

# **APPENDIX K: CULTURAL RESOURCES INFORMATION**

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# **Draft Programmatic Agreement**

1 **Draft for Inclusion in Draft EIS**

2 **Programmatic Agreement**

3 **among**

4 **The United States Army Corps of Engineers,**  
5 **Louisiana State Historic Preservation Officer,**  
6 **The Advisory Council on Historic Preservation**

7 **and**

8 **The Louisiana Coastal Protection and Restoration Authority**

9 **Regarding the**

10 **Mid-Barataria Sediment Diversion**  
11 **River Mile 60.7-R, Plaquemines Parish, Louisiana**

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18 WHEREAS, the State of Louisiana, acting by and through, the Coastal Protection  
19 and Restoration Authority (CPRA) proposes to construct the Mid-Barataria  
20 Sediment Diversion (MBSD), a large-scale sediment diversion in the Barataria  
21 Basin for the purpose of reconnecting and re-establishing sustainable deltaic  
22 processes between the Mississippi River and the Barataria Basin through the  
23 delivery of sediment, freshwater, and nutrients to support the long-term viability of  
24 existing and planned coastal restoration efforts and to help restore habitat and  
25 ecosystem services injured in the northern Gulf of Mexico as a result of the  
26 Deepwater Horizon (DWH) oil spill; and

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28 WHEREAS, on June 22, 2016, the CPRA submitted a permit application for a  
29 Department of Army permit for MBSD to the New Orleans District of the U.S. Army  
30 Corps of Engineers (CEMVN) under the provisions of Section 404 of the Clean  
31 Water Act (33 U.S.C. 1344) and Section 10 of the Rivers and Harbors  
32 Appropriation Act of 1899, as amended (33 U.S.C. 403) (hereafter "Section  
33 10/404"), and a request for permission under Section 14 of the Rivers and Harbors  
34 Appropriation Act of 1899 (33 U.S.C. 408) (hereafter "Section 408"); and

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36 WHEREAS, CEMVN has determined that the proposed MBSD project has the  
37 potential for significant impacts and requires an Environmental Impact Statement  
38 (EIS) under the National Environmental Policy Act (NEPA) to inform CEMVN's  
39 permit decision (CEMVN, 2021. Draft Environmental Impact Statement for the Mid-  
40 Barataria Sediment Diversion Project. Plaquemines and Jefferson Parishes,  
41 Louisiana). The CEMVN Regulatory permit processing number is MVN-2012-  
42 2806-EOO; and

43  
44 WHEREAS, the United States Environmental Protection Agency (EPA), the  
45 National Oceanic and Atmospheric Administration (NOAA), the United States  
46 Department of the Interior (DOI), and the United States Department of Agriculture

47 (USDA) are cooperating agencies and CEMVN is lead federal agency for the EIS  
48 and these agencies have executed a Memorandum of Understanding (MOU) dated  
49 September 11, 2017, to specify duties and obligations among Federal Agencies;  
50 and

51  
52 WHEREAS, the executed MOU among Federal Agencies states that CEMVN is  
53 coordinating with the Louisiana State Historic Preservation Office (LA SHPO) and  
54 Tribal Nations; and

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56 WHEREAS, EPA, NOAA, DOI, and USDA are Federal Agencies who may fund the  
57 construction of the MBSD project as natural resource trustees under the Oil  
58 Pollution Act of 1990 (33 U.S.C. 2701) and are the Federal Agency members of  
59 the Louisiana Trustee Implementation Group for the *Deepwater Horizon* oil spill;  
60 and

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62 WHEREAS, demonstration of National Historic Preservation Act of 1966, as  
63 amended (formerly 16 U.S.C. 470), Section 106 compliance is a necessary  
64 predecessor to a permit decision; and

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66 WHEREAS, CEMVN, EPA, NOAA, DOI, and USDA have determined that the  
67 MBSD project is an “Undertaking” pursuant to the NHPA and will have an adverse  
68 effect on properties included or eligible for inclusion in the National Register of  
69 Historic Places (National Register or NRHP); and

70  
71 WHEREAS, CEMVN, EPA, NOAA, DOI, and USDA have designated CEMVN as  
72 the lead federal agency for Section 106 of the NHPA for the MBSD project pursuant  
73 to 36 CFR 800.2(a)(2); and

74  
75 WHEREAS, CEMVN, EPA, NOAA, DOI, and USDA have elected to fulfill their  
76 obligations under Section 106 of the NHPA through the execution and  
77 implementation of this Programmatic Agreement (Agreement) as provided in 36  
78 CFR 800.14(b); and

79  
80 WHEREAS, CEMVN notified the Advisory Council on Historic Preservation  
81 (ACHP) of the potential for this undertaking to adversely affect historic properties  
82 pursuant to the ACHP's implementing regulations (36 CFR Part 800); and

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84 WHEREAS, the ACHP accepted the invitation to participate in consultation to  
85 develop this Agreement and to seek ways to avoid, minimize, or mitigate adverse  
86 effects on historic properties; and

87  
88 WHEREAS, CEMVN acknowledges Tribes as sovereign nations which have a  
89 unique government-to-government relationship with the federal government and  
90 its agencies; CEMVN further acknowledges its Trust Responsibility to those Tribes;  
91 and

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93 WHEREAS, CEMVN made a reasonable and good faith effort to identify any Tribes  
94 that may attach religious and cultural significance to historic properties that will be  
95 affected by the undertaking; and  
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97 WHEREAS, the CEMVN has invited the Alabama-Coushatta Tribe of Texas,  
98 Chitimacha Tribe of Louisiana, Choctaw Nation of Oklahoma, Coushatta Tribe of  
99 Louisiana, Jena Band of Choctaw Indians, Mississippi Band of Choctaw Indians,  
100 Muscogee (Creek) Nation, Seminole Nation of Oklahoma, Seminole Tribe of  
101 Florida, and the Tunica-Biloxi Tribe of Louisiana to consult in the development of  
102 this Agreement. The Seminole Nation of Oklahoma has deferred to the Chitimacha  
103 Tribe, and the Muscogee (Creek) Nation has chosen not to participate in further  
104 coordination; and  
105

106 WHEREAS, the Chitimacha Tribe of Louisiana, and the Choctaw Nation of  
107 Oklahoma have participated in the development of this Agreement and CEMVN  
108 has invited each of them to sign this Agreement as an Invited Signatory; and  
109

110 WHEREAS, the Mississippi Band of Choctaw has participated in the development  
111 of this Agreement and CEMVN has invited them to concur in this Agreement; and  
112

113 WHEREAS, CEMVN has and will continue to consult with any interested Tribe who  
114 may have not yet requested to consult; and  
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116 WHEREAS, the CEMVN has taken appropriate measures to identify other parties  
117 that may be interested specifically in the development of this Agreement, by  
118 notification to the Presidents of Plaquemines and Jefferson Parishes, as well as to  
119 historical associations within these parishes, and has invited such parties to  
120 participate in the development and implementation of this Agreement; and  
121

122 WHEREAS, CPRA is the Applicant and Proponent for MBSD project and has  
123 participated in the development of this Agreement and has been invited to sign this  
124 Agreement as an Invited Signatory; and  
125

126 WHEREAS, the terms Signatory and Signatories will include reference to Invited  
127 Signatories throughout the remainder of this Agreement; and  
128

129 WHEREAS, if an Invited Signatory chooses not to sign this Programmatic  
130 Agreement, then that party is instead regarded as a Consulting party; and  
131

132 WHEREAS, CEMVN in collaboration with CPRA as permit applicant, with SHPO,  
133 with federally-recognized Tribes, and with the ACHP have defined two Areas of  
134 Potential Effect (APE) for the MBSD Project as depicted in Appendix B; and  
135

136 WHEREAS, after agreement upon two APEs for the MBSD, a Phase I cultural  
137 resources survey was conducted to identify historic properties within the APEs;  
138 and

139  
140 WHEREAS, CEMVN consulted with LA SHPO and Tribes on June 30, 2020  
141 regarding the survey and determined that there are four (4) historic properties  
142 (16JE2, 16JE3, 16JE11, 16JE147) for which effects must be taken into account,  
143 in the MBSD APEs; and

144  
145 WHEREAS, for the purpose of considering effects to historic properties, Site  
146 16JE237 will also be termed a historic property, and so a total of five (5) historic  
147 properties exist within the MBSD APEs; and

148  
149 WHEREAS, CEMVN consulted with the ACHP, SHPO, Tribal Historic Preservation  
150 Officers (THPO) and federally recognized Indian Tribes as defined under 36 CFR  
151 800.16(m) (Tribes), and other appropriate consulting parties in developing this  
152 Agreement to take into consideration the effects of the MBSD project upon historic  
153 properties pursuant to 36 CFR 800.14(b); and

154  
155 WHEREAS, the CEMVN has considered the nature of MBSD construction and  
156 operation and likely effects on historic properties and has taken steps to involve  
157 the individuals, organizations and entities likely to be interested and has involved  
158 the public through the NEPA process, which affords interested persons,  
159 organizations and government agencies an opportunity to review and comment on  
160 proposed major federal actions that are evaluated in a NEPA document; and

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162 WHEREAS, the CEMVN has taken steps to notify the wider public. The public  
163 scoping process included three meetings held in Jefferson and Plaquemines  
164 Parishes, on 20, 25, and 27 July 2017. Notices of the public scoping meetings  
165 were sent through email distribution lists, posted on CEMVN's Mid-Barataria  
166 Sediment Diversion EIS website  
167 ([http://www.mvn.usace.army.mil/Missions/Regulatory/Permits/Mid-Barataria-](http://www.mvn.usace.army.mil/Missions/Regulatory/Permits/Mid-Barataria-Sediment-Diversion-EIS)  
168 [Sediment-Diversion-EIS](http://www.mvn.usace.army.mil/Missions/Regulatory/Permits/Mid-Barataria-Sediment-Diversion-EIS)), and mailed to public libraries, government agencies,  
169 and interested groups and individuals. Scoping meeting dates and locations were  
170 advertised in the following local newspapers on the following dates in 2017:

- 171 • Plaquemines Gazette, July 4 and 11;
- 172 • The Times Picayune, July 5 and 14; and
- 173 • The Advocate, July 5 and 17.

174 The newspaper scoping meeting ads stated that Vietnamese translation would be  
175 available at the meetings, and that translation services in other languages were  
176 available upon request; and

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178  
179 NOW, THEREFORE, the CEMVN, LA SHPO, and ACHP agree that the  
180 undertaking shall be implemented in accordance with the following stipulations in  
181 order to take into account the effect of the undertaking on historic properties.

## 182 183 STIPULATIONS 184

185 CEMVN shall ensure that the following measures are carried out:  
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187 I. Correspondence  
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189 Electronic mail (email) will serve as the official correspondence method for  
190 all communications regarding this Agreement and its provisions. See  
191 Appendix A for a list of contacts and email addresses. Contact information  
192 in Appendix A may be updated as needed without an amendment to this  
193 Agreement. It is the responsibility of each consulting party to immediately  
194 inform the CEMVN of any change in name, address, email address, or  
195 phone number of any point-of-contact. The CEMVN will forward this  
196 information to all signatories by email. Failure of any consulting party to  
197 notify the CEMVN of any change to a point-of-contact's information shall not  
198 be grounds for asserting that notice of a proposed action was not received.  
199

- 200 A. All standard response timeframes established by 36 CFR Part 800  
201 will apply to this Agreement, unless an alternative response  
202 timeframe is agreed to by the CEMVN, LA SHPO, Tribes, and  
203 CPRA. The CEMVN may request expedited review by the LA  
204 SHPO and Tribes on a case by case basis. Such expedited review  
205 period shall not be less than 10 working days.  
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207 II. Tribal Consultation  
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- 209 A. The CEMVN has made a reasonable and good faith effort to  
210 identify Tribes that might attach religious and cultural significance  
211 to historic properties that might be affected by the undertaking or  
212 that might be affiliated with the area of potential effects (APE) for  
213 the MBSD project.  
214

- 215 B. The CEMVN has consulted with and will continue to consult with  
216 federally recognized tribes in a manner that acknowledges the  
217 Government to Government relationship with federally recognized  
218 tribes, including those who participated in the consultation to  
219 develop this Agreement and also those that request in writing to be  
220 a consulting party in the consultation to be carried out under the  
221 terms of this Agreement (collectively referred to as "Consulting  
222 Tribes").  
223

- 224 C. The CEMVN will provide the Consulting Tribes with an executed  
225 copy of this Agreement and has or will provide all Consulting Tribes  
226 with copies of all plans, determinations, and findings provided to  
227 the LA SHPO.  
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229 III. Public Involvement  
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231 A. The CEMVN, in consultation with the LA SHPO, will continue to  
232 provide members of the public who express interest in the effects  
233 of the MBSD project upon historic properties with a description of  
234 the undertaking and the provisions of this Agreement.

235  
236 B. To the extent permitted under applicable federal laws and regulations  
237 (e.g., Section 304 of the NHPA, Section 9 of the Archaeological  
238 Resources Protection Act [ARPA]), the CEMVN will release to the  
239 public documents developed pursuant to this Agreement, including  
240 effects determinations. Specific cultural resources data will not be  
241 released to the general public or be released as part of NEPA  
242 documents.

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244 IV. Other Consulting Parties

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246 A. The CEMVN, in consultation with the LA SHPO, will continue  
247 efforts during the duration of this Agreement to identify other parties  
248 with a demonstrated interest in the undertaking and its effects on  
249 historic properties and invite them to be consulting parties in the  
250 consultation to be carried out under the terms of this agreement.

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252 B. The CEMVN will maintain a record of stakeholders who are invited  
253 to be or accepted as consulting parties in the consultation process  
254 for the MBSD project and maintain it as part of the project file.

255  
256 C. If any dispute arises regarding a written request by a stakeholder  
257 to be recognized as a consulting party, the CEMVN will contact the  
258 ACHP and provide all appropriate documentation. The ACHP will  
259 participate in the resolution of the issue.

260  
261 V. Identification, Evaluation, and Assessment of Effects Determinations

262  
263 A. The CEMVN, in consultation with the LA SHPO, Consulting  
264 Tribes, and CPRA, defined the geographic areas within which  
265 the undertaking will directly or indirectly cause alterations in the  
266 character or use of historic properties, referred to as an “area of  
267 potential effects” (APE). All consulting parties agreed to define  
268 two distinct, but related, APEs: a Construction APE and an  
269 Operations APE. The figure documenting these APEs is attached  
270 as Appendix B. Each APE represents the geographic reach for  
271 potential direct, indirect, and cumulative effects upon historic  
272 properties. Reasonable and good faith identification and  
273 evaluation efforts were limited to the identified MBSD APEs.

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B. The MBSD APEs were defined to include areas that will be directly or indirectly impacted by construction or operation of the MBSD as follows:

1. A Construction APE containing a conveyance channel, guide levees, a dredged Outfall Transition Feature (OTF), a railroad accommodation, a LA Hwy 23 bridge, and a Siphon, as well as any other activities associated with construction (i.e., access roads and staging areas), as shown in Appendix B;

2. An Operations APE consisting of the outfall and the delta formation area in the Barataria Basin as shown in Appendix B;

C. A cultural resources survey of the Construction and Operations APEs was completed following a Scope of Work agreed to by all parties. The results of this survey were provided for all parties to review. CEMVN concluded that four historic properties within the Operations APE are eligible for the National Register (16JE2, 16JE3, 16JE11, 16JE147), and that one property not assessed for the National Register (16JE237) will be treated as NRHP-eligible. Twenty-eight sites within the APEs are ineligible for the National Register. In light of the anticipated effects of operation of the MBSD, CEMVN concluded that the APE contains historic properties that will be adversely affected by the MBSD.

## VI. Resolution of Adverse Effects

A. Adverse Effects have been identified for the Operations APE for five NRHP-eligible archaeological sites.

1. CEMVN and the Consulting Parties have agreed to an alternative mitigation plan (see Appendix C) that includes three basic products:

- i. Peer-reviewed scholarly publication of an ethnohistoric overview regarding Tribes in the Barataria Basin and larger Mississippi River Delta region;
- ii. Compilation of information intended to be available only to Tribes that may more specifically elucidate their Tribal history and become useful in future consultations, and;

- 321                                   iii. Public-facing components that may include a website  
322                                   or other accessible materials providing greater  
323                                   information to the public-at-large.  
324  
325                                   2. The alternative mitigation shall not exceed a cost of \$350,000.  
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327                                   3. Alternative mitigation is not required if CEMVN denies CPRA  
328                                   a Permit for the Mid Barataria Sediment Diversion.  
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330                                   B. If CEMVN issues the permit, CPRA will be responsible for  
331                                   implementation of the alternative mitigation plan.  
332                                   1. Implementation will begin within 6 months following permit  
333                                   issuance.  
334                                   2. Outline and draft versions of each product will be provided  
335                                   to all consulting parties for 60-day review and comment  
336                                   period.  
337                                   3. Completion of all component parts of the alternative  
338                                   mitigation plan is estimated to occur within three (3) years.  
339                                   4. When working with Tribes, CPRA or its Designee will  
340                                   ensure that work is coordinated via designated points of  
341                                   contact and will be sensitive to cultural and language  
342                                   differences per the respective requirements of each Tribal  
343                                   Government.  
344                                   5. CEMVN will be available to help ensure proper protocols  
345                                   are followed in the collection of primary data.  
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348 VII. Curation

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350                                   A. Recovered archaeological collections from a required archaeological  
351                                   survey, evaluation, and/or mitigation plan remain the property of the  
352                                   land owner (either private, state, federal, etc.). CEMVN, in  
353                                   coordination with the LA SHPO and appropriate Tribe(s), may, as  
354                                   determined through consultation, encourage private land owners to  
355                                   transfer any recovered artifacts and related documentation to an  
356                                   appropriate archive or public or Tribal entity. CEMVN, in coordination  
357                                   with LA SHPO and Tribe(s), will work with all Tribal, State, and local  
358                                   agents to support steps that ensure the long-term curation of  
359                                   recovered artifacts and related documents through the transfer of the  
360                                   materials to a suitable repository as agreed to by CEMVN, LA SHPO,  
361                                   and appropriate Tribes(s) and following applicable State or Tribal  
362                                   guidelines.  
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365 VIII. Unanticipated Discoveries and Effects

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367 During Construction activities within the Construction APE, if any cultural  
368 materials or other potential historic properties are encountered, then the  
369 construction contractor will immediately halt all construction activity at the  
370 location of discovery and a fifty (50) foot buffer zone will be defined in all  
371 directions and appropriate measures to protect the find from further  
372 disturbance will be identified and implemented until the consultation  
373 specified in Stipulation VIII(B) is complete.  
374

375 A. Within both the Construction APE and the Operations APE, if an  
376 unanticipated discovery occurs, CPRA shall supply a SOI-qualified  
377 archaeologist to evaluate the discovery and make a written  
378 recommendation to CEMVN on the nature and eligibility of the discovery.  
379 If the discovery is recommended eligible or of undetermined eligibility,  
380 and the CEMVN agrees, then CEMVN and CPRA will assess whether  
381 the discovery can be avoided. If the discovery can be avoided, CPRA  
382 will implement measures to avoid the discovery. CEMVN will notify the  
383 Consulting Parties (timeframe being negotiated), to summarize the  
384 discovery, steps for avoidance, and disposition.  
385

386 B. If the discovery is recommended eligible or of undetermined eligibility  
387 and can't be avoided, CEMVN in consultation with CPRA will determine  
388 actions that it can take to resolve adverse effects, and notify the LA  
389 SHPO and Consulting Parties (timeframe being negotiated). The  
390 notification shall describe the CEMVN's assessment of National  
391 Register eligibility of the property and proposed actions to resolve the  
392 adverse effects. The SHPO and Consulting Parties shall respond within  
393 48 hours of the notification. CEMVN shall take into account their  
394 recommendations regarding National Register eligibility and proposed  
395 actions, and then carry out appropriate actions. CEMVN shall provide  
396 the LA SHPO and Consulting Parties a report of the actions when they  
397 are completed. [Additional language is under consideration.]  
398

#### 399 IX. Discovery of Human Remains 400

401 A. If abandoned cemeteries, unmarked graves, or human remains  
402 are discovered during construction or operation of the MBSD,  
403 CPRA will comply with the Louisiana Unmarked Human Burial  
404 Sites Preservation Act (La. R.S. 8:671 et seq.). CPRA will notify  
405 local law enforcement and the Louisiana Division of  
406 Archaeology (LDOA), within the Louisiana Department of  
407 Culture, Recreation and Tourism, Office of Cultural  
408 Development, by telephone to assess the nature and age of the  
409 human skeletal remains within twenty-four (24) hours of the  
410 discovery of unmarked human remains and will accompany  
411 local law enforcement personnel during all field investigations.  
412 If the appropriate local law enforcement official determines that

413 the remains are not a crime scene, and the remains are more  
414 than 50 years old, LDOA has jurisdiction over the remains. In  
415 no instance will human remains be removed from the discovery  
416 site until jurisdiction is established. In cases where the LDOA  
417 assumes jurisdiction and the remains are determined to be  
418 American Indian, LDOA will consult with Tribes, CEMVN, and  
419 CPRA to determine the appropriate course of action.  
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422 X. Monitoring Plan  
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424 A. CPRA will integrate into its Monitoring and Adaptive Management  
425 (MAM) Plan, specifically within Section 4.3 Evaluation of  
426 Compliance Monitoring Data, the use of Secretary of the Interior  
427 Qualified Archaeologists to conduct an annual one-day  
428 reconnaissance of the Operations APE by boat. The first  
429 reconnaissance visit will occur within three months before the first  
430 operation of the MBSD and will document current conditions prior  
431 to operation for later, post-operation comparison. After operations  
432 begin, the reconnaissance survey will be performed annually for  
433 a period of 15 years. This reconnaissance team will take  
434 photographs and document visible changes to the landscape  
435 within the Operations APE, including in proximity to the NRHP  
436 properties (16JE2, 16JE3, 16JE11, 16JE147, 16JE237), with the  
437 particular attention to any evidence of previously undiscovered  
438 cultural resources and the appearance of human remains at  
439 known archaeological sites. If an apparent cultural resource or  
440 human remains is/are located by the reconnaissance team,  
441 CPRA will notify all Signatories to this Agreement within three  
442 days. A report documenting the results of the annual survey will  
443 be provided to all Consulting parties with 30 days after completion  
444 of the survey. CPRA may share annual survey results as  
445 specified at Section 7.6 Compliance Reporting of its MAM Plan,  
446 only after CEMVN has been allowed to review proposed  
447 language and redact any specific location data for the historic  
448 properties or new findings or other sensitive data under  
449 applicable law and regulations.  
450

451 B. If any unanticipated discoveries of cultural resources are  
452 identified, the provisions of Stipulation VIII will be followed.  
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454 C. If any human remains are identified, the provisions of Stipulation  
455 IX will be followed.  
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458 XI. Dispute Resolution

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- A. Should any Signatory or Consulting Party to this PA object at any time to any actions proposed or the manner in which the terms of this PA are implemented, that party will notify the CEMVN, who will seek to resolve such objection through consultation with the relevant parties, including LA SHPO, Consulting Tribes and CPRA, as appropriate.
- B. If CEMVN determines that the objection cannot be resolved through consultation, the CEMVN shall forward all documentation relevant to the dispute to the ACHP, including any proposed resolution identified during consultation, copying all Signatories and Consulting Parties. The ACHP may provide its advice on the resolution of the objection within 10 business days of receiving adequate documentation. The other Signatories and Consulting Parties may also provide their advice on the resolution of the objection within that time frame.
- C. Prior to reaching a final decision on the dispute, CEMVN will prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, Signatories, and Consulting Parties, and will provide them with a copy of this written response. CEMVN will then proceed according to its final decision.
- D. Any recommendation or comment provided by the ACHP will be understood to pertain only to the subject of the dispute, and the CEMVN's responsibilities to ensure fulfillment of all actions that are not subject of the dispute will remain unchanged.

XII. Administration of this Agreement

All Signatories to this Agreement shall meet according to an agreed timeframe to evaluate the effectiveness of this Agreement, beginning one (1) year after Operation of the MBSD has begun. The CEMVN shall coordinate such meetings following the execution of this Agreement, and shall invite the Signatories and Consulting Parties to participate. At each meeting, held in manner and location as mutually agreed upon by the Signatories and Consulting Parties, the effectiveness of the Stipulations of this Agreement shall be discussed. The discussion of cumulative effects as addressed in Stipulation XVII shall be available for consideration at each agreed meeting, if no special conditions have required an additional meeting per Stipulation XVII.

XIII. Effect of this Agreement

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- A. [Wording for the Signature Status and Execution portion of this Stipulation is under discussion.]
- B. CEMVN shall make compliance with this Agreement a special condition of any permit(s) it issues for the undertaking.
- C. CPRA agrees that in the event CEMVN grants its permit for the MBSD, it will comply with its obligations as set forth in the stipulations of this agreement.

XIV. Duration of this Agreement

This Agreement will remain in effect for fifty (50) years from the date that Operation of the MBSD begins, unless extended for a five-year period by written agreement negotiated by all signatories.

XV. Changes to Permitted Actions

[Wording of this Stipulation is under discussion.]

XVI. Amendment of the Agreement

- A. This Agreement may be amended when such an amendment is agreed to in writing by all the Signatories. Notwithstanding any provision of this Agreement, CEMVN, ACHP, LA SHPO, and any Invited Signatory may request that it be amended, whereupon these parties will consult to consider such amendment. The CEMVN will facilitate such consultation within thirty (30) days of receipt of the written request. Any amendment will be in writing and will be signed by the CEMVN, ACHP, LA SHPO, CPRA, and Invited Signatories, and shall be effective on the date of the final signature.
- B. Appendices: Appendices may be amended at the request of CEMVN or another Signatory or Invited Signatory in the following manner:
  - 1. CEMVN, on its own behalf or on behalf of another Signatory or Invited Signatory, shall notify the Signatories and Invited Signatories of the intent to modify the current Appendix or Appendices and shall provide a draft of the updated Appendix or Appendices to all Signatory and Invited Signatories.
  - 2. If no Signatory or Invited Signatory objects in writing within thirty (30) days of receipt of the proposed modification, CEMVN shall date and sign the amended Appendix and provide a copy of the amended Appendix to the other signatories. Such an amendment shall go into

551 effect on the date CEMNVN transmits the amendment to the other  
552 signatories. If any Signatory or Invited Signatory objects in writing  
553 within thirty (30) days of receipt of the proposed modification, the  
554 parties shall follow the dispute resolution process set forth in  
555 Stipulation XI.

- 556  
557 3. Current List of Appendices:  
558 a. Appendix A: POCs and Contact Information  
559 b. Appendix B: Memorandum Summarizing the APEs with Maps  
560 b. Appendix C: Alternative Mitigation Plan  
561

562 C. Any Amendments to this Agreement or the Appendices shall be posted  
563 to the CEMVN website for the environmental review of the MBSD  
564 project. The MBSD website link is:  
565 [https://www.mvn.usace.army.mil/Missions/Regulatory/Permits/Mid-](https://www.mvn.usace.army.mil/Missions/Regulatory/Permits/Mid-Barataria-Sediment-Diversion-EIS/)  
566 [Barataria-Sediment-Diversion-EIS/](https://www.mvn.usace.army.mil/Missions/Regulatory/Permits/Mid-Barataria-Sediment-Diversion-EIS/)  
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## 568 XVII. Termination of the Agreement

569  
570 If any Signatory to this PA determines that its terms will not or  
571 cannot be carried out, that party will immediately consult with the  
572 other Signatories to attempt to develop an amendment per  
573 Stipulation XVI, above. If within thirty (30) days (or another time  
574 period agreed to by all Signatories) an amendment cannot be  
575 reached, any Signatory may terminate the PA upon written  
576 notification to the other Signatories. Once the PA is terminated,  
577 CEMVN must either (a) execute another PA pursuant to 36 CFR §  
578 800.14(b), or (b) request, take into account, and respond to the  
579 comments of the ACHP under 36 CFR § 800.7. CEMVN will notify  
580 the PA Signatories and Consulting Parties as to the course of  
581 action it will pursue. [Additional language under consideration.]  
582

## 583 XVIII. Addition of Another Federal Agency

584  
585 In the event that another federal agency not initially a party to  
586 or subject to this Agreement receives an application for  
587 funding/license/permit for activities associated with the  
588 Undertaking as described in this Agreement, and the  
589 Undertaking remains unchanged, that agency may fulfill its  
590 Section 106 responsibilities by stating in a written letter to  
591 CEMVN, LA SHPO, and ACHP that it concurs with and will  
592 comply with the terms of this Agreement and that it will  
593 condition its authorization (funding/license/permit) on the  
594 Applicant's compliance with the terms of this PA. Such  
595 agreement shall be evidenced by filing the letter with the  
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597 ACHP, providing notification to the other Consulting Parties,  
598 and implementation of the terms of this Agreement as  
599 appropriate.  
600

601 Execution of this Agreement by the ACHP, CEMVN, and LA SHPO and  
602 implementation of its terms, evidences that the CEMVN has taken into account the  
603 effects of the MBSD Project upon historic properties and has afforded the ACHP  
604 an opportunity to comment.  
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**SIGNATORY PAGE**

**Programmatic Agreement  
among  
The United States Army Corps of Engineers,  
Louisiana State Historic Preservation Officer,  
The Advisory Council on Historic Preservation  
and  
The Louisiana Coastal Protection and Restoration Authority  
Regarding the  
Mid-Barataria Sediment Diversion  
River Mile 60.7-R, Plaquemines Parish, Louisiana**

**U.S. Army Corps of Engineers, New Orleans District (CEMVN)**

Date: \_\_\_\_\_

\_\_\_\_\_  
Stephen F. Murphy  
Colonel, Corps of Engineers  
District Commander

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Mid-Barataria Sediment Diversion  
River Mile 60.7-R, Plaquemines Parish, Louisiana**

**The Louisiana State Historic Preservation Officer**

\_\_\_\_\_  
Kristin P. Sanders,  
Louisiana State Historic Preservation Officer

Date: \_\_\_\_\_

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Mid-Barataria Sediment Diversion  
River Mile 60.7-R, Plaquemines Parish, Louisiana**

**The Advisory Council on Historic Preservation**

Date: \_\_\_\_\_

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John M. Fowler, Executive Director  
ACHP

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**INVITED SIGNATORY PAGE**

**Programmatic Agreement  
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Mid-Barataria Sediment Diversion  
River Mile 60.7-R, Plaquemines Parish, Louisiana**

**Louisiana Coastal Protection and Restoration Authority**

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and  
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Regarding the  
Mid-Barataria Sediment Diversion  
River Mile 60.7-R, Plaquemines Parish, Louisiana**

**Choctaw Nation of Oklahoma**

Nothing in this Agreement shall be construed to waive the sovereign rights and immunities of the Choctaw Nation of Oklahoma, its officers, employees, or agents

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Gary Batton, Chief

Date: \_\_\_\_\_

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among  
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and  
The Louisiana Coastal Protection and Restoration Authority  
Regarding the  
Mid-Barataria Sediment Diversion  
River Mile 60.7-R, Plaquemines Parish, Louisiana**

**Chitimacha Tribe of Louisiana**

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Melissa Darden, Chairman

Date: \_\_\_\_\_

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**CONCURRING PARTY SIGNATORY PAGE**

**Programmatic Agreement  
among  
The United States Army Corps of Engineers,  
Louisiana State Historic Preservation Officer,  
The Advisory Council on Historic Preservation  
and  
The Louisiana Coastal Protection and Restoration Authority  
Regarding the  
Mid-Barataria Sediment Diversion  
River Mile 60.7-R, Plaquemines Parish, Louisiana**

**Mississippi Band of Choctaw Indians**

\_\_\_\_\_  
Ben Cyrus, Chief

Date: \_\_\_\_\_

**Appendix A**  
**Point of Contact Information**



## Appendix A: Point of Contacts (POC)

### CONTACT INFORMATION FOR SIGNATORIES

[Appendix A is still under development]

Signatories shall provide USACE with updated contact information as it becomes available, and revisions to this Appendix A will be made without an amendment to this Agreement.

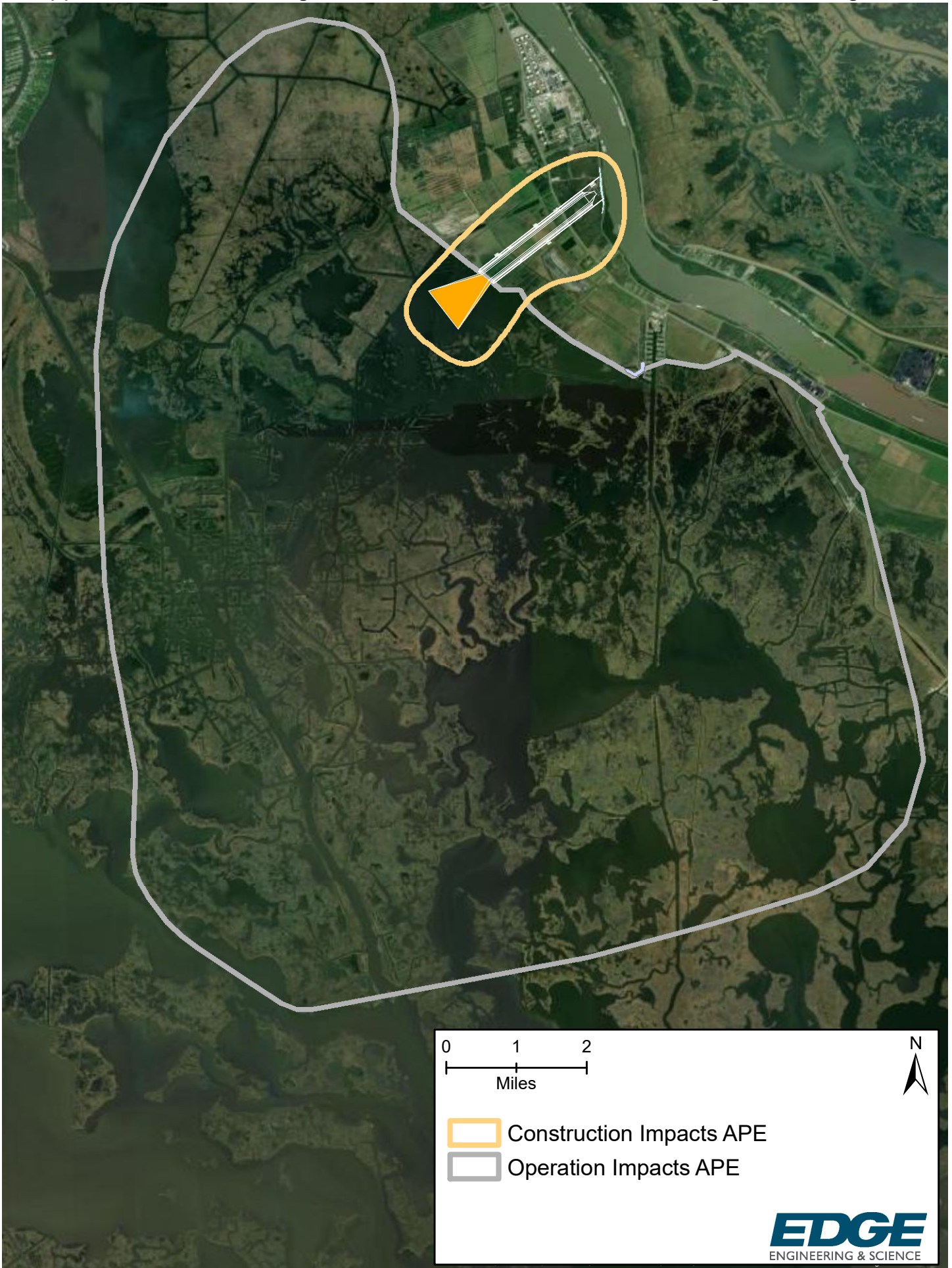
<b>Federally-Recognized Tribes</b>	
<p><b>Chitimacha Tribe of Louisiana</b></p> <p><u>Primary:</u>                      Kimberly S. Walden, THPO                      Chitimacha Tribe of Louisiana                      155 Chitimacha Loop                      Charenton, LA 70523                      (337) 923-9923  <a href="mailto:kim@chitimacha.gov">kim@chitimacha.gov</a></p> <p>Method of contact for project notification and documentation: email to Primary contact.</p> <p>Method of contact for other communication: email, phone call</p>	<p><b>Chitimacha Tribe of Louisiana</b></p> <p><u>Secondary:</u>                      Chairman Melissa Darden                      Chitimacha Tribe of Louisiana                      155 Chitimacha Loop                      Charenton, LA 70523                      (337) 924-4973</p>
<p><b>Choctaw Nation of Oklahoma</b></p> <p><u>Primary:</u>                      Ian Thomson                      Historic Preservation Department                      Choctaw Nation of Oklahoma                      P.O. Box 1210                      Durant, OK 74702                      (580) 924-8280  <a href="mailto:ithompson@choctawnation.com">ithompson@choctawnation.com</a></p> <p>Lindsey D. Bilyeu, MS                      Senior Compliance Review Officer  <a href="mailto:lbilyeu@choctawnation.com">lbilyeu@choctawnation.com</a></p> <p>Method of contact for project notification and documentation: email Senior Compliance Review Officer with a copy to THPO.</p>	<p><b>Choctaw Nation of Oklahoma</b></p> <p><u>Secondary:</u>                      Gary Batton, Chief                      Choctaw Nation of Oklahoma                      Attn: Choctaw Nation Historic Preservation Department                      P.O. Box 1210                      Durant, OK 74702-1210                      (800) 522-6170  <a href="mailto:gbatton@choctawnation.com">gbatton@choctawnation.com</a></p>

<p>Method of contact for other communication: email, phone call</p>	
<p><b>Mississippi Band of Choctaw Indians</b></p> <p><u>Primary:</u> Ken Carleton, Tribal Archeologist Mississippi Band of Choctaw Indians 101 Industrial Road Choctaw, MS 39350 (601) 656-5251 <a href="mailto:ken.carleton@choctaw.org">ken.carleton@choctaw.org</a></p> <p>Method of contact for project notification and documentation: email to Primary contact.</p> <p>Method of contact for other communication: email, phone call</p>	<p><b>Mississippi Band of Choctaw Indians</b></p> <p><u>Secondary:</u> Ben Cyrus, Chief Mississippi Band of Choctaw Indians 101 Industrial Road Choctaw, MS 39350 (601) 656-5251 <a href="mailto:info@choctaw.org">info@choctaw.org</a></p>
<p><b>SHPOS &amp; Other Non-Federal Organizations</b></p>	
<p><b>Advisory Council on Historic Preservation</b></p> <p><u>Primary:</u> John Eddins, Program Analyst Advisory Council on Historic Preservation 401 F Street NW, Suite 308 Washington DC 20001-2637 (202) 517-0211 <a href="mailto:e106@achp.gov">e106@achp.gov</a>; <a href="mailto:jeddins@achp.gov">jeddins@achp.gov</a></p> <p>Method of contact for project notification and documentation: email to <a href="mailto:e106@achp.gov">e106@achp.gov</a> and copy to Primary contact email.</p> <p>Method of contact for other communication: email, phone call</p>	<p><b>Advisory Council on Historic Preservation</b></p> <p><u>Secondary:</u> John Fowler, Chairman Tom McCulloch, Assistant Director Office of Federal Agency Programs Advisory Council on Historic Preservation 401 F. Street NW, Suite 308 Washington, DC 20001-2637 (202) 517-02280222 <a href="mailto:achp@achp.gov">achp@achp.gov</a> <a href="mailto:tmcculloch@achp.gov">tmcculloch@achp.gov</a></p> <p>Method of contact for project notification and documentation: email to <a href="mailto:e106@achp.gov">e106@achp.gov</a> and copy to Primary contact email.</p> <p>Method of contact for other communication: email, phone call</p>
<p><b>Louisiana State Historic Preservation Officer</b></p> <p><u>Primary:</u> Chip McGimsey State Archaeologist Division of Archaeology PO Box 44247 Baton Rouge, LA 70804-4241 (225) 219-4598 <a href="mailto:cmcgimsey@crt.la.gov">cmcgimsey@crt.la.gov</a></p>	<p><b>Louisiana State Historic Preservation Officer</b></p> <p><u>Secondary:</u> Rachel Watson Division of Archaeology PO Box 44247 Baton Rouge, LA 70804-4241 (225) 342-8165 <a href="mailto:rwatson@crt.la.gov">rwatson@crt.la.gov</a></p>

<p>Method of contact for project notification and documentation: email at <a href="mailto:section106@crt.la.gov">section106@crt.la.gov</a></p> <p>Archaeological Site Forms: Submit to LA Division of Archaeology via email to <a href="mailto:siteforms@crt.la.gov">siteforms@crt.la.gov</a>.</p> <p>Reports: Hard copy and PDF on CD</p> <p>Method of contact for other communication: email, phone call</p>	<p>Method of contact for project notification and documentation: <a href="mailto:section106@crt.la.gov">section106@crt.la.gov</a></p> <p>Archaeological Site Forms: Submit to LA Division of Archaeology via email to <a href="mailto:siteforms@crt.la.gov">siteforms@crt.la.gov</a>.</p> <p>Reports: Hard copy and PDF on CD</p> <p>Method of contact for other communication: email, phone call</p>
<p><b>U.S. Army Corps of Engineers (USACE) Districts</b></p>	
<p><b>New Orleans District (CEMVN)</b></p> <p><u>Primary</u>  Paul J. Hughbanks, Archaeologist  CEMVN-PDS-N  4700 Leake Ave.  New Orleans, LA 70118  (504) 862-1100  <a href="mailto:Paul.J.Hughbanks@usace.army.mil">Paul.J.Hughbanks@usace.army.mil</a></p> <p>Method of contact for project notification and documentation: email or receipt of hard copy</p> <p>Method of contact for other communication: email, phone call</p>	<p><b>New Orleans District (CEMVN)</b></p> <p><u>Secondary:</u>  Jason A. Emery, Cultural Resources RTS and District Tribal Liaison  CEMVN-PDS-N  4700 Leake Ave.  New Orleans, LA 70118  (504) 862-2364  <a href="mailto:Jason.a.emery@usace.army.mil">Jason.a.emery@usace.army.mil</a></p>

**Appendix B**  
**Final and Agreed APE Referenced within this**  
**Programmatic Agreement**

Appendix B: Final and Agreed APE Referenced within this Programmatic Agreement



**Appendix C**  
**Alternate Mitigation Plan**



## **Alternate Mitigation Plan for the Mid-Barataria Division PA**

Native Americans have an enduring presence and deep history in Southeastern Louisiana. At the time of European contact, approximately twenty Native nations lived within the present political boundaries of Louisiana; and of that number, at least six nations occupied the Barataria region. By the eighteenth century, under increasing pressure from Anglo-Europeans east of the Mississippi River, several small nations migrated west to settle in colonial Louisiana where their descendants remain today. During Indian Removal in the antebellum period, some Native Americans driven from their eastern homelands came to settle in small groups or with relatives already established in Louisiana.

Throughout the eighteenth and nineteenth centuries, Southeastern Louisiana remained important to Native Americans in Louisiana. They participated in the eighteenth-century colonial market economy or came to the capital of New Orleans to represent their nations in counsel, negotiations, and treaties. Although conditions for the Tribes would change under the American administration, New Orleans remained a political and commercial center and a viable market for Native Americans into the twentieth century. Over the centuries, the Barataria region remained a place of importance for Native Americans, utilized by hunters and fishermen, and the women who gathered plants like Spanish moss, sassafras, swamp cane, and various herbs for their own use and for barter and sale to the colonists and later Americans.

### **Project Goals and Objectives:**

This project will document Native Americans in Southeastern Louisiana between 1500 and 1900 AD, focusing on the larger Barataria region and associated segments of the Mississippi River where many coastal restoration projects are proposed or under development. As some Tribal communities were based wholly or in part on the north shore, St. Tammany and Tangipahoa parishes are included with Orleans and Jefferson parishes in the study area. Bounding the study area by Bayou Lafourche and the north shore of Lake Pontchartrain provides a spatially and environmentally discrete landscape reflecting the colonial/antebellum world of Southeastern Louisiana. Further research may extend the study area to include Terrebonne Parish.

The objective of this study is to prepare a comprehensive ethnohistoric overview documenting the Native American presence and history within the study area. To provide background and context for the research period, the study will:

- 1) examine the geologic and environmental history of the region to characterize how changes to the landscape, landforms, hydrology, and environment across the study area affected settlement and use of the study area over time;
- 2) examine the archaeological record and cultural history of the study area immediately prior to 1500 AD;
- 3) identify and provide a brief overview of Native nations in the region between ca. 1500 and 1699, the point of sustained European contact, including:

- a. ancestral occupation and traditional use area(s);
- b. cultural traditions including worldview, lifestyles, technology, and material culture;
- c. broader patterns of ideology and trade.

The study will provide detailed ethnohistories of participating Tribes during the study period that examine how they responded to regional, national, and international encounters, events, and trends that affected, and often threatened, their cultural and physical survival. Research topics will be developed in consultation with the participating Tribes. Those topics may include, but will not be limited to:

1. participating Tribes at the point of contact;
2. how Tribal social and political organization at contact structured and influenced interactions with Europeans and other non-tribal communities, and how socio-political organization changed over time;
3. the effects that disease, slave-taking/trading, conflicts/wars, and other events and interactions had on population, settlement patterns, Tribal economies, and inter-relations;
4. changes to social and political relations, including changes in perceptions and status, under French, Spanish, and American administrations;
5. ancestral land and the ways in which ancestral territories were lost or reduced;
6. how Tribes were able to organize, form new alliances, gain recognition, and persist as sovereign nations beginning in the nineteenth century;
7. addressing the Tribe's connection to and relationship with the region today.

### **Methodology:**

Information will be derived from a review of published literature, archival research, and ethnographic interviews conducted with knowledgeable members of consulting Tribes. Research sources many include, but not be limited to:

- archaeological and ethnographic studies;
- colonial records including the LA Superior Council and Cabildo;
- Catholic church records including baptismal, marriage, and burial records;
- U.S. Territorial records;
- traveler accounts, journals, and letters;
- Federal, state, parish, and local records, including War Department records, Indian agency records, land sales, legal proceedings, school records, and military records;
- genealogical records including census, marriage, and death records;
- Tribal archives
- Tribal histories and ethnographies;
- newspaper accounts;
- cartographic collections;



- photographic collections.

Interviews will be conducted with knowledgeable elders/Tribal members from each participating Tribe. Interviews will be digitally recorded in audio .wav and/or .mpg format. Interviews will be fully transcribed and returned to interviewees for review, correction, and/or additions. Depending upon the needs and objectives of the individuals interviewed and/or the participating Tribes, more than one interview may be conducted with some individuals. Group interviews may be also conducted.

Each Tribe will have the opportunity to participate in a week-long visit to the region. The purpose of the trip is to facilitate discussion of significant places within the region, better understand traditional uses of the landscape, and develop information on traditional lifeways and settlement patterns within the study area.

**Products:**

The proposed study will provide three products:

- 1) A scholarly publication detailing the results of the study. The report will address all of the topics identified in the proposed scope, and will include a detailed bibliography of references used in the study and/or applicable to the study goals. The presentation of graphical information (i.e., maps) illustrating the locations and patterns of movement of individual Tribes will be developed in consultation with each individual participating Tribe.
- 2) For each participating Tribe, information and/or a series of documents and/or maps that identify specific areas of Tribal occupation at known temporal intervals within the study period will be prepared in consultation with that Tribe. This information will only be made available to each participating Tribe and will not be publicly disclosed. This information will improve consultation with federal agencies by clarifying for each Tribe which projects and/or human remains discoveries they wish to consult on.
- 3) A public component: these can include but are not necessarily limited to:
  - a) the development of a website that tells the Tribal history(s) in the study area through the extensive use of maps showing general patterns of settlement, floral/faunal use, migrations, etc. (but not identifying specific site locations), and historic photographs, paintings, and engravings paired with text developed from the scholarly publication. The inclusion of a number of artists' illustrations of Tribal life in various contexts/times would be an added way to tell these stories.
  - b) Development of curriculum guides and information on Tribal history in Southeastern Louisiana during the study period for use in Louisiana schools.