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# **CULTURAL RESOURCES**

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## **MIAMI-DADE BACK BAY COASTAL STORM RISK MANAGEMENT FEASIBILITY STUDY**

**MIAMI-DADE COUNTY, FLORIDA**

### **APPENDIX E**



**U.S. Army Corps  
of Engineers  
Norfolk District**



**DEPARTMENT OF THE ARMY**  
US ARMY CORPS OF ENGINEERS  
NORFOLK DISTRICT  
FORT NORFOLK  
803 FRONT STREET  
NORFOLK VA 23510-1011

November 20, 2018

Jason Aldridge  
Deputy State Historic Preservation Officer  
Florida Division of Historic Resources  
R.A. Gray Building  
500 S. Bronough Street  
Tallahassee, FL 32399-0250

**RE: 2018 Public National Environmental Policy Act (NEPA) Scoping Meeting and Request for NEPA Scoping Comments: Miami-Dade Back Bay Coastal Storm Risk Management (CRSM) Feasibility Study**

Dear Mr. Aldridge,

While we will be sending further correspondence and information to the Florida Division of Historic Resources, we are including you in this invitation. This scoping letter is being promulgated by the U.S. Army Corps of Engineers (Corps) in compliance with public coordination requirements of the National Environmental Policy Act of 1969 (NEPA). The purpose of this correspondence is to formally initiate the scoping process as defined by 40 CFR 1501.7 for the Miami-Dade Back Bay Coastal Storm Risk Management (CSRM) Feasibility Study. The Corps is the lead federal agency for this study and Miami-Dade County is the nonfederal sponsor. The study authority is Public Law 84-71, June 15, 1955 which authorizes an examination and survey of the coastal and tidal areas of the eastern and southern United States, with particular reference to areas where severe damages have occurred from hurricane winds and tides. The purpose of the project is to reduce potential damages caused by coastal storms and improve human safety and coastal resiliency in the Miami-Dade County Back Bay.

The purpose of the scoping period is to commence the public process for the generation of a NEPA document to assess the effects of the alternatives associated with the Miami-Dade County Back Bay CSRM Feasibility Study. The NEPA document that will be prepared will be either an Environmental Assessment or an Environmental Impact Statement for this study. Scoping will aid in determining the scope of the analysis and any potentially significant issues, including those involving cultural properties protected by Section 106 of the National Historic Preservation Act. This process will also help identify alternatives and information needed to evaluate alternatives.

At this time we are seeking NEPA scoping comments regarding the study, and a public scoping meeting is scheduled December 5, 2018 from 4 p.m. to 7 p.m. at 701 NW 1st Ct, Miami, FL., 33136 in the DERM training room. The format of the meeting will be an open-house that will include informational poster boards and a presentation beginning at 4:30 pm. This meeting will be conducted jointly with the NEPA Scoping Meeting for the Miami-Dade County Coastal Storm Risk Management Feasibility Study, Miami-Dade County, Florida. The public can attend any time during the meeting hours.

The study area covers the entire county, however the focus is on coastal flooding problems. A map of the approximate study area and project overview is provided in Attachment 1. Potential measures being considered include but are not limited to the following: structural

alternatives (such as tidal gates and backflow preventers), non-structural alternatives (such as flood proofing, relocation, and elevation of structures), and Natural and Nature-Based Features (such as mangrove plantings, reefs, and wetland plantings).

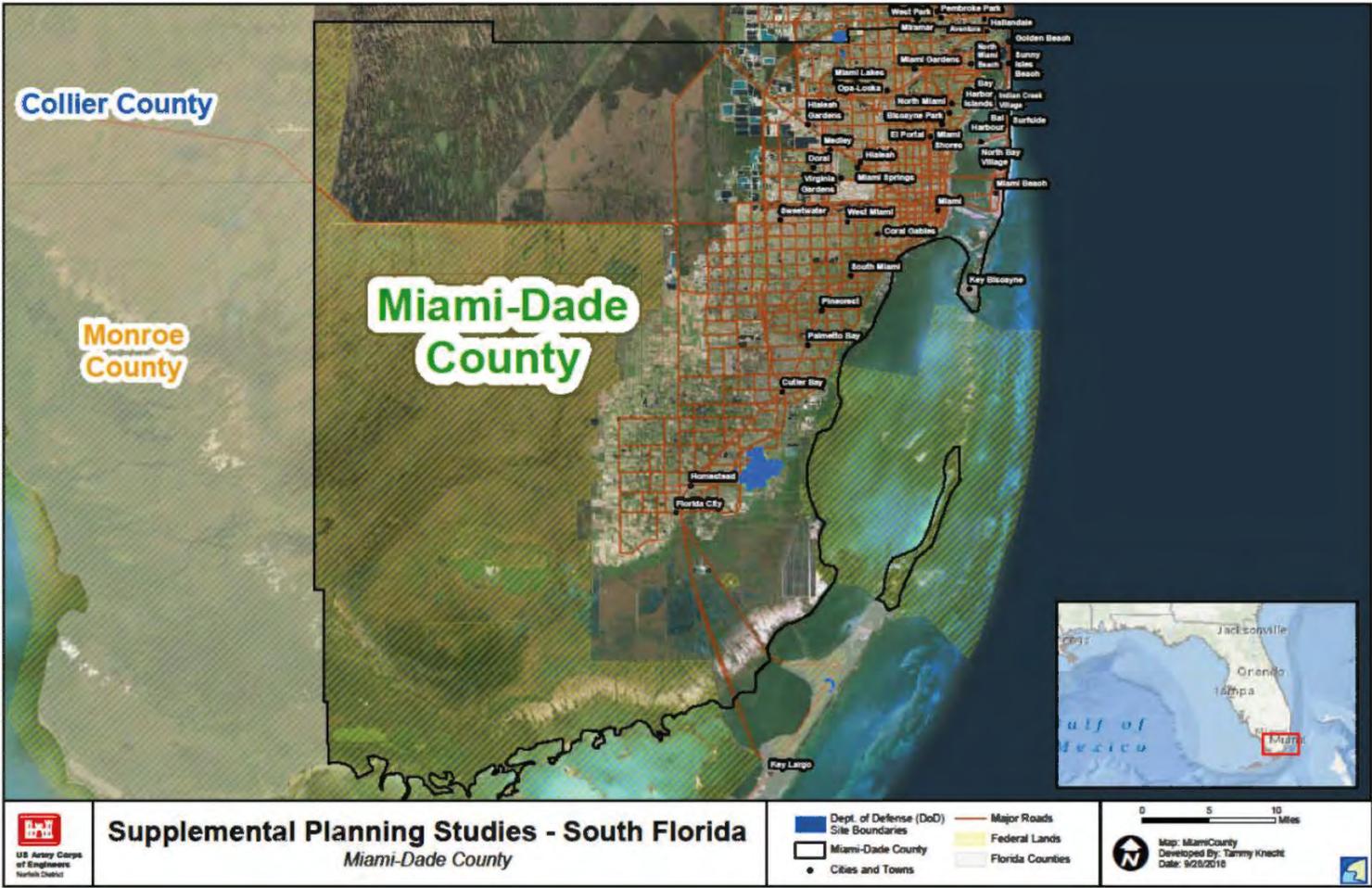
We welcome the Florida Division of Historic Resources's views, questions, comments, concerns and suggestions. The Corps believes that this study will benefit significantly from your involvement. Written scoping comments for the Miami-Dade Back Bay CSRMs Feasibility Study are to be provided no later than January 9, 2019. If it is determined that preparation of an Environmental Impact Statement is required, the Corps will publish a Notice of Intent to prepare an Environmental Impact Statement in the Federal Register and the NEPA public scoping comment period will be extended. Written comments or inquiries regarding the Miami-Dade Back Bay CSRMs Feasibility Study should be addressed to John Haynes at the address above, by email [John.H.Haynes@usace.army.mil](mailto:John.H.Haynes@usace.army.mil); or by telephone at 757-201-7008. Thank you in advance for your participation.

Sincerely,

HAYNES.JOHN.H  
JR.1271781624

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HAYNES.JOHN.HJR.1271781624  
DN: c=US, o=U.S. Government,  
ou=DoD, ou=PKI, ou=USA,  
cn=HAYNES.JOHN.HJR.1271781624  
Date: 2018.11.20 17:20:15 -05'00'

John H. Haynes, Jr. RPA  
U.S. Army Corps of Engineers, Norfolk District  
Archaeologist & Tribal Liaison  
Environmental Analysis Section  
Planning and Policy Branch



Attachment 1 : Map of the Approximate Study Area



**DEPARTMENT OF THE ARMY**  
US ARMY CORPS OF ENGINEERS  
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NORFOLK VA 23510-1011

November 20, 2018

Billy Cypress  
Chairman  
Miccosukee Tribe of Indians  
Tiamami Station  
P.O. Box 440021  
Miami, FL, 33144

**RE: 2018 Public National Environmental Policy Act (NEPA) Scoping Meeting and Request for NEPA Scoping Comments: Miami-Dade Back Bay Coastal Storm Risk Management (CRSM) Feasibility Study**

Dear Chairman Cypress,

This scoping letter is being promulgated by the U.S. Army Corps of Engineers (Corps) in compliance with public coordination requirements of the National Environmental Policy Act of 1969 (NEPA). The purpose of this correspondence is to formally initiate the scoping process as defined by 40 CFR 1501.7 for the Miami-Dade Back Bay Coastal Storm Risk Management (CSRSM) Feasibility Study. The Corps is the lead federal agency for this study and Miami-Dade County is the nonfederal sponsor. The study authority is Public Law 84-71, June 15, 1955 which authorizes an examination and survey of the coastal and tidal areas of the eastern and southern United States, with particular reference to areas where severe damages have occurred from hurricane winds and tides. The purpose of the project is to reduce potential damages caused by coastal storms and improve human safety and coastal resiliency in the Miami-Dade County Back Bay.

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flood proofing, relocation, and elevation of structures), and Natural and Nature-Based Features (such as mangrove plantings, reefs, and wetland plantings).

We welcome the Miccosukee Tribe of Indians' views, questions, comments, concerns and suggestions on a government to government basis. The Corps believes that this study will benefit significantly from your involvement. Written scoping comments for the Miami-Dade Back Bay CSRМ Feasibility Study are to be provided no later than January 9, 2019. If it is determined that preparation of an Environmental Impact Statement is required, the Corps will publish a Notice of Intent to prepare an Environmental Impact Statement in the Federal Register and the NEPA public scoping comment period will be extended. Written comments or inquiries regarding the Miami-Dade Back Bay CSRМ Feasibility Study should be addressed to John Haynes at the address above, by email [John.H.Haynes@usace.army.mil](mailto:John.H.Haynes@usace.army.mil); or by telephone at 757-201-7008. Thank you in advance for your participation.

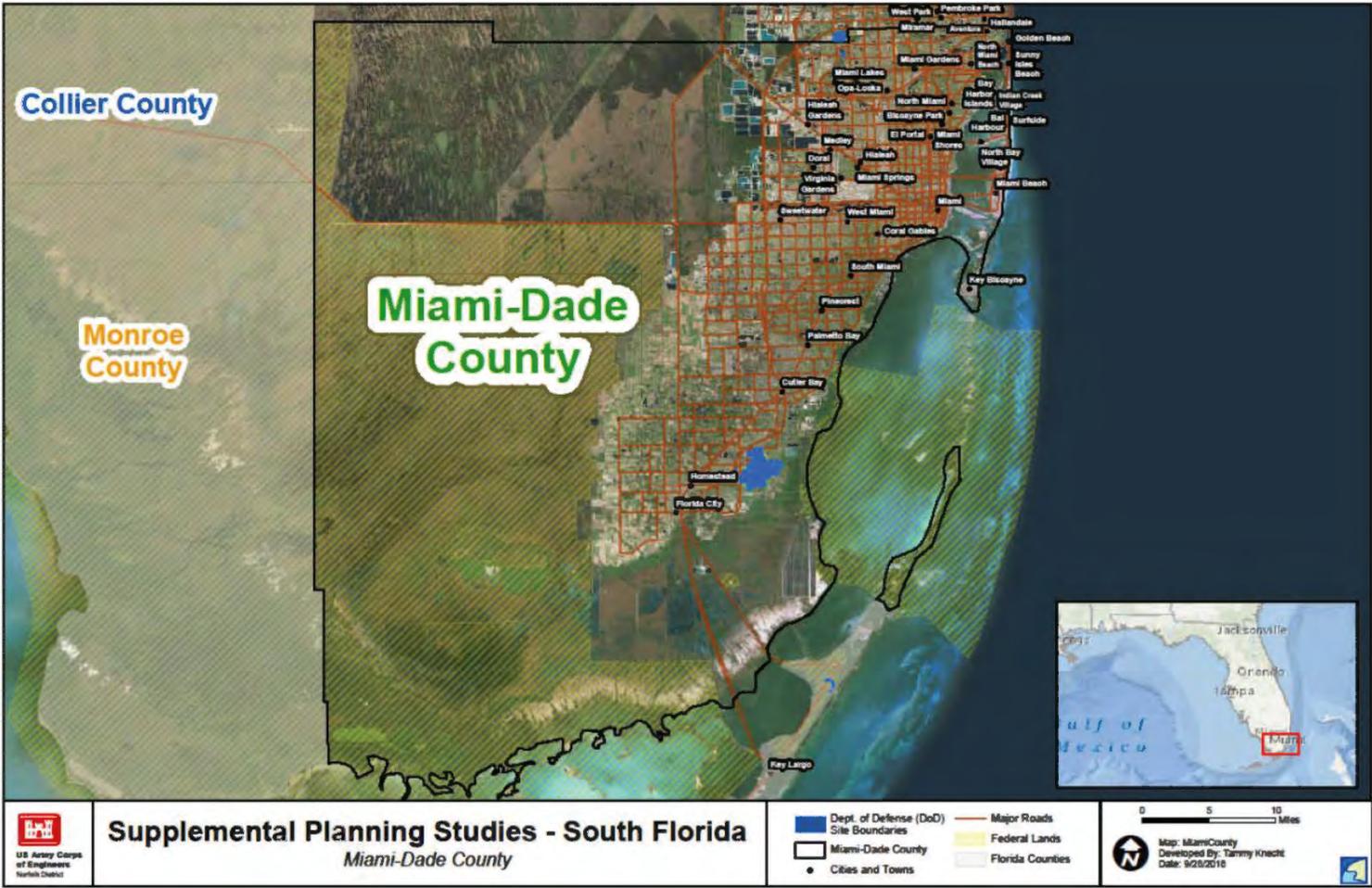
Sincerely,

**HAYNES.JOHN.H.**

**JR.1271781624**

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ou=USA, cn=HAYNES.JOHN.H.JR.1271781624  
Date: 2018.11.20 17:18:43 -05'00'

John H. Haynes, Jr. RPA  
U.S. Army Corps of Engineers, Norfolk District  
Archaeologist & Tribal Liaison  
Environmental Analysis Section  
Planning and Policy Branch



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NORFOLK VA 23510-1011

November 20, 2018

Marcellus Osceola Jr.  
Chairman  
Seminole Tribe of Florida  
6300 Stirling Road  
Hollywood, FL, 33024

**RE: 2018 Public National Environmental Policy Act (NEPA) Scoping Meeting and Request for NEPA Scoping Comments: Miami-Dade Back Bay Coastal Storm Risk Management (CRSM) Feasibility Study**

Dear Chairman Osceola,

This scoping letter is being promulgated by the U.S. Army Corps of Engineers (Corps) in compliance with public coordination requirements of the National Environmental Policy Act of 1969 (NEPA). The purpose of this correspondence is to formally initiate the scoping process as defined by 40 CFR 1501.7 for the Miami-Dade Back Bay Coastal Storm Risk Management (CSRSM) Feasibility Study. The Corps is the lead federal agency for this study and Miami-Dade County is the nonfederal sponsor. The study authority is Public Law 84-71, June 15, 1955 which authorizes an examination and survey of the coastal and tidal areas of the eastern and southern United States, with particular reference to areas where severe damages have occurred from hurricane winds and tides. The purpose of the project is to reduce potential damages caused by coastal storms and improve human safety and coastal resiliency in the Miami-Dade County Back Bay.

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flood proofing, relocation, and elevation of structures), and Natural and Nature-Based Features (such as mangrove plantings, reefs, and wetland plantings).

We welcome the Seminole Tribe of Florida's views, questions, comments, concerns and suggestions on a government to government basis. The Corps believes that this study will benefit significantly from your involvement. Written scoping comments for the Miami-Dade Back Bay CSRM Feasibility Study are to be provided no later than January 9, 2019. If it is determined that preparation of an Environmental Impact Statement is required, the Corps will publish a Notice of Intent to prepare an Environmental Impact Statement in the Federal Register and the NEPA public scoping comment period will be extended. Written comments or inquiries regarding the Miami-Dade Back Bay CSRM Feasibility Study should be addressed to John Haynes at the address above, by email [John.H.Haynes@usace.army.mil](mailto:John.H.Haynes@usace.army.mil); or by telephone at 757-201-7008. Thank you in advance for your participation.

Sincerely,

**HAYNES.JOHN.H**  
**JR.1271781624**

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John H. Haynes, Jr. RPA  
U.S. Army Corps of Engineers, Norfolk District  
Archaeologist & Tribal Liaison  
Environmental Analysis Section  
Planning and Policy Branch





**DEPARTMENT OF THE ARMY**  
US ARMY CORPS OF ENGINEERS  
NORFOLK DISTRICT  
FORT NORFOLK  
803 FRONT STREET  
NORFOLK VA 23510-1011

November 20, 2018

Gregory Chilcoat  
Chief  
The Seminole Nation of Oklahoma  
P.O. Box 1498  
Wewoka, OK, 74884

**RE: 2018 Public National Environmental Policy Act (NEPA) Scoping Meeting and Request for NEPA Scoping Comments: Miami-Dade Back Bay Coastal Storm Risk Management (CRSM) Feasibility Study**

Dear Chief Chilcoat,

This scoping letter is being promulgated by the U.S. Army Corps of Engineers (Corps) in compliance with public coordination requirements of the National Environmental Policy Act of 1969 (NEPA). The purpose of this correspondence is to formally initiate the scoping process as defined by 40 CFR 1501.7 for the Miami-Dade Back Bay Coastal Storm Risk Management (CSRSM) Feasibility Study. The Corps is the lead federal agency for this study and Miami-Dade County is the nonfederal sponsor. The study authority is Public Law 84-71, June 15, 1955 which authorizes an examination and survey of the coastal and tidal areas of the eastern and southern United States, with particular reference to areas where severe damages have occurred from hurricane winds and tides. The purpose of the project is to reduce potential damages caused by coastal storms and improve human safety and coastal resiliency in the Miami-Dade County Back Bay.

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We welcome the The Seminole Nation of Oklahoma's views, questions, comments, concerns and suggestions on a government to government basis. The Corps believes that this study will benefit significantly from your involvement. Written scoping comments for the Miami-Dade Back Bay CSRM Feasibility Study are to be provided no later than January 9, 2019. If it is determined that preparation of an Environmental Impact Statement is required, the Corps will publish a Notice of Intent to prepare an Environmental Impact Statement in the Federal Register and the NEPA public scoping comment period will be extended. Written comments or inquiries regarding the Miami-Dade Back Bay CSRM Feasibility Study should be addressed to John Haynes at the address above, by email [John.H.Haynes@usace.army.mil](mailto:John.H.Haynes@usace.army.mil); or by telephone at 757-201-7008. Thank you in advance for your participation.

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Date: 2018.11.20 17:15:03 -05'00'

John H. Haynes, Jr. RPA  
U.S. Army Corps of Engineers, Norfolk District  
Archaeologist & Tribal Liaison  
Environmental Analysis Section  
Planning and Policy Branch





## FLORIDA DEPARTMENT *of* STATE

**RICK SCOTT**  
Governor

**KEN DETZNER**  
Secretary of State

Mr. John H. Haynes, Jr. RPA  
Archaeologist & Tribal Liaison  
U.S. Army Corps of Engineers, Norfolk District  
803 Front Street  
Norfolk, VA 32510-1011

January 7, 2019

RE: DHR Project File No.:2018-6171, Received by DHR: November 30, 2018  
2018 Public National Environmental Policy Act (NEPA) Scoping Meeting and Request for NEPA  
Scoping Comments: Miami-Dade Back Bay Coastal Storm Risk Management (CRSM)  
Feasibility Study

Mr. Haynes:

Thank you for notifying our office of the above mentioned study. It is our understanding that the purpose of this study will be to examine the specified area and provide recommendations for measures to reduce potential damages caused by coastal storms and improve human safety and coastal resiliency. The Corps notes that additional information as well as further consultation with our office will follow as project planning continues.

Our office has few specific comments at this time since there is limited information about possible recommended measures. However, we do look forward to working with the Corps to address how recommended measures may affect historic properties. While some recommended measures may cause adverse effects to historic properties, these measures may also help to mitigate coastal storm damage risk to historic properties. Early discussion and planning for the different needs of historic properties may help to avoid or minimize potential adverse effects without compromising the overall goal of improving human safety and coastal resiliency.

Since there are numerous historic properties within Miami-Dade County, including the study area, it is important the Corps address a current inventory of historic properties for the area of potential effect. Our office can assist in this effort by sharing information available in the Florida Master Site File. Some recommended measures may require cultural resources assessment surveys to ensure historic properties are adequately identified and evaluated in those areas. Addressing changes in hydrology and water levels resulting from recommended measures will also be important in evaluating possible adverse effects to historic properties, especially for any archaeological sites which may be unnaturally inundated by those measures.

As mentioned above, our office looks forward to working with the Corps as planning for the feasibility study continues. Once more specific measures are identified, our office will provide additional comments and recommendations.

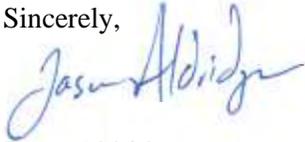
**Division of Historical Resources**  
R.A. Gray Building • 500 South Bronough Street • Tallahassee, Florida 32399  
850.245.6300 • 850.245.6436 (Fax) FLHeritage.com



Mr. Haynes  
DHR Project File No.: 2018-6171  
January 7, 2019  
Page 2

If you have any questions, please contact me by email at [Jason.Aldridge@dos.myflorida.com](mailto:Jason.Aldridge@dos.myflorida.com), or by telephone at 850-245-6344.

Sincerely,

A handwritten signature in blue ink that reads "Jason Aldridge". The signature is written in a cursive style with a large initial "J".

Jason Aldridge  
Deputy State Historic Preservation Officer  
for Compliance and Review



Preserving America's Heritage

January 23, 2020

Mr. John H. Haynes, Jr., RPA  
Archaeologist  
US Army Corps of Engineers  
Norfolk District  
803 Front Street  
Norfolk, Virginia 23510

Ref: *Back Bays Coastal Storm Risk Management Study*  
*Miami-Dade County, Florida*  
*ACHPConnect Log Number:14939*

Dear Mr. Haynes:

The Advisory Council on Historic Preservation (ACHP) has received your notification of adverse effect for the referenced undertaking that was submitted in accordance with Section 800.6(a)(1) of our regulations, "Protection of Historic Properties" (36 CFR Part 800). The background documentation included with your submission does not meet the specifications in Section 800.11(e) of the ACHP's regulations. We, therefore, are unable to determine whether Appendix A of the regulations, *Criteria for Council Involvement in Reviewing Individual Section 106 Cases*, applies to this undertaking. Accordingly, we request that you submit the following additional information so that we can determine whether our participation in the consultation to resolve adverse effects is warranted.

- Copies or summaries of any views provided by consulting parties, the public, and
- Copies or summaries of any views or comments provided by any affected Indian tribe.

Upon receipt of the additional information, we will notify you within 15 days of our decision.

If you have any questions, please contact Mr. Christopher Daniel at 202-517-0223 or via e-mail at [cdaniel@achp.gov](mailto:cdaniel@achp.gov).

Sincerely,

LaShavio Johnson  
Historic Preservation Technician  
Office of Federal Agency Programs



*Preserving America's Heritage*

**Advisory Council on Historic Preservation  
Electronic Section 106 Documentation Submittal System (e106) Form  
MS Word format**

**Send to: [e106@achp.gov](mailto:e106@achp.gov)**

**I. Basic information**

- 1. Name of federal agency** (If multiple agencies, state them all and indicate whether one is the lead agency):

U.S.. Army Corps of Engineers

- 2. Name of undertaking/project** (Include project/permit/application number if applicable):

Miami-Dade County Back Bays Coastal Storm Risk Management Study

- 3. Location of undertaking** (Indicate city(s), county(s), state(s), land ownership, and whether it would occur on or affect historic properties located on tribal lands):

Miami-Dade County, Florida; private, local, and state owned properties; no tribal or federal lands involved

- 4. Name and title of federal agency official and contact person for this undertaking**, including email address and phone number:

John H. Haynes, Jr., RPA

Archaeologist

US Army Corps of Engineers, Norfolk District

803 Front Street

Norfolk, Virginia 23510

757-201-7008

[John.h.hayes@usace.army.mil](mailto:John.h.hayes@usace.army.mil)

ADVISORY COUNCIL ON HISTORIC PRESERVATION

401 F Street NW, Suite 308 □ Washington, DC 20001-2637

Phone: 202-517-0200 Fax: 202-517-6381 [achp@achp.gov](mailto:achp@achp.gov) [www.achp.gov](http://www.achp.gov)

**5. Purpose of notification.** Indicate whether this documentation is to:

- notify the ACHP of a finding that an undertaking may adversely affect historic properties, and/or
- invite the ACHP to participate in a Section 106 consultation, and/or
- **propose to develop a project Programmatic Agreement (project PA) for complex or multiple undertakings in accordance with 36 C.F.R. 800.14(b)(3).**

**II. Information on the Undertaking\***

**6. Describe the undertaking and nature of federal involvement** (if multiple federal agencies are involved, specify involvement of each):

This study examines measures to reduce flood damages from coastal storms, develops alternative plans, and recommends a plan to achieve the objectives.

**7. Describe the Area of Potential Effects:**

Most of the developed areas of Miami-Dade County.

**8. Describe steps taken to identify historic properties:**

Records obtained from the Florida Division of Historic Resources for archaeology, architecture, and surveys. This is a Feasibility stage study. If approved and funded the project would move forth to the Preconstruction Engineering and Design stage, during which field surveys for historic properties would be undertaken. The field identifications and procedures for mitigation are set forth in a draft programmatic agreement.

**9. Describe the historic property** (or properties) and any National Historic Landmarks within the APE (or attach documentation or provide specific link to this information):

None of the structural measures will impact archaeological recorded sites, although some NRHP listed buildings may have visual effects. Attached is a list of NRHP listed properties that are within focus areas for nonstructural measures.

**10. Describe the undertaking's effects on historic properties:**

The project would employ three categories of measures with the potential to cause effects to historic properties:

Structural measures: seawalls, surge barriers

Nonstructural measures: raising buildings, demolishing or moving buildings, and floodproofing (waterproofing the outside [dry proofing] or the inside [wet proofing] of the lower story of a building)

Critical infrastructure protection: using an encircling "ringwall" to protect buildings and structures from flood waters, or employing a nonstructural measure discussed above

**11. Explain how this undertaking would adversely affect historic properties** (include information on any conditions or future actions known to date to avoid, minimize, or mitigate adverse effects):

Construction of structural measures (including ringwalls) would cause ground disturbance adversely affecting unrecorded archaeological sites. Recorded archaeological sites have been avoided during the design process. Structural measures could also cause visual effects to non-archaeological historic properties. Nonstructural measures could cause adverse effects to historic buildings and structures, by altering and possibly destroying or moving them, and may include ground disturbance.

**12. Provide copies or summaries of the views provided to date by any consulting parties, Indian tribes or Native Hawai'ian organizations, or the public**, including any correspondence from the SHPO and/or THPO.

There was a meeting with the THPO for the Seminole Tribe of Florida on October 18, 2018, soon after the start of the study, giving an overview of the scope and objectives of the project. No specific comments were made other than to be kept informed of the resulting study.

A public NEPA scoping meeting was held in Miami on December 5, 2018.

Copies of correspondence will be submitted with this form.

*\* see Instructions for Completing the ACHP e106 Form*

### **III. Optional Information**

**13. Please indicate the status of any consultation that has occurred to date.** Are there any consulting parties involved other than the SHPO/THPO? Are there any outstanding or unresolved concerns or issues that the ACHP should know about in deciding whether to participate in consultation?

The Miami-Dade County Office of Historic Preservation has also been contacted. There are no outstanding issues at this time

**14. Does your agency have a website or website link where the interested public can find out about this project and/or provide comments?** Please provide relevant links:

<http://usacena0.maps.arcgis.com/apps/CrowdsourcingReporter/index.html?appid=00abfd78e3534ed5b02a6369141afe87>

**15. Is this undertaking considered a “major” or “covered” project listed on the Federal Infrastructure Projects Permitting Dashboard or other federal interagency project tracking system?** If so, please provide the link or reference number:

The Infrastructure Projects Permitting Dashboard reference number is 476677.

**The following are attached to this form** (check all that apply):

Section 106 consultation correspondence

Maps, photographs, drawings, and/or plans

Additional historic property information

Other:

**From:** [e106](#)  
**To:** [Haynes, John H Jr CIV USARMY CENAO \(USA\)](#)  
**Subject:** [Non-DoD Source] RE: e106 form for Miami=Dade County Back Bays Coastal Storm Risk Management (UNCLASSIFIED)  
**Date:** Tuesday, January 14, 2020 10:09:18 AM

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The ACHP has received your submission to [e106@achp.gov](mailto:e106@achp.gov). If your submission is to:

- \* notify the ACHP of a finding that an undertaking may adversely affect historic properties, and/or
- \* invite the ACHP to participate in a section 106 consultation, and/or
- \* propose to develop a project Programmatic Agreement (project PA) for complex or multiple undertakings,

and you are enclosing the completed e106 form, this is your official dated receipt of your submission (in accordance with 36 CFR Part 800.6(1)). The ACHP has 15 working days to determine if it will participate in consultation to resolve adverse effects to historic properties. If the ACHP does not participate in consultation, the agency will still need to file the final agreement document and related documentation with the ACHP at the conclusion of the consultation process. This filing is required in order for the agency to complete its compliance responsibilities under Section 106 of the National Historic Preservation Act.

-----Original Message-----

From: Haynes, John H Jr CIV USARMY CENAO (USA) [<mailto:John.H.Haynes@usace.army.mil>]  
Sent: Monday, January 13, 2020 3:36 PM  
To: e106  
Cc: Jason Aldridge ([jason.aldridge@dos.myflorida.com](mailto:jason.aldridge@dos.myflorida.com))  
Subject: e106 form for Miami=Dade County Back Bays Coastal Storm Risk Management (UNCLASSIFIED)

CLASSIFICATION: UNCLASSIFIED

John H. Haynes, Jr. RPA  
Archaeologist & Tribal Liaison  
U.S. Army Corps of Engineers  
Norfolk District (NAO)  
Office 757-201-7008  
Mobile 757-754-1589  
[John.H.Haynes@usace.army.mil](mailto:John.H.Haynes@usace.army.mil)

CLASSIFICATION: UNCLASSIFIED

PROGRAMMATIC AGREEMENT AMONG THE UNITED STATES ARMY CORPS OF ENGINEERS, THE FLORIDA STATE HISTORIC PRESERVATION OFFICE, AND MIAMI-DADE COUNTY REGARDING THE MIAMI-DADE BACK BAY COASTAL STORM RISK MANAGEMENT PROJECT, MIAMI-DADE COUNTY, FLORIDA

**WHEREAS**, the U.S. Army Corps of Engineers (USACE) and Miami-Dade County (County) have proposed to design and implement measures to reduce damages caused by flooding during coastal storms, an undertaking known as the Miami-Dade Back Bays Coastal Storm Risk Management Project (Project); and

**WHEREAS**, the Project involves structural measures including but not limited to surge barriers, tide gates, seawalls, berms, and non-structural measures including raising buildings, water proofing basements, and buyout-demolish buildings, all of which may result in effects on properties listed in or eligible for listing in the National Register of Historic Places (NRHP); and

**WHEREAS**, the USACE and the County have consulted with the Florida State Historic Preservation Office (SHPO) pursuant to 36 CFR Part 800, the regulations implementing Section 106 of the National Historic Preservation Act (54 U.S.C. § 306108) (Section 106) and regulations implementing the National Environmental Policy Act; and

**WHEREAS**, the USACE, in consultation with the SHPO, has established the Project's direct Area of Potential Effects (APE) as the areas where structural measures are implemented and non-structural measures are applied to historic properties as defined in 36 CFR §800.16(l) (as shown in Attachment A) and the visual APE as the area within which there may be historic properties within the view shed of both structural and non-structural measures; 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**, the Corps had determined that use of this agreement is part of the 40 CFR § 1508.21 NEPA process; 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

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**WHEREAS**, the Corps determined that the Project will not have adverse cumulative or indirect effects based on the placement of Project features north of Lake Okeechobee and as Project features are operationally distinct from other CERP features; and

**WHEREAS**, the preliminary APE will be refined in the 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 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 determined that the Project does not occur on or have the potential to affect historic properties on tribal lands; 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**, cultural resource surveys have not been conducted within the Project's direct APE, as shown in Attachment A, and no recorded sites listed in or eligible for listing in the NRHP are within the Project's direct APE; and

**WHEREAS** the USACE, in consultation with the SHPO and other Consulting Parties, has determined that the Project has the potential to cause adverse effects to cultural resources \ which may be eligible for listing in the NRHP; and

**WHEREAS**, the USACE and the County have consulted with the SHPO and the parties have agreed that, after construction of the Project, subsequent operations and maintenance undertakings associated with it would be considered separate undertakings with regard to Section 106; and

**WHEREAS**, 36 CFR § 800.14(b)(1)[ii] allows federal agencies to fulfill their obligations under Section 106 through the development and implementation of programmatic agreements when effects on historic properties cannot be determined prior to approval of an undertaking; and

**WHEREAS**, in accordance with 36 CFR § 800.2(c)(4), the USACE has invited the County to consult on and sign this Agreement as a Signatory Party; 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 CFR § 800.14(b), the USACE has notified the Advisory Council on Historic Preservation (ACHP) of its intention to develop this programmatic agreement (Agreement), pursuant to 36 CFR § 800.14(b)(1)(ii) (letter dated ), and the ACHP has declined/elected to participate in the consultation (letter dated ); and

**WHEREAS**, in accordance with 36 C.F.R. § 800.14(b)(3), the Corps, in a letter dated XXX, 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 as Concurring Parties. The Seminole Tribe of Florida have declined to participate in this Agreement as a Concurring Party, and the Seminole Nation of Oklahoma, the Miccosukee Tribe of Indians of Florida, and the Thlopthlocco Tribal Town did not respond. These tribes will remain Consulting Parties to this Agreement; and

**WHEREAS**, in accordance with 36 CFR § 800.2(c)(5), the USACE has invited the Miami-Dade County Historic Preservation Commission to participate and they have accepted/have declined to participate/have not responded; and

**WHEREAS**, in accordance with 36 CFR § 800.2(d) & 40 CFR § 1503, the USACE has solicited public comment on the Project through a public scoping meeting (held in on), a public meeting on the final array of alternatives (held in on), and a public meeting after publication of the draft Environmental Impact Statement (held in on);

**NOW, THEREFORE**, the USACE, the County, and the SHPO (Signatories) agree that the Project shall be implemented in accordance with the following stipulations in order to take into account the effects of the Project 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 Miami-Dade Back Bays Coastal Storm Risk Management Study, the Corps screened multiple alternatives to select the least-costly plan that reasonably maximized environmental benefits for the Project. The preliminary APE is comprised of the Recommended Plan project feature and includes seawalls, surge barriers, pump stations and immediate surrounding area, as well buildings identified for nonstructural measures as depicted on maps in Attachment A to this Agreement. 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.

B. The Corps previously determined that the Project will not have adverse cumulative or indirect effects based on the preliminary APE; however, if the APE is revised in PED, cumulative and indirect effects may be reconsidered through consultation in accordance with Stipulation II.C below.

C. 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 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 result in adverse direct, indirect, or cumulative affects to 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. The Project archaeologist will begin consultation with the Consulting Parties regarding PED timeframes, cultural resources surveys, and proposed construction schedules within six (6) months of receiving funding at the Jacksonville District level. If the Project is funded by project feature or in phases, the Corps will inform the Consulting Parties and consult on the manner in which the Corps proposes to order the identification and evaluation of historic properties and make subsequent determination of effects for each Project phase or feature.

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 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. The Corps will inform Consulting Parties during identification and evaluation efforts if separate determination of effects are necessary. 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. If the Corps determines that changes to the APE will result in adverse direct, indirect, or cumulative affects to historic properties, the Corps shall consult on this finding of effect in accordance with Stipulation II.C.

**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).
- 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.

#### B. 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 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). Following SHPO 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.
2. 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*.
3. 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.
4. 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).

5. 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 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. Bioarchaeologist/Osteologist means a person who possesses a postgraduate degree in human skeletal biology, human forensic osteology, or other related area of physical anthropology and who has a minimum of 1 year of laboratory experience in human skeletal analysis and reconstruction. "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. If it is determine that the project. Will occur on Federal lands then subsequent Federal laws will apply

## **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 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 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.
- 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 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 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.
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 phase and/or feature shall be reviewed individually in accordance with 36 C.F.R. § 800.4-800.7.

- C. Duration. 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 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.

## **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 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.

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PROGRAMMATIC AGREEMENT AMONG THE UNITED STATES ARMY CORPS OF ENGINEERS,  
THE FLORIDA STATE HISTORIC PRESERVATION OFFICE, AND MIAMI-DADE COUNTY  
REGARDING THE MIAMI-DADE BACK BAY COASTAL STORM RISK MANAGEMENT PROJECT,  
MIAMI-DADE COUNTY, FLORIDA

SIGNATORIES TO THE PROGRAMMATIC AGREEMENT AMONG THE UNITED STATES  
ARMY CORPS OF ENGINEERS, THE FLORIDA STATE HISTORIC PRESERVATION  
OFFICE, AND MIAMI-DADE COUNTY REGARDING THE MIAMI-DADE BACK BAY  
COASTAL STORM RISK MANAGEMENT PROJECT, MIAMI-DADE COUNTY, FLORIDA

:

U.S. ARMY CORPS OF ENGINEERS, JACKSONVILLE DISTRICT

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

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

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

DRAFT

SIGNATORIES TO THE PROGRAMMATIC AGREEMENT AMONG THE UNITED  
STATES ARMY CORPS OF ENGINEERS, THE FLORIDA STATE HISTORIC  
PRESERVATION OFFICE, AND MIAMI-DADE COUNTY REGARDING THE MIAMI-  
DADE BACK BAYS COASTAL STORM RISK MANAGEMENT PROJECT, DADE  
COUNTY, FLORIDA:

FLORIDA STATE HISTORIC PRESERVATION OFFICE

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

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

Timothy A. Parsons,  
State Historic Preservation Officer

DRAFT

**INVITED SIGNATORY:**

Miami-Dade County

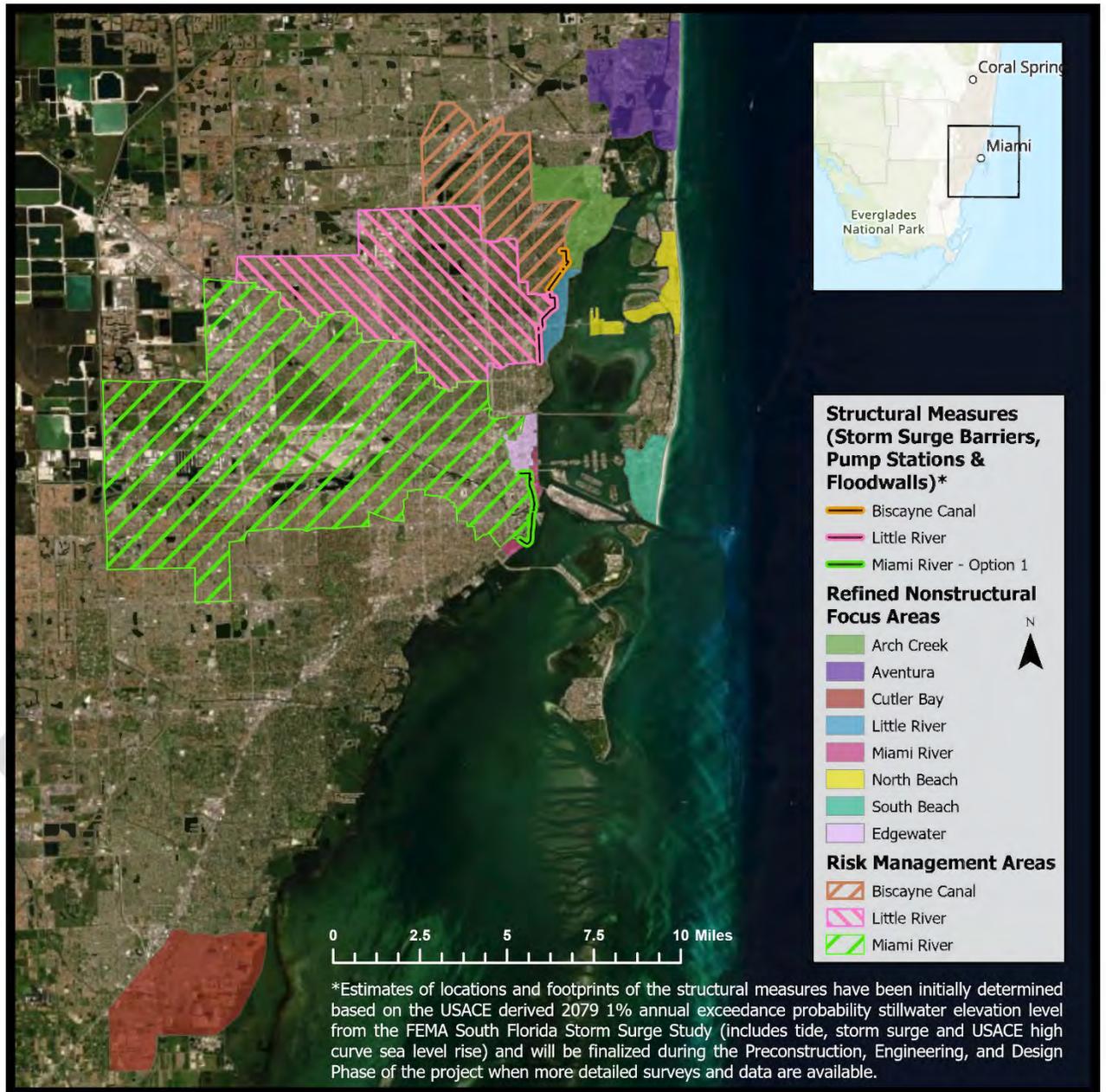
By: \_\_\_\_\_ Date: \_\_\_\_\_  
Xxxxxxxx County Manager

DRAFT

**CONCURRING PARTIES:**

DRAFT

ATTACHMENT A  
 AREAS OF POTENTIAL EFFECT



**Attachment B**

Locations of Archaeological Sites and Cultural Resources Surveys in the APE  
MAP to be inserted in final document

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**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*

To be inserted in final document

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**Attachment D**

Definitions

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## 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, 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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