



# Upper Barataria Basin, Louisiana Feasibility Report



**Appendix I – Programmatic Agreement**

**December 2021**

**Programmatic Agreement  
among  
The United States Army Corps of Engineers,  
Louisiana State Historic Preservation Officer, and  
The Choctaw Nation of Oklahoma  
Regarding  
Plans to Address Effects of Repetitive Storm Events in the Upper Barataria  
Basin Coastal Area, Assumption, Ascension, St. James, Lafourche,  
St. John the Baptist, St. Charles, and Jefferson Parishes, Louisiana  
(UBB PA)**

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 (CPRA) as the Non-Federal Sponsor (NFS), is conducting the “Upper Barataria Basin Coastal Feasibility Study” (UBB; 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 UBB study area, which includes the Louisiana parishes of Assumption, Ascension, St. James, Lafourche, St. John the Baptist, St. Charles, and Jefferson encompasses approximately 800 square miles dominated by extensive coastal wetlands created by the deltaic processes of the Mississippi River, and characterized by a number of former distributary channels extending into the basin from either Bayou Lafourche or from the Mississippi River; and

WHEREAS, the study area is prone to coastal storm damages from tidal surges, storm surges, and rainfall. The headwater flooding from rainfall is intensified by tidal events, resulting in flood damages to industrial, commercial, and agricultural facilities as well as residential structures and critical evacuation routes such as US Highway 90 in the basin. Additionally, tidal events can create a backwater effect that does not allow rainfall to drain from within the basin; and

WHEREAS, the USACE has determined that the UBB project is an “Undertaking” pursuant to the National Historic Preservation Act of 1966 (16 U.S.C. 470), as amended, (NHPA), and may have an adverse effect on properties included or eligible for inclusion in the National Register of Historic Places (NRHP); and

WHEREAS, the USACE has elected to fulfill its obligations under Section 106 of the NHPA through the execution and implementation of a Programmatic Agreement (this Agreement) as provided in 36 CFR 800.14(b); and

WHEREAS, the USACE has involved the public through the National Environmental Policy Act (NEPA) process, which affords all persons, organizations and government agencies the right to review and comment on proposed major federal actions that are evaluated by a NEPA document. A public website page with study information and request for feedback was established in December of 2018. A general scoping meeting requesting feedback was conducted on January 10, 2019 using Facebook Live Streaming; and

WHEREAS, a Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) was published in the Federal Register (Volume 84, No. 63) on April 2, 2019. Public meetings to collect input during planning were held within the study area on May 1, 2019 and May 2, 2019; and

WHEREAS, a Public Notice for the UBB Draft Feasibility Report with Integrated Environmental Impact Statement was published in the Baton Rouge and New Orleans Advocate for the 45-day comment period beginning November 29, 2019 and ending January 13, 2020. This document included a general discussion of cultural resources within the study area; and

WHEREAS, a Notice of Intent to prepare a Programmatic Agreement regarding the UBB dated April 13, 2020 was sent to the Advisory Council on Historic Preservation (ACHP), Louisiana State Historic Preservation Officer (LA SHPO), Tribal Historic Preservation Officers (THPO) and federally recognized Indian Tribes as defined under 36 CFR 800.16(m) (Tribes); and

WHEREAS, after viewing the available details of the Recommended Plan, on November 10, 2020 the ACHP declined the invitation to participate in consultation to develop this Agreement and to seek ways to avoid, minimize, or mitigate adverse effects on historic properties; and

WHEREAS, the Recommended Plan for authorization by Congress to be contained within a Final Draft Feasibility Study with Integrated Environmental Impact Statement was shared with the LA SHPO and Tribes on December 18, 2020; and

WHEREAS, the USACE consulted with the Louisiana State Historic Preservation Officer (LA SHPO), Tribal Historic Preservation Officers (THPO) and federally recognized Indian Tribes as defined under 36 CFR 800.16(m) (Tribes), and other appropriate consulting parties in developing this Agreement in order to define efficient and cost effective processes for taking into consideration the effects of the UBB project upon historic properties pursuant to 36 CFR 800.14(b); and

WHEREAS, the USACE acknowledges Tribes as sovereign nations which have a unique government-to-government relationship with the federal government and its agencies; USACE further acknowledges its Trust Responsibility to those Tribes; and

WHEREAS, the USACE made a reasonable and good faith effort to identify any Tribes that may attach religious and cultural significance to historic properties that may be affected by the undertaking; and

WHEREAS, the USACE has invited the Alabama-Coushatta Tribe of Texas, Caddo Nation of Oklahoma, Chitimacha Tribe of Louisiana, Choctaw Nation of Oklahoma, Coushatta Tribe of Louisiana, Jena Band of Choctaw Indians, Mississippi Band of Choctaw Indians, Seminole Nation of Oklahoma, Seminole Tribe of Florida, and the Tunica-Biloxi Tribe of Louisiana to consult in the development of this Agreement.; and

WHEREAS, the USACE will invite any interested Tribe who participates in the development of this Agreement to sign this Agreement as an Invited Signatory Party, and those Tribes not requesting to sign this Agreement as an Invited Signatory Party will be invited to sign as a Concurring Party; and

WHEREAS, the USACE will furthermore take appropriate steps to involve and notify parties, as appropriate, during the implementation of the terms of this Agreement; and

WHEREAS, the Louisiana Coastal Protection and Restoration Authority (CPRA) is a local sponsor for UBB project and has participated in the development of this Agreement and will be invited to sign this Agreement as a Concurring Party; and

NOW, THEREFORE, the USACE, LA SHPO, Choctaw of Oklahoma (Invited Signatory) and CPRA (Concurring Party) agree that the implementation of the following stipulations will evidence that the USACE has taken into account the effects of the UBB project upon historic properties.

## **STIPULATIONS**

The USACE shall adhere to the process and protocols set forth in this Agreement.

### **I. Correspondence**

Electronic mail (email) will serve as the official correspondence method for all communications regarding this Agreement and its provisions. See Appendix A for a list of contacts and email addresses. Contact information in Appendix A may be updated as needed without an amendment to this Agreement. It is the responsibility of each signatory to immediately inform the USACE of any change in name, address, email address, or phone number of any point-of-contact. The USACE will forward this information to all signatories by email. Failure of any party to this Agreement to notify the USACE of any change to a point-of-contact's information shall not be grounds for asserting that notice of a proposed action was not received.

- A. All standard response timeframes established by 36 CFR Part 800 will apply to this Agreement, unless an alternative response timeframe is agreed to by the LA SHPO and Tribes. The USACE may request expedited review by the LA SHPO and Tribes on a case by case basis. Such expedited review period shall not be less than 10 working days.

### **II. Tribal Consultation**

- A. The Choctaw Nation of Oklahoma participated in the development of this Agreement and will sign this Agreement as an Invited Signatory Party.

### **III. Public Involvement**

- A. The USACE, in consultation with the LA SHPO, shall continue to identify and provide members of the public likely to be interested in the effects of the UBB project upon historic properties with a description of the undertaking and the provisions of this Agreement.
- B. Specific cultural resources data will not be released to the general public or become released as part of NEPA documents.
- C. To the extent permitted under applicable federal laws and regulations (e.g., Section 304 of the NHPA, Section 9 of the Archaeological Resources Protection Act [ARPA]), the USACE will release to the

public, documents developed pursuant to this Agreement, effects determinations, and Interim Progress Reports.

IV. Other Consulting Parties

- A. Any member of the public expressing an interest in the effects of this undertaking on historic properties, may become a consulting party by submitting a written request to USACE.
- B. The USACE, in consultation with the LA SHPO, will continue efforts during the duration of this Agreement to identify other parties with demonstrated interests in the preservation of historic properties.
- C. The USACE will document the consulting parties in the consultation process for the UBB project and maintain it as part of the administrative record.
- D. If any dispute arises about the right to be recognized as a consulting party, the USACE will contact the ACHP and provide all appropriate documentation. The ACHP will participate in the resolution of the issue.

V. Identification, Evaluation, and Assessment of Effects Determinations

- A. USACE shall ensure staff or contractors whose qualifications meet the Secretary of the Interior's Professional Qualification Standards set forth in the Federal Register at 48 Fed. Reg. 44716-01 (September 29, 1983), as amended complete identification and evaluation of historic properties per National Register of Historic Places Criteria. USACE shall be responsible for all determinations submitted to LA SHPO and Tribes.
- B. The USACE, in consultation with the LA SHPO and Consulting Tribes, will define and document the geographic areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist, referred to as an area of potential effects (APE). Because UBB contains borrow sources and mitigation areas that are spatially distinct from the risk reduction system, there will be multiple APEs (collectively, the UBB APE). Each APE will assist in identifying the potential for cumulative effects upon historic properties. The reasonable and good faith identification and evaluation efforts will be limited to the identified UBB APE.
- C. UBB APEs are defined at this time to include areas that may be directly or indirectly impacted by:

1. A structural alignment constructed to a 1% AEP (100-yr future design) and totaling a little over 161,300 feet (30.6 miles) in length to be constructed in St. Charles and Lafourche Parishes, including its associated features (i.e., pump stations, canals, and drainage structures), as well as activities associated with construction (i.e., access roads and staging areas);
  2. A 270 feet barge gate structure across Bayou Des Allemands in St. Charles Parish;
- D. Borrow sources and mitigation sites are not yet fully defined, and will be coordinated for purposes of defining the APE by the USACE, LA SHPO, and Consulting Tribes. Additional areas of the UBB APE will be identified as necessary.
- E. Following the delineation of final UBB APE components, the USACE will conduct a reasonable and good faith effort to identify historic properties located within the UBB APE. Level of survey to be conducted within the APE and methodology will be developed in consultation with the LA SHPO and Consulting Tribes, in a manner equivalent to the Section 106 Process of NHPA and equivalent to Reconnaissance or Phase I Investigations required by the Louisiana Division of Archaeology. Areas that are inaccessible or are determined to possess a low probability for containing historic properties may be excluded from survey after consultation with the LA SHPO and Consulting Tribes.
- F. The USACE will ensure that the results of identification efforts are documented in reports that meet the standards of the Louisiana Division of Archaeology, and will ensure that the reports are submitted to the LA SHPO and Consulting Tribes for review and comment. The USACE will ensure that the comments provided by the LA SHPO and Consulting Tribes are addressed and incorporated into a final report.
- G. The USACE will consult with the LA SHPO and Consulting Tribes on the eligibility of any properties identified during the identification effort. For any properties determined not eligible for nomination to the NRHP, no further consideration will be required under the terms of this Agreement. For those properties determined eligible for nomination, the USACE will proceed in accordance with Stipulation VII. For those properties whose eligibility for the NRHP cannot be determined on the basis of the identification effort, the USACE will consult with the LA SHPO and Consulting Tribes to determine if the

proposed project can avoid the properties. If the properties can be avoided, the USACE will proceed as in Stipulation VI. If the properties cannot be avoided, the USACE will ensure that additional investigations to evaluate each property's eligibility for nomination will be undertaken.

- H. The USACE will ensure that the results of the evaluation efforts are documented in reports that meet the standards of the Louisiana Division of Archaeology and will ensure that the reports are submitted to the LA SHPO and Consulting Tribes for review and comment. The USACE will ensure that the comments provided by the LA SHPO and Consulting Tribes are addressed and incorporated into a final report.
- I. The USACE will consult with the LA SHPO and Consulting Tribes on the eligibility of the properties assessed during the evaluation effort. For any properties determined not eligible for nomination to the NRHP, no further consideration will be required. For those properties determined eligible for nomination, the USACE will proceed in accordance with Stipulation VII.
- J. In the event of disagreement between the USACE, LA SHPO, and/or Consulting Tribes concerning the eligibility of a property for listing in the NRHP under 36 CFR Part 60, the USACE shall request a formal determination of eligibility for that property from the Keeper of the NRHP (Keeper). The determination by the Keeper will serve as the final decision regarding the NRHP eligibility of the property.

#### VI. Coordination of Effects Determinations

- A. The USACE shall evaluate the effects of a project activity on historic properties in a holistic manner and will not segment activities. In the event the USACE determines that any aspect of the project activity will have an effect or adverse effect on a historic property within the UBB APE, the entire project activity will be reviewed accordingly.
- B. Consultation under this Agreement will be concluded for USACE findings of *no historic properties affected* and *no adverse effect* when the LA SHPO and Consulting Tribes have been provided the opportunity to review and comment on the written documentation and either concur or do not object within 30 days of receipt of the USACE finding, and subject to the provisions of this Agreement.



- C. Following submission of written documentation to the LA SHPO and Consulting Tribes, the USACE may propose a finding of *no adverse effect with conditions*, as appropriate. Such conditions may include, but are not limited to:
  - 1. Avoidance and/or preservation-in-place of historic properties;
  - 2. Modifications or conditions to ensure consistency with the Secretary of Interior's Standards for the Treatment of Historic Properties and applicable guidelines.
- D. In the event of an objection by the LA SHPO, Consulting Tribes or other consulting parties regarding the USACE's findings of *no historic properties affected*, findings of *no adverse effect*, and findings of *no adverse effect with conditions*, the USACE shall seek to resolve such objection through consultation in accordance with procedures outlined in Stipulation XII.

## VII. Resolution of Adverse Effects

- A. In the event that the USACE, in consultation with the LA SHPO and Consulting Tribes, determines that the implementation of a project activity may result in an adverse effect to historic properties (as defined in 36 CFR 800.5(a)(1) and (2) of the ACHP's regulations), the USACE shall notify the ACHP, LA SHPO, Consulting Tribes, other consulting parties and the public. If the project activity will affect a National Historic Landmark, USACE shall also notify the National Park Service (NPS). The notification of adverse effect shall include the following documentation, subject to the confidentiality provisions of 36 CFR 800.6:
  - 1. Summary description of the activity area;
  - 2. Summary of identification efforts in accordance with this agreement;
  - 3. Summary analysis of effects to historic properties;
  - 4. Summary of alternatives considered to avoid or reduce adverse effects;
  - 5. Proposed mitigation measures in accordance with Stipulation VIII when adverse effects cannot be avoided or conditioned to reach a determination of no adverse effect; and

- B. The LA SHPO, Consulting Tribes, and any additional consulting parties, including the NPS, as appropriate, shall be afforded an opportunity to review and to comment on the adverse effect notification for a period of thirty (30) calendar days after receipt of the adverse effect notification.
- C. Should the USACE, LA SHPO, and Consulting Tribes disagree on the proposed mitigation measures, the USACE shall seek to resolve such objection through consultation in accordance with Stipulation XII.

#### VIII. Standard Mitigation Measures

- A. The USACE, in coordination with the LA SHPO, Consulting Tribes, and other consulting parties, will identify standard mitigation measures for adverse effects to historic properties. Standard mitigation measures will be tailored to the significance of the historic property, and may include, but are not necessarily limited to, one or more of the following:
  - 1. Public Interpretation;
  - 2. Documentation consistent with the Level II Standards of the Historic American Building Survey/Historic American Engineering Record (HABS/HAER);
  - 3. Historical, Architectural or Archeological Monographs;
  - 4. Rehabilitation of historic buildings in accordance with the Secretary of the Interior's Standards for the Treatment of Historic Properties (36 CFR Part 68);
  - 5. Off-site mitigation, including acquisition of property or preservation easements on property, as appropriate and legal, containing threatened resources of comparable significance in circumstances where there is an imminent need to proceed with construction activity and it is in the public interest;
  - 6. Ethnographic studies;
  - 7. Studies of traditional cultural properties;
  - 8. Relocation of historic properties to sites approved by the LA SHPO as possessing similar overall character; and

## 9. Data recovery for archeological properties.

- B. In the event that the LA SHPO, and/or Consulting Tribes determine that standard mitigation measures are not adequate or appropriate to resolve adverse effects, the USACE, LA SHPO, and Consulting Tribes will consult to negotiate additional mitigation measures. Other consulting parties may express their concerns regarding mitigation measures through written comments submitted to any of the signatories to the Agreement.
- C. Once the USACE, LA SHPO, and/or Consulting Tribes agree to the terms of the mitigation, such agreement will be formalized through an MOA executed and implemented pursuant to 36 CFR 800.6(c). Such MOA shall be forwarded to all signatories to this Agreement. If there is a disagreement that cannot be resolved, the formal dispute provisions at Stipulation XII will be implemented.

## IX. Curation

Recovered archaeological collections from a USACE-required archaeological survey, evaluation, and/or mitigation plan remain the property of the land owner (either private, State, Federal, etc.). USACE, in coordination with the LA SHPO and appropriate Federally-recognized Tribe(s) may, as determined through consultation, encourage private land owners to transfer any recovered artifacts and related documentation to an appropriate archive or public or Federally-recognized Tribal entity. USACE, in coordination with LA SHPO and Tribe(s), shall work with all Tribal, State, and local agents to support steps that ensure the long-term curation of these artifacts and documents through the transfer of the materials to a suitable repository as agreed to by USACE, the SHPO, and Tribes(s) and following applicable State or Tribal guidelines. USACE shall ensure that collections from Federal or Tribal land, including field and laboratory records sufficient to document the collection, are curated at a repository meeting federal standards (36 C.F.R. 79) as agreed to by USACE, LA SHPO, and Tribe(s), and follow that repository's guidelines..

## X. Unanticipated Discoveries and Effects

- A. In the event that the USACE discovers a previously unidentified cultural resource, including but not limited to archeological sites, standing structures, human remains, and properties of traditional religious and cultural significance to Tribes, during the execution of the project, the USACE immediately shall secure the immediate jobsite by the most appropriate quickly available means, to include but not necessarily limited to a 50-foot radius buffer around the

unexpected discovery, and suspend work in that buffered area of the affected resource. The USACE shall notify the LA SHPO, Consulting Tribes, and additional consulting parties, as appropriate, of the finding within 24 hours. Any previously unidentified cultural resource will be treated as though it is eligible for the NRHP until other determination may be made through consultation, within a period of 7 days. If consulting parties agree that the cultural resource is not eligible for the NRHP, then suspension of work will end. If consulting parties agree that the cultural resource is eligible for the NRHP, then the USACE, in consultation with the LA SHPO and Consulting Tribes, will develop a treatment plan or Standard Mitigation Measures agreement in accordance with Stipulation VIII. USACE will implement the plan or Standard Mitigation Measures agreement once approved by the LA SHPO, Consulting Tribes, and additional consulting parties, as appropriate. If there is a disagreement that cannot be resolved, the formal dispute provisions at Stipulation XII will be implemented.

- B. In the event that the USACE is notified of a previously unidentified archaeological property on federal or tribal land during the execution of any of the undertakings, the USACE will ensure that procedures established by ARPA 1979 (Public Law 96-95; 16 U.S.C. 470aa-mm), as amended, and implementing regulations (43 CFR Part 7) will be followed.
- C. The USACE shall insure that all contractors are made aware of the requirements of this Agreement. Language of Stipulation X shall be included in Construction Plans and Specifications. In the event that a contractor discovers a previously unidentified cultural resource, the contractor shall immediately notify the USACE and refrain from further project activities within a minimum of 50 feet from the discovery (50-foot radius no work buffer), and shall take reasonable efforts to avoid and minimize harm to the cultural resource. The USACE shall begin implementing any additional measures thought necessary to secure the historic property for safety and security concerns, within one day of the discovery.
- D. In the event that previously unidentified effects to historic properties are identified following the completion of work within an activity area, any party may provide the USACE with evidence of such effects for a period of twelve (12) months from the completion of the affecting work. The USACE, in consultation with the LA SHPO, Consulting Tribes, and ACHP, as appropriate, will review and if determined necessary will develop a treatment plan or Standard Mitigation Measures agreement in accordance with Stipulation VIII. Consultation to develop the treatment plan will begin as soon as it

is determined necessary, but not more than 1 month from notification.

- E. If the USACE, LA SHPO, and/or Consulting Tribes cannot agree on an appropriate course of action to address the discovery situation, the USACE shall initiate the dispute resolution process set forth in Stipulation XII.

XI. Treatment of Human Remains and Items of Religious and Cultural Importance

- A. Portions of Language of Stipulation XI shall be included in Construction Plans and Specifications, to offer fullest knowledge of the importance therein
- B. Documenting Human Remains: The recordation of human remains in a burial context or as individual elements is a task that requires sensitivity and good judgment, as defined through consultation. Consultation is a necessary part of documenting any human remains (in a discovery situation or during the treatment of historic properties) following the provisions of this stipulation. In planning how to document human remains (photography, drawing for the purposes of illustration, videography, or other), the determination will be made in consultation and concurrence with the LA SHPO, Federally-recognized Tribe(s), and, as appropriate, other descendant communities. Even if it is determined to photo document the human remains, the photographs should not be published or made publicly available in any way. The USACE will maintain records for the purpose of management of the human remains, with the intent of satisfying the protection provisions of the federal and state laws governing human remains, the records will be hardcopy and digital. When the records are digital, they will not be connected to externally available electronic resources like GIS servers or other and marked as restricted (per NHPA, FOIA, and, as appropriate, ARPA). As part of the consultation for the UBB where Human Remains are present, the USACE will ensure that the consultation happens as appropriate to each jurisdiction (State or Federal) to determine the course of action for each situation.
- C. General Human Remains Discovery Process:
  - 1. In the event that previously unreported or unanticipated human remains, burials, funerary objects, Native American sacred objects, or Native American objects of cultural patrimony are encountered during field investigations, laboratory work, or during construction or maintenance activities originating from federal, state, or private lands

(Federal and Non-Federal Lands) USACE shall notify the LA SHPO and Tribes within 24-hrs of the discovery. Concurrently, USACE will implement the provisions 2 thru 6, below:

2. Any USACE employee or contractor(s) who knows or has reason to know that they have inadvertently discovered human remains, burials, funerary objects, Native American sacred objects, or Native American objects of cultural patrimony must provide immediate telephone notification of the inadvertent discovery to the responsible Federal construction official, with written confirmation, to the USACE Point of Contact in this agreement. The written notification should contain the results, if any, of the field evaluation. The USACE Cultural Resources Staff and Tribal Liaison will begin to develop a plan of action to inform the District Commander of the consultation tasks necessary to address the discovery. No photographs should be taken at this time of the human remains.
3. All fieldwork, construction or maintenance activities, 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, within the APE. USACE will 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. USACE will take immediate steps, if necessary, to further secure and protect inadvertently discovered human remains, burials, funerary objects, Native American sacred objects, or Native American objects of cultural patrimony, as appropriate, including stabilization, or covering the find location.
4. USACE will notify local law enforcement, coroner, or medical examiner, as appropriate, and the LA SHPO, per the Point Of Contact in Appendix A, 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. USACE will also notify Tribes of the discovery within the same period. If the appropriate local law enforcement official determines that the remains

are not involved in a criminal investigation, USACE will follow jurisdictional guidelines as provided for based on land ownership (per Stipulation XI. D.).

- a. In cases where human remains, burials, funerary objects, Native American sacred objects, or Native American objects of cultural patrimony are discovered during the implementation of a USACE-funded undertaking on Federal Land, USACE will notify by telephone and e-mail the LA 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.
  - b. In cases where the human remains are discovered on Non-Federal Lands and are determined to be Native American, the State of Louisiana will notify and coordinate with Tribes, but not later than forty-eight (48)-hours from the time of their notification. As requested and to the extent of its legal authority, USACE will assist the State of Louisiana, to consult with Tribes and affected parties, as appropriate.
  - c. In cases where the human remains are discovered on Non-Federal Lands and determined to be other than Native American, the State of Louisiana will notify and coordinate. As requested and to the extent of its legal authority, USACE will assist the State of Louisiana to consult with the affected parties, as appropriate.
5. USACE will consult with LA SHPO, THPOs, and appropriate Federally-recognized 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 laws and their implementing regulations, if the discovery of Native American human remains, funerary objects, Native American sacred objects, or Native American objects of cultural patrimony occurs on Federal Land.
  6. Following the outcome of any consultation (Federal Lands or Non-Federal Lands) to address the discovery of human

remains, USACE will coordinate with any contractor(s) regarding any required scope of project modification necessary to implement recommendations from the consultation and facilitate proceeding with the Undertaking.

- D. **Specific Authorities and Processes for Addressing Human Remains:** If human remains, funerary objects, Native American sacred objects, or Native American objects of cultural patrimony are encountered during project field investigations or laboratory work or during construction activities, the USACE will comply with the provisions based on the nature of the land ownership at the time remains or objects are encountered, in accordance with Engineering Regulation 1102-2-100 (Policy & Guidance), Appendix C-4.

1. **Federal Lands:** If discovered/recovered from *Federal lands*, USACE shall concurrently implement processes defined in this Agreement, satisfying NHPA, as well as
  - ensuring consultation with appropriate Federally-recognized Tribes for any human remains, funerary objects, Native American sacred objects, or Native American objects of cultural patrimony (objects) as required by the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA), as amended (25 U.S.C. §§ 3001-3014) and its implementing regulations (43 C.F.R. Part 10; and
  - ensuring the appropriate provisions of the Archaeological Resources Protection Act, 16 USC §§ 470aa et seq., are followed.
- a. For discoveries of human remains, burials, funerary objects, Native American sacred objects, or Native American objects of cultural patrimony, USACE will continue to consult with the LA SHPO, claimant Federally-recognized Tribes, and other affected parties, as appropriate, whether they are Signatories to this Agreement or not, regarding additional measures to avoid and protect or mitigate the adverse effect of the Undertaking. These measures may include:
  - i. Visits to the site by the LA SHPO, claimant Federally-recognized Tribes, and other affected parties, as appropriate;



- ii. Formally evaluate the archaeological site for NRHP-eligibility;
  - iii. Explore potential avoidance alternatives;
  - iv. Develop and implement a mitigation plan in consultation and concurrence with the LA SHPO, claimant Federally-recognized Tribes, and other affected parties, as appropriate, including procedures for disinterment and re-interment.
- b. Initial Determination of nature of discovered Human Remains when from Federal Lands (Native American or Other)
  - i. USACE, in consultation with the LA SHPO and claimant Federally-recognized Tribes, whether they are Signatories to this Agreement 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 USACE archaeologists or any other professional without first consulting with the claimant Federally-recognized Tribes, whether they are Signatories to this Agreement or not. The consulting expert will 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.
  - ii. USACE, in consultation with the LA SHPO, claimant Federally-Recognized Tribes, and other affected parties, as appropriate, whether they are Signatories to this Agreement or not, will 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, USACE will notify the appropriate affected parties of its findings. This notification will include pertinent information as to kinds of human remains, funerary objects, Native American sacred objects, or Native American items of cultural patrimony discovered, their condition, and the circumstances of their inadvertent discovery.

- iii. If the remains are determined NOT to be Native American in origin, USACE will follow the principals outlined in the 2007 ACHP "Policy Statement Regarding Treatment Of Burial Sites, Human Remains and Funerary Objects" to respectfully treat the remains and determine proper disposition, disinterment, re-interment, and memorialization, as well as any Real Estate guidance at the time of the discovery.
- c. Initiating NAGPRA Consultation following Inadvertent Discoveries/Recovery of Human Remains from Federal Lands
- i. For the purposes of notification and consultation of an inadvertent discovery, USACE considers the Consulting Tribes, and Federally-recognized Tribes who have identified the Parish as an area of interest are likely to be cultural affiliated with inadvertently discovered NAGPRA items found on a specific Work Item.
  - ii. Upon certification of an inadvertent discovery of NAGPRA items by the responsible federal official, the USACE shall notify the consulting Federally-recognized Tribes. This notification will be made via email and telephone call to the appropriate consulting Tribes' Primary POC within twenty-four (24) hours, and include concurrent hard copy written notification, via regular mail. Notifications shall include a copy of the field documentation and a list of all other parties being notified.
  - iii. No later than three (3) days after the email and telephone notification, the consulting Federally-

recognized Tribes and/or claimant Federally-recognized Tribe shall agree to a date and time for a teleconference to begin the consultation process.

d. Consultation for Inadvertent Discoveries//Recovery of Human Remains from Federal Lands that are Native American

- i. Consultation will begin with the teleconference with all consulting Federally-recognized Tribes and/or claimant Federally-recognized Tribe. At this time both parties may determine that the cause of the inadvertent discovery is not ongoing, that the location where the discovery occurred is secure (or can be secured), and that the NAGPRA items do not need to be removed.
- ii. If all Consulting Parties participating in the consultation reach the same conclusion under A above, then the USACE will issue a written notice to all parties concluding that the location of the inadvertent discovery is secure and that the NAGPRA items will be left in place. If any Consulting Parties disagree with this assessment, then consultation will progress with all Consulting Parties including the signatories to this Agreement.
- iii. If consensus is not attained, the USACE will notify, in writing, all consulting Federally-recognized Tribes of its intent to complete consultation with a written plan of action in accordance with 43 CFR § 10.5(e). The USACE will produce a NAGPRA plan of action which details the steps it will follow to complete the NAGPRA consultation process (43 CFR § 10.5(e)). This plan will contain a) a list of all materials considered to be NAGPRA items, b) the planned treatment, care, and handling of the materials, c) any planned recording of the find location as an archaeological site, d) any analysis planned for the remains, e) and a description of any anticipated summary reports. USACE and the consulting Federally-

recognized Tribes will create a template plan of action to be on file.

- iv. Within thirty (30) days of receipt of notice to consult and the action plan, the consulting Federally-recognized Tribes agree to provide a summary response containing the names and contact info for any potential lineal descendants, recommendations on any topics that should be included in consultation, request for any additional consultation meetings, recommendations for any treatment actions for the location of the discovery, and a list of any items that should be considered as NAGPRA items. Submission of this report does not preclude on-going discussion on any of these topics as consultation progresses.
  - v. Based on the responses received, USACE may choose to update and resubmit the plan of action to all Consulting Parties, but at a minimum will notify all Consulting Parties in writing of its intent to implement the plan of action previously presented to the Consulting Parties.
  - vi. At the conclusion of implementation of the plan of action, USACE will provide all of the Consulting Parties, in writing, copies of the draft Notice of Intended Disposition, and will provide the Consulting Parties thirty (30) days to comment.
- e. Process to Determine Disposition of Native American Human Remains from Federal Lands
- i. Once the thirty (30) days has commenced after providing the Consulting Parties with the draft copy of the Notice of Intended Disposition, and considering all comments, USACE will publish the Notice of Intended Disposition in a newspaper of general circulation in the local area, and also in a newspaper of general circulation in the local area for the Tribes. Both notices will be published a second time, at least one week later.

- ii. Copies of the Notice of Intended Disposition, as well as a description of when and where it was published, will be provided to the National Parks Service, National NAGPRA program.
  - iii. USACE anticipates that during the notice period described above, discussions will begin with the appropriate claimant Federally-recognized Tribe/s regarding disposition. Disposition will generally take the form of a physical transfer of custody and reburial on USACE lands, or the claimant Federally-recognized Tribe(s) may choose to rebury privately once the Tribe assumes control over the NAGPRA items.
2. Non-Federal Lands: If human remains are recovered *from NFS, state, or other private land*, USACE will require that the laws of the State of Louisiana are followed. As requested and to the extent of its legal authority, USACE will support the State of Louisiana in following the state's processes related to discovery, disposition, disinterment, re-interment, and memorialization.
- a. Louisiana Statutes related to the discovery of human remains are found in the Unmarked Human Burial Sites Preservation Act (R.S. 8:671-681).
    - i. <https://www.crt.state.la.us/cultural-development/archaeology/CRM/cemeteries-burials/index>
    - ii. For unanticipated discoveries on private, parish, or state land in Louisiana, the Louisiana Unmarked Human Burial Sites Preservation Act (R.S. 8:671-681) applies. The Louisiana Division of Archaeology is the lead agency and will consult with USACE, Tribe(s), landowner, and descendants as appropriate to determine the necessary course of action
  - b. If the human remains recovered are determined to be Native American, USACE, in conjunction with the NFS, will identify and secure a mutually agreeable reburial location in which to reinter the human remains removed from the project area. Other arrangements may defined at the time it is

determined that Native American human remains have been recovered, but will include at a minimum:

- i. In person consultation regarding the human remains and any objects;
  - ii. The identification of a reburial location as close to the disinterment location as feasible;
  - iii. A commitment on the part of USACE to facilitate the reburial by an affiliated Tribe and to protect the human remains and associated grave goods, at no cost to the Federally-recognized Tribes, or the LA SHPO.
  - iv. Acknowledgment of the establishment of the cemetery in the administrative record and in the real estate records as determined best at time of reburial.
- c. If the remains are determined NOT to be Native American in origin, USACE will follow the principals outlined in the 2007 ACHP "Policy Statement Regarding Treatment Of Burial Sites, Human Remains and Funerary Objects" to respectfully treat the remains and determine proper disposition, disinterment, re-interment, and memorialization, as well as any USACE real estate guidance at the time of the discovery.

## XII. Dispute Resolution

- A. Except for the resolution of eligibility issues, as set forth in Stipulation V, should the LA SHPO, Consulting Tribes, or a member of the public disagree on the implementation of the provisions of this agreement, they will notify the USACE, who will seek to resolve such objection through consultation.
- B. If the dispute cannot be resolved through consultation, the USACE shall forward all documentation relevant to the dispute to the ACHP, including any proposed resolution identified during consultation. Within seven (7) calendar days after receipt of all pertinent documentation, the ACHP may:
  1. Provide the USACE with recommendations to take into account in reaching final decision regarding the dispute; or

2. Notify the USACE that it will comment pursuant to 36 CFR 800.7(c) and provide formal comments within twenty-one (21) calendar days.
- C. Any recommendation or comment provided by the ACHP will be understood to pertain only to the subject of the dispute, and the USACE's responsibilities to fulfill all actions that are not subject of the dispute will remain unchanged.
- D. If the ACHP does not provide the USACE with recommendations or notification of its intent to provide formal comments within seven (7) calendar days, the USACE may assume that the ACHP does not object to its recommended approach and it will proceed accordingly.

### XIII. Administration, Effect, and Duration of this Agreement

- A. This Agreement will be signed in counterparts and shall take effect upon execution by the USACE and LA SHPO.
- B. This Agreement will remain in effect for ten (10) years from the date of execution, unless extended for a two-year period by written agreement negotiated by all signatories.
- C. All signatories to this Agreement shall meet annually to evaluate the effectiveness of this Agreement, beginning one (1) year after the date of execution. The USACE shall coordinate such annual meetings following the execution of this Agreement. At each annual meeting, held in manner and location as mutually agreed upon by all signatories, the effectiveness of the Stipulations of this Agreement shall be discussed.

### XIV. Amendment and Termination

- A. Notwithstanding any provision of this Agreement, USACE, LA SHPO, and Invited Signatory Parties may request that it be amended, whereupon these parties will consult to consider such amendment. The USACE will facilitate such consultation within thirty (30) days of receipt of the written request. Any amendment will be in writing and will be signed by the USACE, LA SHPO, and Invited Signatory Parties, and shall be effective on the date of the final signature.
- B. Any Invited Signatory Party may withdraw its participation in this Agreement by providing thirty (30) days advance written

notification to all other parties. In the event of withdrawal by one Invited Signatory Party, the Agreement will remain in effect for the other signatories.

- C. The Agreement may be terminated in accordance with 36 CFR Part 800. Any party requesting termination of this Agreement shall provide thirty (30) days advance written notification to all other signatories.

Execution of this Agreement by the USACE, and LA SHPO and implementation of its terms, evidences that the USACE has taken into account the effects of the UBB project upon historic properties and has afforded the ACHP an opportunity to comment.



**SIGNATORY PAGE**

**Programmatic Agreement  
among  
The United States Army Corps of Engineers,  
Louisiana State Historic Preservation Officer, and  
The Choctaw Nation of Oklahoma  
Regarding  
Plans to Address Effects of Repetitive Storm Events in the Upper Barataria  
Basin Coastal Area, Assumption, Ascension, St. James, Lafourche,  
St. John the Baptist, St. Charles, and Jefferson Parishes, Louisiana  
(UBB PA)**

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



Stephen F. Murphy  
Colonel, Corps of Engineers  
District Commander

Date: 3/9/2021

SIGNATORY PAGE

Programmatic Agreement  
among  
The United States Army Corps of Engineers,  
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Basin Coastal Area, Assumption, Ascension, St. James, Lafourche,  
St. John the Baptist, St. Charles, and Jefferson Parishes, Louisiana  
(UBB PA)

The Louisiana State Historic Preservation Officer



Kristin P. Sanders,  
Louisiana State Historic Preservation Officer

Date: 2/26/2021

**INVITED SIGNATORY PAGE**

**Programmatic Agreement  
among  
The United States Army Corps of Engineers,  
Louisiana State Historic Preservation Officer, and  
The Choctaw Nation of Oklahoma  
Regarding  
Plans to Address Effects of Repetitive Storm Events in the Upper Barataria  
Basin Coastal Area, Assumption, Ascension, St. James, Lafourche,  
St. John the Baptist, St. Charles, and Jefferson Parishes, Louisiana  
(UBB PA)**

**The Choctaw Nation of Oklahoma**

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

\_\_\_\_\_  
Gary Batton, Chief  
Choctaw Nation of Oklahoma

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

**CONCURRING PARTY SIGNATURE PAGE**

**Programmatic Agreement  
among  
The United States Army Corps of Engineers,  
Louisiana State Historic Preservation Officer, and  
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Regarding  
Plans to Address Effects of Repetitive Storm Events in the Upper Barataria  
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St. John the Baptist, St. Charles, and Jefferson Parishes, Louisiana  
(UBB PA)**

**Louisiana Office of Coastal Protection and Restoration Authority Board**

\_\_\_\_\_  
Bren Haase  
Executive Director  
Louisiana Office of Coastal Protection and Restoration Authority Board

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

## Appendix A: Point of Contacts (POC)

### CONTACT INFORMATION FOR CONSULTING PARTIES

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

Federally-Recognized Tribes	
<b>Choctaw Nation of Oklahoma</b>  <u>Primary:</u> Ian Thomson Historic Preservation Department Choctaw Nation of Oklahoma P.O. Box 1210 Durant, OK 74702 (580) 924-8280 <a href="mailto:ithompson@choctawnation.com">ithompson@choctawnation.com</a>  Lindsey D. Bilyeu, MS Senior Compliance Review Officer <a href="mailto:lbilyeu@choctawnation.com">lbilyeu@choctawnation.com</a>  Method of contact for project notification and documentation: email Senior Compliance Review Officer with a copy to THPO.  Method of contact for other communication: email, phone call	<b>Choctaw Nation of Oklahoma</b>  <u>Secondary:</u> Gary Batton, Chief Choctaw Nation of Oklahoma Attn: Choctaw Nation Historic Preservation Department P.O. Box 1210 Durant, OK 74702-1210 (800) 522-6170 <a href="mailto:gbatton@choctawnation.com">gbatton@choctawnation.com</a>

<b>SHPOS &amp; Other Non-Federal Organizations</b>	
<b>Advisory Council on Historic Preservation</b>  <u>Primary:</u> Chris Daniel, Program Analyst Advisory Council on Historic Preservation 401 F Street NW, Suite 308 Washington DC 20001-2637 (202) 517-0223 <a href="mailto:e106@achp.gov">e106@achp.gov</a> ; <a href="mailto:cdaniel@achp.gov">cdaniel@achp.gov</a>  Method of contact for project notification and documentation: email to <a href="mailto:e106@achp.gov">e106@achp.gov</a> and copy to Primary contact email.  Method of contact for other communication: email, phone call	<b>Advisory Council on Historic Preservation</b>  <u>Secondary:</u> John Fowler, Chairman Tom McCulloch, Assistant Director Office of Federal Agency Programs Advisory Council on Historic Preservation 401 F. Street NW, Suite 308 Washington, DC 20001-2637 (202) 517-02280222 <a href="mailto:achp@achp.gov">achp@achp.gov</a> <a href="mailto:tmcculloch@achp.gov">tmcculloch@achp.gov</a>  Method of contact for project notification and documentation: email to <a href="mailto:e106@achp.gov">e106@achp.gov</a> and copy to Primary contact email.  Method of contact for other communication: email, phone call
<b>Louisiana State Historic Preservation Officer</b>  <u>Primary:</u> Chip McGimsey State Archaeologist Division of Archaeology PO Box 44247 Baton Rouge, LA 70804-4241 (225) 219-4598 <a href="mailto:cmcgimsey@crt.la.gov">cmcgimsey@crt.la.gov</a>  Method of contact for project notification and documentation: email at <a href="mailto:section106@crt.la.gov">section106@crt.la.gov</a>  Archaeological Site Forms: Submit to LA Division of Archaeology via email to <a href="mailto:siteforms@crt.la.gov">siteforms@crt.la.gov</a> .  Reports: Hard copy and PDF on CD  Method of contact for other communication: email, phone call	<b>Louisiana State Historic Preservation Officer</b>  <u>Secondary:</u> Nicole Hobson-Morris Division of Historic Preservation PO Box 44247 Baton Rouge, LA 70804-4241 (225) 342-8172 <a href="mailto:nmorris@crt.la.gov">nmorris@crt.la.gov</a>  Method of contact for project notification and documentation: <a href="mailto:section106@crt.la.gov">section106@crt.la.gov</a>  Louisiana Resource Inventory Forms: Submit in pdf to LA Division of Historic Preservation via email to Jennie Garcia <a href="mailto:jgarcia@crt.la.gov">jgarcia@crt.la.gov</a> .  Method of contact for other communication: email, phone call

<p><b>Louisiana Coastal Protection and Restoration Authority</b>  Joseph “Wes” Leblanc  Project Manager  Coastal Protection and Restoration Authority  150 Terrace Avenue  Baton Rouge, Louisiana 70802  Telephone: (225) 342-6750  E-mail: <a href="mailto:Joseph.LebLANC@la.gov">Joseph.LebLANC@la.gov</a></p>	<p><b>Louisiana Coastal Protection and Restoration Authority</b>  Bren Haase  Executive Director  Louisiana Office of Coastal Protection and Restoration Authority  P.O. Box 44027  Baton Rouge, LA 70804-4027  Telephone: (225) 342-1475  E-mail: <a href="mailto:Bren.Haase@la.gov">Bren.Haase@la.gov</a></p>
<p><b>U.S. Army Corps of Engineers (USACE) Districts</b></p>	
<p><b>New Orleans District (CEMVN)</b></p> <p><u>Primary</u>  Paul J. Hughbanks, Archaeologist  CEMVN-PDS-N  4700 Leake Ave.  New Orleans, LA 70118  (504) 862-1100  <a href="mailto:Paul.J.Hughbanks@usace.army.mil">Paul.J.Hughbanks@usace.army.mil</a></p> <p>Jason A. Emery, Cultural Resources  RTS and District Tribal Liaison  CEMVN-PDS-N  4700 Leake Ave.  New Orleans, LA 70118  (504) 862-2364  <a href="mailto:Jason.a.emery@usace.army.mil">Jason.a.emery@usace.army.mil</a>  Method of contact for project notification and documentation: email or receipt of hard copy</p> <p>Method of contact for other communication: email, phone call</p>	<p><b>New Orleans District (CEMVN)</b></p> <p><u>Secondary:</u>  Marshall K. Harper, Branch Chief  Environmental Studies Branch  CEMVN-PDS  4700 Leake Ave.  New Orleans, LA 70118  (504) 862-1151  <a href="mailto:Marshall.K.Harper@usace.army.mil">Marshall.K.Harper@usace.army.mil</a></p>