



## South Central Coast Louisiana



*Hurricane Ike flooding in Delcambre, Louisiana.*

### Appendix A-3 – Cultural Resource Coordination & Compliance

May 2022

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## Section 1

# Introduction

The cultural prehistory and history of South Central Coastal Louisiana is a very rich one shared with much of the southeast. The generalized Pre-Contact cultural chronology for the region according to Rees (2010:12) is divided into five (5) primary archaeological components, or “periods,” as follows: Paleoindian (11,500-8000 B.C.), Archaic (8000-800 B.C.), Woodland (800 B.C.-1200 A.D.), Mississippian (1200-1700 A.D.), and Historic (1700 A.D.-present). Regionally, these periods have been further divided into sub-periods based on material culture, settlement patterns, subsistence practices, and sociopolitical organization. Specific sub-periods identified within the study area include: Poverty Point, Tchefuncte, Marksville, Baytown, Troyville, Coles Creek, Plaquemine, and Mississippian. Post-Contact Period (ca. 1650 A.D.-present) cultural affiliations within the study area, follow the thematic approach set forth in the Louisiana Division of Archaeology’s (LDOA) *State of Louisiana Site Record Form* (amended August 29, 2018) and are divided into the following temporal groups: *Historic Exploration* (1541-1803 A.D.), *Antebellum Louisiana* (1803-1860 A.D.), *War and Aftermath* (1860-1890 A.D.), *Industrial and Modern* (1890-1945 A.D.), and *Post-WWII* (1945 A.D.-present).

## Section 2

# Historic Properties

Preserving historic properties as important reflections of our American heritage became a national policy through passage of the Antiquities Act of 1906, the Historic Sites Act of 1935, and “Section 106” of the National Historic Preservation Act (NHPA) [54 U.S.C. § 300101 et seq.], as amended (54 U.S.C. § 306108), and its implementing regulations, set out at 36 Code of Federal Regulations (CFR) Part 800. The passage of the NHPA established the National Register of Historic Places (NRHP) and the process for adding Historic properties to it. In accordance with 36 CFR 800.16(l), “Historic Property” means 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. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria. Historic Properties in the study area were identified based on a review of the National Register (NR) database and project files. NR-listed properties typically fall into one of five categories: building, structure, object, site, and district. The National Park Service (NPS) uses these definitions to differentiate NR historic resource types (NPS 1995):

- *Building*: A building, such as a house, barn, church, hotel, or similar construction, is created principally to shelter any form of human activity. “Building” may also refer to a historically and functionally related unit, such as a courthouse and jail or a house and barn.
- *Structure*: The term “structure” is used to distinguish from buildings those functional constructions made usually for purposes other than creating human shelter.”
- *Object*: The term “object” is used to distinguish from buildings and structures those constructions that are primarily artistic in nature or a relatively small in scale and simply constructed. CEMVN’s background research indicates that there are no NRHP-listed Objects within the study area.
- *Site*: A site is the location of a significant event, a prehistoric/historic occupation or activity, or a building or structure, whether standing, ruined, or vanished, where the location itself possesses historic, cultural, or archeological value regardless of the value of any existing structure.
- *District*: A district possesses a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united historically or aesthetically by plan or physical development.

In addition to the five common types of NR properties mentioned previously, CEMVN also reviewed the study area for the presence of National Historic Landmarks (NHLs) and archaeological sites not presently listed on the NR:



- *National Historic Landmark*: The NPS has developed criteria for the recognition of nationally significant properties, which are designated NHLs and prehistoric and historic units of the NPS. NHLs are those districts, sites, buildings, structures, and objects designated by the Secretary of the Interior (SOI) as possessing national significance in American history, architecture, archeology, engineering, and culture. NHLs are afforded a special level of protection and Section 110(f) of the NHPA, requires that before approval of any federal Undertaking which may directly and adversely affect any NHL, the head of the responsible federal agency shall, to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to such landmark, and shall afford the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment on the Undertaking.
- *Archaeological Sites Not Presently Listed on the National Register*: Not every archaeological site is eligible for the NR because not all archaeological sites possess both significance and sufficient integrity to be considered eligible for listing. Most eligibility determinations made pursuant to the Section 106 process are called “consensus determinations” because agreement between the federal agency and the appropriate State Historic Preservation Officer (SHPO)/Tribal Historic Preservation Officer (THPO) is all that is normally required for federal Undertakings; no formal nomination to or listing on the NR is necessary. The Louisiana SHPO maintains a database of all previously recorded sites within Louisiana. Individual nonstructural Undertakings will be screened against this database to determine if sites that have been identified as eligible for NR-listing, but not yet enrolled, exist within proposed work areas.

## 2.1 HISTORIC PROPERTIES WITHIN THE STUDY AREA

Historic properties in the study area were identified based on a review of the NRHP database, the LA SHPO *Cultural Resources Database*, historic map research, and project files. Based on this background research, USACE determined that Iberia Parish has 32 properties and districts listed on the NRHP including one (1) NHL (Shadows-on-the-Teche), as well as the Downtown New Iberia Commercial Historic District and East Main Street Historic District. It is noteworthy to mention that Avery Island, located in Iberia Parish, was listed in September of 2018 at all three levels of significance (local, state, and national) and for all four (4) NRHP criteria (history, association with significant individuals, architecture, and archaeology). St. Martin Parish has a total of 25 properties and Districts listed on the NRHP including one NHL (Acadian House), the Breaux Bridge Historic District, and St. Martinville Historic District. St. Mary Parish has a total of 29 NRHP properties and districts listed on the NRHP including Morgan City Historic District, Franklin Historic District, and the Patterson Commercial District.

The study area is also the setting of at least 23 terrestrial and naval Civil War battles ranging from small skirmishes to major decisive battles. Additionally, the NPS's American Battlefield Protection Program (ABPP; 54 U.S.C. 380101-380103), Civil War Sites Advisory Commission (Public Law 101-628), has assigned Preservation Priorities (<https://www.nps.gov>).

[gov/abpp/battles/bystate.htm](http://gov.abpp/battles/bystate.htm)) for two individual battlefields located in St. Mary Parish: Irish Bend (Preservation Priority: II.3) and Fort Bisland (Preservation Priority: IV.1).



## Section 3

# Archaeological Site Potential

Based on a review of the Louisiana Division of Archaeology (LDOA), *Louisiana Cultural Resources Map* (LDOA Website), approximately 449 archaeological sites have been previously recorded within the current study area that collectively span the entire spectrum of Pre-Contact and Post-Contact archaeological components referenced above; encompassing some 10,000 years or more. It is also important to stress that many known of the known sites in the project vicinity have occupation spans encompassing more than one cultural/temporal period. Moreover, nearly half of these sites possess more than a single archaeological component attesting to the long-ranging cultural importance of the region. Nevertheless, as compared to other areas of the state, relatively little survey work has been conducted within the study area.

In lieu of additional survey data, *Louisiana's Comprehensive Archaeological Plan* (Girard, et al. 2018) provides a useful site distribution model that can be used for baseline planning purposes. Largely, the unique geomorphology and ecology of South Central Coast Louisiana has influenced site type and location. To examine how the physical landscape in Louisiana impacts the archaeological record, the LDOA divides the state into a series of regions that follow the ecoregions classification of the Western Ecology Division of the United States Environmental Protection Agency (<https://www.epa.gov/eco-research/ecoregion-download-files-state-region-6#pane-16>). There are six regions at Level III, two of which fall within the present study area (Western Gulf Coastal Plain and Mississippi Alluvial Plain) and are then further divided into sub-regions (Level IV: Holocene Meander Belts, Inland Swamp and Coastal Marshes, and Lafayette Loess Plains). Girard, et al., (2018:24-31) define how the unique environmental, biological, and physiological characteristics of each region cumulatively influenced cultural development in order to provide context to the distribution of where sites are likely or unlikely to occur. These characteristics are described in the subsections that follow.

### 3.1 THE MISSISSIPPI ALLUVIAL PLAIN (HOLOCENE MEANDER BELTS AND INLAND SWAMP AND COASTAL MARSHES)

In the southern portion of the state this region includes the Holocene-age deltaic lobes of the Mississippi River. Comprised primarily of freshwater marshes grading to brackish and saltwater marshes along the coast, natural levees along numerous distributaries, and relic channels provide the only elevated ground. Periodic river channel avulsion has resulted in erosion of many earlier landforms while regional subsidence has submerged and buried many others. Several Pleistocene-age salt domes protrude above the marsh and represent dry, stable "islands" amidst the constantly evolving coastal marsh region. Sites are found predominantly on higher, better-drained landforms. These are typically natural levees along channels but may include point bars and other surfaces. In many areas, the distribution and



age of sites on the modern surface reflects the geological history of that area, rather than its entire occupational history.

The Inland Swamp and Coastal Marsh sub-region represents the transition between freshwater backswamps to fresh, brackish, and saline waters of the deltaic marshes. Much of the land is low-lying and subject to seasonal flooding. Numerous bayous drain the region with their natural levees providing the only elevated ground. Sites are concentrated along natural levees. Channel migration has eroded many landforms, and sediment deposition has buried many others. Regional subsidence has resulted in many older landforms and sites being submerged below the modern surface.

### **3.2 WESTERN GULF COASTAL PLAIN (LAFAYETTE LOESS PLAINS)**

This region is underlain by Late Pleistocene terraces consisting of sands, silts, and clays. The terrain is generally flat with shallowly incised rivers and bayous. The eastern fifth of the region is covered in Late Pleistocene loess derived from the Mississippi Valley. During the last 500 years, much of this area was prairie, and may have been throughout much of the Holocene, with forests concentrated along drainages. Over the last 2,500 years, the coast has episodically regressed and prograded. A series of cheniers (fossil beach ridges) marking regressive episodes are separated by stretches of fresh brackish marsh (progressive episodes). The cheniers are comprised of sand and shell and rise 1-to-5 meters above the surrounding marsh and represent the only elevated ground in the coastal portion of the coastal plain. Across most of the region, sites occur primarily adjacent to large and small drainages. In some areas there are extensive networks of mounds, many of which were used prehistorically as living and activity areas. There are very few settings where sites could have been buried [by natural processes and sites often can range from] Paleoindian through Post-Contact occupations collapsed across the modern surface. Along the coast, sites are confined to the elevated cheniers. Sites occupy the modern surface and have not been buried by younger deposits.



## Section 4

# Cultural, Historic, and Tribal Trust Resources

Federal regulations require USACE, as an agency responsible for funds appropriated by Congress, to identify if properties are historic (listed or eligible for listing on the NRHP); to assess the effects the work will have on historic properties; to seek ways to avoid, minimize, or mitigate any Adverse Effects to historic properties; and to evaluate the proposed action's potential for significant impacts to the human and natural environment. The consideration of impacts to historic and cultural resources is mandated under Section 101(b)4 of the National Environmental Policy Act (NEPA) as implemented by 40 CFR, Parts 1501-1508. Additionally, "Section 106" of the NHPA requires federal agencies to take into account their effects on historic properties (i.e., historic and cultural resources) and allow the ACHP an opportunity to comment. Section 106 lays out four (4) basic steps that must be carried out sequentially (i.e., "Standard" Section 106): 1) establish the Undertaking; 2) identify and evaluate historic properties; 3) assess effects to historic properties; and 4) resolve any Adverse Effects (avoid, minimize, or mitigate). An agency cannot assess the effects of the undertaking on historic properties until it has identified and evaluated historic properties within the Area of Potential Effects (APE). The federal agency must consult with the appropriate SHPO/s, THPO/s, and/or tribal officials, state and local officials, non-federal sponsors, and other consulting parties in identifying historic properties, assessing effects, and resolving Adverse Effects, and provide for public involvement.

Furthermore, CEMVN recognizes that Tribes may have sites of religious and cultural significance on or off Tribal Lands, as defined in 36 CFR § 800.16(x), including sites that may contain human remains and/or associated cultural items, that may be affected by this Undertaking. Each Tribe has a THPO who consults with federal agencies regarding activities that may impact archaeological sites of ancestral interest. Additionally, USACE utilizes the *Tribal Consultation Policy*, dated November 1, 2012, as guidance when implementing its Federal trust responsibility to Tribal Nations. Further, it is the policy of the Federal Government to consult with Indian Tribal Governments on a Government-to-Government basis as required in E.O. 13175 (U.S. President 2000).



## Section 5

# Summary of Section 106 Consultation

In accordance with Section 106 of the NHPA, CEMVN determined that implementing the recommended plan may result in multiple Federal Undertakings, as defined by 54 U.S.C. § 300320 and 36 CFR § 800.16(y), that may affect properties listed on, or eligible for listing on, the NRHP pursuant to 36 CFR Part 60 (historic properties) and/or properties having religious and cultural significance to Tribes including sites that may contain human remains and/or associated cultural items. Additional project design work and engineering studies will occur upon the Project moving forward into the Pre-Construction Engineering and Design phase (PED) and those individual properties eligible for non-structural measures will be coordinated with stakeholders as the project is developed further. Because the scope and programmatic nature of the recommended plan makes it unreasonable to fully identify historic properties or determine the effects of the Undertaking at the present time, CEMVN has concluded that a phased process to conduct identification and evaluation of historic properties (36 CFR § 800.4(b)(2)) and for application of the criteria of Adverse Effect (800.5(a)(3)), is an appropriate and necessary approach for the agency to meet the requirements of Section 106. As the Federal agency cannot fully determine how these Undertakings may affect historic properties, the location of historic properties, or their significance and character, USACE elected to negotiate a Programmatic Agreement (PA) in consultation with stakeholders, as provided for in 36 CFR § 800.14(b)(1)(ii), to govern the implementation of this Program (Undertakings) and fulfill its obligations under Section 106 of the NHPA, including the resolution of Adverse Effects.

In partial fulfillment of CEMVN's Section 106 responsibilities, CEMVN initiated early coordination with the Chitimacha Tribe of Louisiana (CTL); the only Federally-recognized Indian tribe with a reservation in the study area. On November 08, 2018, a meeting was held between CEMVN Cultural & Social Resources Section representatives and the CTL THPO in Charenton, Louisiana, for the purpose of discussing the SCCL Project. During this meeting the CTL confirmed that they would participate as a Consulting Party in the development of a PA.

On June 10, 2019, CEMVN submitted an initial consultation letter entitled: "Notice of Intent to Prepare Programmatic Agreement Regarding "South Central Coast Louisiana Flood Risk Management Feasibility Study" (Attachment 1) to the SHPO, Affected Tribes (the Alabama-Coushatta Tribe of Texas (ACTT), the Choctaw Nation of Oklahoma (CNO), the Coushatta Tribe of Louisiana (CT), the Chitimacha Tribe of Louisiana (CTL), the Jena Band of Choctaw Indians (JBCI), the Mississippi Band of Choctaw Indians (MBCI), the Muscogee (Creek) Nation (MCN), the Seminole Nation of Oklahoma (SNO), the Seminole Tribe of Florida (STF), and the Tunica-Biloxi Tribe of Louisiana (TBTL)), the Non-Federal Sponsor (NFS; the Louisiana Coastal Protection and Restoration Authority Board (CPRAB), and the ACHP. The aforementioned letter provided information regarding the study area, initial array of alternates being considered, alternative evaluation criteria, plan formulation milestones, and



CEVMN's proposal to develop a project-specific PA pursuant to 36 CFR § 800.14(b) to fulfill its responsibilities under Section 106 of the NHPA. Additionally, this letter invited stakeholders to provide input regarding the proposed undertaking and its potential to significantly affect historic properties and/or sites of religious and cultural significance and requested potential consulting parties' assistance with identifying other relevant entities who may have an interest in participating in this consultation. On June 24, 2019, CEMVN received a written response from the ACHP stating that the agency "has not yet determined if Appendix A of the regulations, Criteria for Council Involvement in Reviewing Individual Section 106 Cases, applies to this undertaking" and requested additional information regarding the views of the SHPO, Tribes, other consulting parties, and the public in order to determine if their participation in this consultation is warranted. Additionally, on July 17, 2019, the CNO submitted a written response to CEMVN's June 10, 2019, letter stating that the project lies outside of their area of historic interest and the CNO respectfully defers to the other Tribes that have been contacted. No additional responses to this letter were received from any of the other stakeholders consulted (SHPO/Tribal/NFS).

On June 14, 2019 CEMVN posted a NHPA/NEPA Public Notice on the designated project website: (<https://www.mvn.usace.army.mil/South-Central-Coast/>) for a (15)-day comment period requesting the public's input concerning: 1) the proposed Undertaking and its potential to significantly affect historic properties; 2) assistance in identifying any relevant parties who may have an interest in participating in this consultation, and; 3) CEMVN's proposal to develop a PA pursuant to 36 CFR § 800.14(b) (Attachment 2). No comments were received.

On January 24, 2020, CEMVN submitted a second Section 106 consultation letter entitled: Continued Consultation: Section 106 Programmatic Agreement Regarding "South Central Coast Louisiana Flood Risk Management Feasibility Study," to the following stakeholders: SHPO, affected Tribes (ACTT, CT, CTL, JBCI, MBCI, MCN, SNO, STF, and TBTL), the NFS (CPRAB), and the ACHP (Attachment 3). The letter provided information regarding the Tentatively Selected Plan (TSP) for the SCCL Project and requested stakeholders' input regarding CEMVN's proposal to develop a project-specific PA that establishes procedures to satisfy CEMVN's Section 106 responsibilities for this undertaking and potential stakeholders' interest in participating in the development of this PA. On January 29, 2020, CEMVN received a written response from the ACHP stating that it was "still premature for us to determine our participation and the more information request we sent still stands." On January 24, 2020, the JBCI submitted a written response to CEMVN's January 24, 2020, letter stating that the JBCI defers to the CTL to develop and consult upon this specific PA and that this deference does not preclude future Section 106 consultation with the JBCI in this area. On January 27, 2020, SHPO submitted a written response accepting CEMVN's invitation to consult in the development of the SCCL PA. On January 30, 2020, the MCN submitted a written response to CEMVN's January 24, 2020, letter stating that the project is located outside of the MCN's area of interest and that the MCN defers to other tribes that have been contacted for comment. No additional responses were received from any of the other stakeholders consulted (Tribal/NFS).



On July 12, 2019, the SCCL Project was further discussed with potential stakeholders during a regularly scheduled monthly Tribal Consultation Call. The following Tribal representatives participated: Ken Carleton (MBCI) and Alina Shively (JBCI). In addition, the following representatives from the Bureau of Indian Affairs (BIA) participated: Pete Voision (Regional Hydrologist), Harold Peterson (Natural Resources Officer), Leonard Rawlings (BIA), and David Saunders (Regional Archaeologist). CEMVN Archaeologists briefed the participating Tribal and BIA representatives on the project plans, current background, need to develop a PA, and proposed time frames. No further discussion regarding the SCCL Project occurred during this meeting.

On March 10, 2020, CEMVN continued consultation with the ACHP and provided the documentation specified in § 800.11(e); including a summary of the views of the SHPO, Tribes, other consulting parties, and the public to date. On March 24, 2020, the ACHP responded that the “ACHP has received your notification and supporting documentation regarding the Adverse Effects of the referenced Undertaking on a property or properties listed or eligible for listing in the NRHP. Based upon the information you provided, we have concluded that Appendix A, *Criteria for Council Involvement in Reviewing Individual Section 106 Cases*, of our regulations, “Protection of Historic Properties” (36 CFR Part 800), does not apply to this Undertaking. Accordingly, we do not believe that our participation in the consultation to resolve adverse effects is needed. However, if we receive a request for participation from the SHPO, THPO, affected Indian tribe, a consulting party, or other party, we may reconsider this decision. Additionally, should circumstances change, and you determine that our participation is needed to conclude the consultation process, please notify us.”

On June 29, 2020, CEMVN held an initial Section 106 consultation meeting to develop the SCCL PA. During this meeting SHPO identified Certified Local Governments (CLG) within the study areas as potential stakeholders. On July 14, 2020, CEMVN provided the CLGs of New Iberia, Morgan City, Franklin, Patterson, Jeanerette, and St. Martinville, with background information regarding the project and a summary of Section 106 consultation conducted to-date, and requested any information that CLGs wished to provide concerning the proposed Undertaking and its potential to significantly affect historic properties and/or of individual CLGs interest in participating in the development of the SCCL PA. No responses were received. Subsequent Section 106 PA development meetings were held on July 27, 2020, August 24, 2020, and September 21, 2020.

Pursuant to 36 CFR §800.6(b)(1)(iv), on December 17, 2020, USACE transmitted the final PA entitled: *“Programmatic Agreement Among the U.S. Army Corps of Engineers, New Orleans District; Louisiana Coastal Protection and Restoration Authority Board; Louisiana State Historic Preservation Officer of the Department of Culture, Recreation & Tourism; Chitimacha Tribe of Louisiana; and Mississippi Band of Choctaw Indians, Regarding the South Central Coast Louisiana Flood Risk Management Project”* (SCCL PA; Attachment 4) and supporting documentation to the ACHP for execution.

On January 7, 2021, the ACHP acknowledged receipt of the SCCL PA and confirmed that the filing of the SCCL PA, and execution of its terms, fulfills the requirements of Section 106



of the National Historic Preservation Act and the ACHP's regulations. Accordingly, USACE may proceed with issuing a Record of Decision (ROD) in compliance with Section 106 of the NHPA and in coordination with NEPA, as amended (42 U.S.C. § 4321 et seq.).

## **Attachment 1**

# **Notice of Intent to Prepare Programmatic Agreement Regarding “South Central Coast Louisiana Flood Risk Management Feasibility Study**





DEPARTMENT OF THE ARMY  
CORPS OF ENGINEERS, NEW ORLEANS DISTRICT  
7400 LEAKE AVE  
NEW ORLEANS LA 70118-3651

June 10, 2019

Regional Planning and  
Environment Division, South  
Environmental Planning Branch  
Attn: CEMVN-PDS-N

Kristin Sanders, SHPO  
LA State Historic Preservation Officer  
P.O. Box 44247  
Baton Rouge, LA 70804-4241

**RE: Notice of Intent to Prepare Programmatic Agreement Regarding "South Central Coast Louisiana Flood Risk Management Feasibility Study."**

Dear Ms. Sanders:

The United States Army Corps of Engineers (USACE), New Orleans District (CEMVN), is initiating the process to develop a Programmatic Agreement (PA) for the South Central Coast Louisiana (SCCL) Flood Risk Management Feasibility Study pursuant to Section 106 of the National Historic Preservation Act (NHPA), as amended (54 U.S.C. § 300101 et seq.), and Section 110 of the NHPA, that require Federal agencies to take into account the effect of their undertakings on historic properties during the planning process and consult with stakeholders regarding these effects. This letter is intended to notify the LA State Historic Preservation Officer (LA SHPO) pursuant to 36 CFR Part 800.14(b) of our plan to develop a project-specific PA that establishes procedures to satisfy the CEMVN's Section 106 responsibilities with regard to the programmatic review of this feasibility study and allows CEMVN to coordinate Section 106 reviews with its evaluation of the proposed action's potential for significant impacts to the human and natural environment required by the National Environmental Policy Act (NEPA), as amended (42 U.S.C. § 4321 et seq.). The PA will address the potential to effect historic properties that are eligible for or listed on the National Register of Historic Places (NRHP), including archaeological sites, districts, buildings, structures, and objects that are significant in American history, architecture, archaeology, engineering, and/or sites of religious and cultural significance on or off Tribal Lands [as defined in 36 CFR § 800.16(x)] that may be affected by this undertaking. We invite the LA SHPO to participate in this consultation since it may involve important questions of policy or interpretation and will result in the development of a PA that governs the application of the Section 106 process with regards to the proposed Undertaking.

**Study Authority**

CEMVN is conducting the present SCCL Flood Risk Management Feasibility Study under the standing authority of *The Bipartisan Budget Act of 2018 (Pub. L. 115-123), Division B, Subdivision 1, H. R. 1892-13, Title IV, Corps of Engineers-Civil, Department of the Army, Investigations*, for flood and storm damage risk reduction. The lead Federal agency for this proposed action is the USACE. The Louisiana Coastal Protection and Restoration Authority

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(CPRA) is the non-Federal sponsor. The feasibility study phase is 100% federally funded. CEMVN will analyze numerous issues related to the effects of any proposed storm damage reduction measures. These issues will include, but will not be limited to, the following: Continued wetlands losses impacting migratory species, the ecological nurseries of the Gulf of Mexico, and various commercial and recreational activities.

#### **Study Area**

The study area, which includes the Louisiana coastal parishes of Iberia, St. Mary, and St. Martin, encompasses an area of approximately 2,965 square miles containing an array of private, local, state, tribal, and federally-managed lands including portions of the Gulf of Mexico, Gulf coastal areas, coastal marshes, the Atchafalaya River, floodplain, and adjacent lands (agriculture, urban, and wildlife habitat), constructed public and private facilities, and other areas subject to repetitive flood inundation. A map depicting the study area is included as Figure 1.

#### **Study Purpose and Background**

Rainfall from hurricanes, tropical storm events, and local storms pose a significant risk to the communities, ecosystems, and industries within the present study area. The region has experienced repetitive storm events including Hurricanes Rita, Ike, Gustav, and Andrew, resulting in loss of life, wildlife, property, and repeated mandatory evacuation costs. This area is also vulnerable to coastal land loss and degradation. Historically, from 1932 to 2010, the area experienced a net loss of approximately 22,500 acres of wetlands. Continued wetlands losses impact migratory species, the ecological nurseries of the Gulf of Mexico, and various commercial and recreational activities. In addition, the study area's topography, low elevation, proximity to the Gulf of Mexico, subsiding lands, and rising seas, are all contributing factors causing coastal flooding, shoreline erosion, and loss of wetlands.

Communities of concern include Breaux Bridge and St. Martinville located in St. Martin Parish. New Iberia, Jeanerette, Delcambre, and Loreauville are at risk of storm damage in Iberia Parish. In St. Mary Parish, Morgan City, Franklin, Patterson, Baldwin, Berwick, as well as the federally recognized Tribal Nation of the Chitimacha whose reservation includes most of Charenton are at risk of damages from flooding from storms that have repeatedly impacted this part of the Louisiana coast over time. Activities in the study area include those related to the Gulf Intracoastal Waterway and Bayou Teche; the Port of Morgan City, Port of West St. Mary, and Port of Iberia; Keystone Lock and Dam, Berwick Lock, and Bayou Boeuf Lock; the Wax Lake Outlet and Pumping Station; Patterson Regional Airport; major transportation corridors and evacuation routes (Hwy 90/future I-49 corridor); and other activities associated with local bayous and structures. In addition to impacts resulting from repeated storm action, the study area is also vulnerable to coastal land loss and degradation, which increases risk to communities, habitat, and infrastructure. The study area also encompasses ecosystems having national, state, and local significance such as the Bayou Teche National Wildlife Refuge, the State of Louisiana Marsh Island Wildlife Refuge, and the Attakapas and Atchafalaya Delta Wildlife Management Areas. The Atchafalaya Basin is unique because it has a growing delta system. Designated by Congress in 2006 as a National Heritage Area, the Atchafalaya Basin encompasses significant cultural, historic, scenic, and recreational resources. It is the Nation's largest alluvial bottomland and swamp that provides habitat for 24 federal and state-listed threatened or endangered species, or species of concern.



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#### Smart Planning Framework

CEMVN is conducting this study according to the Specific, Measurable, Attainable, Risk Informed, Timely (SMART) planning framework for civil works feasibility studies for water resources development projects. The SMART planning process is intended to improve and streamline feasibility studies, reduce their cost, and expedite their completion. The study works progressively through a six-step planning process: 1) identifying problems and opportunities, 2) inventorying and forecasting conditions, 3) formulating alternative plans, 4) evaluating alternative plans, 5) comparing alternative plans, and 6) selecting a plan. From a NHPA/NEPA perspective, the SMART planning process is broken out into four (4) separate phases over the course of the study (Figure 2): Scoping; Alternative Evaluation and Analysis; Feasibility-Level Analysis; and Integrated Feasibility Report (IFR)/Environmental Impact Statement (EIS) development. On April 02, 2019, CEMVN published a Notice of Intent to Prepare a Draft Environmental Impact Statement for the SCCL Feasibility Study in the Federal Register (Vol. 84, No. 63) and USACE began providing to the public NEPA compliance documentation on the designated project website at <https://www.mvn.usace.army.mil/South-Central-Coast/>. CEMVN intends to continue to use this website to post additional project information throughout the development of the IFR/EIS. The IFR/EIS examines the existing condition of environmental and cultural resources within the study area and analyzes potential impacts to those resources as a result of implementing the alternatives. At the feasibility level, there may be insufficient funding and time to conduct required NHPA cultural resources studies and/or mitigation and typically additional feasibility work still remains to be completed on the cultural, environmental, engineering, cost estimating, economic, real estate, and construction elements of the plan. Therefore, prior to approving the Undertaking, the agency may propose to develop a project-specific PA in consultation with stakeholders when the federal agency cannot fully determine how the Undertaking may affect historic properties or the location of historic properties and their significance and character.

There are five (5) key milestones that mark significant decisions in the SMART planning process (Figure 2): Alternatives Milestone; Tentatively Selected Plan (TSP) Milestone; Agency Decision Milestone; Civil Works Review Board; and Chief's Report Milestone. Table 1 (below) provides a schedule of proposed milestone dates for the SCCL Flood Risk Management Feasibility Study:

Table 1. Proposed Study Milestone Schedule

Milestone	Scheduled	Actual	Complete
Alternate Milestone	Jan 31, 2019	Jan 31, 2019	Yes
Tentatively Selected Plan	Oct 2, 2019	TBD	No
Release Draft Report to Public	Dec 3, 2019	TBD	No
Agency Decision Milestone	Mar 27, 2020	TBD	No
Final Report Transmittal	Mar 19, 2021	TBD	No
Chief's Report	Jul 12, 2021	TBD	No

Upon the completion of the Draft IFR/EIS a stakeholder/public comment period will be initiated in conjunction with technical, peer, and policy reviews. Subsequently, results of the reviews and additional feasibility work will be incorporated into the final Chief's Report, which will again be made available for stakeholder/public review. Following the execution of a PA, the Chief of Engineers may then proceed with making a final recommendation on the project and issuing a Record of Decision (ROD) in compliance with NHPA and NEPA.

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#### **Consideration of Alternates**

CEMVN is investigating the best comprehensive solutions that meet the study objective: to reduce the risk of storm damage to industries and businesses critical to the Nation's economy and protect the health and safety of Louisiana coastal communities. The USACE will evaluate a range of alternatives for the proposed action including structural and nonstructural measures. Proposed measures for the SCCL Flood Risk Management Feasibility Study include levees and floodwalls, hydraulic and salinity control structures, non-structural efforts, and shoreline stabilization measures. Expected outputs include a reduction in the risk of flooding (frequency and magnitude), and the enhancement of the Nation's economic development, job growth, and international competitiveness, which are all supported by Administration policy. Structural measures recommended for consideration presently include:

- Comprehensive Levee State Alignment A (Figure 3);
- Comprehensive Levee State Alignment B (Figure 3);
- Comprehensive levee parallel to Hwy 90 on the south side;
- Existing Levee Improvements elevation based on hurricane storm criteria;
- Ring Levees around economic damage hot spots and critical infrastructure;
- Wave attenuation structure off shore to reduce storm surge and wave impacts.

The USACE is also considering nonstructural measures. These include:

- Buyouts;
- Wet proofing;
- Dry proofing.

Additional information and maps regarding initial alternatives under consideration can be accessed at: <https://www.mvn.usace.army.mil/Portals/56/docs/BBA%2018/2019%2005%2014%20FINAL%20SCCL%20Public%20Meeting%20PPT.pdf>. The alternatives will be further developed in the IFR/EIS.

#### **Section 106 Consultation**

CEMVN has determined that the proposed action constitutes an Undertaking as defined in 36 CFR § 800.16(y) and has the potential to cause effects on historic properties. This letter initiates formal Section 106 consultation pursuant to 36 CFR § 800.3(c). Due to time and budget constraints for this Undertaking associated with the SMART Planning framework, CEMVN proposes to develop a project-specific PA pursuant to 36 CFR § 800.14(b)(3). The goal of this Section 106 consultation is to provide a project-specific framework for addressing this complex Undertaking and establish protocols for continuing consultation with the LA SHPO, Tribal Governments, and other stakeholders. The PA would identify consulting parties, define applicability, establish review timeframes, stipulate roles and responsibilities of stakeholders, summarize Tribal consultation procedures, consider the views of the SHPO/THPO and any other consulting parties, afford for public participation, develop programmatic allowances to exempt certain actions from Section 106 review, provide the measures CEMVN will implement to develop an Area of Potential Effects (APE) in consultation with external stakeholders, outline a standard review process for plans and specifications as they are developed, determine an appropriate level of field investigation to identify and evaluate historic properties within the APE and the potential to affect historic properties and/or sites of religious and cultural significance,



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streamline the assessment and resolution of Adverse Effects through avoidance, minimization, and programmatic treatment approaches for mitigation, establish reporting frequency and schedule, provide provisions for post-review unexpected discoveries and unmarked burials, and incorporate the procedures for amendments, duration, termination, dispute resolution, and implementation.

CEMVN proposes to send future notices, draft agreements, and other background information to consulting parties by e-mail to minimize communication delays and expedite the development of the PA. Please let CEMVN know if this is impractical, so we can make alternative arrangements.

A date and time for the initial Section 106 consultation meeting has not been set. Upon selection of a TSP, CEMVN will schedule a teleconference with consulting parties. The purpose of the initial meeting will be to discuss the proposed Undertaking, the APE, and determine the appropriate steps to identify, evaluate, avoid, minimize, and mitigate potential adverse effects. CEMVN will notify the SHPO and other likely consulting parties regarding the meeting as soon as possible and forward information regarding the meeting location, a conference call-in number, and the Agenda.

Please do not hesitate to notify CEMVN regarding any information your office may wish to provide at this time concerning the proposed undertaking and its potential to significantly affect historic properties and/or of any other relevant parties who you feel may have an interest in participating in this consultation. Should you have any questions or need additional information regarding this undertaking or the SMART Planning Framework, please contact Jeremiah Kaplan, Archaeologist at [Jeremiah.H.Kaplan@usace.army.mil](mailto:Jeremiah.H.Kaplan@usace.army.mil) or (504) 862-2004.

Sincerely,

HARPER.MARSHALL  
.KEVIN.1536114358

Digitally signed by  
HARPER.MARSHALL.KEVIN.

MARSHALL K. HARPER  
Chief, Environmental Planning Branch

CC:File

LA SHPO

An electronic copy of this letter with enclosures will be provided to the Section 106 Inbox, [section106@crt.la.gov](mailto:section106@crt.la.gov).



Figure 1. ESRI Transportation imagery displaying location of the SCCL study area .



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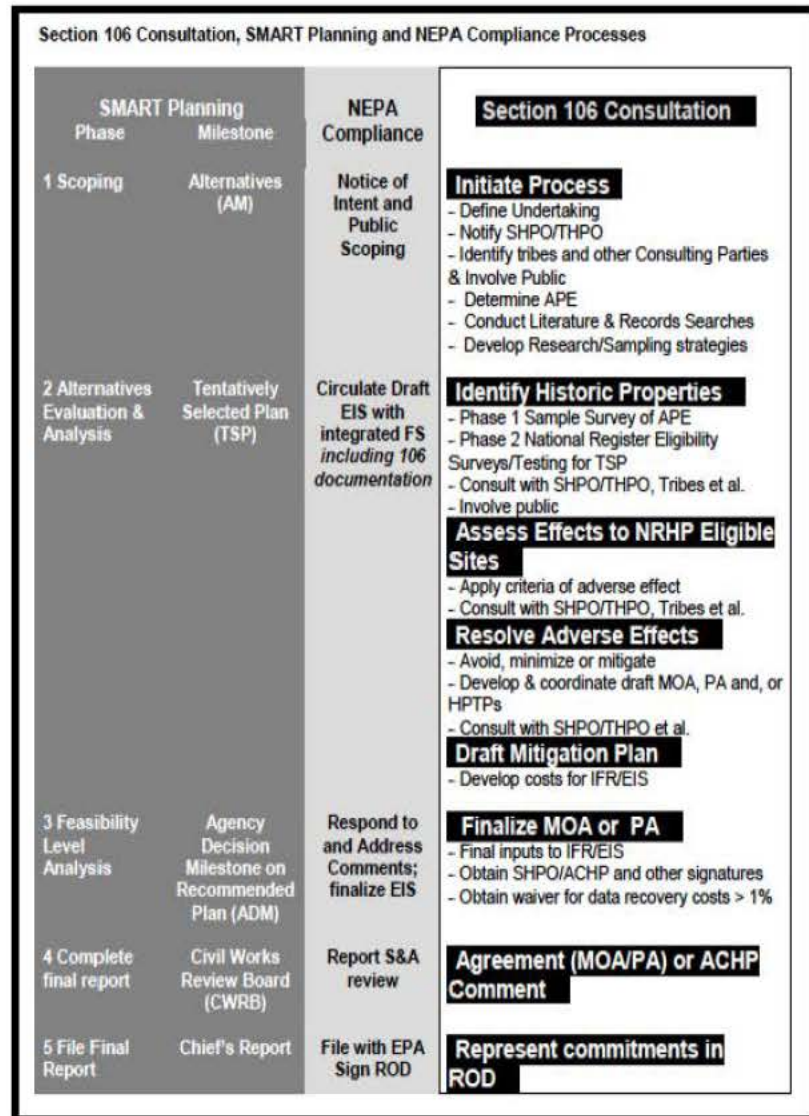


Figure 2. Section 106 Consultation, SMART Planning, and NEPA Compliance Process.

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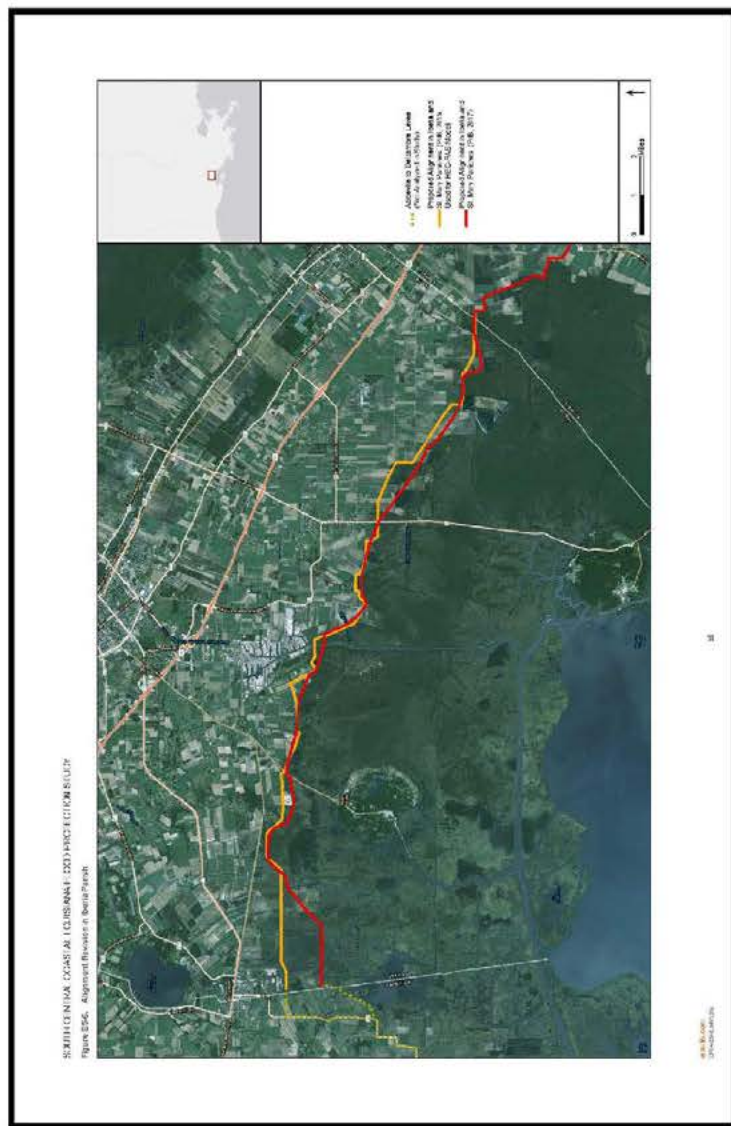


Figure 3. SCCL Comprehensive Levee State Alignment A/B ([ARCADIS 2017: ftp://ftp.coastal.la.gov/TV-67/Uploads%20for%20Atkins%2020151216/SCCL%20Study/1SCCL%20Flood%20Protection%20Study.pdf](http://ftp.coastal.la.gov/TV-67/Uploads%20for%20Atkins%2020151216/SCCL%20Study/1SCCL%20Flood%20Protection%20Study.pdf)).



# **Attachment 2**

## **NHPA/NEPA Public Notice**

**Public Notice NHPA/NEPA<sup>1</sup>**

**Notice of Intent to Prepare Programmatic Agreement Regarding South Central Coast Louisiana Flood Risk Management Feasibility Study**

The United States Army Corps of Engineers (USACE), New Orleans District (CEMVN), is initiating the process to develop a Programmatic Agreement (PA) for the South Central Coast Louisiana Flood Risk Management Feasibility Study (SCCL), Flood Risk Management Feasibility Study pursuant to Section 106 of the National Historic Preservation Act (NHPA), as amended (54 U.S.C. § 300101 et seq.), and Section 110 of the NHPA, that require Federal agencies to take into account the effect of their undertakings on historic properties during the planning process and consult with stakeholders regarding these effects.

The study area, which includes the Louisiana coastal parishes of Iberia, St. Mary, and St. Martin, encompasses an area of approximately 2,965 square miles containing an array of private, local, state, tribal, and federally-managed lands including portions of the Gulf of Mexico, Gulf coastal areas, coastal marshes, the Atchafalaya River, floodplain, and adjacent lands, constructed public and private facilities, and other areas subject to repetitive flood inundation. CEMVN is investigating the best comprehensive solutions that meet the study objective: to reduce the risk of storm damage to industries and businesses critical to the Nation's economy and protect the health and safety of Louisiana coastal communities. CEMVN will evaluate a range of alternatives for the proposed action including structural and nonstructural measures. Proposed measures include levees/floodwalls, hydraulic and salinity control structures, non-structural efforts, and shoreline stabilization measures. USACE began providing to the public NEPA compliance documentation on the designated project website at <https://www.mvn.usace.army.mil/South-Central-Coast/>. CEMVN intends to continue to use this website to post additional project information.



CEMVN has determined that the proposed action constitutes an Undertaking as defined in 36 CFR § 800.16(y) and has the potential to cause effects on historic properties. Accordingly, CEMVN proposes to develop a project-specific PA pursuant to 36 CFR § 800.14(b)(3) to provide a framework for addressing this complex Undertaking and establish protocols for continuing consultation with the LA State Historic Preservation Officer (LA SHPO), Tribal Governments, and other stakeholders. The PA would identify consulting parties, define applicability, establish review timeframes, stipulate roles and responsibilities of stakeholders, summarize Tribal consultation procedures, consider the views of the SHPO/Tribal Historic Preservation Officer and other consulting parties, afford for public participation, develop programmatic allowances to exempt certain actions from Section 106 review, provide the measures CEMVN will implement to develop an Area of Potential Effects (APE) in consultation with external stakeholders, outline a standard review process for plans and specifications, determine an appropriate level of field investigation to identify and evaluate historic properties and/or sites of religious and cultural significance within the APE, streamline the assessment and resolution of Adverse Effects through avoidance, minimization, and programmatic treatment approaches for mitigation, establish reporting frequency and schedule, provide provisions for post-review unexpected discoveries and unmarked burials, and incorporate the procedures for amendments, duration, termination, dispute resolution, and implementation.

To help further develop a course of action for this project CEMVN is requesting your input by June 28, 2019, concerning the proposed Undertaking and its potential to significantly affect historic properties and/or of relevant parties who may have an interest in participating in this consultation. Comments can be sent electronically to: [Southcentralcoaststudy@usace.army.mil](mailto:Southcentralcoaststudy@usace.army.mil), or, mail comments to: Cultural & Social Resources Section (CEMVN-PDP-CSR), USACE, Room 140, 7400 Leake Ave., New Orleans, LA 70118-3651.

<sup>1</sup> CEMVN is issuing this public notice as part of its responsibilities under the Advisory Council on Historic Preservation's regulations, 36 CFR Part 800, implementing Section 106 of the National Historic Preservation Act of 1966, as amended (54 U.S.C. § 306108). This notice applies to activities carried out under the standing authority of The Bipartisan Budget Act of 2018 (Pub. L. 115-123), Division B, Subdivision 1, H. R. 1892-13, Title IV, Corps of Engineers-Civil, Department of the Army, Investigations, for flood and storm damage risk reduction. CEMVN is also required to fulfill the Council of Environmental Quality regulations (NEPA regulations, 43 FR 55978 (1978)) that provide policy and procedures to enable CEMVN officials to be informed and to take into account environmental considerations when authorizing or approving CEMVN actions that may significantly affect the environment of the United States. It is the intent of NEPA that federal agencies encourage and facilitate public involvement to the extent practicable in decisions that may affect the quality of the environment.



## **Attachment 3**

# **Continued Consultation: Section 106 Programmatic Agreement Regarding “South Central Coast Louisiana Flood Risk Management Feasibility Study”**

**PROGRAMMATIC AGREEMENT AMONG THE U.S. ARMY CORPS OF ENGINEERS, NEW ORLEANS DISTRICT; LOUISIANA COASTAL PROTECTION AND RESTORATION AUTHORITY BOARD; LOUISIANA STATE HISTORIC PRESERVATION OFFICER OF THE DEPARTMENT OF CULTURE, RECREATION & TOURISM; CHITIMACHA TRIBE OF LOUISIANA; AND MISSISSIPPI BAND OF CHOCTAW INDIANS, REGARDING THE SOUTH CENTRAL COAST LOUISIANA FLOOD RISK MANAGEMENT PROJECT.**

**WHEREAS**, in order to address repetitive storm events resulting in loss of life, property, and repeated mandatory evacuation costs, the U.S. Army Corps of Engineers (USACE), New Orleans District (CEMVN), in partnership with the Louisiana Coastal Protection and Restoration Authority Board (CPRAB) as the Non-Federal Sponsor (NFS), is conducting the “South Central Coast Louisiana Flood Risk Management Feasibility Study” (SCCL; Project) under the standing authority of the Bipartisan Budget Act of 2018 (BBA or Act; Pub. L. 115-123), signed into law February 9, 2018; and

**WHEREAS**, the BBA provides that a project that is studied using Supplemental Investigation funds is eligible for implementation using Construction funds provided in that Act if the Secretary determines that the project is technically feasible, economically justified, and environmentally acceptable. Implementation of the project may be undertaken using Supplemental Construction funds once the verification and Chief’s Report for the project are provided to the Office of the Assistant Secretary of the Army (ASA) for Civil Works (CW), and the ASA makes the required determination of technical feasibility, economic justification, and environmental acceptability; and

**WHEREAS**, CEMVN is the lead federal agency for purposes of the National Environmental Policy Act of 1969 (NEPA) and its implementing regulations, set out at 40 CFR parts 1500-1508 (43 FR 55978), and “Section 106” of the National Historic Preservation Act (NHPA) [54 U.S.C. § 300101 et seq.], as amended (54 U.S.C. § 306108), and its implementing regulations, set out at 36 Code of Federal Regulations (CFR) Part 800, and in accordance with 36 CFR § 800.2(a)(2) and 800.8; and

**WHEREAS**, the SCCL project area, which includes the Louisiana coastal parishes of Iberia, St. Mary, and St. Martin, encompasses approximately 2,965 square miles (7,679 km) containing an array of private, local, state, tribal, and federally-managed lands including portions of the Gulf of Mexico, Gulf coastal areas, coastal marshes, the Atchafalaya River, floodplain, and adjacent lands (agriculture, urban, and wildlife habitat), constructed public and private facilities, and other areas subject to repetitive flood inundation; and

**WHEREAS**, CEMVN has determined that non-structural measures; including structure elevations and floodproofing are the most cost-effective solution to reduce flood-risk within the study area; and

**WHEREAS** Based on feasibility-level design, the following types of non-structural storm damage reduction measures may occur, but are not limited to: elevation of residential structures, dry/wet-floodproofing, and/or retrofit of residential/non-residential structures (Appendix A); and

**WHEREAS**, CEMVN has determined that implementing the SCCL Project may result in multiple Federal Undertakings, as defined by 54 U.S.C. § 300320 and 36 CFR § 800.16(y), that may affect properties listed in or eligible for listing on the National Register of Historic Places (NRHP) pursuant to 36 CFR Part 60 (historic properties) and/or properties having religious and cultural significance to Tribes including sites that may contain human remains and/or associated cultural items; and



**WHEREAS**, additional project design work and engineering studies will occur upon the Project moving forward into the Pre-Construction Engineering and Design phase (PED) and those individual properties eligible for non-structural measures will be coordinated with stakeholders as the project is developed further; and

**WHEREAS**, because the scope and programmatic nature of the SCCL Project makes it unreasonable to fully identify historic properties or determine the effects of the Undertaking at the present time, CEMVN has concluded that a phased process to conduct identification and evaluation of historic properties (36 CFR § 800.4(b)(2)) and for application of the criteria of adverse effect (800.5(a)(3)), is an appropriate and necessary approach for the agency to meet the requirements of Section 106; and

**WHEREAS**, as the federal agency cannot fully determine how these Undertakings may affect historic properties, the location of historic properties, or their significance and character, CEMVN has elected to negotiate a Programmatic Agreement (PA) in consultation with stakeholders, as provided for in 36 CFR § 800.14(b)(1)(ii), to govern the implementation of this Program and fulfill its obligations under Section 106 of the NHPA including the resolution of adverse effects for these Undertakings; and

**WHEREAS**, in this PA, "Signatories" is defined in 36 CFR § 800.6(c)(1), "Invited Signatories" is defined in 36 CFR § 800.6(c)(2), and "Concurring Party" is defined in 36 CFR § 800.6(c)(3); and

**WHEREAS**, a Consulting Party shall be recognized by CEMVN as a Signatory, Invited Signatory, or a Concurring Party starting on the date the Consulting Party signs this PA as a Signatory, Invited Signatory, or Concurring Party and provides CEMVN with a record of this signature; and

**WHEREAS**, in accordance with 36 CFR § 800.6(c)(1), a Signatory has the authority to amend or terminate the PA; and

**Whereas**, in accordance with 36 CFR § 800.6(c)(2), Invited Signatories who sign this PA are signatories with the authority to amend or terminate the PA; and

**WHEREAS**, in accordance with 36 CFR § 800.6(c)(3), a Concurring Party is a Consulting Party invited to concur in the PA but who does not have the authority to amend or terminate the PA; and

**WHEREAS**, in accordance with 36 C.F.R. § 800.6(a)(1), the Advisory Council on Historic Preservation (ACHP) has been provided the required documentation and invited to participate in this PA. On March 24, 2020, the ACHP provided written notice that it has chosen not to participate in the consultation; and

**WHEREAS**, pursuant to 36 C.F.R. § 800.6(b)(1), CEMVN has consulted with the Louisiana State Historic Preservation Officer of the Department of Culture, Recreation and Tourism (SHPO) via letter on June 10, 2019, and January 24, 2020, regarding its intent to develop this PA and invited the SHPO to participate. SHPO confirmed that they would participate in the

PROGRAMMATIC AGREEMENT AMONG THE U.S. ARMY CORPS OF ENGINEERS, NEW ORLEANS DISTRICT; LOUISIANA COASTAL PROTECTION AND RESTORATION AUTHORITY BOARD; LOUISIANA STATE HISTORIC PRESERVATION OFFICER OF THE DEPARTMENT OF CULTURE, RECREATION & TOURISM; CHITIMACHA TRIBE OF LOUISIANA; AND MISSISSIPPI BAND OF CHOCTAW INDIANS, REGARDING THE SOUTH CENTRAL COAST LOUISIANA FLOOD RISK MANAGEMENT PROJECT.

development of this agreement on January 27, 2020, and is a Signatory to this PA; and

**WHEREAS**, CEMVN has consulted with the NFS regarding the potential effects of the Undertakings on historic properties, and as the proponent of the Undertakings, the NFS is an Invited Signatory to this PA; and

**WHEREAS**, CEMVN recognizes that the Alabama-Coushatta Tribe of Texas (ACTT), the Choctaw Nation of Oklahoma (CNO), the Coushatta Tribe of Louisiana (CT), the Chitimacha Tribe of Louisiana (CTL), the Jena Band of Choctaw Indians (JBCI), the Mississippi Band of Choctaw Indians (MBCI), the Muscogee (Creek) Nation (MCN), the Seminole Nation of Oklahoma (SNO), the Seminole Tribe of Florida (STF), and the Tunica-Biloxi Tribe of Louisiana (TBTL) (collectively referenced as “Tribes”), may have sites of religious and cultural significance on or off Tribal Lands [as defined in 36 CFR § 800.16(x)] that may be affected by these Undertakings, and in meeting its Federal trust responsibility, CEMVN engaged in government-to-government consultation with Tribes via letter on June 10, 2019, and January 24, 2020. Pursuant to 36 CFR § 800.2 (c)(2)(ii)(E), and in consideration of the confidentiality of information, CEMVN has invited the Tribes to enter into a PA that specifies how CEMVN shall carry out Section 106 responsibilities for these Undertakings; and

**WHEREAS**, the ACTT, CNO, CT, CTL, JBCI, MBCI, MCN, SNO, STF, and TBTL have assumed the responsibilities of the SHPO with respect to its/their Tribal lands through appointment of a Tribal Historic Preservation Officer (THPO) in accordance with Section 101 of the NHPA and CEMVN shall consult with the appropriate THPO in lieu of the SHPO for Undertakings occurring on or affecting its/their Tribal lands; and

**WHEREAS**, on November 08, 2018, the CTL confirmed that they would participate in the development of this agreement during an in-person meeting held between CEMVN Cultural & Social Resources Section representatives and the CTL THPO in Charenton, LA, for the purpose of discussing the SCCL Project, and are a Concurring Party to this PA; and

**WHEREAS**, on July 17, 2019, the CNO submitted a written response to CEMVN’s June 10, 2019, letter stating that the project lies outside of their area of historic interest and the CNO respectfully defers to the other Tribes that have been contacted; and

**WHEREAS**, on January 24, 2020, the JBCI submitted a written response to CEMVN’s January 24, 2020, letter stating that the JBCI defers to the CTL to develop and consult upon this specific PA and that this deference does not preclude future Section 106 consultation with the JBCI in this area; and

**WHEREAS**, on January 30, 2020, the MCN submitted a written response to CEMVN’s January 24, 2020, letter stating that the project is located outside of the MCN’s area of interest and that the MCN defers to other tribes that have been contacted for comment; and

**WHEREAS**, on June, 29, 2020, the MBCI confirmed that they would participate in the development of this agreement during the initial Section 106 PA development consultation meeting, and are a Concurring Party to this PA; and



**WHEREAS**, as of the date of this Agreement, no other Tribes(s) have expressly declined to enter into this Agreement as a signatory party; and

**WHEREAS**, CEMVN may invite additional Tribes that have sites of religious and cultural significance to enter into the terms of this Agreement as Invited Signatories or Concurring Parties in accordance with 36 CFR § 800.14(f), and nothing in this Agreement prevents a Tribe from entering into a separate PA or other agreement with CEMVN; and

**WHEREAS**, the terms of this PA shall not apply to Undertakings on or affecting Tribal lands without prior execution of the PA by the affected Tribe; and

**WHEREAS**, on June 14, 2019 CEMVN posted a NHPA/NEPA Public Notice on the designated project website: (<https://www.mvn.usace.army.mil/South-Central-Coast/>) for a (15)-day comment period requesting the public's input concerning: 1) the proposed Undertaking and its potential to significantly affect historic properties; 2) assistance in identifying any relevant parties who may have an interest in participating in this consultation, and; 3) CEMVN's proposal to develop a PA pursuant to 36 CFR § 800.14(b) and no comments were received; and

**WHEREAS**, on July 14, 2020, CEMVN requested by e-mail the Certified Local Governments (CLGs) of New Iberia, Morgan City, Franklin, Patterson, Jeanerette, and St. Martinville (<https://www.crt.state.la.us/cultural-development/historic-preservation/certified-local-government/louisiana-clgs/index>) interest in participating in this consultation and any information concerning the proposed Undertaking and its potential to significantly affect historic properties that they wished to provide, and as of the date of this Agreement, none have responded; and

**WHEREAS**, CEMVN has requested the participation of local governments, including the CLGs, and the public, during the development of this Agreement and will take appropriate steps to involve and notify those parties, as appropriate, during the implementation of the terms of this Agreement; and

**WHEREAS**, for the review of specific Undertakings under this PA, CEMVN may invite other agencies, organizations, and individuals to participate as Consulting Parties; and

**WHEREAS**, consultation among all Signatories, Invited Signatories, and Concurring Parties to this PA shall continue throughout the implementation of the PA. Consultation is mutual, meaningful dialogue regarding the fulfillment of this PA, the process of Section 106 compliance, and the treatment of historic properties that may be affected by CEMVN Undertakings; and

**NOW, THEREFORE**, CEMVN, SHPO, (Signatories), CPRA (Invited Signatory), CTL, and MBCI (Concurring Parties) agree that the Undertakings resulting from the SCCL Project shall be administered in accordance with the following stipulations in order to take into account the effects of the Undertakings on historic properties and to satisfy CEMVN's responsibilities under Section 106 of the NHPA for all resulting SCCL Project Undertakings:

## STIPULATIONS

**To the extent of its legal authority, and in coordination with other Signatories, Invited Signatories, and Concurring Parties, CEMVN shall implement the following measures:**

### **I. GENERAL**

#### **A. Applicability**

1. If another Federal program or Federal agency has approved an Undertaking that lies wholly or partly within a SCCL Project APE within the past five (5)-years, and no new substantial information has been revealed, then Section 106 consultation and review is concluded for that portion of the SCCL Project APE within this previous Undertaking provided that CEMVN:
  - a) Confirms that the Area of Potential Effects (APE) and effect [as defined by 36 CFR § 800.16(i)] of the present Undertaking are the same as that of the Undertaking reviewed by the previous agency, and;
  - b) Determines that the previous agency complied with Section 106, including Tribal consultation, appropriately and;
  - c) Adopts the findings and determinations of the previous agency.
2. CEMVN shall document these findings in its project file in order to confirm that the requirements of Section 106 have been satisfied. Should CEMVN, in consultation with SHPO and participating Tribes, determine that the previous Section 106 review was insufficient or involved interagency disagreements about eligibility, effect, and/or resolution of adverse effects, CEMVN shall conduct additional Section 106 consultation in accordance with the terms of this PA.
3. CEMVN has determined that the following types of activities have limited or no potential to affect historic properties and CEMVN has no further Section 106 responsibilities with regards to them, pursuant to 36 CFR § 800.3(a)(1):
  - a) Administrative actions such as personnel actions, travel, procurement of services, supplies (including vehicles and equipment) for the support of day-to-day operational activities.
  - b) Providing funding for planning, studies, and design and engineering costs that involve no commitment of resources other than staffing and associated funding.
  - c) Surveying, monitoring, data gathering, and reporting in support of planning activities and conducting other activities necessary for CEMVN to evaluate the



eligibility of properties for non-structural measures (e.g., performing environmental testing and site assessments with no ground disturbance, and if warranted, additional hazardous, toxic and radioactive waste investigations, physical property inspections, evaluating the condition of structures, determining dry/wet floodproofing methods, verifying the current elevation of structures, title research, or performing appraisals, boundary monumentations, and demarcation of project areas and resources (e.g., cultural sites, wetlands, threatened and endangered species habitat)). Rental or purchase of vehicles or other motorized equipment.

- d) Payment of fees including but not limited to: costs of obtaining all required permits (e.g., zoning or land use approvals, environmental permits or other required certifications, Certificates of Appropriateness, and/or building permits), costs of title searches, surveys, appraisal fees, and applicable state and local tax.

## **B. Timeframes and Communications**

1. All references to time periods in this PA are in calendar days. If a review period included in this PA ends on a Saturday, Sunday, or State/Federal holiday, the review period will be extended until the next business day. Any electronic communication forwarding plans or other documents for review under the terms of the PA that is sent after 4:00 pm Central Time will be deemed to have been received by the reviewing party on the next business day. E-mail comments submitted by a Signatory, Invited Signatory, or Concurring Party for review under this PA are timely if they are received at any time on the last day of a review period. Responses sent by U.S. mail will be accepted as timely if they are postmarked by the last day allowed for the review.
2. CEMVN shall provide the Signatories, Invited Signatories, and Concurring Parties with the opportunity to review and comment on various documents and reports as specified under the terms of the PA. Determinations or reviews that have been completed by CEMVN under the terms of this PA prior to the signature of a Signatory, Invited Signatory, or Concurring Party shall not be reconsidered because the Consulting Party did not have the opportunity to review and comment.
3. The Signatories, Invited Signatories, and Concurring Parties may send and accept official notices, comments, requests for further information and documentation, and other communications required by this PA by electronic mail (e-mail). If the size of an e-mail message is unusually large or an e-mail is returned to a sender because its size prevents delivery, the sender shall contact the recipient(s) and determine alternative methods to deliver the information.
4. Time sensitive information that is not sent by e-mail should be sent by overnight mail, courier, or be hand-delivered and the timeframe for its review will be measured by the date the delivery is signed for by the individual recipient, agency, or organization representing the Signatory, Invited Signatory, or Concurring Party.

5. The response time for each request for comment or concurrence shall be a maximum of thirty (30)-days, unless otherwise stipulated in this PA or agreed to on a case-by-case basis.
6. The failure of any Signatory, Invited Signatory, or Concurring Party to comment or concur on CEMVN's finding or determination within an agreed upon timeframe, shall be treated by CEMVN as non-objection, and CEMVN may proceed to the next step in the consultation process without taking additional steps to seek comments from that party.

### **C. Points of Contact**

1. The Signatories, Invited Signatories, and Concurring Parties of this PA shall each designate a primary and secondary point of contact (see Appendix B). The primary contact is the contact to which all formal correspondence is sent. If the individual designated as the primary point of contact is not available, communications will be directed to the secondary contact.
2. It is the responsibility of each Signatory, Invited Signatory, and Concurring Party to inform CEMVN of any changes in the name, address, e-mail address, or phone number of the point-of-contact. Such changes shall not require an amendment to this PA. CEMVN shall forward this information to the other Consulting Parties by e-mail.

### **D. Confidentiality**

1. In accordance with 36 CFR § 800.6(a)(5), if an Indian Tribe requests that specific information shared with CEMVN be kept confidential, or if the agency official believes that there are other reasons to withhold information, CEMVN shall comply to the extent allowed by law.
2. CEMVN shall safeguard information about historic properties provided by SHPO and/or sites of traditional, religious, and/or cultural importance to Tribes, including location information or non-public information provided by SHPO/Tribes to assist in the identification of such properties, to the extent allowed by Section 304 of NHPA (54 U.S.C. § 307103), and other applicable laws. In accordance with Stipulation II.A.1(a) only *Qualified Staff* shall be afforded access to protected historic property information.
3. CEMVN shall provide to all Consulting Parties the documentation specified in 36 CFR § 800.11 subject to the confidentiality provisions of 36 CFR § 800.11(c) and such other documentation as may be developed during consultation to resolve adverse effects.

### **E. Roles and Responsibilities of the Signatories**

1. CEMVN:
  - a) Shall not authorize implementation of an individual Undertaking until Section 106 review is completed pursuant to this PA.

PROGRAMMATIC AGREEMENT AMONG THE U.S. ARMY CORPS OF ENGINEERS, NEW ORLEANS DISTRICT; LOUISIANA COASTAL PROTECTION AND RESTORATION AUTHORITY BOARD; LOUISIANA STATE HISTORIC PRESERVATION OFFICER OF THE DEPARTMENT OF CULTURE, RECREATION & TOURISM; CHITIMACHA TRIBE OF LOUISIANA; AND MISSISSIPPI BAND OF CHOCTAW INDIANS, REGARDING THE SOUTH CENTRAL COAST LOUISIANA FLOOD RISK MANAGEMENT PROJECT.



- b) Shall notify and consult with the SHPO, Tribes, and other Consulting Parties, as appropriate. Consultations may include in-person meetings, as well as communications by U.S. mail, e-mail, facsimile, and/or telephone. Times and places of meetings, as well as an agenda for meetings, shall be developed with mutual acceptance and done in a timely manner.
  - c) Shall consult with any Tribe on a government-to-government basis in recognition of their sovereign status, whether a signatory to this PA or not, throughout any activity or Undertaking that might affect historic properties; particularly in regards to sites that may have traditional, religious, and/or cultural importance to Tribes. In meeting its Federal trust responsibility, CEMVN alone shall conduct all government-to-government consultation with Tribes.
  - d) Shall be responsible for determining the APE, identifying historic properties located within the APE, and providing NRHP eligibility determinations/findings of effect, in consultation with SHPO, Tribes, and other Consulting Parties.
  - e) Shall ensure all Cultural Resources review is conducted by staff meeting the *Professional Standards* as outlined in Stipulation II.A.1(c).
  - f) Shall ensure that all documentation generated as part of the NHPA process resulting from these Undertakings will be consistent with applicable *Standards* (Stipulation II.A.1(b)) and confidentiality provisions outlined in Stipulation I.D.
  - g) Shall provide to the NFS, a written record of all stipulations and conditions pursuant to this agreement regarding the subject real property that the NFS has jurisdiction over and ensure that they are understood. Additionally, CEMVN shall provide the NFS with guidance on the treatment of any historic properties, if applicable.
  - h) Shall provide the Signatories and ACHP with an annual report for each year that this PA is in effect as outlined in Stipulation IV.E.1.
2. SHPO/THPO(s):
- a) Shall coordinate with CEMVN, to identify Consulting Parties, including any communities, organizations, or individuals that may have an interest in a specific Undertaking and its effects on historic properties.
  - b) Shall review CEMVN's determinations of the APE, NRHP eligibility, and findings of effect, and respond within timeframes required by this PA.
  - c) Upon request, SHPO shall provide CEMVN and/or its designee(s) with available information about historic properties (such as access to site files, GIS data, survey information, geographic areas of concern). Only *Qualified Staff* and/or designee(s) shall be afforded access to protected historic property information.

- d) For CEMVN Undertakings on Tribal lands or affecting properties of religious and cultural significance, and where no tribe-specific consultation agreements or protocols are in place, CEMVN shall consult with affected Tribes in accordance with 36 CFR Part 800. In determining the specific Tribes affected, CEMVN shall first establish that it is a type of Undertaking with potential to affect historic properties with religious and cultural significance and may consult with Tribes, any State Tribal Agency, SHPO, and access the National Park Service (NPS) Native American Consultation Database, the list of Tribal Areas of Interest in the State of Louisiana, [http://www.crt.state.la.us/Assets/OCD/archaeology/native\\_americancontacts/NatAmContacts.pdf](http://www.crt.state.la.us/Assets/OCD/archaeology/native_americancontacts/NatAmContacts.pdf), or other tools to identify geographic Tribal interests.
  - e) Shall participate in reviews of Undertakings and consultation meetings as needed and any other roles appropriate to the completion of the goals of this PA. In those instances where consultation with SHPO/THPO(s) has occurred, CEMVN shall document any decisions that were reached in its project file.
  - f) Shall review the annual report provided by CEMVN and will recommend any actions or revisions to be considered; including updates to the appendices in accordance with Stipulation IV.E.2.
  - g) Shall participate in meetings convened by CEMVN or any other Signatory, Invited Signatory, or Concurring Party to review the effectiveness of this PA.
3. NFS:
- a) Shall coordinate with CEMVN, to identify Consulting Parties, including any communities, organizations, private land owners, or other individuals that may have an interest in a specific Undertaking and its effects on historic properties.
  - b) Shall participate in meetings as needed and any other roles appropriate to the completion of the goals of this PA.
  - c) Shall review the annual report provided by CEMVN and will recommend any actions or revisions to be considered; including updates to the appendices in accordance with Stipulation IV.E.2.
  - d) Shall participate in meetings convened by CEMVN or any other Signatory, Invited Signatory, or Concurring Party to review the effectiveness of this PA.
  - e) Shall assist in determining the final disposition of any recovered archaeological collections from a CEMVN-funded archaeological survey, evaluation, Standard Treatment Measure (STM) or project-specific Memorandum of Agreement (MOA) Treatment Measure (TM), or post-review discovery, in accordance with Stipulation III.D(1) of this PA and shall coordinate with any private land owners regarding State of Louisiana *Archaeological Collection Donation Forms*, if necessary.



4. ACHP:

- a) Shall review any Adverse Effect (AE) determination as required in CFR § 800.6(a)(1).
- b) Shall participate in dispute resolution as required by Stipulation IV.B of this PA.

**F. Public Participation**

- 1. To date, CEMVN has undertaken the public outreach and participation activities which have been memorialized in “Whereas” clauses found in this PA.
- 2. It is the intent of NEPA that federal agencies encourage and facilitate public involvement to the extent practicable in decisions that may affect the quality of the environment. CEMVN shall also provide public notices and the opportunity for public comment or participation on any Undertaking through the NEPA public participation process, and if applicable, Executive Order 12898 (Environmental Justice) provided such notices specifically reference Section 106 as a basis for public involvement.
- 3. CEMVN recognizes that the views of the public are essential to informed decision making throughout the Section 106 consultation process. CEMVN shall notify the public of proposed Undertakings, the implementation of STM or project-specific MOA TM as required by this PA in a manner that reflects the nature, complexity, and significance of historic properties potentially affected by the Undertaking and the likely public interest given CEMVN's specific involvement.
- 4. CEMVN may confer with other Consulting Parties to determine if there are individuals, groups, or organizations with a demonstrated interest in historic properties that should be included as a Consulting Party for any specific Undertaking in accordance with 36 CFR § 800.2(c)(5). If such parties are identified, or identify themselves to CEMVN, CEMVN shall provide them with information regarding the Undertaking and its effects on historic properties, consistent with the confidentiality provisions of Stipulation I.D of this PA.
- 5. CEMVN shall ensure that reasonable time frames for public comment are afforded and will consider all views provided by the public regarding any specific Undertaking. CEMVN shall provide contact information and accept responses to its requests for public comments through the U.S. mail or e-mail submittals.
- 6. Should a member of the public object to implementation of the PA's terms, CEMVN shall notify the other Consulting Parties by e-mail and take the objection into consideration. CEMVN shall consult with the objecting party and, if that party so requests, the other Signatories, for not more than fifteen (15)-days. In reaching its decision regarding the objection, CEMVN shall take into consideration all comments from these parties. Within fifteen (15)-days after closure of this consultation period, CEMVN shall provide the other Consulting Parties with its final decision in writing.

7. Additional opportunities for NEPA participation and public comment will be relayed through appropriate means (e.g., postings, publications, social media), as is applicable.

## II. PROJECT REVIEW

### A. Standards

1. This PA uses the definitions presented in the subsequent paragraphs to establish standards for performing all cultural resource project reviews and investigations required under the terms of this PA including, but not limited to, site identification, NRHP eligibility evaluations, and as appropriate, STM or MOA TM for the resolution of adverse effects to historic properties:
  - a) "Qualified Staff" - shall mean staff who meet, at a minimum, the SOI *Professional Qualifications Standards* set forth at 48 FR 44738 (September 29, 1983), for History, Archaeology, Architectural History, Architecture, or Historic Architecture ([https://www.nps.gov/history/local-law/arch\\_stnds\\_9.htm](https://www.nps.gov/history/local-law/arch_stnds_9.htm)) and the appropriate qualifications presented in *Professional Qualifications* (36 CFR Part 61, Appendix A).
  - b) "Standards" — shall mean the Secretary of the Interior's (SOI) *Standards and Guidelines for Archaeology and Historic Preservation* [Federal Register 48(190) 1983:44716-44737] ([https://www.nps.gov/history/local-law/arch\\_stnds\\_0.htm](https://www.nps.gov/history/local-law/arch_stnds_0.htm)).
  - c) "Professional Standards" — shall mean that all cultural resource investigations shall be performed by, or under the direct (in-field) supervision of appropriate professional(s) or by contractors, who are "Qualified Staff."
  - d) "Field and Reporting Standards" — CEMVN shall ensure that all fieldwork and documentation resulting from Undertakings reviewed pursuant to this PA are consistent with all applicable Louisiana Division of Archaeology (LDOA) *Field Standards* (<https://www.crt.state.la.us/cultural-development/archaeology/CRM/section-106/field-standards/index>) and *Reporting Standards* (<https://www.crt.state.la.us/cultural-development/archaeology/CRM/section-106/report-standards/index>), and the Louisiana Division of Historic Preservation (LDHP) *Louisiana Historic Resource Inventory Guidelines* (<https://www.crt.state.la.us/Assets/OCD/hp/standing-structures-survey/SurveyGuidelines.pdf>), or the most current versions located on the Louisiana Office of Cultural Development website.
  - e) "Policies and Guidelines" — shall mean guidance from any of the following:
    - The National Park Service publication *The Archaeological Survey: Methods and Uses* (National Park Service 1978);
    - ACHP's *Treatment of Archeological Properties: A Handbook* (1980; <https://www.achp.gov/sites/default/files/documents/2018-11/Treatment%20of%20Archeological%20Properties-A%20Handbook-OCR.pdf>);



- *Identification of Historic Properties: A Decision-making Guide for Managers* (1988, joint ACHP-NPS publication);
  - *Consulting About Archeology Under Section 106* (1990);
  - *ACHP's Recommended Approach for Consultation on Recovery of Significant Information from Archeological Sites* (1999);
  - *ACHP's Policy Statement Regarding the Treatment of Burial Sites, Human Remains and Funerary Objects* (2007; <https://www.achp.gov/sites/default/files/2018-06/FactSheetPolicyRegardingTreatmentofBurialSitesHumanRemainsandFuneraryObjects.pdf>);
  - *ACHP's Section 106 Archaeology Guidance: A reference guide to assist federal agencies in making effective decisions about archaeological sites* (2009; <https://www.achp.gov/sites/default/files/guidance/2017-02/ACHP%20ARCHAEOLOGY%20GUIDANCE.pdf>);
  - *ACHP's Section 106 Archaeology Guidance* (2009; <https://www.achp.gov/sites/default/files/guidance/2017-02/ACHP%20ARCHAEOLOGY%20GUIDANCE.pdf>);
  - *SOI's Standards and Guidelines for Archaeology and Historic Preservation* (48 FR 44716-42, September 29, 1983);
  - *National Register Bulletin 38, Guidelines for Evaluating and Documenting Traditional Cultural Properties* (1998);
  - *LDHP's Elevation Guidelines for Historic Buildings in the Louisiana GO Zone* (2014); <https://www.crt.state.la.us/Assets/OCD/hp/uniquely-louisiana-education/Disaster-Recovery/Final%20Elevation%20Design%20Booklet%2012-07-15%20v2.pdf>; and
  - *NPS Guidelines on Flood Adaptation for Rehabilitating Historic Buildings* (2019); <https://www.nps.gov/tps/standards/rehabilitation/flood-adaptation-guidelines.pdf>).
2. In developing Scopes of Work (SOW) for identification and evaluation studies, STM or MOA TM(s), or any other stewardship activities required under the terms of this PA, CEMVN, shall comply with the requirements of the *Standards, Professional Standards, Field and Reporting Standards*, and the *Policies and Guidelines*, as in existence at the time they are performed.

## **B. Programmatic Allowances**

1. CEMVN shall determine if all the actions within the scope of an Undertaking are included in the Programmatic Allowances set forth in this PA (Appendix D). Upon such a determination, CEMVN shall complete the Section 106 review process by documenting this determination in the project file, without further SHPO, Tribal, or other Consulting Party review or notification. This will complete the Section 106 review for the Undertaking unless an Unexpected Discovery or unforeseen effect to historic properties is reported.

2. If the Undertaking involves a National Historic Landmark (NHL), CEMVN shall notify SHPO, participating Tribe(s), and NPS NHL Program Manager of the NPS Southeast Regional Office that the Undertaking conforms to one (1) or more Allowances. CEMVN shall provide information about the proposed scope of the Undertaking and the Allowance(s) enabling CEMVN's determination.
3. If CEMVN determines any portion of an Undertaking's scope does not conform to one (1) or more Allowances listed in Appendix D, CEMVN shall conduct standard Section 106 review, as appropriate, for the entire Undertaking in accordance with Stipulation II.C(1).
4. Allowances may be revised and new Allowances may be added to this Agreement in accordance with Stipulation IV.A.

#### **C. Standardized Project Review**

1. For Undertakings not exempt from further Section 106 review under Stipulation I.A., or Appendix D, CEMVN shall ensure that the standardized project review steps are implemented (Stipulations II.C-H).

#### **D. Area of Potential Effects**

1. For each Undertaking implemented under this PA, and in consultation with SHPO and participating Tribes, CEMVN *Qualified Staff* shall determine the APE in accordance with 36 CFR § 800.16(d). CEMVN may consider additional information provided by other parties, such as the NFS, local governments, and the public, when establishing the APE.
2. The APE shall incorporate both direct effects (e.g., access, staging, and construction areas) and indirect effects (e.g., visual), including all areas to be impacted by construction activities.
3. The APE shall be defined as follows:
  - a) Non-Structural Undertakings Limited to Rehabilitation and/or Retrofit: The APE shall be defined as the individual facility when an Undertaking is limited to retrofit (Appendix A); or rehabilitation, as defined in 36 CFR §68.2(b) of an individual facility's interior or exterior as defined in 44 CFR§206.201(c), with associated ground disturbance.
  - b) All other Non-Structural Undertakings: The APE shall be the subject property's tax parcel, unless the Undertaking is planned within a National Register (NR) Historic District, NHL District, NR-eligible or unassessed archaeological site, or situated on a large tract of land in a rural area, wherein CEMVN shall define and establish the APE in consultation with SHPO and Participating Tribes. For establishing the APE where there are identified viewshed considerations, see Stipulation II.E.3(c) (below). It is assumed that the tax parcel will on average range in size from one (1) to five (5) acres



- (0.4-2.2 ha), but within a tax parcel, survey will be limited to the area of ground disturbance and a reasonable buffer, unless additional area is required for construction staging or other eligible non-structural measure activities or actions (Appendix A).
- c) Viewshed Considerations for APE in National Register-eligible or Listed Historic Districts: In NR-eligible or listed Historic Districts, CEMVN shall delineate the APE to include the subject property for the proposed Undertaking as well as structures in the vicinity which may border, be adjacent to, or located in the immediate view of the subject property. *Qualified Staff* shall determine if a site visit is required to assess the unique circumstances of the subject property; to include the position of other structures within the APE relative to vegetation, site conditions and/or irregular street layouts that may influence the final APE. At a minimum, CEMVN shall require documentation of the APE to include at least three (3) photographs of the subject property, including two (2) oblique views of each corner of the main façade and one (1) elevation of the main façade. In addition, CEMVN shall require one (1) context/streetscape photo showing properties on either side of the subject property; and one (1) context/streetscape photo showing approximately three (3) structures directly across the street (as is applicable). Additional photos may be needed, per the discretion of *Qualified Staff*.
4. Where the APE is not subject to the aforementioned definitions, the APE shall be established by Qualified CEMVN staff in consultation with SHPO and participating Tribe(s). CEMVN may also consider information provided by other parties, such as local governments and the public, when establishing the APE.
5. CEMVN shall provide to SHPO and participating Tribes, a map displaying the APE for each Undertaking and provide any pertinent background information relevant to CEMVN's determination of the APE. SHPO and Tribes shall provide comment and/or concurrence on the proposed APE within the timeframes outlined in Stipulation I.B. If necessitated, CEMVN shall re-initiate consultation to revise the APE in accordance with the PA and ensure that SHPO and Tribes are provided the opportunity to comment as defined under Stipulation II.D.1.

## **E. Identification and Evaluation of Historic Properties**

1. In consultation with SHPO and Tribes, as appropriate, CEMVN shall complete the identification and evaluation of historic properties within the APE prior to the approval of an individual Undertaking in accordance with 36 C.F.R. § 800.4(a-c).
2. Cultural Resource Investigation and Evaluation:
- a) CEMVN shall make a reasonable and good faith effort to identify historic properties [as defined at 36 CFR § 800.16(l)(1)] in accordance with 36 CFR § 800.4(b)(1). CEMVN may consult with SHPO and Tribes to determine the level of effort, methodology necessary to identify and evaluate a variety of historic property types. For properties of religious and cultural significance to affected Tribes, CEMVN shall consult with the affected Tribes to determine geographical

areas containing them that may be affected by an Undertaking and determine the necessary level of effort to identify, evaluate, and/or avoid any such historic properties.

- b) CEMVN shall take the appropriate measures necessary to identify historic properties within the APE including, but not limited to: buildings; structures; archeological sites (including shipwrecks and/or properties of traditional religious and cultural importance to Tribes); prehistoric or historic districts; objects; cemeteries or other sites that may contain human remains, funerary objects, sacred objects, or objects of cultural patrimony; and Traditional Cultural Properties (TCP); including artifacts, records, and remains that are related to and located within such properties and that meet the NR criteria.
- c) When CEMVN identifies an Undertaking with the potential to affect a NHL, CEMVN shall contact the National Park Service (NPS) NHL Program Manager of the Southeast NPS Regional Office in addition to SHPO, participating Tribes, and other Consulting Parties. The purpose of this notification is to ensure early coordination for the Undertaking which CEMVN later may determine adversely affects the NHL.
- d) All cultural resource surveys shall be implemented on a schedule established to accommodate all field investigations and appropriate SHPO and Tribal review prior to the approval of an Undertaking. CEMVN shall provide all documentation for these efforts to the SHPO, Tribes, or other Consulting Parties, as appropriate, consistent with the confidentiality provisions of Stipulation I.D of this PA.

### 3. Background Research:

- a) CEMVN shall ensure that background research is conducted as per the *Standards* and will entail a review of primary and secondary sources relevant to the environmental, geological, and cultural processes that have influenced the study area to gain an understanding of resource sensitivity, determine the kinds of resources that might be identified within the study area, develop research questions, guide fieldwork, and to facilitate the evaluation of resources using the NR Criteria. Research materials consulted may include, but are not limited to, information provided by Consulting Parties and the public, the NRHP database, the LDOA *Louisiana Cultural Resources Map* (LDOA Website), historic maps, pertinent regional and local cultural resources investigations, historic aerial photography, and other appropriate sources.

### 4. Identification and Evaluation of Archaeological Resources:

- a) CEMVN shall ensure that previous fieldwork and background information is reviewed in conjunction with the APE to guide the level of field efforts necessary for each Undertaking and will attempt to re-identify all previously recorded archaeological sites and determine what, if any, additional fieldwork is necessary.



- b) In consultation with SHPO and Tribes, survey methods may appropriately exclude land shown to be recently disturbed to an extent that it is unlikely that cultural resources would possess integrity sufficient to be considered eligible for listing on the NRHP. Documentation for excluding such land will be provided in the cultural resource survey report.
  - c) If the Phase I level of effort does not provide adequate information to provide eligibility recommendations for any archaeological sites identified within the APE, CEMVN shall conduct Phase II Investigation sufficient to provide conclusive eligibility recommendations and meet the *Standards*. The intent of Phase II Investigation is to determine the eligibility of a site for listing on the NRHP utilizing the least amount of ground disturbance to obtain the necessary information.
  - d) CEMVN shall ensure that a LDOA Archaeological Site Form is completed for any newly identified archaeological site. Forms for previously recorded sites shall be updated as is necessary.
  - e) CEMVN shall ensure that any new and updated LDOA Sites Form for a given project are accepted as final prior to any draft report submittal.
5. Identification and Evaluation of Built Environment Resources:
- a) CEMVN shall ensure that an LDHP *Louisiana Historic Resource Inventory* (LHRI) Form is completed for all above-ground structures or properties within the APE over forty-five (45)-years of age, along with any structures that may possess exceptional significance, is completed that includes at least two (2) photos (including primary elevation), and provides the details necessary to determine a site's limits/boundaries, function, and/or integrity. A forty-five (45)-year threshold anticipates that the individual Undertaking commences no more than five (5)-years after an inventory's completion. Site-specific research shall be limited to what is necessary for CEMVN to conduct a professional NR eligibility evaluation.
  - b) CEMVN shall ensure that all elements of the built environment that are surveyed will be evaluated according to guidelines set forth in 36 CFR § 800.4(c)(1), as well as additional guidance provided in National Register Bulletin 15: *How to Apply the National Register Criteria for Evaluation*.
  - c) All submissions shall utilize the LDHP's LHRI system.
  - d) CEMVN shall ensure that all LHRI forms for a given project are accepted as final prior to any draft report submittal.
6. All fieldwork and reporting shall meet the *Field and Reporting Standards* as defined in Stipulation II.A.1(d).

## **F. Determinations of Eligibility and Effect**

1. CEMVN shall review any NRHP eligibility recommendation based on identification and evaluation efforts and make its own finding of effect resulting from the performance of these activities prior to submitting such determinations to the SHPO, Tribes, and other Consulting Parties.
2. CEMVN shall determine NRHP eligibility, and consult with SHPO, participating Tribes, and other Consulting Parties regarding these determinations. Should SHPO, participating Tribes, or another Consulting Party disagree with the determination of eligibility, CEMVN will either:
  - (1) Elect to consult further with the objecting party until the objection is resolved;
  - (2) Treat the property as eligible for the NRHP; or
  - (3) Obtain a determination of eligibility from the Keeper of the NR in accordance with 36 CFR § 63.2(d-e) and 36 CFR § 800.4(c)(2).
3. Findings of No Historic Properties Affected:
  - a) CEMVN shall make a finding of “No Historic Properties Affected” under the following circumstances:
    - (1) If no historic properties are present in the APE; or
    - (2) The Undertaking is designed to avoid effects to historic properties, including NRHP-listed or eligible properties of religious or cultural significance to participating Tribes; or
    - (3) The Undertaking does not affect the character defining features of a historic property.
  - b) CEMVN shall notify SHPO and participating Tribes(s) and provide supporting documentation in accordance with 36 CFR § 800.11(d) and applicable *Standards*. Unless SHPO or a participating Tribe objects to the finding within the applicable timeframes outlined in Stipulation I.B, the Section 106 review of the Undertaking will have concluded.
  - c) If SHPO or a participating Tribe, objects to a finding of “No Historic Properties Affected,” CEMVN shall consult with the objecting party to resolve the disagreement:
    - (1) If the objection is resolved, CEMVN either may proceed with the Undertaking in accordance with the resolution or reconsider effects on the

historic property by applying the criteria of adverse effect pursuant to Stipulation II.F.4.

- (2) If CEMVN is unable to resolve the disagreement, it shall forward the finding and supporting documentation to the ACHP and request that the ACHP review CEMVN's finding in accordance with 36 CFR § 800.4(d)(1)(iv)(A) through 36 CFR § 800.4(d)(1)(iv)(C). CEMVN shall consider ACHP's recommendation in making its final determination. If CEMVN's final determination is to reaffirm its "no historic properties affected" finding, the Section 106 review of the Undertaking will have concluded. Otherwise, CEMVN shall proceed to Stipulation II.G.

4. Application of the Criteria of Adverse Effect:

- a) If CEMVN finds an Undertaking may affect historic properties in the APE, including those of religious or cultural significance to affected Tribes, CEMVN shall apply the criteria of adverse effect to historic properties within the APE including cumulative effects taking into account the views of the Consulting Parties and the public concerning effects in accordance with 36 CFR § 800.5(a).
- b) If CEMVN determines that an Undertaking does not meet the adverse effect criteria, CEMVN shall propose a finding of "No Adverse Effect" in accordance with 36 CFR § 800.5(b):
  - (1) CEMVN shall notify SHPO and participating Tribes, and all other Consulting Parties of its finding; describe any project specific conditions and future submissions; and provide supporting documentation pursuant to 36 CFR §800.11(e).
  - (2) Unless a Consulting Party objects within the applicable timeframe outlined in Stipulation I.B, CEMVN shall proceed with its "No Adverse Effect" determination and conclude the Section 106 review.
  - (3) If a Consulting Party objects to a finding of "No Adverse Effect," CEMVN shall consult with the objecting party to resolve the disagreement.
  - (4) If the objection is resolved, CEMVN shall proceed with the Undertaking in accordance with the resolution; or
  - (5) If the objection cannot be resolved, CEMVN shall request that ACHP review the findings in accordance with 36 CFR § 800.5(c)(3)(i)-(ii) and submit the required supporting documentation. CEMVN shall consider ACHP's comments in making its final determination.
- c) If CEMVN finds the Undertaking may adversely affect historic properties, CEMVN shall seek ways to revise the scope of the project to substantially conform to the



*Standards*, and/or avoid or minimize adverse effects for NRHP-listed or eligible historic properties and/or properties of religious or cultural significance to Tribes, or TCP(s) as is outlined in Appendix E; STM I.A.: *Design Review*.

- d) If CEMVN determines in consultation with SHPO and Tribes(s), as appropriate, that an Undertaking has a low potential to effect archaeological resources, CEMVN may determine “No Adverse Effect,” and may require archaeological monitoring of construction activities. In these instances, an archaeological monitoring plan shall be developed in consultation with SHPO and participating Tribes prior to construction.
- e) If an Undertaking is not modified to avoid the adverse effect(s), CEMVN shall initiate consultation to resolve the adverse effect(s) in accordance with Stipulation II.G.

## **G. Resolution of Adverse Effects**

1. If CEMVN determines that an Undertaking may adversely affect a historic property, it shall resolve the effects of the Undertaking in consultation with SHPO, NFS, participating Tribes, ACHP (if participating), and other Consulting Parties, by one (1) of the following methods depending upon the severity of the adverse effect(s), as well as determination of the historic property’s significance on a local, state, or national level. When CEMVN determines an Undertaking will adversely affect an NHL, CEMVN shall notify and invite the Secretary and ACHP to participate in consultation in accordance with 36 CFR § 800.10. When ACHP participates in consultation related to an NHL, ACHP shall report the outcome of the consultation to the Secretary and the CEMVN Administrator.
2. Abbreviated Consultation Process
  - a) After taking into consideration the significance of the historic properties affected, the severity of the adverse effect(s), and avoidance or minimization of the adverse effect(s), CEMVN may propose in writing to the Consulting Parties to resolve the adverse effects of the Undertaking through the application of one (1) or more STM(s) outlined in Appendix D as negotiated with SHPO, participating Tribes, and other Consulting Parties. The use of these STM(s) may not require the execution of a project-specific MOA.
  - b) In consultation with SHPO, participating Tribes, and other Consulting Parties, CEMVN shall propose in writing the implementation of a specific STM, or combination of STMs, with the intent of expediting the resolution of adverse effects, and provide documentation as required by 36 CFR § 800.11(e) subject to the confidentiality provisions of 36 CFR § 800.11(c)). Unless a Consulting Party or ACHP objects to CEMVN’s proposal within the timeframe outlined in Stipulation I.B, CEMVN shall proceed with the implementation of the STM(s) and will conclude the Section 106 review.

- c) If any of the Consulting Parties or ACHP objects within the timeframe outlined in Stipulation I.B to the resolution of adverse effects through the application of the Abbreviated Consultation Process, CEMVN shall resolve the adverse effect(s) using procedures outlined below in Stipulation II.G.3.
  - d) Because funding and implementation details of STMs for specific Undertakings may vary, CEMVN shall provide written notice to the Consulting Parties within sixty (60)-days of the completion of the STM(s). This written notice serves as confirmation that the STM(s) for a specific Undertaking have been implemented. CEMVN also shall include information pertaining to the progress and completion of STMs in the annual report pursuant to Stipulation IV.E.
3. Project-Specific Memorandum of Agreement
- a) CEMVN shall provide ACHP with an adverse effect notice in accordance with 36 CFR § 800.6(a)(1) if it has not already provided such under the Abbreviated Consultation Process of this Agreement. If a Consulting Party or ACHP objects in accordance with Stipulation IV.B, or if CEMVN in consultation with SHPO, participating Tribes, and other Consulting Parties has determined that a project-specific MOA would be more appropriate to resolve the adverse effects. In consultation with SHPO, participating Tribes, and other Consulting Parties, including ACHP (if participating), CEMVN shall develop a project-specific MOA, in accordance with 36 CFR § 800.6(c) to agree upon a TM to avoid, minimize, and/or mitigate adverse effects on historic properties.
4. Objections
- a) Should any Consulting Party object within the timeframes established by this PA to any plans, specifications, or actions taken pursuant to resolving an adverse effect, CEMVN shall consult further with the objecting party to seek resolution in accordance with Stipulation IV.B.

## H. Reports

1. CEMVN shall ensure that all reports and other documents resulting from the actions pursuant to this PA will be provided in a format acceptable to SHPO and Tribes, as appropriate. CEMVN shall ensure that all such reports (e.g., identification surveys, evaluation reports, treatment plans, and data recovery reports) meet or exceed the Department of the Interior's *Format Standards for Final Reports of Data Recovery* (42 FR 5377-79) and the *Field and Report Standards* identified in Stipulation II.A.1(d).
2. CEMVN shall provide all documentation for these efforts to SHPO, Tribes, or other Consulting Parties, as appropriate, consistent with the confidentiality provisions of Stipulation I.D. of this PA.

3. Once supporting documentation is received, SHPO and Tribes shall have thirty (30)-days to review supporting documentation (e.g., site forms and reports). If SHPO or Tribes intend to review and comment on documentation, and are unable to do so within the thirty (30)-day review period, a request for additional review time must be made in writing to CEMVN and specify the anticipated completion date. CEMVN shall consider the request and work with the requesting party to come to a mutually agreeable timeframe. CEMVN shall notify other Consulting Parties of the extension by e-mail.

### **III. OTHER CONSIDERATIONS**

#### **A. Changes to an Approved Undertaking**

1. If CEMVN determines the change has no potential to affect the property or the previous effect determination is still applicable, CEMVN shall approve the change.
2. If CEMVN determines that the change can be modified to conform to any applicable *Standards*, or a previously determined finding of effect is still applicable, CEMVN shall conclude its Section 106 review responsibilities.
3. If CEMVN determines that the change may cause additional effects to the property; does not conform to any applicable *Standards*; or changes a previously determined finding of effect, CEMVN shall initiate consultation pursuant to Stipulation II.C.1.

#### **B. Provisions for Post-Review Discoveries**

1. If previously unreported properties that may be eligible for nomination to the NR or of significance to Tribes, and/or, unanticipated effects on historic properties are found during the construction phase, CEMVN shall implement the provisions outlined below that are intended to ensure that the Undertaking is in compliance with all applicable federal and state laws and regulations, including Section 106 of the NHPA:
2. If previously unreported properties and/or unanticipated effects on historic properties are found but there is no reasonable expectation that the property contains human remains, funerary objects, sacred objects, or objects of cultural patrimony, all work within a fifty (50) meter (164 ft) radius buffer zone must stop immediately. CEMVN shall notify SHPO and Tribes, as appropriate, as well as any other affected party, of the discovery, and implement interim measures to protect the discovery from theft and vandalism. Construction may continue outside the fifty (50) meter (164 ft) radius buffer zone. Within seventy-two (72) hours of receipt of notification of the discovery, CEMVN, as appropriate, shall:
  - a) Inspect the work site to determine the extent of the discovery and ensure that work activities have halted within the fifty (50) meter (164 ft) radius buffer zone;
  - b) Clearly mark the area of the discovery;



- c) Implement additional measures, as appropriate, to protect the discovery from theft and vandalism;
  - d) Provide an initial assessment of the site's condition and eligibility to SHPO and Tribes; and
  - e) Notify other Consulting Parties, if applicable, of the discovery.
3. If CEMVN, in consultation with SHPO, Tribes, and other Consulting Parties, as appropriate, determines the site is either isolated, does not retain integrity sufficient for listing on the NRHP, or will not be further disturbed by construction activities, construction may resume within the fifty (50) meter (164 ft) radius buffer zone.
  4. If CEMVN determines that the cultural resource site or artifact either is, or may be, eligible for inclusion on the NRHP, CEMVN shall consult with the SHPO, Tribes, and other Consulting Parties, as appropriate, regarding appropriate measures for site treatment pursuant to 36 C.F.R. § 800.6(a). SHPO and Tribes will have seven (7)-days to provide their objections or concurrence on the proposed actions. These measures may include:
    - a) Formal archaeological evaluation of the site;
    - b) Visits to the site by SHPO and/or Tribes;
    - c) Exploration of potential alternatives to avoid the site;
    - d) Preparation and implementation of a mitigation plan by CEMVN in consultation and concurrence with the SHPO, Tribes, and other Consulting Parties, as appropriate.
  5. The notified Consulting Parties will have seven (7)-days following notification to provide comment regarding CEMVN's determination of the NRHP eligibility of the discovery.
  6. A report of findings describing the background history leading to and immediately following the reporting and resolution of an inadvertent discovery will be prepared within thirty (30)-days of the resolution of each inadvertent discovery.
  7. CEMVN shall communicate the procedures to be observed with its contractors and personnel.

**C. Treatment of Human Remains, Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony**

1. In the event that previously unreported and unanticipated human remains, burials, funerary objects, sacred objects, or objects of cultural patrimony are encountered during field investigations, laboratory work, or construction activities, CEMVN shall comply with the provisions outlined below:

2. Any USACE employee, contractor, or subcontractor who knows or has reason to know that they have inadvertently discovered human remains, burials, funerary objects, sacred objects, or objects of cultural patrimony on Federal lands or human remains or funerary objects on state or private lands must provide immediate telephone notification of the inadvertent discovery, with written confirmation, to CEMVN Cultural Resources Section (CRS).
3. All work must stop immediately within a one hundred (100) meter (328 ft) radius buffer zone around the point of discovery; unless there is reason to believe that the area of the discovery may extend beyond the one hundred (100) meter (328 ft) radius buffer zone in which case the buffer zone will be expanded appropriately. CEMVN shall implement measures to protect the discovery from theft and vandalism. Any human remains or other items in the immediate vicinity of the discovery must not be removed or otherwise disturbed. CEMVN shall take immediate steps, if necessary, to further secure and protect inadvertently discovered human remains, burials, funerary objects, sacred objects, or objects of cultural patrimony, as appropriate, including stabilization, or covering the find location.
4. If abandoned cemeteries, unmarked graves, or human remains are discovered during the implementation of a CEMVN-funded undertaking on privately-owned lands or lands owned by a state or local governmental entity CEMVN shall comply with the Louisiana Unmarked Human Burial Sites Preservation Act (La. R.S. 8:671 et seq.) and, if applicable, the Louisiana Cemetery Law (La. R.S. 8). CEMVN shall notify local law enforcement and the Louisiana Division of Archaeology (LDOA), within the Louisiana Department of Culture, Recreation and Tourism, Office of Cultural Development, by telephone to assess the nature and age of the human skeletal remains within twenty-four (24) hours of the discovery of unmarked human remains and accompany local law enforcement personnel during all field investigations. If the appropriate local law enforcement official determines that the remains are not involved in a legal investigation, LDOA has jurisdiction over the remains. In cases where the human remains are determined to be Native American, the LDOA shall notify and coordinate with Tribes as required by state law. CEMVN will assist LDOA, as requested, to consult with Tribes and affected parties, as appropriate.
5. If human remains, burials, funerary objects, sacred objects, or objects of cultural patrimony are discovered during the implementation of a CEMVN-funded undertaking on Federal or Tribal land, CEMVN shall notify by telephone and e-mail, SHPO, Tribes, and other affected parties (e.g., living descendants) that may attach religious and cultural significance to the discovery at the earliest possible time, but no later than forty-eight (48) hours and inform them of the steps already taken to address the discovery. CEMVN shall consult with SHPO, Tribes, and other affected parties to develop a mutually agreeable action plan with timeframes to take into account the effects of the Undertaking on the discovery; resolve adverse effects if necessary; and ensure compliance with applicable federal and state laws and their implementing regulations.
6. In the case of the discovery of Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony on Federal or Tribal land, and local law

enforcement determines that the remains are not involved in a legal investigation, CEMVN shall follow the procedures outlined by the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA), as amended (25 U.S.C. § 3001 et seq.), and its implementing regulations (43 C.F.R. Part 10); Archeological Resources Protection Act of 1979 (ARPA) (16 U.S.C. § 470aa-mm); and Section 106 of the NHPA. In addition, CEMVN shall follow the guidelines outlined in the ACHP's *Policy Statement Regarding the Treatment of Burial Sites, Human Remains, and Funerary Objects* (2007). This step is not intended to substitute the requirements of 43 C.F.R. 10.4(d)(iii).

7. CEMVN, when on Federal or Tribal lands, in consultation with SHPO and Tribes, whether they are Signatories to this PA or not, and other affected parties, may consult with a qualified physical anthropologist, forensic scientist, or other experts as may be needed to examine and assess the discovery. Unless the remains were inadvertently removed, the evaluation will be conducted at the site of discovery. Other than for crime scene investigation, no excavation, examination, photographs, or analysis of Native American human remains or remains suspected of being Native American will be conducted or allowed by CEMVN archaeologists or any other professional without first consulting with the appropriate Tribes, whether they are Signatories to this PA or not. The consulting expert shall be allowed to draw and measure the exposed remains and associated funerary objects. Drawings cannot be published in any form or shown as part of scholarly presentations without the written permission of the appropriate Tribes or next living descendant.
8. CEMVN, when on Federal lands, in consultation with SHPO, Tribes, and other affected parties, as appropriate, whether they are Signatories to this PA or not, shall have seven (7)-days to determine if the skeletal remains are human, the degree to which they were disturbed, and if possible, using reasonable measures to assess their potential age, cultural affiliation, and identity, without any further disturbance. Upon making a determination or at the end of the seven (7)-days, whichever comes first, CEMVN shall notify the appropriate affected parties of its findings. This notification shall include pertinent information as to kinds of human remains, funerary objects, sacred objects, or items of cultural patrimony discovered, their condition, and the circumstances of their inadvertent discovery. SHPO, Tribes, and other affected parties, whether they are Signatories to this PA or not, shall have seventy-two (72) hours to respond to CEMVN's notification verbally followed by written response via U.S. mail and/or e-mail specifying the intent of the affected party to conduct or decline further consultation.
9. For discoveries of human remains, burials, funerary objects, sacred objects, or objects of cultural patrimony on Federal or Tribal lands, CEMVN shall continue to consult with SHPO, Tribes, and other affected parties, as appropriate, whether they are Signatories to this PA or not, regarding additional measures to avoid and protect or mitigate the adverse effect of the Undertaking. These measures may include:
  - a) Visits to the site by the SHPO, Tribes, and other affected parties, as appropriate;
  - b) Formally evaluate the archaeological site for NRHP-eligibility;



- c) Explore potential avoidance alternatives;
  - d) Develop and implement a mitigation plan in consultation and concurrence with the SHPO, Tribes, and other affected parties, as appropriate, including procedures for disinterment and re-interment.
10. CEMVN shall coordinate with any contractor(s) and/or sub-contractor(s) regarding any required scope of project modification necessary to implement recommendations from the consultation and facilitate proceeding with the Undertaking.

#### **D. Curation**

1. Recovered archaeological collections from a CEMVN-funded archaeological survey, evaluation, and/or mitigation remain the property of the land owner of the subject property at the time of excavation. Any records generated are the property of the Federal government. CEMVN, in coordination with Consulting Parties and the appropriate NFS, shall encourage land owners to donate any recovered collections to an appropriate long-term curation facility or Tribal entity. CEMVN, in coordination with the NFS, SHPO, and affected Tribes, as appropriate, will work with all land owners to support steps that ensure the long-term curation of these artifacts through the transfer of the materials to a suitable repository as agreed to by CEMVN, SHPO, and affected Tribes(s), pursuant to 36 CFR § 79. The disposition of human remains and associated burial items shall comply with the Louisiana Unmarked Burial Sites Preservation Act (R.S. 8:681) if on private or state lands.

### **IV. IMPLEMENTATION OF AGREEMENT**

#### **A. Amendments**

1. If any Signatory or Invited Signatory who signs this PA determines that an amendment to the terms of this PA must be made, the Signatory or Invited Signatory shall consult to seek amendment in the following manner:
  - a) The Signatory or Invited Signatory shall submit a written request for amendment to CEMVN containing the proposed amendment.
  - b) Upon receipt of a request to amend this PA, CEMVN shall immediately notify the Signatories and Invited Signatories who have signed this PA and initiate a (30)-day period to consult on the proposed amendment, whereupon the Signatories and Invited Signatories shall consult to consider such amendments.
  - c) If agreement to the amendment cannot be reached within the (30)-day period, resolution of the issue may proceed by following the dispute resolution process in Stipulation IV.B.

- d) An amendment to this PA, exclusive of the appendices, shall be effective only when it has been signed by all the Signatories and Invited Signatories who have signed this PA. An amendment shall be effective for Undertakings occurring on or affecting historic properties on Tribal lands only when the affected Tribe has signed the amended PA as an Invited Signatory. The terms of this Agreement shall not apply to Undertakings on or affecting Tribal lands without prior execution of the Amended PA by the affected Tribes.
  - e) Amendments to this PA shall take effect on the date that they are fully executed by all Signatories and Invited Signatories who have signed this PA.
  - f) Modifications, additions, or deletions to the appendices made as a result of continuing consultation among the Consulting Parties do not require the PA to be amended.
2. Modifications, additions, or deletions to the appendices may be amended at the request of CEMVN or another Signatory or Invited Signatory who has signed this PA in the following manner:
- a) CEMVN, on its own behalf, or on the behalf of another Signatory or Invited Signatory, shall notify all Signatories and Invited Signatories to this PA of the intent to add to or modify the current Appendix or Appendices and shall provide a draft of the updated Appendix or Appendices to all Signatories and Invited Signatories who have signed this PA.
  - b) If no Signatory or Invited Signatory who has signed this PA objects in writing within (30)-days of receipt of CEMVN's proposed addition or modification, CEMVN shall date and sign the amended Appendix and provide a copy of the amended Appendix to all Signatories and Invited Signatories. Such an amendment shall go into effect on the date CEMVN transmits the amendment to the other Signatories and Invited Signatories or an alternative date provided by the terms of the amendment.

## **B. Dispute Resolution**

1. Should any party to this PA object in writing to the terms of this PA or to any actions proposed or the manner in which the terms of this PA are implemented, CEMVN shall consult with such party to resolve the objection for not more than thirty (30)-days.
2. If the objection is resolved within thirty (30)-days, CEMVN shall proceed in accordance with the resolution.
3. If CEMVN determines that such objection cannot be resolved, CEMVN shall forward to ACHP all documentation relevant to the objection, including CEMVN's proposed resolution.

4. Within thirty (30)-days of receipt, ACHP shall:
  - a) Concur with CEMVN's proposed resolution; or
  - b) Provide CEMVN with recommendations, which CEMVN shall take into account in reaching a final decision regarding the objection; or
  - c) Notify CEMVN that the objection will be referred for comment in accordance with 36 CFR § 800.7(a)(4), and proceed to do so.
5. Prior to reaching a final decision on the dispute, CEMVN shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, Signatories, Invited Signatories, and Concurring Parties, and provide them with a copy of this written response. CEMVN shall then proceed according to its final decision. The Signatories shall continue to implement all other terms of this PA that are not subject to objection.
6. If the ACHP does not provide its advice regarding the dispute within the thirty (30)-day time period, CEMVN may make a final decision on the dispute and proceed with its proposed resolution to the objection after providing ACHP, Signatories, Invited Signatories, and Concurring Parties, with a written summary of its final decision.

#### **C. Severability and Termination**

1. In the event any provision of this PA is deemed by a Federal court to be contrary to, or in violation of, any applicable existing law or regulation of the United States of America, only the conflicting provision(s) shall be deemed null and void, and the remaining provisions of the PA shall remain in effect.
2. Any Signatory or Invited Signatory who signs this PA may terminate this PA by providing thirty (30)-days' written notice to the other Consulting Parties, provided that the Consulting Parties consult during this period to seek amendments or other actions that would prevent termination. If this PA is terminated, CEMVN shall comply with Section 106 through other applicable means pursuant to 36 CFR Part 800. Upon such determination, CEMVN shall provide ACHP, Signatories, Invited Signatories, and Concurring Parties written notice of the termination of this PA.
3. Any Invited Signatory or Concurring Party who has signed this PA may notify the other Consulting Parties that it is fully withdrawing from participation in the PA. Following such a withdrawal, CEMVN shall review the activities within the Undertaking that may affect historic properties of religious and cultural significance to any Tribe in accordance with 36 CFR § 800. Withdrawal from this PA by a Concurring Party does not terminate the PA. A Concurring Party that has withdrawn from the PA may at any time notify ACHP, Signatories, Invited Signatories, and Concurring Parties in writing, that it has rescinded its notice to withdraw from participation in the PA.



4. This PA may be terminated by the implementation of a subsequent Agreement that explicitly terminates or supersedes this PA, or by CEMVN's implementation of Alternate Procedures, pursuant to 36 CFR § 800.14(a).

#### **D. Duration and Extension**

1. The PA shall remain in effect from the date of final signature for a period not to exceed ten (10)-years unless otherwise extended pursuant to Stipulation V.D.2 (below), or terminated pursuant to Stipulation V.C(2) or V.C(4).
2. The Signatories and Invited Signatories who have signed this PA may collectively agree in writing to execute this PA to cover additional calendar years, or portions thereof, provided that the original PA has not expired or if the PA has expired while a new Agreement is in preparation.

#### **E. Monitoring and Reporting**

1. Each year following the execution of this PA, until it expires or is terminated, CEMVN shall provide the other Signatories, Invited Signatories, Concurring Parties, and the ACHP with an annual report detailing work carried out pursuant to its terms. This annual report will summarize the actions taken to implement the terms of this PA (e.g., statistics on resolution of adverse effects, use of other agency's determinations, the progress and completion of all STM/MOA TM), include any scheduling changes proposed, any disputes and objections received, and will recommend any actions or revisions to be considered; including updates to the Appendices.
2. Any Signatory, Invited, Signatory, or Concurring Party, including CEMVN, may request a meeting to review the annual report or discuss issues and concerns in greater detail regarding implementation of the PA within the thirty (30)-days' following receipt of the annual report. This review will occur in person or by telephone as determined by CEMVN.

#### **V. EXECUTION OF AGREEMENT**

1. This PA may be executed in counterparts, with a separate page for each Signatory, Invited Signatory, and Concurring Party and shall become effective on the date of the final signature of the Signatories.
2. The PA shall go into effect regarding Undertakings occurring, or affecting historic properties, on Tribal lands when the subject Tribe has signed the PA as an Invited Signatory.
3. CEMVN shall ensure that each Signatory, Invited Signatory, and Concurring Party is provided with an electronic (.pdf) copy of the PA including signatures. CEMVN shall provide electronic copies of additional executed signature pages to the Signatories, Invited Signatories, and Concurring Parties as they are received. CEMVN shall provide a

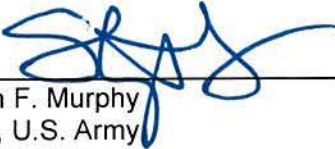
complete copy of the PA with original signatures to any Consulting Party on request.

4. EXECUTION of this PA and implementation of its terms is evidence that CEMVN has taken into account the effects of these Undertakings on historic properties and afforded the ACHP an opportunity to comment on CEMVN's administration of the referenced Programs, and that CEMVN has satisfied its Section 106 responsibilities for all individual Undertakings of its referenced Programs.

Signatory Page

**PROGRAMMATIC AGREEMENT AMONG THE U.S. ARMY CORPS OF ENGINEERS, NEW ORLEANS DISTRICT; LOUISIANA COASTAL PROTECTION AND RESTORATION AUTHORITY BOARD; LOUISIANA STATE HISTORIC PRESERVATION OFFICER OF THE DEPARTMENT OF CULTURE, RECREATION & TOURISM; CHITIMACHA TRIBE OF LOUISIANA; AND MISSISSIPPI BAND OF CHOCTAW INDIANS, REGARDING THE SOUTH CENTRAL COAST LOUISIANA FLOOD RISK MANAGEMENT PROJECT**

United States Army Corps of Engineers

By:  \_\_\_\_\_  
Stephen F. Murphy  
Colonel, U.S. Army  
District Engineer

Date: 11/16/20

**Signatory Page**

**PROGRAMMATIC AGREEMENT AMONG THE U.S. ARMY CORPS OF ENGINEERS, NEW ORLEANS DISTRICT; LOUISIANA COASTAL PROTECTION AND RESTORATION AUTHORITY BOARD; LOUISIANA STATE HISTORIC PRESERVATION OFFICER OF THE DEPARTMENT OF CULTURE, RECREATION & TOURISM; CHITIMACHA TRIBE OF LOUISIANA; AND MISSISSIPPI BAND OF CHOCTAW INDIANS, REGARDING THE SOUTH CENTRAL COAST LOUISIANA FLOOD RISK MANAGEMENT PROJECT**

**Louisiana State Historic Preservation Officer**

By: Kristin P. Sanders  
Kristin P. Sanders  
Louisiana State Historic Preservation Officer

Date: November 18, 2020



Invited Signatory Page

**PROGRAMMATIC AGREEMENT AMONG THE U.S. ARMY CORPS OF ENGINEERS, NEW ORLEANS DISTRICT; LOUISIANA COASTAL PROTECTION AND RESTORATION AUTHORITY BOARD; LOUISIANA STATE HISTORIC PRESERVATION OFFICER OF THE DEPARTMENT OF CULTURE, RECREATION & TOURISM; CHITIMACHA TRIBE OF LOUISIANA; AND MISSISSIPPI BAND OF CHOCTAW INDIANS, REGARDING THE SOUTH CENTRAL COAST LOUISIANA FLOOD RISK MANAGEMENT PROJECT**

Louisiana Office of Coastal Protection and Restoration Authority Board

By:   
Chip Kline

Date: 12/16/20

Executive Assistant to the Governor for Coastal Activities Chairman  
Louisiana Coastal Protection and Restoration Board

**Concurring Party Signatory Page**

**PROGRAMMATIC AGREEMENT AMONG THE U.S. ARMY CORPS OF ENGINEERS, NEW ORLEANS DISTRICT; LOUISIANA COASTAL PROTECTION AND RESTORATION AUTHORITY BOARD; LOUISIANA STATE HISTORIC PRESERVATION OFFICER OF THE DEPARTMENT OF CULTURE, RECREATION & TOURISM; CHITIMACHA TRIBE OF LOUISIANA; AND MISSISSIPPI BAND OF CHOCTAW INDIANS, REGARDING THE SOUTH CENTRAL COAST LOUISIANA FLOOD RISK MANAGEMENT PROJECT**

**Chitimacha Tribe of Louisiana**

By: \_\_\_\_\_  
Chairman Melissa Darden  
Chitimacha Tribe of Louisiana

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

**Concurring Party Signatory Page**

**PROGRAMMATIC AGREEMENT AMONG THE U.S. ARMY CORPS OF ENGINEERS, NEW ORLEANS DISTRICT; LOUISIANA COASTAL PROTECTION AND RESTORATION AUTHORITY BOARD; LOUISIANA STATE HISTORIC PRESERVATION OFFICER OF THE DEPARTMENT OF CULTURE, RECREATION & TOURISM; CHITIMACHA TRIBE OF LOUISIANA; AND MISSISSIPPI BAND OF CHOCTAW INDIANS, REGARDING THE SOUTH CENTRAL COAST LOUISIANA FLOOD RISK MANAGEMENT PROJECT**

**Mississippi Band of Choctaw Indians**

By: \_\_\_\_\_  
Cyrus Ben, Chief  
Mississippi Band of Choctaw Indians

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

## APPENDIX A

### SCCL ELIGIBLE ACTIVITIES & ACTIONS

The majority of SCCL program eligible non-structural activities and actions fall into the specific categories and actions listed in this Appendix, but this action list is meant to be illustrative in nature and shall not be regarded as all inclusive or disqualify future actions and/or actions not considered in this Appendix from being project types eligible for CEMVN funding.

#### ELEVATION

Physically raising an existing structure to an elevation to the 100-year Base Flood Elevation (BFE) based on year 2075 hydrology or higher if required by USACE or local ordinance. Foundations must be designed to properly address all loads and effects, be appropriately connected to the floor structure above, and utilities must be properly elevated.

##### Applicability

Residential  
Non-Residential

##### Actions

1. Elevation on piers, columns, or piles;
2. Elevation on continuous foundation walls;
3. Elevating on open foundations (e.g., piles, piers, posts, or columns);
4. Elevation of slab;
5. Slab separation;
6. Elevation on fill;
7. Second story conversion/attic build-out;
8. Establishment of staging areas.

#### DRY FLOODPROOFING

Techniques applied to keep non-residential structures dry by sealing the structure to keep floodwaters out. Dry flood proofing will be completed on eligible structures at or below three (3) feet (0.9 m) depth

##### Applicability

Non-Residential  
Residential for historic structures only

##### Actions

1. Sealing building to make it watertight or impermeable to floodwaters using waterproof membranes or sealants to reduce seepage of floodwater through walls and wall penetrations;
2. Use of watertight shields for doors and windows;
3. Reinforcing walls to withstand floodwater pressure and impact forces generated by floating debris;
4. Anchoring the structure to resist flotation, collapse, and lateral movement;
5. Installing drainage collection systems and sump pumps to prevent sewer backup, control the interior water level, or reduce hydrostatic pressure on the slab and walls;
6. Bracing of walls to address hydrostatic and hydrodynamic forces;



7. Installing removable/permanent flood panels;
8. Establishment of staging areas.

### **WET FLOODPROOFING**

Techniques designed to permit floodwaters to enter a structure to prevent or provide resistance to damage from flooding. Wet Floodproofing of a structure interior is intended to counteract hydrostatic pressure on the walls, surface and support systems of the structure by equalizing interior and exterior water levels during a flood.

#### **Applicability**

Residential  
Non-Residential

#### **Actions**

1. Providing openings to allow in water;
2. Relocation of HVAC and utilities;
3. Installation of flood-resistant materials;
4. Rearrangement/floodproofing of utility systems;
9. Anchoring to resist flotation, collapse, and lateral movement;
10. Establishment of staging areas.
11. Raising interior offices;
12. Flood protection of interior/exterior equipment;
13. Flood protection of applicable interior/exterior industrial/sales supplies;
14. Providing emergency floodproofing for supplies and equipment;
15. new drainage system designed and installed to help remove the water from the building, (Where the floodwater may not drain naturally from the lowest levels of the property);
16. Installing a pumping system for draining the building in concert with the receding waters outside the property;
17. Installing substitute materials that are more flood-damage resistant when replacing deteriorated materials and features;
18. Installing a horizontal water-stop joint in the wall, which prevents the wicking of moisture during a flooding event, in a manner that does not compromise the structural integrity of the wall.

### **RETROFITTING OF EXISTING BUILDINGS**

Modifications to the structural elements of a building to reduce or eliminate the risk of future flood damage and to protect inhabitants. The structural elements of a building that are essential to protect in order to prevent damage include foundations, load-bearing walls, beams, columns, structural floors and roofs, and the connections between these elements. Retrofitting also includes modifications to the non-structural elements of a building or facility to reduce or eliminate the risk of future damage and to protect inhabitants. Retrofits are primarily defined as modifications to the elements of a building to reduce or eliminate the risk of future damage. Structural retrofits are designed to protect elements such as foundations, load-bearing walls, beams, columns, building envelopes, windows, structural floors, roofs, and the connections between these elements. Non-structural retrofitting involves the modification of a building or facility's non-structural elements and may include elevation of heating and ventilation systems to minimize or prevent flood damage.

Applicability

Residential

Non-Residential

Actions

1. Building hardening;
2. Modification to structural elements;
3. Hurricane clips;
4. Tie-down straps;
5. Attic bracing;
6. Cross bracing on pier and post foundations;
7. Metal fasteners;
8. Collar ties;
9. Gussets;
10. Installations of plywood diaphragms beneath first floor joists;
11. Concealed anchoring of furniture;
12. Bracing building contents;
13. Strapping and anchoring of mechanical, electrical, and plumbing equipment;
14. Elevation of heating and ventilating systems;
15. Automatic gas shut off valves;
16. Elevation of electrical panels;
17. Elevating washer and dryer;
18. Elevating furnace or water heater;
19. Anchoring of fuel tanks;
20. Bolting walls;
21. Installing backflow valves;
22. Strengthening of entry doors;
23. Bracing of garage doors.

**APPENDIX B  
Contact List**

<b>Primary Contact</b>	<b>Secondary Contact</b>
<b>Advisory Council on Historic Preservation</b> Christopher Daniel Program Analyst Advisory Council on Historic Preservation 401 F Street NW, Suite 308 Washington DC 20001-2637 202.517.0223 <a href="mailto:cdaniel@achp.gov">cdaniel@achp.gov</a>	<b>Advisory Council on Historic Preservation</b> Reid Nelson, Chairman Office of Federal Agency Programs Advisory Council on Historic Preservation 401 F. Street NW, Suite 308 Washington, DC 20001-2637 Telephone: (202) 517-0228 E-mail: <a href="mailto:rnelson@achp.gov">rnelson@achp.gov</a>
<b>Alabama-Coushatta Tribe of Texas</b> Ms. Joann Battise, Chairwoman Alabama-Coushatta Tribe of Texas 571 State Park Rd. 56 Livingston, TX 77351 [REDACTED]	<b>Alabama-Coushatta Tribe of Texas</b> Mr. Bryant Celestine Historic Preservation Officer Alabama-Coushatta Tribe of Texas 571 State Park Rd. 56 Livingston, TX 77351 [REDACTED]
<b>Choctaw Nation of Oklahoma</b> Lindsey D. Bilyeu, MS Senior Compliance Review Officer Historic Preservation Department Choctaw Nation of Oklahoma P.O. Box 1210 Durant, OK 74702 [REDACTED]	<b>Choctaw Nation of Oklahoma</b> Gary Batton, Chief Choctaw Nation of Oklahoma Attn: Choctaw Nation Historic Preservation Department P.O. Box 1210 Durant, OK 74702-1210 [REDACTED]
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**APPENDIX C**  
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## APPENDIX D

### Programmatic Allowances

This list of Programmatic Allowances (Allowances) enumerates CEMVN-funded activities that may have no or minimal effect on historic properties if implemented as specified in this Appendix. In accordance with Stipulation II.B., Undertakings composed entirely of the following activities do not require Section 106 review. If CEMVN determines any portion of an Undertaking's scope does not conform to one (1) or more Allowances listed in Appendix D, CEMVN shall conduct standard Section 106 review, as appropriate, for the entire Undertaking in accordance with Stipulation II.C(1). Should an unexpected discovery, unidentified property, or unexpected effect be encountered, work must stop and compliance with Stipulation III.B is required.

"In-kind," when referenced in the Allowances for historic materials and features shall be in accordance with the *Standards*, and shall mean that it is either the same or a similar material, and the result shall match all physical and visual aspects, including design, design form, texture, profile, dimensions, proportion, and workmanship. Where severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture and, where possible, materials. Prior to authorizing the release of funds for individual Undertakings requiring conditions pursuant to this Agreement, CEMVN shall inform NFS(s) of all stipulations and conditions and ensure that they are understood so they can be adequately conveyed to the sub-recipient. CEMVN shall work in partnership with NFS(s) to provide sub-recipients with guidance on in-kind repair pursuant to The SOI *Standards for the Treatment of Historic Properties* 1995 (*Standards*), 36 CFR Part 68, or the most updated version, and techniques to avoid or minimize adverse effects to historic properties.

When referenced in an Allowance "previously disturbed areas" shall mean the following: alterations to the soil such that the property and associated stratification no longer has the potential to yield specific data from the past.

This list may be revised without amending this PA by a letter concurred with by CEMVN, SHPO, and Participating Tribes.

**I. GROUND DISTURBING ACTIVITIES AND SITE WORK** are limited to the proposed activities as described below; including the areas where the activity is staged. Project review should take into account the entirety of the proposed activities including any staging, site access, site cleanup, and site work (e.g. grading for positive drainage, vegetation removal) as potential ground-disturbing activities. This is not the entire list of possible ground-disturbing activities; other possible ground-disturbing activities are listed under Appendix A and other activity types in this appendix. If the project ground disturbance is limited to within 3 feet (0.9 m) of the existing structure and no known eligible or unassessed site is within the footprint and/or APE, the Allowance may be applied as documented by CEMVN to the project file. Should an unexpected discovery be encountered, work must stop and compliance with Stipulation III.B is required. If a potential ground-disturbing activity including staging, site access, site cleanup, and site work falls within a cemetery, known NR-eligible or unassessed archaeological site, and/or where there are unexpected finds, standard Project Review per Stipulation II.C(1), will apply.

- a. Ground-disturbing activities related to the repair, replacement, reinforcing or pouring of footings, foundations, and retaining walls, if related ground disturbing

activities are substantially within 3 feet (0.9 m) of the existing structure and do not require pile driving.

- b. In-kind repair or replacement of landscaping and utilities, such as planters, trellises, irrigation, exterior lighting, signs (e.g. freestanding facility signage), retaining walls, ramps, and steps. This allowance also includes decks. Minor mitigation measures (e.g., addition of new safety anchors) will be covered by this Allowance.
- c. In-kind repair or replacement of walkways, paths, trails, driveways, and parking areas.
- d. Removal of debris from private property, including leaning trees and hanging branches, provided that structures are not affected, ground disturbance is limited to surface scraping, and in-ground elements, such as driveways, walkways or swimming pools, are left in place.
- e. Installation of scaffolding and temporary barriers (e.g., chain link fences), provided such work will not result in additional damage, irreversible alterations, significant loss of historic fabric, or substantial ground disturbance.
- f. In-kind repair or replacement of fencing and freestanding exterior walls.
- g. Non-destructive or concealed testing for hazardous materials (e.g., lead paint, asbestos, etc.) or for assessment of hidden damages.

**II. STANDING STRUCTURES** when proposed activities, including the area where the activity is staged, are consistent with the *Standards*.

- a. Installation of temporary stabilization, bracing, or shoring, provided such work does not result in significant loss of historic fabric, or irreversible alterations to this or adjacent areas.
- b. Bracing and reinforcing of walls, chimneys, and fireplaces, provided the bracing and reinforcing are either concealed from exterior view or removable in the future.
- c. Strengthening and reinforcing of foundations provided that any visible new material is compatible with existing structures and the site and no ground disturbance is required.
- d. Bracing and anchoring of walls and/or foundations to address hydrostatic and hydrodynamic forces, provided the work is concealed from exterior view and if required, mortar repair and/or any disturbed historic fabric is restored in-kind and no ground disturbance is required.
- e. Strengthening of entry doors and bracing of garage doors provided they do not result in altering the existing door form and appearance.



- f. Replacement of exterior, utilitarian, non-character-defining metal doors and frames leading into non character-defining spaces with flood resistant doors and frames.
- g. Elevation of building contents including furniture, partitions, computers, cabinetry, supplies, and equipment and any other moveable items. This Allowance does not apply to built-in features.
- h. Replacement of damaged plaster and lath with drywall or other flood-resistant wall treatment where the plaster is a non-character-defining detail, excluding properties eligible or individually listed on the NR or contributing properties to NHL Historic Districts.
- i. Cleaning, repair, or repainting of surfaces, in a building that is less than forty-five (45)-years of age (construction date as noted in the project documentation, or by the NFS or sub-recipient, or by a photograph/site visit) provided that the building is not adjacent to or on a NR-eligible or listed building or structure or within the viewshed of a NR-eligible or listed historic district.
- j. Cleaning, repair, or repainting of surfaces, provided that destructive surface cleaning and preparation treatments are not used (e.g., water blasting, sandblasting, power sanding, chemical cleaning). Surface treatments must comply with the treatment approaches outlined in Preservation Brief 6: *Dangers of Abrasive Cleaning to Historic Buildings* (<https://www.nps.gov/tps/how-to-preserve/briefs/6-dangers-abrasive-cleaning.htm>).
- k. Reconstruction of concrete and masonry walls, columns, parapets, chimneys, or cornices, using compatible brick and mortar following the *SOI Standards for Rehabilitation*.
- l. Caulking and weather-stripping to complement the color of adjacent surfaces or sealant materials.
- m. In-kind replacement or installation of insulation systems, provided that existing interior plaster, woodwork, or exterior siding is not altered. The Allowance does not apply to urea formaldehyde foam insulation or any other thermal insulation containing water, when installed within wall cavities. It does not apply to exterior insulation finishing systems that do not include an adequate vapor and moisture drainage system, or work in enclosed spaces that are not finished.
- n. Sealing a building or installing flood panels in a building that is less than forty-five (45)-years of age (construction date as noted in the project documentation, or by the NFS or sub-recipient, or by a photograph/site visit) to make it watertight or impermeable to floodwaters. This allowance does not apply to the use of liquid sealants as water repellants on masonry buildings, unless the sealant is vapor permeable.
- o. Installation of removable flood barriers for doors and windows above ground only in a building that is less than forty-five (45)-years of age (construction date as noted in the project documentation, or by the NFS or sub-recipient, or by a photograph/site visit).

- p. Providing openings and installation of flood-resistant materials above ground only in a building that is less than forty-five (45)-years of age (construction date as noted in the project documentation, or by the NFS or sub-recipient, or by a photograph/site visit).
- q. Installation of backflow valves, pumping systems (e.g., sump pumps), and/or perimeter drainage for structures around foundations and footings, to allow for proper site drainage except when located within or immediately adjacent to NR-eligible or unassessed archaeological sites. This allowance excludes properties individually listed on the NR or contributing properties to NR-eligible or listed historic districts.
- r. The following retrofits, provided that such retrofits are not visible on the exterior or within character-defining historic interiors: modifications to non-character defining structural elements; cross bracing on pier and post foundations; installation of plywood diaphragms beneath first floor joists, anchoring of fuel tanks; installation of automatic gas shut off valves; concealed anchoring of furniture and/or bracing of building contents.
- s. Retrofit or replacement of metal utilitarian structures (e.g. pump houses, storage buildings) less than forty-five (45)-years old (construction date as noted in the project documentation, or by the NFS or sub-recipient, or by a photograph/site visit). Modern materials may be used provided their finish is compatible with existing structures and the site.
- t. Minor interior and/or exterior modifications required for compliance with the Americans with Disabilities Act (ADA).

### **III. Utilities, Mechanical, and Electrical Systems**

- a. Minor utility system work, including mechanical (e.g., HVAC), electrical, or plumbing work, which is limited to upgrading, or in-kind replacement. Historic fixtures, grilles, etc., where exposed to view, shall be in-kind for the Allowance to apply. The Allowance shall not apply to installation of new exposed ductwork on properties individually listed on the NR or contributing properties to NR-eligible or listed historic districts.
- b. Elevation of HVAC, electrical (e.g., electrical panels, switch boards), and mechanical equipment (e.g., generators, washers and dryers, and hot water heaters, and pumping equipment) providing they are placed or located where not highly visible from the street, or if installation does not result in significant loss of historic fabric, or character-defining details.
- c. Installation of generators and similar devices within previously disturbed soils that are not adjacent to or on a NR-eligible or listed building or structure or within the viewshed of a NR-eligible or listed district.
- d. Installation of early warning devices on existing utility poles on other existing utilities.

#### **IV. Piers, Docks, Boardwalks, and Boat Ramps**

- a. Minor elevation and/or upgrades, such as codes and standards, to existing piers, docks, boardwalks, and/or boat ramps, when placed in the existing footprint.

#### **V. Temporary Structures**

- a. Installation of temporary structures for uses such as offices, classrooms, medical facilities, except when located in historic districts or within or immediately adjacent to NR-eligible or unassessed archaeological sites.
- b. Removal of temporary structures provided that CEMVN confirms that no eligible or unassessed archaeological site(s) was identified on the property during the installation of the temporary structure(s).

## APPENDIX E

### Standard Treatment Measures

As provided in Stipulation II.F.4(a), if an Undertaking may adversely affect NR-listed or eligible historic properties and/or properties of religious or cultural significance to Tribes, or TCP(s), CEMVN may propose to resolve the adverse effect through the application of one (1) or more of the STMs set out below. The selected measures shall be developed by CEMVN after discussions with the SHPO, Tribes, and other Consulting Parties, as appropriate, and shall be documented in writing in a Treatment Plan (TP). CEMVN shall provide SHPO, and/or Tribes, and other Consulting Parties, as appropriate, with the opportunity to object to the proposed STM as set out in II.G.2(b). If CEMVN, in consultation with stakeholders, determines that a TM not included in the list below is in the public interest and is the most appropriate means to resolve an adverse effect, CEMVN shall initiate consultation to develop a project-specific MOA as set out in Stipulation II.G.3(a).

The TP shall identify, as appropriate: the responsible party/entity that will implement and complete each STM; the STM SOW and the standards that shall apply to the preparation and distribution of a deliverable; the deliverable(s) (e.g., the quantity, size, materials, content, final ownership/copyrights); measures to ensure that any STM documenting the condition of, or requiring the data recovery on the historic property, is implemented before the property is adversely affected; any *Professional Standards* in addition to those specified in Stipulation II.A.1(c) that will be required to prepare deliverable(s) described in the STM(s); the repositories and/or parties that will receive copies of a deliverable and the disposition of any deliverable that is not curated; milestones when CEMVN, SHPO, Tribes, and other Consulting Parties, as appropriate, shall be given the opportunity to review and comment on the deliverable; and timeframes for each review and deliverable.

CEMVN shall provide written notice to SHPO, Tribes, and other Consulting Parties, as appropriate, within sixty (60)-days of the completion of the STM as required by Stipulation II.G.2(d). CEMVN shall include information pertaining to the progress of and completion of all STM(s) in the annual report pursuant to Stipulation IV.E.1.

Any dispute regarding the implementation of a TP shall be resolved following the process set out in Stipulation IV.B.

This Appendix may be amended in accordance with Stipulation IV.A.1(f) of this Agreement.

#### List of Standard Treatment Measures:

- I. **DESIGN REVIEW:** The purpose of this STM is to determine if there are feasible alternatives that may avoid or minimize potential adverse effects to historic properties. Avoidance and minimization of adverse effects shall be dependent on the type of historic property (e.g., archaeological site vs. historic structure) and the type of adverse effect. CEMVN anticipates that it will identify work items that may cause an adverse effect during the review of a project, or at an early stage of project planning, when the design has not been fully developed. The implementation of this STM will allow CEMVN, in consultation with SHPO, Tribes, and other Consulting Parties, as appropriate, to continue with plan development, and allows CEMVN and Consulting Parties the potential to influence the design.



CEMVN may include this STM with other measures that are intended to mitigate any adverse effects that cannot be avoided or minimized.

#### **A. Design Review**

Based on CEMVN's review of the construction design, if CEMVN determines that the proposed Undertaking may adversely affect a historic property:

1. CEMVN shall consider ways to resolve adverse effects to a historic property by assessing feasible alternatives and/or determining if avoidance of the historic property is feasible through redesign of the project and/or specific project elements that are causing the adverse effect.
2. If avoidance is not feasible or practical, CEMVN then shall look for ways to minimize the adverse effect to a historic property. Minimizing the adverse effect could include shifting specific project elements away from the historic property to lessen the adverse effect (e.g., buffering) and/or, considering ways to revise the scope of the project to substantially conform to the *Standards* as described in Stipulation II.A.1(b).
3. CEMVN shall provide a written assessment of any alternatives, avoidance, and/or minimization measures considered along with sufficiently developed plans to SHPO, Tribes, and or Consulting Parties, as appropriate, for a fifteen (15)-day review and comment period. Protective measures may be further developed in consultation with stakeholders on a case-by-case basis to avoid or minimize adverse effects.
4. Following the fifteen (15)-day review period CEMVN shall consider all comments, and if the scope of the project can be substantially revised to avoid the adverse effects, or the Undertaking no longer affects the character defining features of a historic property, CEMVN shall make a determination of "No Adverse Effect"; describe any project specific conditions; and provide supporting documentation pursuant to 36 CFR §800.11(e). Unless a Consulting Party makes a timely objection in accordance with the applicable timeframe outlined in Stipulation I.B.6., then design review is complete and CEMVN shall proceed with its "No Adverse Effect" determination, including any conditions, and conclude the Section 106 review and CEMVN is not required to carry out any additional STMs that may have been identified to offset the potential adverse effect. Any subsequent construction footprint or scope of project changes shall be reviewed in accordance with Stipulation III.A.
5. Should avoidance or minimization of the adverse effect not be feasible, in whole or in part, or if the adverse effect is determined to be in the best interest of the public and unavoidable, CEMVN shall continue consultation with SHPO, Tribes, and/or Consulting Parties, as appropriate, in accordance with Stipulation II.F.4(a) and the following treatment measures outlined below are suggested for the resolution of adverse effects.

- II. PHOTOGRAPHIC RECORDATION:** CEMVN, in consultation with SHPO, Tribes, and other Consulting Parties, as appropriate, will select the photographic medium or mediums from the options described below and identify a list of photographs that will serve to document the historic property to archival standards. Photographic images may include existing drawings and plans. If the Consulting Parties determine that it is in the public interest to document a property through the preparation of measured drawings, CEMVN shall initiate consultation to develop a project-specific MOA.

**A. Recordation for Standing Structures (Flexible Standards)**

CEMVN shall ensure that *Qualified Staff*, as defined in Stipulation II.A.1(a), photograph the exterior and/or interior, if it is accessible, in the selected photographic format(s) with an emphasis on documenting those portions of the exterior and/or interior that will be altered. The trained professional shall take photographs of the views identified by CEMVN, SHPO, Tribes, other Consulting Parties, as appropriate, and/or agent or contractor, and will print specifically identified images:

- a. Digital Photography: The digital photography and color photographs must comply with the “Best” category of requirements from the latest *National Register Photo Policy Fact Sheet*: [https://www.nps.gov/subjects/nationalregister/upload/Photo\\_Policy\\_update\\_2013\\_05\\_15\\_508.pdf](https://www.nps.gov/subjects/nationalregister/upload/Photo_Policy_update_2013_05_15_508.pdf), with the following additional requirements:
  1. Image files must be saved as both TIFF and JPEG files;
  2. Color images must be produced in RGB (Red/Green/Blue) color mode as 24-bit or 48-bit color files;
  3. In addition to the requirements specified by the *National Register Photo Policy Fact Sheet*, photographs shall be digitally labeled to state the address (name of facility, street number, street name, city, and state); date of photograph; description of view, including direction of camera; and name of photographer, agent, or contractor responsible for the recordation.
- b. 35mm Black/White and Color Photography: Photographs must be taken with a 35mm SLR Camera or a 35mm point-and-shoot camera using 35mm black/white or color film. Photographs taken with disposable cameras are not acceptable.
  1. The 35mm film black/white or color film photography package shall include one (1) full set of 35mm film black/white or color photographs printed on acid free paper specifically designed for color prints, the corresponding 35mm film negatives in acid free sleeves.
  2. Photographs shall be labeled in pencil on the back to state the address, name of facility, street number, street name, city, and state; date of photograph; description of view, including direction of camera; and name of photographer, agent, or contractor responsible for the recordation.

- c. Large Format Photography: Photographs must be taken with a large-format view camera with ample movement for perspective correction. The minimal complement of lenses includes a sharp rectilinear wide angle, a normal, and a mildly telephoto lens.
  - 1. Acceptable film formats are 4x5, 5x7, and 8x10-inch. Acceptable polyester-based films include those of medium and slow speed (100 and 400 ASA) produced by a wide array of manufacturers.
  - 2. The large format film photography package shall include one (1) full set of 4x5 or 5x7-inch photographs printed on acid free paper and the corresponding 4x5 or 5x7-inch negatives in acid free sleeves.
  - 3. Photographs shall be labeled in pencil on the back to state the address name of facility, street number, street name, city, and state; date of photograph; description of view, including direction of camera; and name of photographer, agent, or contractor responsible for the recordation.
- d. Video: A video documentary regarding the historic property may include on-camera interviews, archival footage and/or images, current footage of the historic property, and current footage of other similar historic properties. The content and length of the video shall be described in the TP.
- e. Narrative History: A narrative history may be prepared to provide a context for the photographs following the Historic American Building Survey (HABS) *Guidelines for Historical Reports*: “Short” or “Outline” format: <https://www.nps.gov/hdp/standards/HABS/HABSHistoryGuidelines.pdf>.
- f. Recordation Package: The recordation package shall include a photo log, printed copies of selected photographs, digital copies of photographs, and may include a narrative history. The recordation package may include reproductions of historic photographs, existing building plans, contemporary sketch plans, and/or maps. All materials shall be packaged in archival sleeves and boxes. Archival disks shall be used for all digital materials.
- g. Review: The photographer, agent, or contractor responsible for the recordation may informally consult with SHPO, Tribes, and other Consulting Parties, as appropriate, to select photographs and other images that will be included in the recordation materials. The process to review and finalize the photographs and other images shall be described in the TP.
- h. Distribution: The photographer, agent, or contractor responsible for the recordation shall prepare a minimum of three (3) archival quality copies of the recordation materials and shall forward two (2) copies to SHPO and one (1) copy to CEMVN for archiving. In consultation with SHPO, Tribes, other Consulting Parties, as appropriate, CEMVN may identify additional archives and/or parties that will receive copies of the recordation materials. The

responsible entity shall provide CEMVN with documentation confirming that the recordation materials have been archived as described in the TP.

**B. Recordation for Standing Structures (Established Standards)**

The TP shall document the proposed Level and Standard that will be most appropriate to capturing the significance of the historic property prior to alteration and define the responsible entity. Choices will be made between the National Park Service (NPS), Heritage Documentation Programs (<https://www.nps.gov/hdp/>): *Historic American Building Standards* (HABS); *Historic American Engineering Standards* (HAER); or the *Historic American Landscape Standards* (HALS) at *Level III* or *Level II*. During the development of the TP, CEMVN shall coordinate with the NPS, SHPO, Tribes, and other Consulting Parties, as necessary to make the selection. Any permission requiring a *Level I* effort under any of these standards shall require an individual MOA to resolve the effects. The responsible entity shall ensure that *Qualified Staff*, as defined in Stipulation II.A.1(a), photographs the exterior and/or interior, if it is accessible, in the selected standard with an emphasis on documenting those portions of the historic property that will be altered or demolished. The trained professional shall take photographs of the views identified by CEMVN, in consultation with stakeholders, and shall print specifically identified images and produce the required historical narrative.

- III. **PUBLIC INTERPRETATION:** CEMVN shall consult with SHPO, Tribes, and other Consulting Parties, as appropriate, to design an educational or public interpretive plan. The educational or public interpretive plan may include historical markers, signs, displays, educational pamphlets, websites, workshops, videos, and other similar mechanisms to educate the public on historic properties within the local community, state, or region. In certain instances SHPO may request that the proposed historical marker conform to the requirements of the Louisiana Historical Marker Program, in the Department of Culture, Recreation, and Tourism, and request that the responsible entity apply to this program (<https://www.crt.state.la.us/tourism/industry-partners/>).
- IV. **HISTORICAL CONTEXT STATEMENTS:** CEMVN shall consult with SHPO, Tribes, and other Consulting Parties, as appropriate, to identify the topic, audience, and framework of a historic context statement and format for the final deliverable. The context statement may focus on an individual property, a set of related properties, historic district, or other relevant themes identified in the *Louisiana Comprehensive Preservation Plan* (<https://www.crt.state.la.us/cultural-development/historic-preservation/louisiana-state-plan-shpo/index>) or the NPS *National Historic Landmark Thematic Framework* (<https://www.nps.gov/subjects/nationalhistoriclandmarks/nhl-thematic-framework.html>).
- V. **ORAL HISTORY DOCUMENTATION:** CEMVN shall consult with SHPO, Tribes, and other Consulting Parties, as appropriate, to identify the list of potential interview candidates; the parameters of the oral history project; qualifications of the individual or individuals conducting the oral interviews; the process for any ongoing coordination with stakeholders; and format for the final deliverable.



- VI. HISTORIC PROPERTY INVENTORY:** CEMVN shall consult with SHPO, Tribes, and other Consulting Parties, as appropriate, to establish the appropriate level of effort to accomplish a historic property inventory. Efforts may be directed toward the resurvey of previously designated historic properties which have undergone change or lack sufficient documentation, or the survey of new historic properties that lack formal designation. The proposed STM shall describe the boundaries of the survey area and the data collection methods in accordance with Stipulation II.E.5.
- VII. NATIONAL REGISTER AND NATIONAL HISTORIC LANDMARK NOMINATIONS:** CEMVN shall consult with SHPO, Tribes, and other Consulting Parties, as appropriate, to identify individual properties that would benefit from a completed NRHP or NHL nomination form. Once the Consulting Parties have agreed to a property, the responsible entity shall continue to coordinate with CEMVN through the drafting of the NRHP nomination form and shall contact the NHL Program to begin the nomination process. CEMVN in turn, shall forward the materials to Consulting Parties for review and comment. The SHPO and/or Tribes shall provide adequate guidance to the responsible entity during the preparation of the nomination form. CEMVN shall work with the SHPO to ensure the completed NRHP form is presented to the Louisiana National Register Review Committee in a timely manner for consideration by the SHPO and the Keeper of the Register.
- VIII. GEO-REFERENCING OF HISTORICAL MAPS AND AERIAL PHOTOGRAPHS:** CEMVN shall consult with SHPO, Tribes, and other Consulting Parties, as appropriate, to identify the historical maps and/or aerial photographs for scanning and geo-referencing. Once a list of maps and/or aerial photographs have been agreed upon, the responsible entity shall continue to coordinate with CEMVN through the scanning and geo-referencing process and shall submit drafts of paper maps and electronic files to CEMVN, who in turn forward the materials to Consulting Parties for review and comment. The final deliverable produced by the responsible entity shall include: 1) a paper copy of each scanned image; 2) a geo-referenced copy of each scanned image; 3) original high-resolution digital image of map/aerial photograph in TIFF file format; 4) copies of the user agreements for every geo-referenced image with transferability of use to all parties; 5) a process report outlining the research, and; 6) the metadata relating to both the original creation of the paper maps and the digitization process.
- IX. ARCHAEOLOGICAL RESEARCH DESIGN AND DATA RECOVERY PLAN:** CEMVN shall consult with SHPO, Tribes, and other Consulting Parties, as appropriate, to develop and implement a data recovery plan with a research design to recover data from archaeological properties listed in, or eligible for listing in the NRHP, which will be adversely affected by ground-disturbing activities that are part of the Undertaking. The research design and data recovery plan shall be consistent with the *Standards* in accordance with Stipulation II.A as well as the Louisiana Unmarked Human Burial Sites Preservation Act (RS 8:671 et seq.). This STM does not apply to the excavation of burials or burial objects.

- X. SALVAGE:** CEMVN shall consult with SHPO, Tribes, and other Consulting Parties, as appropriate, to identify architectural elements that may be salvaged from a building/structure if they cannot be retrofitted to be made compatible with best-practice floodproofing methods. The salvaged elements may be re-used in another structure or in displays for educational purposes. As an alternative, CEMVN shall consult with SHPO, Tribes, and other Consulting Parties, as appropriate, to attempt to identify a private or public not-for-profit local or regional historic preservation organization interested in receiving a donation of the architectural features. The organization may sell the architectural features to the general public for the specific purpose of raising funds to support future historic preservation activities in the region. Salvage activities shall not occur at or below grade in order to avoid affecting unevaluated archaeological resources.

## **Attachment 4**

**“Programmatic Agreement among the U.S. Army Corps of Engineers, New Orleans District; Louisiana Coastal Protection and Restoration Authority; Louisiana State Historic Preservation Officer of the Department of Culture, Recreation & Tourism; Chitimacha Tribe of Louisiana; and Mississippi Band of Choctaw Indians, Regarding the South Central Coastal Louisiana Flood Risk Management Project”**



DEPARTMENT OF THE ARMY  
CORPS OF ENGINEERS, NEW ORLEANS DISTRICT  
7400 LEAKE AVE  
NEW ORLEANS LA 70118-3651

January 24, 2020

Regional Planning and  
Environment Division, South  
Environmental Planning Branch  
Attn: CEMVN-PDS-N

Kristin Sanders, SHPO  
LA State Historic Preservation Officer  
P.O. Box 44247  
Baton Rouge, LA 70804-4241

**RE: Continued Consultation: Section 106 Programmatic Agreement Regarding  
"South Central Coast Louisiana Flood Risk Management Feasibility Study."**

Dear Ms. Sanders:

The U.S. Army Corps of Engineers (USACE), New Orleans District (CEMVN), is continuing consultation to develop a Programmatic Agreement (PA) for the "South Central Coast Louisiana (SCCL) Flood Risk Management Feasibility Study" pursuant to Section 106 of the National Historic Preservation Act (NHPA), as amended (54 U.S.C. § 300101 et seq.), and Section 110 of the NHPA, that require Federal agencies to take into account the effect of their undertakings on historic properties during the planning process and consult with stakeholders regarding these effects. This letter is intended to provide information regarding CEMVN's Tentatively Selected Plan (TSP) for a 25-year Floodplain Nonstructural Plan (elevation and flood proofing) and notify the LA State Historic Preservation Officer pursuant to 36 CFR Part 800.14(b) of our proposal to develop a project-specific PA that establishes procedures to satisfy the CEMVN's Section 106 responsibilities with regard to the programmatic review of this feasibility study and allows CEMVN to coordinate Section 106 reviews with its evaluation of the proposed action's potential for significant impacts to the human and natural environment required by the National Environmental Policy Act (NEPA), as amended (42 U.S.C. § 4321 et seq.). The PA will address the potential of this Undertaking to effect historic properties that are eligible for or listed on the National Register of Historic Places (NRHP), including archaeological sites, districts, buildings, structures, and objects that are significant in American history, architecture, archaeology, engineering, and/or sites of religious and cultural significance on or off Tribal Lands [as defined in 36 CFR § 800.16(x)]. We invite the LA State Historic Preservation Officer to participate in this consultation since it may involve important questions of policy or interpretation and will result in the development of an agreement document that governs the application of the Section 106 process with regards to the proposed Undertaking. Documentation in this letter is consistent with the requirements in 36 CFR §800.11(e).

**Study Authority**

CEMVN is conducting the present SCCL Flood Risk Management Feasibility Study under the standing authority of *The Bipartisan Budget Act of 2018 (Pub. L. 115-123), Division B, Subdivision 1, H. R. 1892-13, Title IV, Corps of Engineers-Civil, Department of the Army,*



*Investigations*, for flood and storm damage risk reduction. The lead Federal agency for this proposed action is the USACE. The Louisiana Coastal Protection and Restoration Authority (CPRA) is the non-Federal sponsor. The feasibility study phase is 100% federally funded. CEMVN will analyze numerous issues related to the effects of any proposed storm damage reduction measures. These issues will include, but will not be limited to, the following: continued wetlands losses impacting migratory species, the ecological nurseries of the Gulf of Mexico, and various commercial and recreational activities.

### **Study Area**

The study area, which includes the Louisiana coastal parishes of Iberia, St Mary, and St. Martin, encompasses approximately 2,965 square miles (7,679 km) containing an array of private, local, state, tribal, and federally-managed lands including portions of the Gulf of Mexico, Gulf coastal areas, coastal marshes, the Atchafalaya River, floodplain, and adjacent lands (agriculture, urban, and wildlife habitat), constructed public and private facilities, and other areas subject to repetitive flood inundation. A map depicting the study area is included as Figure 1.

### **Study Purpose**

Rainfall from hurricanes, tropical storm events, and local storms pose a significant risk to the communities, ecosystems, and industries within the present study area. The region has experienced repetitive storm events including Hurricanes Andrew (1992), Allison (2001), Bertha (2002), Lili (2002), Rita (2005), Gustav (2008), Ike (2008), Lee (2011), and Barry (2019) resulting in loss of life, wildlife, property, and repeated mandatory evacuation costs.

Communities of concern include Breaux Bridge and St. Martinville located in St. Martin Parish. New Iberia, Jeanerette, Delcambre, and Loreauville are at risk of storm damage in Iberia Parish. In St. Mary Parish, Morgan City, Franklin, Patterson, Baldwin, Berwick, and the federally-recognized Chitimacha Tribe of Louisiana whose reservation includes most of Charenton. Facilities and infrastructure at risk include those related to the Gulf Intracoastal Waterway and Bayou Teche; the Port of Morgan City, Port of West St. Mary, and Port of Iberia; Keystone Lock and Dam, Berwick Lock, and Bayou Boeuf Lock; the Wax Lake Outlet and Pumping Station; Charenton flood gate; Patterson Regional Airport; major transportation corridors and evacuation routes (Hwy 90/future I-49 corridor); and other activities associated with local bayous and structures. The study area also encompasses ecosystems having national, state, and local significance such as the Bayou Teche National Wildlife Refuge, the State of Louisiana Marsh Island Wildlife Refuge, and the Attakapas and Atchafalaya Delta Wildlife Management Areas. The Atchafalaya Basin is unique because it has a growing delta system. Designated by Congress in 2006 as a National Heritage Area, the Atchafalaya Basin encompasses significant cultural, historic, scenic, and recreational resources and is the Nation's largest alluvial bottomland and swamp that provides habitat for 24 federally and state-listed threatened or endangered species, or species of concern. In addition to impacts resulting from repeated storm action, the study area is also vulnerable to coastal land loss and degradation, which increases risk to communities, habitat, and infrastructure. Historically, from 1932 to 2010, the area experienced a net loss of approximately 22,500 acres (9,105 ha) of wetlands. Continued wetlands losses impact migratory species, the ecological nurseries of the Gulf of Mexico, and various commercial and recreational activities. In addition, the study area's topography, low elevation, proximity to the Gulf of Mexico, subsiding lands, and rising seas, are all contributing factors causing coastal flooding, shoreline erosion, and loss of wetlands.

## **Background**

On June 10, 2019, CEMVN submitted an initial Section 106 consultation letter entitled: *Notice of Intent to Prepare Programmatic Agreement Regarding "South Central Coast Louisiana Flood Risk Management Feasibility Study"* to the Louisiana State Historic Preservation Office (SHPO), Affected Tribes (the Alabama-Coushatta Tribe of Texas (ACTT), Choctaw Nation of Oklahoma (CNO), Coushatta Tribe of Louisiana (CT), Chitimacha Tribe of Louisiana (CTL), Jena Band of Choctaw Indians (JBCI), Mississippi Band of Choctaw Indians (MBCI), Muscogee (Creek) Nation (MCN), Seminole Nation of Oklahoma (SNO), Seminole Tribe of Florida (STF), and the Tunica-Biloxi Tribe of Louisiana (TBTL); collectively referenced as "Tribes"), the NFS (CPRA), and the Advisory Council on Historic Preservation (ACHP). The aforementioned letter provided information regarding the study area, initial array of alternatives being considered, alternative evaluation criteria, the Specific, Measurable, Attainable, Risk Informed, Timely (SMART) planning framework for civil works feasibility studies for water resources development projects, plan formulation milestones, and CEMVN's proposal to develop a project-specific PA pursuant to 36 CFR § 800.14(b) to fulfill its responsibilities under Section 106 of the NHPA. Additionally, this letter invited stakeholders to provide input regarding the proposed Undertaking and its potential to significantly affect historic properties and/or sites of religious and cultural significance and requested potential consulting parties' assistance with identifying other relevant entities who may have an interest in participating in this consultation.

On July 17, 2019, the CNO responded that "This project lies outside of our area of historic interest. The Choctaw Nation Historic Preservation Department respectfully defers to the other Tribes that have been contacted." On June 24, 2019, CEMVN received a written response from the ACHP stating that the agency "has not yet determined if Appendix A of the regulations, Criteria for Council Involvement in Reviewing Individual Section 106 Cases, applies to this Undertaking" and requested additional information regarding the views of the SHPO, Tribes, other consulting parties, and the public in order to determine if their participation in this consultation is warranted. To date, no response has been received from any of the other stakeholders consulted (SHPO/Tribal/NFS).

Additionally, on June 14, 2019, CEMVN posted a NHPA/NEPA Public Notice to the designated project website (<https://www.mvn.usace.army.mil/South-Central-Coast/>) for a 15-day comment period requesting the public's input concerning the proposed Undertaking and its potential to significantly affect historic properties, assistance in identifying any relevant parties who may have an interest in participating in this consultation, and CEMVN's proposal to develop a project-specific PA pursuant to 36 CFR § 800.14(b). No comments were received. The web page also includes background information regarding purpose, array of alternatives, project planning, and project status along with a Draft Integrated Feasibility Report (IFR)/Environmental Impact Statement (EIS). CEMVN intends to continue to use this website to post additional project information throughout the development of the IFR/EIS.

## **Description of the Undertaking**

CEMVN has determined that the proposed action constitutes an Undertaking as defined in 36 CFR § 800.16(y). CEMVN has now completed its initial screening of alternatives and has developed a TSP that meets the study's purpose and need. The evaluation of the measures and alternatives determined that nonstructural measures; including structure elevations and flood proofing are the most cost-effective solution to reduce flood-risk within the study area. The TSP would provide reduced flood risk for all structures in the study area with a First Floor

Elevation (FFE) at or below the 25-year flood stage based on predicted year 2025 hydrologic conditions. Preliminary review of the Hydrologic and Hydraulic (H&H) analysis conducted for the TSP indicates that it would reduce flood damage risks to an estimated 3,463 structures. Figure 2 illustrates the preliminary distribution of identified structures. The TSP is voluntary in nature and is anticipated to be comprised of roughly 2,629 residential structures, 71 public buildings, 597 commercial structures, and 166 warehouses. However, the H&H analysis is ongoing and those individual structures eligible for non-structural measures will be refined and coordinated with stakeholders as the project is developed further. Components of the TSP include:

- Elevation of eligible residential structures. This measure requires lifting the entire residential structure or the habitable area to the predicted 2075, 0.01 Annual Exceedance Probability (AEP) flood elevation, unless the required elevation is greater than a maximum of 13 feet above ground level;
- Dry flood proofing of eligible non-residential structures. Dry flood proofing consists of sealing all areas below the flood risk reduction level of a structure to make it watertight and ensure that floodwaters cannot get inside by making walls, doors, windows, and other openings impermeable to water penetration;
- Floodplain Management Plans. The NFS is required to prepare a Floodplain Management Plan in coordination with USACE to maintain the integrity of the project. The NFS shall work with the governing bodies within the three (3) parishes to ensure consistency with local development plans and regulations;
- Adoption of more stringent local floodplain regulations. Although communities within the study area cannot change the minimum National Flood Insurance Program standards, the NFS should work with local governments to adopt local standards that achieve higher levels of flood risk reduction. Examples of potential actions may include replacing elevation requirements based on the 0.01 AEP to the 0.2-year level of risk reduction; implementing a zero rise floodway; and adopting cumulative damages as the trigger for substantial damage determination;
- Adoption of more restrictive parish and municipal building codes, land use and zoning regulations, and other developmental controls. Local governments within the floodplain should be encouraged to adopt, implement, enforce stricter building and housing code requirements, land use and zoning regulations, and other developmental controls aimed at reducing flood risk and flood damage.

#### **Area of Potential Effects (APE)**

At the feasibility stage, the Area of Potential Effects (APE) for each individual non-structural measure is conceptual; CEMVN acknowledges that the APE(s) could change as H+H analysis and determination of eligibility for participation in non-structural measures is further developed. Therefore, CEMVN proposes to adopt a programmatic approach in accordance with 36 CFR § 800.14(b) to determine individual APEs for non-structural measures in consultation with SHPO and participating Tribe(s) pursuant to 36 CFR § 800.16(d). The APE will incorporate both direct effects (e.g., access, staging, and construction areas) and indirect effects (e.g., visual), including all areas of proposed ground disturbance. Furthermore, CEMVN may consider information provided by other parties, such as the NFS, local governments, and the public,

when establishing individual APEs. In this consultation, the “study area” is referenced in place of a formal APE for discussion and planning purposes.

### **Historic Property Identification and Evaluation Efforts**

CEMVN has conducted a review of existing documentation: the NRHP database, the Louisiana Division of Archaeology (LDOA) *Louisiana Cultural Resources Map* (LDOA Website), historic map research, a review of pertinent cultural resources survey reports, Louisiana Division of Historic Preservation (LDHP) *Louisiana Historic Resource Inventory* (LHRI) forms, and other pertinent data, and has determined that there are multiple historic properties as defined in 36 CFR 800.16(l) within the study area. Based on this background research, CEMVN determined that Iberia Parish has 32 properties and districts listed on the NRHP including one (1) National Historic Landmark (NHL; Shadows-on-the-Teche), as well as the Downtown New Iberia Commercial Historic District and East Main Street Historic District. It is also noteworthy to mention that Avery Island, located in Iberia Parish, was listed at all three (3) levels of significance (local, state and national) and for all four (4) NRHP criteria (history, association with significant individuals, architecture and archaeology) in September of 2018. St. Martin Parish has a total of 25 properties and Districts listed on the NRHP including one (1) NHL (Acadian House) and the Breaux Bridge Historic District and St. Martinville Historic District. St. Mary Parish has a total of 29 NRHP properties and districts listed on the NRHP including Morgan City Historic District, Franklin Historic District, and the Patterson Commercial District. Additionally, approximately 449 archaeological sites have been previously recorded within the current study area that collectively span the entire spectrum of Pre-Contact and Post-Contact archaeological components known within the region; encompassing some 10,000 years or more. It is also important to stress that many known of the sites in the study area have occupation spans encompassing more than one of these cultural/temporal periods attesting to the long-ranging cultural importance of the region. At the present time, it remains undetermined if many of the previously identified resources are eligible for inclusion in the NRHP or if they will be affected by the Undertaking. Furthermore, the distribution of structures within the preliminary 25-year floodplain fall within locations that possess a high potential to contain additional unrecorded built-environment resources and/or archaeological deposits and identification and evaluation for these properties is ongoing.

### **Assessment of the Undertaking’s potential to effect Historic Properties**

A review of the TSP indicates that the considered action includes elevation and flood proofing measures that may introduce new visual elements and/or modifications to built-environment resources that may directly affect both known and undocumented above-ground historic properties (e.g., standing structures and historic districts), in a manner that may diminish the integrity of the property’s location, design, setting, materials, workmanship, feeling, or association in addition to ground disturbing activities (e.g., access, staging, foundation work, utility relocations and hardening) within the project footprint that may directly affect known and undocumented archeological resources in a manner that may diminish the integrity of the property’s location, design, setting, materials, workmanship, feeling, or association. A review of the TSP also indicates that the considered action includes measures that may indirectly result in the introduction of new visual elements and/or modifications to the viewshed and overall visual landscape of known and previously undocumented cultural resources that may be listed or eligible for the NRHP, potentially including historic structures, NRHDs, NHLs, other built-environment resources (see above), and/or Traditional Cultural Properties (TCP) by introducing elements that are inconsistent with the historic or cultural character of these resources in a way

that may diminish the visual integrity of the property's setting, feeling, or association and/or cause changes to the integrity of feeling or character associated with a historic or TCP.

Potential negative cumulative impacts may include direct damage to built-environment resources or destruction of archaeological resources as well as the potential successive introduction of new visual elements and/or modifications to the viewshed and overall visual landscape of known and previously undocumented cultural resources significant at the state, local, and national level and/or of significance to Tribes that may be listed or eligible for the NRHP; including archaeological sites, historic structures, NRHDs, NHLs, other built-environment resources (see above) and/or TCPs. Conversely, the proposed action may have long-term positive net impacts to cultural resources within communities in the study area. CEMVN acknowledges that non-structural elevation and/or flood-proofing measures may result in modifications to historic buildings or other built-environment resources potentially not meeting the Secretary of the Interior's Standards (48 FR 44716-42, September 29, 1983). However, the overarching goal of this effort is to reduce risk from future flood events while still preserving the physical integrity and historic character of built-environment resources and in relation to other resources within a historic district (as applicable), thus; protecting the architectural qualities of communities as a whole. Therefore, the proposed action may also have positive cumulative impacts towards preserving at-risk unique architectural and design characteristics that many of Louisiana communities and historic districts strive to maintain and enhance. Otherwise, damage to, or widespread loss of, cultural resources within the present study area could lead to the loss of connection to place; causing a net loss of cultural diversity within the study area and its surrounding communities. This is important because the cultural resources within many portions of the study area are understudied and/or not duplicated or replaced at other locations. Because most cultural resources are nonrenewable this would constitute a significant cumulative impact.

In summary, CEMVN has determined that that the proposed Undertaking includes activities that have the potential to effect historic properties in a way that would directly, indirectly, and/or cumulatively affect the characteristics that make the properties eligible for the NRHP. However, no determination of effect under the NHPA pursuant to 36 CFR 800.4(d) is being made at this time. Following the completion of identification and evaluation for non-structural measures, CEMVN will consider ways to revise the Scope of Work (SOW) to substantially conform to the standards, and/or avoid or minimize adverse effects for National Register-listed or eligible historic properties and/or sites of religious or cultural Tribal significance.

### **Consulting Parties**

This letter continues formal Section 106 consultation pursuant to 36 CFR § 800.3(c). In addition to the LA SHPO, CEMVN has identified the following Tribal governments as having an interest in the project: the ACTT, CN, CT, CTL, JBCI, MBCI, MCN, SNO, STF, and TBTL; the following NFS: CPRA; and the ACHP. CEMVN has not identified any other preservation interests. Should you know of additional Tribal governments or preservation groups, please do not hesitate to communicate these to CEMVN.

CEMVN proposes to send future notices, draft agreements, and other background information to consulting parties by e-mail to minimize communication delays and expedite the development of the PA. Please let CEMVN know if this is impractical, so we can make alternative arrangements.



## Conclusion

In conclusion, CEMVN has determined that the proposed action constitutes an Undertaking as defined in 36 CFR § 800.16(y) and has the potential to cause effects to historic properties. However, no determination of effect under the NHPA is being made at this time. As the federal agency cannot fully determine how the Undertaking may affect historic properties, the location of historic properties, or their significance and character at the present time [36 CFR § 800.14(b)(1)(ii)], prior to approving the Undertaking, CEMVN proposes to develop a project-specific PA pursuant to 36 CFR § 800.14(b) in consultation with the NFS, SHPO, Tribes, and other interested parties, to satisfy CEMVN's Section 106 responsibilities for this Undertaking.

The goal of this Section 106 consultation is to provide a framework for addressing this Undertaking and establish protocols for continuing consultation with the LA SHPO, Tribal governments, and other stakeholders. The PA would identify consulting parties, define applicability, establish review timeframes, stipulate roles and responsibilities of stakeholders, include Tribal consultation procedures, consider the views of the SHPO/THPO(s) and any other consulting parties, afford for public participation, develop programmatic allowances to exempt certain actions from Section 106 review, outline a standard review process, determine an appropriate level of field investigation to identify and evaluate historic and determine the potential to affect historic properties and/or sites of religious and cultural significance, streamline the assessment and resolution of Adverse Effects through avoidance, minimization, and programmatic treatment approaches for mitigation, establish reporting frequency and schedule, provide provisions for post-review unexpected discoveries and unmarked burials, and incorporate the procedures for amendments, duration, termination, dispute resolution, and implementation. The PA would then govern CEMVN's subsequent NHPA compliance efforts. Following the execution of a PA, the Chief of Engineers may then proceed with making a final recommendation on the project and issuing a Record of Decision (ROD) in compliance with NHPA and in coordination with NEPA.

Table 1 (below) provides Updated Mitigation Plan Formulation Milestones for the SCCL Flood Risk Management Feasibility Study. Schedule updates will continue to be provided to stakeholders in subsequent Section 106 documentation and consultation meetings.

Table 1. Proposed Study Milestone Schedule

<b>Milestone</b>	<b>Scheduled</b>	<b>Actual</b>	<b>Complete</b>
Alternate Milestone	Jan 31, 2019	Jan 31, 2019	Yes
Tentatively Selected Plan	Oct 2, 2019	Sep 19, 2019	Yes
Release Draft Report to Public	Dec 3, 2019	Nov 22, 2019	Yes
Agency Decision Milestone	Mar 27, 2020	TBD	No
Final Report Transmittal	Mar 19, 2021	TBD	No
Chief's Report	Jul 12, 2021	TBD	No

A date and time for the initial Section 106 consultation meeting has not yet been set. The purpose of the initial meeting will be to discuss the properties being considered as part of the TSP, the historic properties, and to gather feedback from your organization regarding the proposed Undertaking and the potential to affect significant cultural/Tribal resources, and begin development of the PA. CEMVN will notify SHPO, Tribes, and other likely consulting parties regarding the meeting as soon as possible and forward information regarding a conference call-in number and the agenda.

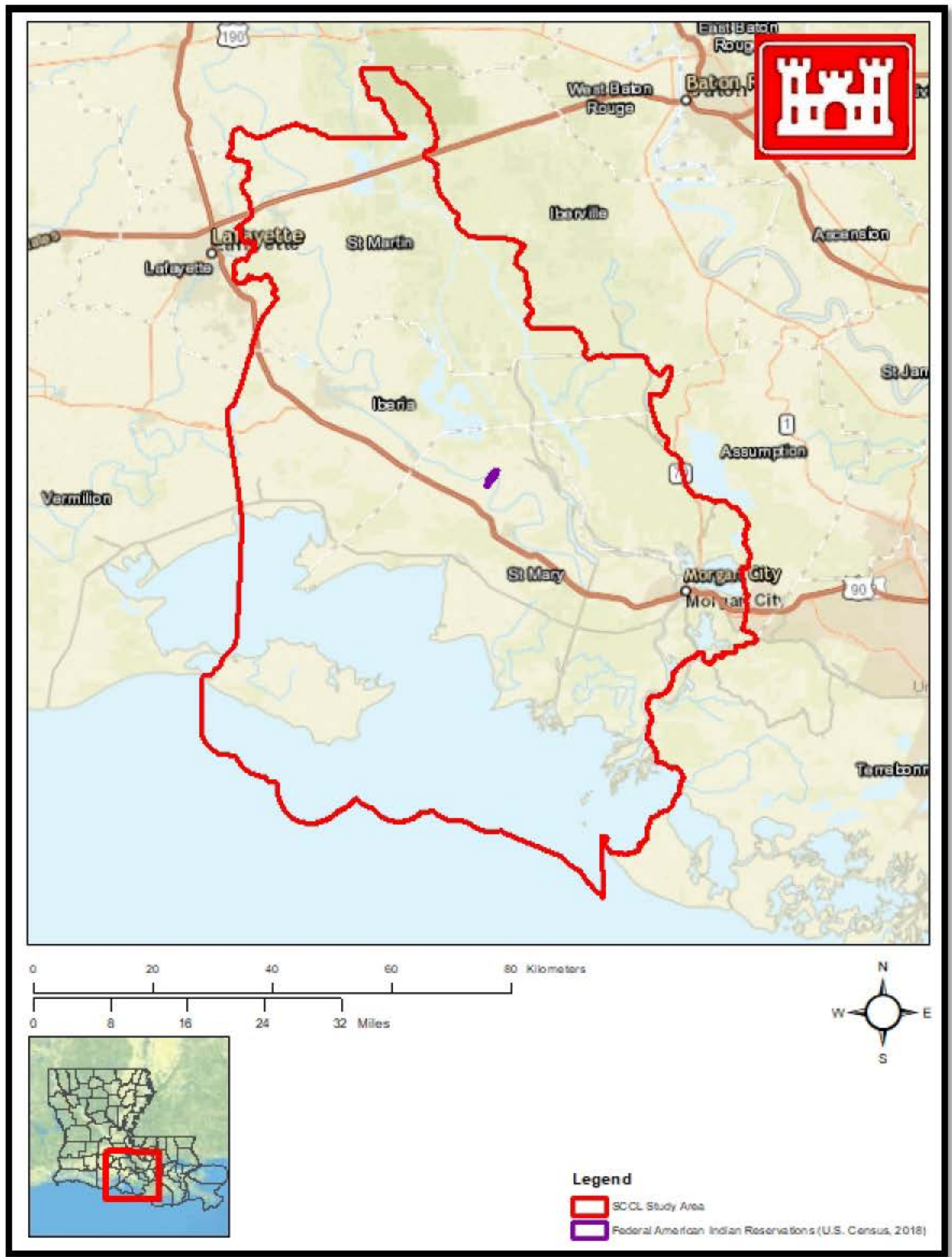


Figure 1. ESRI Transportation imagery displaying location of the SCCL study area.

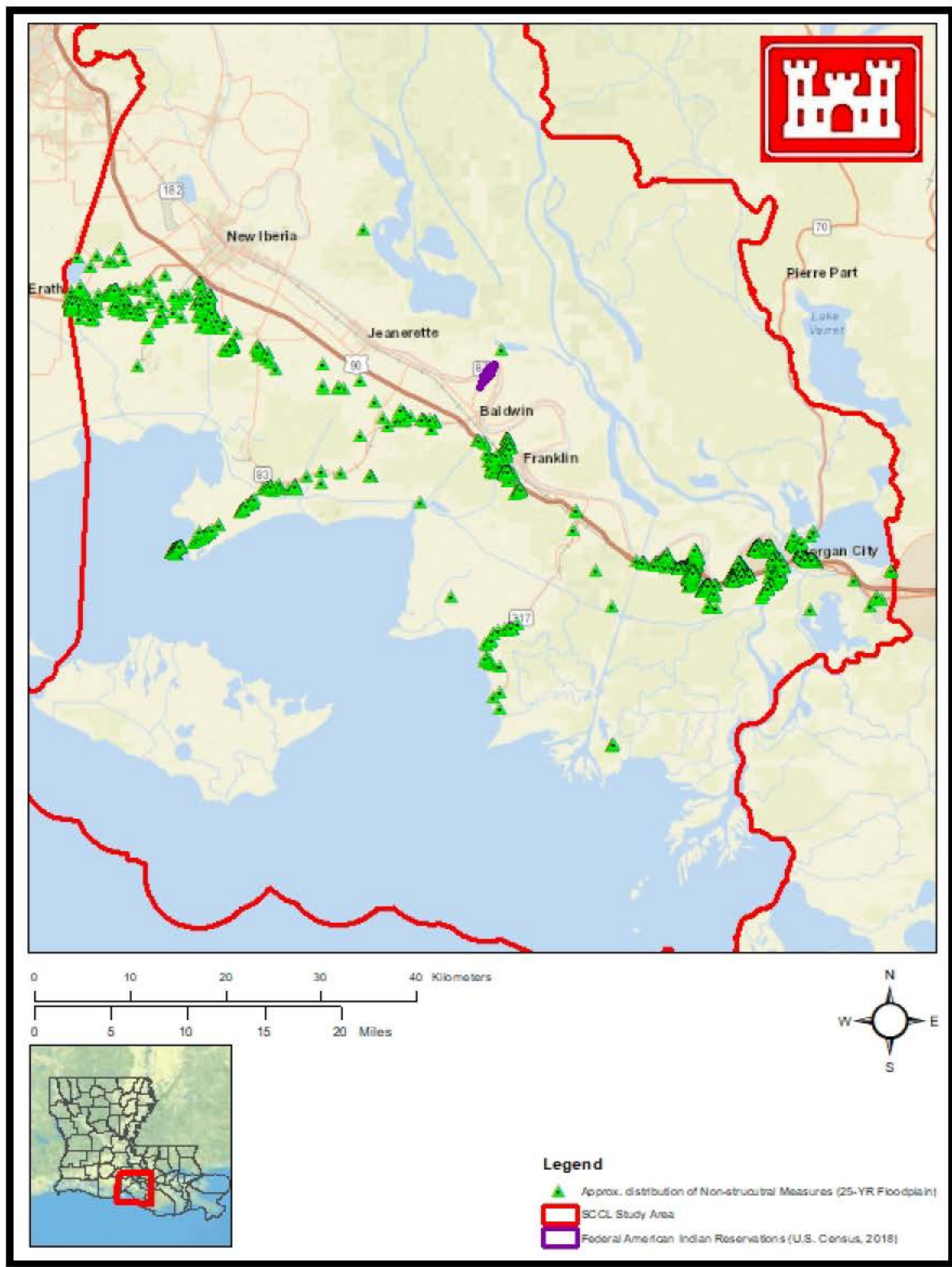


Figure 2. Preliminary distribution of non-structural measures in the 25-Year flood plain.

## Section 6

# Cultural Resource Cost Estimate for Refined Alternative 1

A cost estimate for costs associated with cultural resource preservation for the non-structural Refined Alternative 1 was developed using CEMVN contracted cultural resource survey and mitigation costs, and are shown in Table 6-1.

*Table 6-1. Cultural Resource Cost Estimate for Refined Alternative 1*

Activity	Cost (2020 Dollars)
Architectural/Archaeological Survey	\$3,974,943
Archaeological Mitigation	\$51,784.55
Architectural Mitigation	\$500,000
Contingency (31.7%)	\$3,117,000
<b>Total</b>	<b>\$9,834,000</b>