



**US Army Corps
of Engineers®**

**PROGRAMMATIC AGREEMENT AMONG
THE U.S. ARMY CORPS OF ENGINEERS, THE FLORIDA STATE HISTORIC PRESERVATION
OFFICER, EVERGLADES NATIONAL PARK, AND THE ADVISORY COUNCIL ON HISTORIC
PRESERVATION REGARDING THE CENTRAL EVERGLADES PLANNING SOUTH PROJECT, MIAMI-
DADE COUNTY, FLORIDA**

WHEREAS, the U.S. Army Corps of Engineers, Jacksonville District (Corps), plans to construct and operate the Central Everglades Planning Project (CEPP) South Project (Project) with project features located in Miami-Dade County, Florida, as part of the Comprehensive Everglades Restoration Plan (CERP), authorized by Congress in Section 601(d)(2)(b) of the Water Resources Development Act (WRDA) of 2000 as amended by the 2016 Water Infrastructure Improvements for the Nation Act, which includes the WRDA of 2016 as Title I, and Section 1308(a) of America's Water Infrastructure Act, and as amended by WRDA of 2018 "with such modifications as the Secretary [of the Army] considers appropriate;" and

WHEREAS, the Congressionally-authorized purpose of the Project is to construct infrastructure for later operations to improve the quantity, quality, timing, and distribution of water flows to the Northern Estuaries, central Everglades (Water Conservation Area 3 [WCA 3] and Everglades National Park [ENP]), and Florida Bay to aid in restoring pre-drainage vegetative communities and habitat for fish and wildlife; and

WHEREAS, the Corps has determined that the Project constitutes an undertaking, as defined in 36 C.F.R. § 800.16(y) (a glossary is provided as Attachment A), 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 (formerly 16 U.S.C. § 470f); and

WHEREAS, the Corps has collaborated with a CEPP Cultural Resources Working Group to develop plans to identify historic properties and the effects of CEPP, with invitations for participation to the SHPO, ENP, Seminole Tribe of Florida (STOF), Miccosukee Tribe of Indians of Florida, South Florida Water Management District, the Certified Local Government of Miami-Dade County, and the Advisory Council on Historic Preservation (ACHP); and

WHEREAS, the Corps has determined a preliminary area of potential effects (APE) for the direct effects of the Project, as depicted on maps in Attachment B to this Programmatic Agreement (Agreement); and

WHEREAS, the location and design of features have not been finalized, and will be finalized as part of a phased, multi-year design and construction agreement between the Corps and the South Florida Water Management District (SFWMD), and the Corps has determined the project partnership agreement constitute a decision document requiring the completion of the Section 106 of the NHPA Review Process; and

WHEREAS, the features to be designed and constructed as part of CEPP South include water control structures, degradation of existing levees, backfilling of existing canals, and construction of levees and water control structures, as shown in Attachment B; and

WHEREAS, the Project is currently in Pre-Construction Engineering and Design (PED) phase and the APE will be refined based on engineering, cultural resources surveys, and hydraulic modeling. Current project designs and impacts are preliminary and will be subject to change; and

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WHEREAS, the Section 106 of the NHPA Review Process is ongoing for other components of CEPP, which are CEPP North and CEPP New Water; and

WHEREAS, the construction and implementation of the CEPP South features operate within current water budgets and will not affect Tribal Lands based on current modeling data; and

WHEREAS, there are two archaeological sites recorded in the Florida Master Site File within 200 meters of the conceptual location of CEPP South construction features and a portion of the L-67 Degrade crosses into the Shark River Slough Archaeological District, a property listed on the National Register of Historic Places; and

WHEREAS, portions of the APE have been surveyed to inventory historic properties, with 12 reports on file at the Florida Master Site File overlapping the conceptual location of CEPP South construction features; and

WHEREAS, the Corps has determined that the direct, indirect and cumulative effects of the Project has the potential to affect properties listed or eligible for listing in the NRHP and has initiated consultation regarding the Project with a working group to include staff from the SHPO, ENP, the STOF, and the ACHP, pursuant to Section 106 of the NHPA; and

WHEREAS, the Corps, with the concurrence of SHPO, has decided to comply with Section 106 of the NHPA for the Project 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)(2)(i), the Corps notified and invited the Miccosukee Tribe of Indians of Florida, the Seminole Nation of Oklahoma, the Seminole Tribe of Florida, and the Thlopthlocco Tribal Town to participate in this Agreement as Concurring Parties, and they have **accepted/declined** to participate in this Agreement as Concurring Parties and will remain Consulting Parties; and

WHEREAS, the SFWMD is the non-Federal sponsor for the project and has been invited to be a Concurring Party to this Agreement, and the SFWMD has **elected/declined** to participate; and

WHEREAS, the Project will affect lands within the boundaries of ENP and they have been invited to be a Signatory to this Agreement, and ENP has **elected/declined** to participate; and

WHEREAS, in accordance with 36 C.F.R. § 800.14(b)(3), the Corps **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 as a Signatory; and

WHEREAS, the SHPO, SFWMD (**if participating**), the ACHP, ENP, 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 **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

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NOW, THEREFORE, the Corps, SHPO, ENP, and the ACHP (herein referred to as Signatories) agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking 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

The preliminary APE for the Project was determined by the Corps in consultation with the Consulting Parties. The preliminary APE takes into account the likelihood of direct and indirect effects to historic properties resulting from the Project.

- A. The design and engineering of individual Project components will be completed separately as funding is available. When detailed Project designs become available, the Corps will refine the APE and provide the new APE to Consulting Parties. The preliminary APE, as shown in Attachment B, includes the tentative footprints of:

CEPP South Phase

- S-333 Spillway Modification
- S-356 Pump Station Modifications
- L-29 Canal Gated Spillway
- L-29 Levee Degrade
- L-67A Conveyance
- L-67C Levee Gap
- L-67C Levee Degrade
- L-67 Extension Levee Degrade and Canal Backfill
- Blue Shanty Levee Construction

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- B. As the Corps revises the APE, the Corps shall consult with the Consulting Parties on that revision in accordance with Stipulation I (Timeframes and Review Procedures). The Corps shall determine the potential for Project activities to affect historic properties in the revised APE in consultation with the Consulting Parties and the CEPP Cultural Resources Working Group. Revisions to the APE will not necessitate amendments to this Agreement.
- C. The APE will be finalized as the Project is designed. All efforts to identify historic properties, assess and resolve any adverse effects, to include indirect and cumulative effects, will be completed allowing consideration of historic properties in the siting and design of the feature. The Corps will complete the Section 106 Review Process before construction plans are finalized, approved, and constructed

III. TREATMENT OF HISTORIC PROPERTIES

- A. The Corps shall complete identification and evaluation of historic properties as early as practical, following the phased Project authorization and funding, to assist in the avoidance and minimization of historic properties well in advance of Project construction.
 - 1. An inventory of properties within the final APE 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 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 Professionals*. 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. If any areas are to be omitted from surveys due to excessive ground disturbance, the Corps shall document and consult on all 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. 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 36 C.F.R. § 800.4(d) or

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- 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 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. The Corps may implement the Project in a phased approach as features are designed and sited, and funding is available. Multiple identification surveys, historic property evaluations, and determinations of effects may result for each Project feature. The Corps reserves the right to make separate determinations of effects for each Project phase and feature. The Corps will provide information to the Working group and hold additional face-to-face consultations as requested, 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. The Corps anticipates providing information through the Working Group.
1. Findings of "No Historic Properties Affected."
 - a. The Corps shall make findings of "no historic properties affected" for each Project construction feature under the following circumstances:
 - i. If no historic properties are present in the APE; or
 - ii. The Project 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 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 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 Stipulation 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 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. If the Corps determines that an specific Project 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 feature to avoid or minimize effects to historic properties; and provide supporting documentation pursuant to 36 C.F.R. § 800.11(e).

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- 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 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 feature will have concluded. If the Corps will revise its finding then it shall proceed to Stipulation III.B.3 below.
 - d. Avoidance of adverse effects to historic properties is the preferred treatment approach. The Corps will consider redesign of elements of the Project feature in order to avoid and/or minimize historic properties and Project effects that may be adverse. If the Corps determines that the Project feature cannot be modified to avoid or minimize adverse effects, the Corps will make a determination of “adverse effect”.
3. If the Corps determines that a specific Project 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 Stipulation 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 feature. If necessary, a HPTP will also provide recommendations for the management of historic properties that are identified during this Project and 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 protection of historic properties where possible. The HPTP shall include a general schedule of work

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for each Project 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* (Attachment C) and/or the procedures outlined in Florida Statute 872, as appropriate.

1. The Corps shall submit a draft HPTP to the Consulting Parties for review and comment pursuant to Stipulation I (Timeframes and Review Procedures).
2. 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. 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 Professionals*.
4. 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. 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 Professionals*, and the ACHP's "Recommended Approach for Consultation on Recovery of Significant Information from Archaeological Sites" (ACHP, May 18, 1999).
6. 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 accordance with Stipulation I and VII (Timeframes and Review Procedures and Confidentiality).

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IV. QUALIFICATIONS

- A. 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 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 DHR found in *Module Three: Guidelines for Use by Historic Preservation Professionals*.

V. TREATMENT OF HUMAN REMAINS

- A. Human remains and grave goods encountered during any Project 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.
- B. The Native American Graves Protection and Repatriation Act (NAGPRA)(25 U.S.C. § 3001 et seq.) applies to this Agreement only on Federal lands within the APE, i.e. those owned by the Corps or NPS. In the event that Native American human remains, as well as Native American funerary objects, sacred objects, or objects of cultural patrimony are encountered during undertakings associated with this Agreement, those remains and objects are subject to NAGPRA and treatment under NAGPRA's implementing regulations at 43 C.F.R. Part 10.

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

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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 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. Any disclosure of information under this Agreement will be consistent 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 archaeological sites and any other cultural resources under 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 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 Signatory 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.

- C. Should a member of the public object to the terms of this agreement and its implementation, 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

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in reaching its decision, will consider all comments provided by the other 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 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. 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. Any Signatory to this Agreement may terminate this Agreement. 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.
 - 1. The Corps shall consult with the Signatories for a period not to exceed 30 calendar days to resolve the termination request.

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2. 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.
 3. Should such consultation fail, the Signatory proposing termination may terminate this Agreement by promptly notifying the other Signatories in writing.
 4. 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 feature shall be reviewed individually in accordance with 36 C.F.R. § 800.4-800.7.
- D. This Agreement shall remain in effect for a period of 15 years after the date it takes effect and shall automatically expire and have no further force or effect at the end of this 15-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.

XI. MONITORING AND REPORTING

Each year following the execution of this Agreement until it expires or is terminated, the Corps shall provide all parties to this Agreement and the ACHP a summary memorandum detailing work undertaken pursuant to its terms. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received in the Corps' efforts to carry out the terms of this Agreement.

XII. EFFECTIVE DATE

This Agreement shall take effect on the date that it has been fully executed by the Signatories and filed with the ACHP.

XIII. EXECUTION

Execution and the implementation of its terms of this Agreement by the Corps, the SHPO, ENP 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.

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SIGNATORY TO CENTRAL EVERGLADES PLANNING PROJECT SOUTH PROJECT, BROWARD,
MIAMI-DADE, AND MONROE COUNTIES, FLORIDA PROGRAMMATIC AGREEMENT:

U.S. ARMY CORPS OF ENGINEERS, JACKSONVILLE DISTRICT

BY: _____

DATE: _____

Andrew D. Kelly Jr.
Colonel, U.S. Army
District Commander

DRAFT

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SIGNATORY TO CENTRAL EVERGLADES PLANNING PROJECT, MIAMI-DADE COUNTY, FLORIDA, PROGRAMMATIC AGREEMENT:

FLORIDA STATE HISTORIC PRESERVATION OFFICE

BY: _____

DATE: _____

Timothy A. Parsons, Ph.D.
State Historic Preservation Officer

DRAFT

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**SIGNATORY TO CENTRAL EVERGLADES PLANNING PROJECT, MIAMI-DADE COUNTY, FLORIDA,
PROGRAMMATIC AGREEMENT:**

ADVISORY COUNCIL ON HISTORIC PRESERVATION

BY: _____

DATE: _____

John M. Fowler
Executive Director

DRAFT

**Programmatic Agreement Regarding Central Everglades Planning Project South Project, Miami-Dade
County, Florida**

SIGNATORY TO CENTRAL EVERGLADES PLANNING PROJECT, MIAMI-DADE COUNTY, FLORIDA,
PROGRAMMATIC AGREEMENT:

EVERGLADES NATIONAL PARK

BY: _____

DATE: _____

Pedros Ramos
Superintendent
Everglades and Dry Tortugas National Parks

DRAFT

Attachment A

Glossary

DRAFT

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.

Section 106 Process – The steps to identify historic properties, assess adverse effects, and resolve adverse effects promulgated by the Advisory Council for Historic Preservation through regulations found in 36 C.F.R Part 800.

Programmatic Agreement Regarding Central Everglades Planning Project, Palm Beach, Monroe, Miami-Dade, Broward, Hendry And Martin Counties, Florida

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

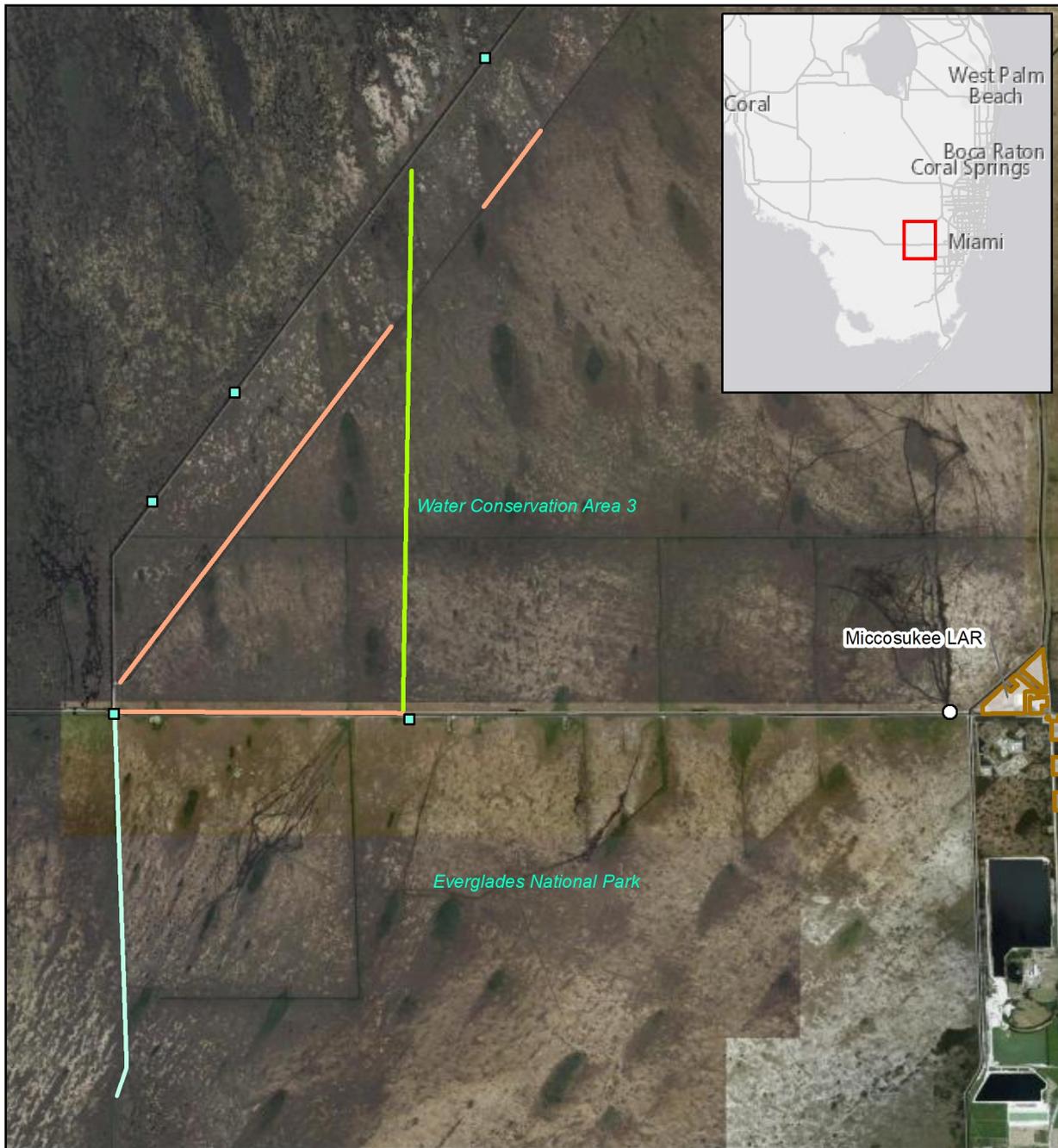
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Attachment B

Map of the Preliminary APE

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**Programmatic Agreement Regarding Central Everglades Planning Project, Palm Beach, Monroe,
Miami-Dade, Broward, Hendry And Martin Counties, Florida**



- Modify Pump Station
- New Structure
- BIA National Land Areas Representation
- Levee Construction
- Levee Degrade
- Levee Degrade and Canal Backfill

Central Everglades Planning Project South Project
Conceptual Location of Features

Miami-Dade, County, Florida

0 5 km

**Programmatic Agreement Regarding Central Everglades Planning Project, Palm Beach, Monroe,
Miami-Dade, Broward, Hendry 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*

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