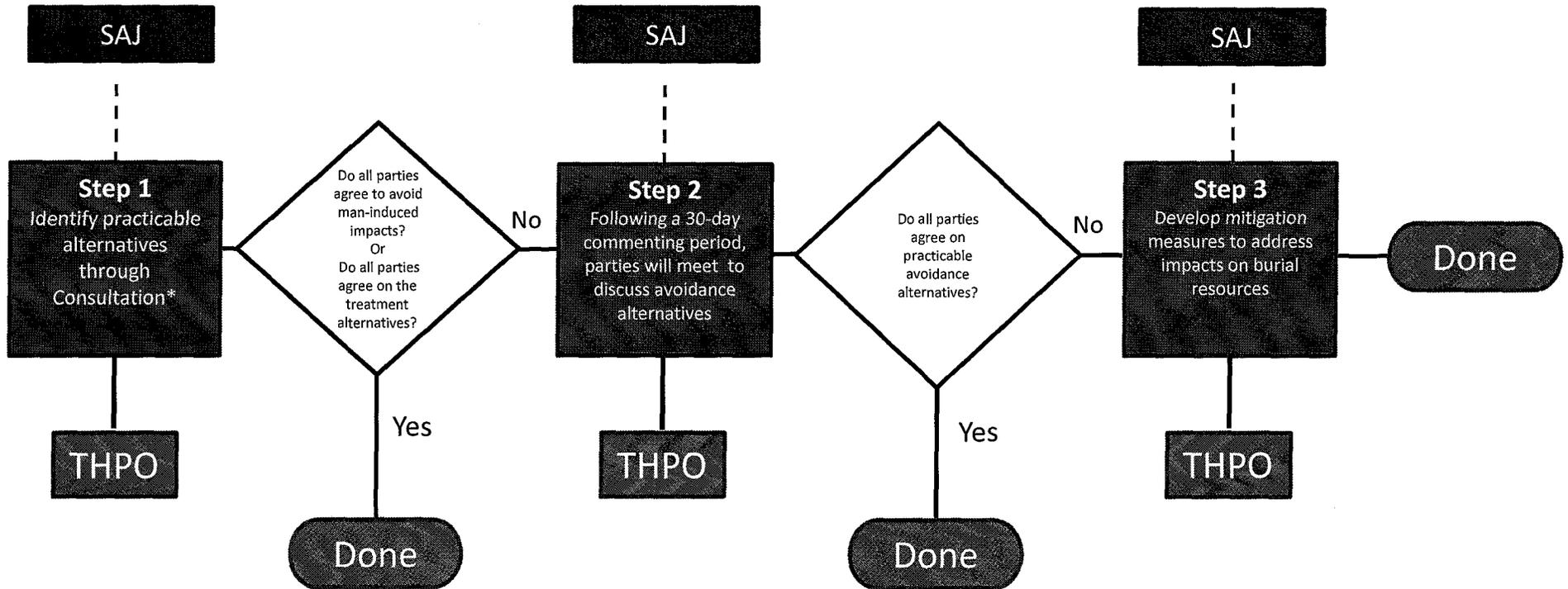
“Treatment” means, for purposes of this Agreement, actions taken by or required by the USACE to resolve impacts on cultural resources (avoidance and mitigation/minimization). For purpose of the NHPA, the term means actions taken by a Federal agency to mitigate or resolve adverse effects on historic properties. 36 C.F.R. § 800.6

**Appendix B**



## Appendix C-Three Step Process

SAJ's Process for Treatment of Burial Resources



SAJ and STOF Leadership will be involved in the decision making process during steps 2 and 3

Consultation will occur at a minimum via the following:

1. Civil Works Annual Project Meeting
2. Regulatory Bimonthly Status Meetings
3. Scoping of NEPA and/or feasibility studies
4. Reconnaissance studies

Note: the Consultation meetings listed above are not to be recognized as a substitute for this Three-Step Process.



*This Memorandum for Record is pursuant to the Trust Agreement Between the Jacksonville, U.S. Army Corps of Engineers, and the Seminole Tribe of Florida Regarding Proposed Actions that May Adversely Affect American Indian Burial Resources. The resolution of effects to burial resources will be accomplished through the Three-Step Process established in part VI of the agreement.*

MEMORANDUM FOR RECORD

MFR No.:

SUBJECT:

**Step 1. Thru consultation with appropriate parties the Jacksonville District has completed these tasks:**

- Developed identification methods for burial resources  
*Attach methodology*
- Identified potential treatment alternatives  
*Attach potential treatment alternatives including feasibility analysis relative to cultural/religious values and the likelihood of man-induced impacts*
- Developed a proposed consultation schedule  
*Attach proposed consultation schedule and protocols for information exchanges*
- Circulated MFR No. 1 to all consulting parties for a 30 calendar day review and commenting period  
*Attach comment matrix*

Date Document  
Routed for Review:

*If the Jacksonville District and the Seminole Tribe of Florida cannot agree on the feasibility and prudence of the alternatives relative to cultural/religious values or the alternatives fail to avoid man-induced impacts, this process will proceed to **Step 2**.*

\_\_\_\_\_  
Name of USACE SAJ Representative

\_\_\_\_\_  
Title of USACE SAJ Representative

\_\_\_\_\_  
Signature of USACE SAJ Representative

\_\_\_\_\_  
Date of Signature

Concur

Do Not Concur

\_\_\_\_\_  
Name of Seminole Tribe of Florida Representative

\_\_\_\_\_  
Title of Seminole Tribe of Florida Representative

\_\_\_\_\_  
Signature of Seminole Tribe of Florida Representative

\_\_\_\_\_  
Date of Signature

Seminole Tribe of Florida Comments Attached



*This Memorandum for Record is pursuant to the Trust Agreement Between the Jacksonville, U.S. Army Corps of Engineers, and the Seminole Tribe of Florida Regarding Proposed Actions that May Adversely Affect American Indian Burial Resources. The resolution of effects to burial resources will be accomplished through the Three-Step Process established in part VI of the agreement.*

MEMORANDUM FOR RECORD

MFR No.:

SUBJECT:

**Step 2. The Jacksonville District has completed the following tasks:**

- Established meeting date for USACE-SAJ and Seminole Tribe of Florida leadership and staff and other consulting parties to discuss alternatives considered during Step 1.

Meeting Date/Time:

- Prepared notes from meeting between leadership, to include guidance to staff on how to proceed.  
*Attach meeting summary and guidance to staff*

- Circulated MFR No. 2 to the Seminole Tribe of Florida to review and verify understanding of results of leadership meeting, to include guidance to staff on how to proceed. *Attach comment/response matrix*

Date Document Routed for Review:

*If the leadership of the respective parties concludes there are no feasible and prudent avoidance alternatives relative to cultural/religious values, then the staff for the respective parties will proceed to Step 3.*

<p>_____</p> <p>Name of USACE SAJ Representative</p> <p>_____</p> <p>Title of USACE SAJ Representative</p> <p>_____</p> <p>Signature of USACE SAJ Representative</p> <p>_____</p> <p>Date of Signature</p>	<p style="text-align: center;"><input type="checkbox"/> Concur                      <input type="checkbox"/> Do Not Concur</p> <p>_____</p> <p>Name of Seminole Tribe of Florida Representative</p> <p>_____</p> <p>Title of Seminole Tribe of Florida Representative</p> <p>_____</p> <p>Signature of Seminole Tribe of Florida Representative</p> <p>_____</p> <p>Date of Signature</p>
--	---

Seminole Tribe of Florida Comments Attached



*This Memorandum for Record is pursuant to the Trust Agreement Between the Jacksonville, U.S. Army Corps of Engineers, and the Seminole Tribe of Florida Regarding Proposed Actions that May Adversely Affect American Indian Burial Resources. The resolution of effects to burial resources will be accomplished through the Three-Step Process established in part VI of the agreement.*

MEMORANDUM FOR RECORD

MFR No.:

SUBJECT:

**Step 3. The Jacksonville District has completed the following tasks:**

*In coordination with the Seminole Tribe of Florida, prepared this third MFR discussing the feasibility and prudence relative to cultural/religious values of the mitigation measures comparing the mitigation measures to the alternatives developed in Step 1 and Step 2.*

This MFR includes the following, as prescribed by the agreement:

- List of alternatives that were considered
- List factors of each alternative and how they were considered
- Determination of feasibility and prudence relative to cultural/religious values for each alternative
- List differing opinions on feasibility and prudence relative to cultural/religious values
- Circulated this MFR to leadership of the appropriate consulting parties.

Date Document  
Routed for Review:

- Leadership of the Jacksonville District and Seminole Tribe of Florida meet to determine the best course of action or treatment. *Attach meeting summary*

Meeting Date/Time:

*Though the Jacksonville District will make the ultimate decision considering the interests of all stakeholders, it will make a good faith effort to honor any requests by the Seminole Tribe of Florida and acknowledges that such decisions are on a case-by-case basis.*

Concur

Do Not Concur

\_\_\_\_\_  
Name of USACE SAJ Representative

\_\_\_\_\_  
Name of Seminole Tribe of Florida Representative

\_\_\_\_\_  
Title of USACE SAJ Representative

\_\_\_\_\_  
Title of Seminole Tribe of Florida Representative

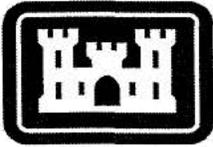
\_\_\_\_\_  
Signature of USACE SAJ Representative

\_\_\_\_\_  
Signature of Seminole Tribe of Florida Representative

\_\_\_\_\_  
Date of Signature

\_\_\_\_\_  
Date of Signature

Seminole Tribe of Florida Comments Attached



*This Memorandum for Record is pursuant to the Trust Agreement Between the Jacksonville, U.S. Army Corps of Engineers, and the Seminole Tribe of Florida Regarding Proposed Actions that May Adversely Affect American Indian Burial Resources. The resolution of effects to burial resources will be accomplished through the Three-Step Process established in part VI of the agreement.*

MEMORANDUM FOR RECORD

MFR No.:

SUBJECT:

**Additional Information:**

\_\_\_\_\_  
Name of USACE SAJ Representative

\_\_\_\_\_  
Signature of USACE SAJ Representative

\_\_\_\_\_  
Title of USACE SAJ Representative

\_\_\_\_\_  
Date of Signature



*This Memorandum for Record Attachment is pursuant to the Trust Agreement Between the Jacksonville, U.S. Army Corps of Engineers, and the Seminole Tribe of Florida Regarding Proposed Actions that May Adversely Affect American Indian Burial Resources. The resolution of effects to burial resources will be accomplished through the Three-Step Process established in part VI of the agreement.*

**MEMORANDUM FOR RECORD – Attachment**

**MFR No.:**

**SUBJECT:**

**Attachment Title:**

---

**PROGRAMMATIC AGREEMENT REGARDING THE LAKE OKEECHOBEE WATERSHED RESTORATION  
PROJECT, GLADES, HIGHLANDS, OKEECHOBEE, AND MARTIN COUNTIES, FLORIDA**

**Attachment D**

Definitions

DRAFT

**PROGRAMMATIC AGREEMENT REGARDING THE LAKE OKEECHOBEE WATERSHED RESTORATION  
PROJECT, GLADES, HIGHLANDS, OKEECHOBEE, AND MARTIN COUNTIES, FLORIDA**

**Glossary of Definitions**

**Adverse Effect** – an effect of an undertaking that “may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property’s location, design, setting, materials, workmanship, feeling or association. Consideration shall be given to all qualifying characteristics of an historic property, including those that may have been identified subsequent to the original evaluation of the property’s eligibility for the National Register. Adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative.” 36 C.F.R. § 800.5(a)(1).

**Area of Potential Effects (APE)** – “the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking.” 36 C.F.R. § 800.16(d).

**Construction** – Ground disturbing activities which have the potential to effect historic properties.

**Consultation** – “the process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the Section 106 process.” 36 C.F.R. § 800.16(f).

**Day(s)** – calendar days.

**Eligible for inclusion in the National Register** - Includes both properties formally determined as such in accordance with regulations of the Secretary of the Interior and all other properties that meet the National Register criteria.

**Historic Property** – “any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties.” See 36 C.F.R. § 800.16(l)(1), providing elaboration on the statutory definition codified at 54 U.S.C. § 300308.

**Interested Member of the Public** – an individual or entity that is not a consulting Party (until invited to be so), but which the Lead Federal Agency believes may be interested in information about the undertaking and its effects on historic properties based on, for example, the Lead Federal Agency’s prior experience or contact with the individual or entity, the recommendations of a SHPO or THPO, affected Indian tribes, or the individual or entity’s own initiative in providing its views. See 36 C.F.R. § 800.2(d).

**National Register of Historic Places (National Register)** – the National Park Service through the authority of the Secretary of the Interior maintains the National Register of Historic Places. Sites are determined eligible for listing on the National Register using criteria defined in 36 C.F.R. § 60.4.

**Signatory** – In accordance with 36 C.F.R. § 800.6(c)(1), a signatory has the sole authority to execute,

**PROGRAMMATIC AGREEMENT REGARDING THE LAKE OKEECHOBEE WATERSHED RESTORATION  
PROJECT, GLADES, HIGHLANDS, OKEECHOBEE, AND MARTIN COUNTIES, FLORIDA**

amend, or terminate the agreement.

**State Historic Preservation Officer (SHPO)** – “the official appointed or designated pursuant to Section 101(b)(1) of the NHPA to administer the State historic preservation program or a representative designated to act for the State historic preservation officer.” 36 C.F.R. § 800.16(v).

**Undertaking** – “a project, activity, or program funded in whole or in part under the jurisdiction of a Federal agency, including those carried out with Federal financial assistance; those requiring a Federal permit, license or approval.” 36 C.F.R. § 800.16(y).

DRAFT