

**MEMORANDUM OF AGREEMENT
AMONG
THE FEDERAL EMERGENCY MANAGEMENT AGENCY
THE LOUISIANA STATE HISTORIC PRESERVATION OFFICER
AND THE ADMINISTRATORS OF THE TULANE EDUCATIONAL FUND
REGARDING THE CONSTRUCTION OF
TULANE POWER PLANT SUPER BLOCK FLOOD WALL
TULANE UNIVERSITY OF LOUISIANA
NEW ORLEANS, LA**

WHEREAS, the Federal Emergency Management Agency (FEMA) of the Department of Homeland Security, pursuant to Section 406 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. §§5121-5206) and implementing regulations in Title 44 of the Code of Federal Regulations (44 CFR) Part 206, proposes to provide hazard mitigation funds from FEMA Public Assistance through the Governor’s Office of Homeland Security and Emergency Preparedness (GOHSEP) to The Administrators of the Tulane Educational Fund (Tulane) in response to damages caused by Hurricanes Katrina (DR-1603-LA) to construct a flood wall and dry floodproof existing exterior buildings walls around a block to protect ten buildings from flood water, a project otherwise known as the Tulane Power Plant Super Block Flood Wall (Undertaking); and

WHEREAS, FEMA consulted with the Louisiana State Historic Preservation Officer (SHPO) in accordance with Section 106 of the National Historic Preservation Act (16 U.S.C. §470f) (NHPA), its implementing regulations (36 CFR Part 800), and the “Programmatic Agreement among FEMA, the Louisiana State Historic Preservation Officer (SHPO), the Louisiana Governor’s Office of Homeland Security and Emergency Preparedness (GOHSEP), the Alabama-Coushatta Tribe of Texas, the Caddo Nation, the Chitimacha Tribe of Louisiana, the Choctaw Nation of Oklahoma, the Coushatta Tribe of Louisiana, the Jena Band of Choctaw Indians, the Mississippi Band of Choctaw Indians, the Quapaw Tribe of Oklahoma, the Seminole Nation of Oklahoma, the Seminole Tribe of Florida, the Tunica-Biloxi Tribe of Louisiana, and the Advisory Council on Historic Preservation” dated August 17, 2009 (*2009 Statewide*); and

WHEREAS, FEMA, in consultation with SHPO, has determined that the Area of Potential Effect (APE) for standing structures includes the city block where the wall will be constructed which is bounded by Newcomb Place, Willow Street, Audubon Street, and Plum Street and all buildings surrounding this block as shown in Figure 1. The APE for archaeological resources is the area around the perimeter of the block and a small area on the west façade of the Woldenberg Art Center West (U082) where ground disturbance is planned and is shown in Figure 2, and will also include any area or areas that will be used for staging or other construction related activities; and

WHEREAS, FEMA, in consultation with SHPO has determined that the Undertaking may affect several contributing structures to the Tulane University of Louisiana National Register Historic District shown on Figure 3, including: Woldenberg Art Center West (Building 38 – U082) identified on the National Register nomination as the Newcomb Gymnasium; Woldenberg Art Center East (Building 39 – U083) identified on the National Register nomination as the

Newcomb Art School; Newcomb Hall (Building 34); the Josephine Louise House (Building 37), and Warren House (Building 40). The Undertaking will also affect the Caroline Richardson Building (U084), Student Health Service Building (U092), and the Power Plant Building (U086) that were determined eligible for inclusion in the National Register of Historic Places by FEMA in consultation with SHPO. The APE is also located within the Uptown National Register Historic District (Figure 4); and

WHEREAS, FEMA has reviewed data provided by the Louisiana Department of Culture, Recreation, and Tourism, Office of Cultural Development, Louisiana Division of Archaeology and determined that there are no known archaeological sites within 0.5 miles of the APE. The 1878 Hardee map depicts the APE as an undeveloped or cutover backswamp, while no coverage of this portion of the campus is provided on the 1883 Robinson map and thus indicates the area was either undeveloped or sparsely developed by this time. By 1909, the Sanborn Fire Insurance Map depicts a single dwelling located on the corner of Audubon and Plum Streets within the Archaeological APE; and

WHEREAS, FEMA consulted with SHPO and SHPO concurred in a letter dated August 24, 2009, with FEMA's determination that the construction of the Tulane Power Plant Super Block Flood Wall may adversely affect historic properties; and

WHEREAS, in accordance with Stipulation VIII.A of the *2009 Statewide PA* and 36 CFR §800.6(a)(1), FEMA notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination in a letter dated August 27, 2009 and the ACHP determined in a letter to FEMA dated September 18, 2009, that it had declined to participate in the consultation to develop a Memorandum of Agreement (MOA) to avoid, minimize, and mitigate the adverse effects of this Undertaking; and

WHEREAS, FEMA consulted with Tulane, the Subgrantee, and in recognition that Tulane will assume responsibilities to perform various actions described by this MOA, FEMA has invited Tulane to participate in this consultation and execute this MOA as an Invited Signatory; and

WHEREAS, GOHSEP, the Grantee, was invited by FEMA to participate in this consultation and execute this MOA as a Concurring Party; and

WHEREAS, FEMA notified the Alabama Coushatta Tribe of Texas (ACTT), Chitimacha Tribe of Louisiana, Choctaw Nation of Oklahoma, Coushatta Tribe of Louisiana, Jena Band of Choctaw Indians, Mississippi Band of Choctaw Indians, Quapaw Tribe of Oklahoma, Seminole Nation of Oklahoma, Seminole Tribe of Florida, and Tunica Biloxi Tribe of Louisiana (collectively referenced as "Tribes") and provided information regarding identified historic properties in the APE, information regarding the history and topography of the APE, and afforded the Tribes an opportunity to participate in the consultation, and the ACTT responded in a letter dated October 14, 2009 that it has determined, based on the information provided by FEMA, that the Undertaking will cause no known impacts to religious, culture, or historic assets of the ACTT and based upon the period of historic significance of the location it declined to participate in the consultation unless there is an inadvertent discovery of human remains and/or archaeological artifacts; and

WHEREAS, FEMA notified the City of New Orleans Historic District Landmarks Commission; the National Trust for Historic Preservation (NTHP); the Preservation Resource Center (PRC); Common Knowledge/Squandered Heritage; and the New Orleans Chapter of the American Institute of Architects of the Undertaking and the opportunity to participate in this consultation; and FEMA received no comments; and

WHEREAS, FEMA provided information to the NTHP's, PRC's, and the City of New Orleans' websites regarding the opportunity for the public to comment on the Department of Culture, Recreation, and Tourism website or mail comments to FEMA and FEMA received no comments; and

WHEREAS, FEMA, SHPO, GOHSEP, and Tulane constitute the Consulting Parties referenced in this MOA; and

WHEREAS, a Consulting Party will be recognized by FEMA as a Signatory, Invited Signatory, or Concurring Party starting on the date the Consulting Party signs this MOA as a Signatory, Invited Signatory, or Concurring Party and provides FEMA with a record of this signature; and

WHEREAS, FEMA and SHPO are Signatories to the MOA as defined in 36 CFR §800.6(c)(1); and

WHEREAS, Tulane is the Invited Signatory to the MOA as defined in 36 CFR §800.6(c)(2) and

WHEREAS, GOHSEP is the Concurring Party to the MOA as defined in 36 CFR §800.6(c)(3); and

WHEREAS, all references to time periods in this MOA are in calendar days and notices and other written communications may be submitted by e-mail. If a review period included in this MOA ends on a Saturday, Sunday, or Federal holiday, the review period will be extended until the first business day following the Saturday, Sunday, or Federal holiday. Any electronic communication received by FEMA or SHPO after 4:00 pm Central Time will be deemed to have been received on the next day. Comments by SHPO or FEMA on any plans or documents submitted for review under this MOA are timely if they are received at any time on the last day of a review period;

NOW THEREFORE, FEMA, SHPO, and Tulane agree that the Undertaking will be implemented in accordance with the following Stipulations to take into account the effects of the Undertaking on historic properties and to satisfy FEMA's Section 106 responsibilities for the Undertaking.

STIPULATIONS

To the extent of its legal authority and in coordination with the SHPO, GOHSEP, and Tulane, FEMA will require that the following measures are implemented:

I. DESIGN OF NEW FLOOD WALL

- A. FEMA and SHPO will review plans under Stipulations II – V to ensure that the design, height, materials, and the siting of the new Flood Wall and the dry floodproofing of any exterior wall of a National Register eligible or National Register listed building as identified in Figure 3 will be responsive to the *Secretary of the Interior's Standards for the Treatment of Historic Properties (SOI Standards)*, in particular, Standards #2, #5, #7, #8, #9, and #10 set out at: http://www.nps.gov/history/hps/tps/standguide/rehab/rehab_standards.htm. In addition FEMA and SHPO's review will consider if the new construction destroys the spatial relationships that characterize the Tulane University of Louisiana NRHD and is compatible with the historic materials, features, size, scale and proportion, of all National Register eligible or listed standing structures located within the APE as provided in the Guidelines to the *SOI Standards*, http://www.nps.gov/history/hps/tps/standguide/rehab/rehab_approach.htm.
- B. FEMA and SHPO will review plans under Stipulations II – V to ensure that the design for the Flood Wall will consider the historic character of the setting of the Tulane University of Louisiana NRHD and, to the extent feasible, retain and preserve the setting of the historic streetscape and other historic landscaping.
- C. Tulane will provide a copy of this MOA to the architectural and engineering (A&E) firm selected by Tulane to develop the plans for the new Flood Wall.

II. DESIGN REVIEW OF SCHEMATIC DESIGNS: EFFECTS ON STANDING STRUCTURES

- A. Prior to the development and/or submission of the Schematic Designs, Tulane will request that GOHSEP arrange a meeting with FEMA and SHPO for an informal in-process review of conceptual plans or to discuss historic preservation issues resulting from the design of the Flood Wall with Tulane and its A&E firm.
- B. Tulane will post an electronic copy of the Schematic Designs of the new Flood Wall on an ftp web site. Tulane will notify GOHSEP and FEMA when this information is available for review and provide instructions to access the site, and FEMA will forward a copy of Tulane's notice to SHPO within 3-days and request SHPO's review of the Schematic Designs. FEMA and SHPO will review the Schematic Designs to ascertain if:
1. the proposed design conforms to the *SOI Standards*; and
 2. the proposed design considers the historic character of the setting of the Tulane University of Louisiana NRHD and, to the extent feasible, retains and preserves the setting of the historic streetscape and other historic landscaping;
or

3. the construction of the new Flood Wall and the dry flood proofing of buildings as part of this Undertaking will adversely effect the Tulane University of Louisiana NRHD or any National Register eligible buildings located within the APE.
- C. SHPO will provide comments, if any, to FEMA on the proposed Schematic Designs within 15-days following receipt of FEMA's notice. FEMA will review the SHPO's comments submitted within the 15-day review period and notify GOHSEP and Tulane within 7-days following the end of the SHPO's 15-day review period if the proposed design for the Undertaking conforms to the guidance in the *SOI Standards* or if it will cause adverse effects.
 - D. If FEMA and/or SHPO determine that the proposed Schematic Design will cause adverse effects to historic properties, FEMA will notify SHPO, Tulane, and GOHSEP by e-mail and clearly describe the issues that must be addressed to avoid the adverse effects. FEMA's notice will include any comments submitted by FEMA or SHPO regarding the adverse effects and any recommendations by FEMA or SHPO regarding alternatives that may avoid or minimize the adverse effects.
 - E. Any Signatory or Invited Signatory may request a meeting with FEMA, Tulane, SHPO, and GOHSEP to look for ways to avoid or minimize the adverse effects that may result from the proposed Schematic Design.

III. DESIGN REVIEW OF DESIGN DEVELOPMENT DRAWINGS: EFFECTS ON STANDING STRUCTURES

- A. Tulane will post an electronic copy of the Design Development Drawings of the new Flood Wall on an ftp web site. Tulane will notify GOHSEP and FEMA when this information is available for review and provide instructions to access the site, and FEMA will forward a copy of Tulane's notice to SHPO within 3-days and request SHPO's review of the Design Development Drawings. FEMA and SHPO will review the Design Development Drawings to ascertain if the Design Development Drawings conform to the *SOI Standards* and incorporate any comments provided by FEMA and/or SHPO on the Schematic Design to avoid adverse effects.
- B. SHPO will provide comments, if any, to FEMA on the proposed Design Development Plans within 7-days following the receipt of FEMA's request for SHPO's review. FEMA will review the SHPO's comments submitted within the 7-day review period and notify GOHSEP and Tulane within 14-days following FEMA's receipt of Tulane's notice regarding the availability of the Design Development Plans if the Design Development Plans for the Undertaking conform to the guidance in the *SOI Standards* or if they will cause adverse effects.
- C. If FEMA and/or SHPO determine that the proposed Design Development Plans will cause adverse effects to historic properties, FEMA will notify SHPO, Tulane, and GOHSEP by e-mail and clearly describe the issues that must be addressed to avoid the

- D. Any Signatory or Invited Signatory may request a meeting with FEMA, Tulane, SHPO, and GOHSEP to look for ways to avoid or minimize the adverse effects that may result from the proposed Design Development Drawings.

IV. DESIGN REVIEW OF CONSTRUCTION DOCUMENTS: EFFECTS ON STANDING STRUCTURES

- A. Tulane will post an electronic copy of the Construction Documents of the new Flood Wall on an ftp web site. Tulane will notify GOHSEP and FEMA when this information is available for review and provide instructions to access the site, and FEMA will forward a copy of Tulane's notice to SHPO within 3-days and request SHPO's review of the Construction Documents. FEMA and SHPO will review the Construction Documents to ascertain if the Construction Documents conform to the *SOI Standards* and incorporate any comments provided by FEMA and/or SHPO on the Design Development Drawings to avoid adverse effects.
- B. SHPO will provide comments, if any, to FEMA on the proposed Construction Documents within 7-days following the receipt of FEMA's request for SHPO's review. FEMA will review the SHPO's comments submitted within the 7-day review period and notify GOHSEP and Tulane within 14-days following FEMA's receipt of Tulane's notice regarding the availability of the Construction Documents if the Construction Documents for the Undertaking conforms to the guidance in the *SOI Standards* or if they will cause adverse effects.
- C. If, after reviewing the comments, FEMA and/or SHPO determine that the proposed Construction Documents will cause adverse effects to historic properties, FEMA will notify SHPO, Tulane, and GOHSEP by e-mail and clearly describe the issues that must be addressed to avoid the adverse effects. FEMA's notice will include any comments submitted by FEMA or SHPO regarding the adverse effects and any recommendations by FEMA or SHPO regarding alternatives that may avoid or minimize the adverse effects.
- D. Any Signatory or Invited Signatory may request a meeting with FEMA, Tulane, SHPO, and GOHSEP to look for ways to avoid or minimize the adverse effects that may result from the proposed Construction Documents.
- E. FEMA will notify Tulane and GOHSEP by e-mail within 14-days following FEMA's receipt of Tulane's notice regarding the availability of the Construction Documents if additional steps, including a meeting, must be taken to avoid, minimize, or mitigate adverse effects or if the design review required by this MOA is completed and the requirements of Stipulations II – IV are fully satisfied.

- F. If FEMA does not submit comments to GOHSEP and Tulane within 14-days following FEMA's receipt of Tulane's notice regarding the availability of the Construction Documents, the design review required by this MOA is complete and the requirements of Stipulations II – IV are fully satisfied.

V. CHANGES TO THE SCOPE OF WORK

- A. Tulane will notify GOHSEP and FEMA by e-mail as soon as practicable of any substantial change, from the Construction Documents that were reviewed by FEMA and SHPO pursuant to Stipulation IV above. For purposes of this MOA a substantial change is a change in the location, height, or materials of the proposed flood wall. A substantial change also includes changes to the methods to dry floodproof any National Register eligible or National Register listed building as identified in Figure 3 that will be incorporated into the Flood Wall.
- B. FEMA will review the revised plans, and if FEMA determines that the changes will result in adverse effects to historic properties, it will notify GOHSEP and SHPO by e-mail within 7 days of receiving the notice of the substantial change and take steps to consult with SHPO and GOHSEP to determine if there are feasible alternatives that may avoid or minimize the additional adverse effects. SHPO and GOHSEP agree to cooperate with FEMA and Tulane to discuss the feasibility of alternatives that may avoid or minimize adverse effects and the parties will agree on a reasonable time frame for determining alternates in order prevent a delay in the Undertaking . If FEMA, GOHSEP, SHPO, and Tulane cannot agree on an acceptable resolution that would revise the Construction Documents, to incorporate alternatives identified during this consultation with SHPO and GOHSEP to avoid or minimize adverse effects caused by the substantial change, then FEMA will consult under Stipulation X, Dispute Resolution, to resolve any remaining issues.

VI. DISCOVERIES AND UNEXPECTED EFFECTS

- A. FEMA will provide Tulane with an electronic copy of "Louisiana Archaeology Illustrated" (April 2006). Tulane will ensure that copies of this publication are provided to any contractor for this Undertaking that will be involved with ground disturbing activities to assist the contractor with the identification of archaeological deposits.
- B. If, in the course of the Undertaking, archaeological deposits, as defined in 36 CFR §60.4(d), are uncovered or unforeseen effects that may cause an adverse effect to another historic property occur, Tulane shall ensure that its contractor immediately stops work in the general vicinity of the discovery or unforeseen effect and takes all reasonable measures to avoid or minimize harm to the finds and/or to avoid or minimize further unforeseen effects. Tulane shall ensure that the archaeological findings are secured and access to the area of the discovery is restricted.
- C. Tulane will notify FEMA and GOHSEP of discoveries or unforeseen effects as soon as practicable, but no later than 3 days following the discovery or unforeseen effect. FEMA will notify and consult with the SHPO and others, as appropriate, including Tribes, to

- D. If FEMA and the SHPO and others, as appropriate, determine that further steps are necessary to evaluate or treat the unforeseen effect of the newly discovered property and it does not contain human remains, FEMA shall work with SHPO, Tulane, GOHSEP, and others, as appropriate, to agree on timeframes and determine ways to avoid, minimize, or mitigate any adverse effects that may result from the discovery. Any party included in the discovery consultation may request an on-site meeting to review the situation. Archaeological discoveries are the property of Tulane, unless state laws provide otherwise, and FEMA, SHPO, GOHSEP, and others will provide Tulane with the opportunity to curate and interpret the archaeological discovery or to donate the archaeological discovery to an appropriate curation facility as part of the consultation to determine the appropriate treatment of the discovery. At the conclusion of this consultation, FEMA will provide all parties that participated in the discovery consultation with a written summary of the consultation and its resolution. This summary may be transmitted to the participants via e-mail.
- E. If human skeletal remains are uncovered during the Undertaking, Tulane shall immediately notify GOHSEP, FEMA, the Tulane University Police Department, the New Orleans Police Department, and the Orleans Parish Coroner's Office. The local law enforcement officials shall assess the nature and age of the human skeletal remains. Tulane shall ensure that the notice of the discovery required by Louisiana Unmarked Human Burial Sites Preservation Act (R.S. 8:671 *et seq*) is given to the Secretary of the Department of Culture, Recreation and Tourism (CRT) or the Secretary's designee by contacting the Louisiana Division of Archeology at 225-342-8170 within seventy-two (72) hours of the discovery. If the coroner determines that the human skeletal remains are older than 50 years of age, the Secretary, CRT has jurisdiction over the remains. FEMA shall work with the SHPO, Tribes, the Louisiana Division of Archaeology, Tulane, and GOHSEP to ensure compliance with this State law, other applicable laws, and this MOA. In addition, FEMA shall require that the guidelines contained in the ACHP's 2007 "Policy Statement Regarding Burial Sites, Human Remains, and Funerary Objects" are followed.

VII. RECORDATION

- A. Prior to the construction of the Flood Wall FEMA will require Tulane to take digital photographs recording the historic properties that will be affected by the Undertaking. The photographic recordation will be performed by or under the direct supervision of an individual who meets the Secretary of the Interior's Professional Qualification Standards set out at 48 FR 44716, September 29, 1983, for History, Architectural History,

- B. The digital photography must comply with the requirements from the Proposed Update Photographic Policy National Register of Historic Places (revised March 2008) including the National Archives and Records Administration's (NARA's) guidance to supplement requirements in 36 CFR §1228.270 for transferring permanent electronic records to NARA.
1. Image files must be saved as JPEG files using high quality compression settings at a minimum. These files must be transferred as first generation JPEG files that have not been degraded in quality by multiple revisions and re-saving. The image files must be saved on archival quality CD-R media.
 2. Digital camera files must be captured as 6 megapixel files or greater with a minimum pixel array of 3,000 pixels by 2,000 pixels.
 3. Color images must be produced in RGB (Red Green Blue) color mode as 24-bit or 48-bit color files.
- C. Photographic prints must comply with the Proposed Update Photographic Policy National Register of Historic Places (revised March 2008) requirements: http://www.nps.gov/history/nr/publications/bulletins/photopolicy/photo_policy.htm
1. The photographs must meet the NPS Photo Expansion Policy 75-year permanence standard.
 2. Paper prints must follow the "Acceptable Ink and Paper Combinations for Digital Images" guidelines in the Photo Expansion Policy.
 3. Printed photographs must include:
 - a. At least 45 different black-and-white archival photographs will be printed from the digital photographs taken of the historic buildings that will be affected;
 - b. Labels that state the address including the Parish and State where the building is located; date of photograph; description of view including compass direction of camera; and name of photographer;
- D. A Preliminary Scope of Work (SOW) for the 45 different photographs is included in Figure 5. Tulane will consult with FEMA and SHPO to finalize the SOW for the photographs following the completion of the review for the Schematic Designs described in Stipulation II. As part of this consultation, Tulane will forward the finalized SOW to include the list of photographs to GOHSEP and FEMA by e-mail, and FEMA will forward this list to SHPO for a 15-day review and comment period. The SOW will include a list of at least 45 photographs that will be taken of the National Register listed and eligible buildings that will be altered by the construction of the Flood Wall, APE, its context and setting. The SOW will also include the resumes of the individuals that will perform or supervise the performance of the photographic recordation and that will

prepare or supervise the preparation of the narrative history. FEMA will notify Tulane in writing, to include e-mail, if the professional(s) selected to perform the photographic recordation and short narrative history does not meet the Secretary of the Interior's Professional Qualification Standards as required in Stipulation VII.A and/or if the proposed SOW is not the SOW previously agreed upon. Within seven business days of receipt of FEMA's written notice, Tulane will submit to FEMA a revised SOW and/or another professional(s) to complete the photography and narrative history. If FEMA does not provide written comments to Tulane on the SOW and/or the professional(s) selected to perform recordation within 10-days following Tulane's e-mail containing the SOW and the resume of the selected professional(s), the SOW and the selected professional(s) will be deemed sufficient and in compliance with FEMA's standards and Tulane may finalize the submitted SOW and take all required steps to complete the recordation required by this Stipulation.

- E. Tulane will prepare a short narrative history describing the history of the structures located on the Tulane Power Plant Super Block to accompany the archival photographs. This narrative history will include the information required in Historic American Building Survey (HABS) Historical Reports: Short form. The narrative history will be prepared by or under the direct supervision of an individual who meets the Secretary of the Interior's Professional Qualification Standards set out at 48 FR 44716, September 29, 1983, for History, Architectural History, or Historic Architecture. These qualifications will be reviewed by FEMA and SHPO following the process set out in Stipulation VII.D.
- F. FEMA will review the final, archival copies of the recordation materials to ensure that they conform to the SOW, including any revisions to the SOW in response to FEMA and/or SHPO's comments. FEMA will notify GOHSEP and Tulane by e-mail within 7 days following FEMA's receipt of the final archival copies of the recordation materials if the materials do not conform to the SOW. GOHSEP will assist Tulane to complete the required recordation and submit it to FEMA.
- G. FEMA will ensure that Tulane prepares four (4) archival copies of the recordation materials. FEMA shall forward two (2) copies to SHPO, and SHPO will forward one (1) copy to the State Library and one (1) copy to the State Archives. FEMA shall submit one copy (1) to the University of New Orleans, Orleans Earl K. Long Library, Louisiana Special Collections in New Orleans, LA. Tulane will retain one (1) copy of the recordation materials and archive it in the Tulane Library.

VIII. NOTICES

All notices required pursuant to this MOA shall be delivered electronically to:

- A. If to Tulane: Billie Pearsall at bporche@tulane.edu
- B. If to FEMA: Gail Lazaras at Gail.Lazaras@dhs.gov
- C. If to GOHSEP: Joshua Barbee at joshua.barbee@associates.dhs.gov

IX. ANTICIPATORY DEMOLITION

FEMA will not grant assistance to Tulane should it, with intent to avoid the requirements of this MOA or Section 106 of the NHPA, significantly adversely affect a historic property to which the assistance would relate, or having legal power to prevent it, allow such significant adverse effect to occur. After consultation with SHPO and ACHP, FEMA may determine that circumstances justify granting such assistance despite an adverse effect created or permitted by Tulane, and will complete consultation pursuant to 36 CFR §800.9(c).

X. DISPUTE RESOLUTION

- A. Should any Signatory, Invited Signatory, or Concurring Party object to FEMA within the timeframes provided by this MOA to any plans, specifications, or actions provided for review, FEMA shall notify Tulane and GOHSEP and consult further with the objecting party, Tulane, and GOHSEP to seek resolution.
- B. If FEMA determines that the dispute cannot be resolved, FEMA shall forward FEMA's proposed resolution of the dispute and all relevant documentation to the ACHP. Within 7-days after receipt of the documentation, the ACHP will:
 - 1. Advise FEMA that it concurs with FEMA's resolution of the dispute; or
 - 2. Provide FEMA with recommendations, which FEMA shall take into account in reaching a final decision regarding the dispute; or
 - 3. Notify FEMA that it shall comment pursuant to 36 CFR §800.7(c), and proceed to comment. Any comment provided shall be taken into account by FEMA in accordance with 36 CFR §800.7(c)(4) with reference to the subject of the dispute.
- C. If the ACHP does not provide FEMA with comments or recommendations within 7-days, FEMA may assume that the ACHP does not object to its recommended approach and it shall proceed accordingly.
- D. Any recommendation or comment provided by ACHP shall be understood to pertain only to the subject of the dispute, and FEMA's responsibilities to fulfill all actions that are not subject of the dispute shall remain unchanged.
- E. Any dispute regarding National Register eligibility that is not resolved pursuant to this Stipulation will be resolved in accordance with 36 CFR §800.4(c)(2).

XI. AMENDMENTS, TERMINATION, AND NONCOMPLIANCE

- A. If Tulane determines that it is not feasible to complete the Undertaking or fulfill the requirements of this MOA, Tulane will immediately notify FEMA and GOHSEP in writing, to include e-mail, of this determination. Within 21-days of receiving this notice,

- B. Any Signatory or Invited Signatory may request in writing that the MOA be amended or terminated. Within 21-days of such a request, FEMA will convene a meeting of the Signatories, Invited Signatory, and Concurring Parties, in person or by telephone, to consider this request. The Parties will make a good faith effort to amend the MOA prior to any Party taking steps to terminate it. The MOA may be amended upon the written agreement of the Signatories and Invited Signatory, and the process will comply with 36 CFR §800.6(c)(7).
- C. If the MOA is not amended, the Signatories or Invited Signatory may terminate the MOA by providing a 30-day written notice to the other Signatories, Invited Signatory, and Concurring Parties. The Signatories, Invited Signatory, and Concurring Parties will cooperate in good faith to seek amendments or other actions that would prevent termination during this 30-day time frame. Should consultation fail, FEMA will promptly notify the Signatories, Invited Signatory, and Concurring Parties in writing of termination. Termination of the MOA will require FEMA to comply with the Statewide Programmatic Agreement in effect on the date of the termination. This MOA may be terminated without further consultation by execution of a subsequent agreement that explicitly terminates or supersedes this MOA.

XII. DURATION

Unless amended or terminated in accordance with Stipulation VIII., this MOA will remain in effect through December 31, 2012, or until FEMA determines that it has been satisfactorily fulfilled. Tulane will notify GOHSEP and FEMA when the Undertaking is completed, and FEMA will notify the Signatories, Invited Signatories, and Concurring Parties by e-mail when it determines that the design review process described in Stipulations II, III, and IV; the recordation required by Stipulation VII; and construction of the Flood Wall is completed and opportunities for discoveries or unexpected events described in Stipulation VI are unlikely, thereby fulfilling the terms of this MOA.

XIII. EFFECTIVE DATE AND IMPLEMENTATION OF MOA


This MOA shall become effective immediately upon FEMA's filing an original copy signed by the Signatories and the Invited Signatory with the ACHP. FEMA shall provide each Signatory, Invited Signatory, and Concurring Party with a complete copy of the MOA including all executed signature pages.

EXECUTION AND IMPLEMENTATION of this Memorandum of Agreement evidences that FEMA has afforded ACHP a reasonable opportunity to comment on the Undertaking to construct the Tulane Power Plant Super Block Flood Wall and its effects on historic properties, that FEMA

has taken into account the effects of the undertaking on historic properties, and that FEMA has satisfied its responsibilities under Section 106 of the National Historic Preservation Act and its implementing regulations.

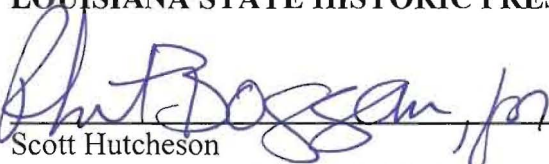
SIGNATORY PARTIES:

FEDERAL EMERGENCY MANAGEMENT AGENCY


_____ Date: 8 Feb 10

Cynthia Teeter
Acting Section Chief for Environment and Historic Preservation
Louisiana Transitional Recovery Office

LOUISIANA STATE HISTORIC PRESERVATION OFFICER


_____ Date: 3-3-10

Scott Hutcheson
State Historic Preservation Officer

INVITED SIGNATORY:

THE ADMINISTRATORS OF THE TULANE EDUCATIONAL FUND


_____ Date: 3/2/2010

Rick Jones
Senior Associate Vice President

CONCURRING PARTY:

**GOVERNOR'S OFFICE OF HOMELAND SECURITY AND EMERGENCY
PREPAREDNESS**


_____ Date: 3-3-10

Mark J. DeBoiser
Deputy Director, Disaster Recovery

Figure 1: APE for Standing Structures

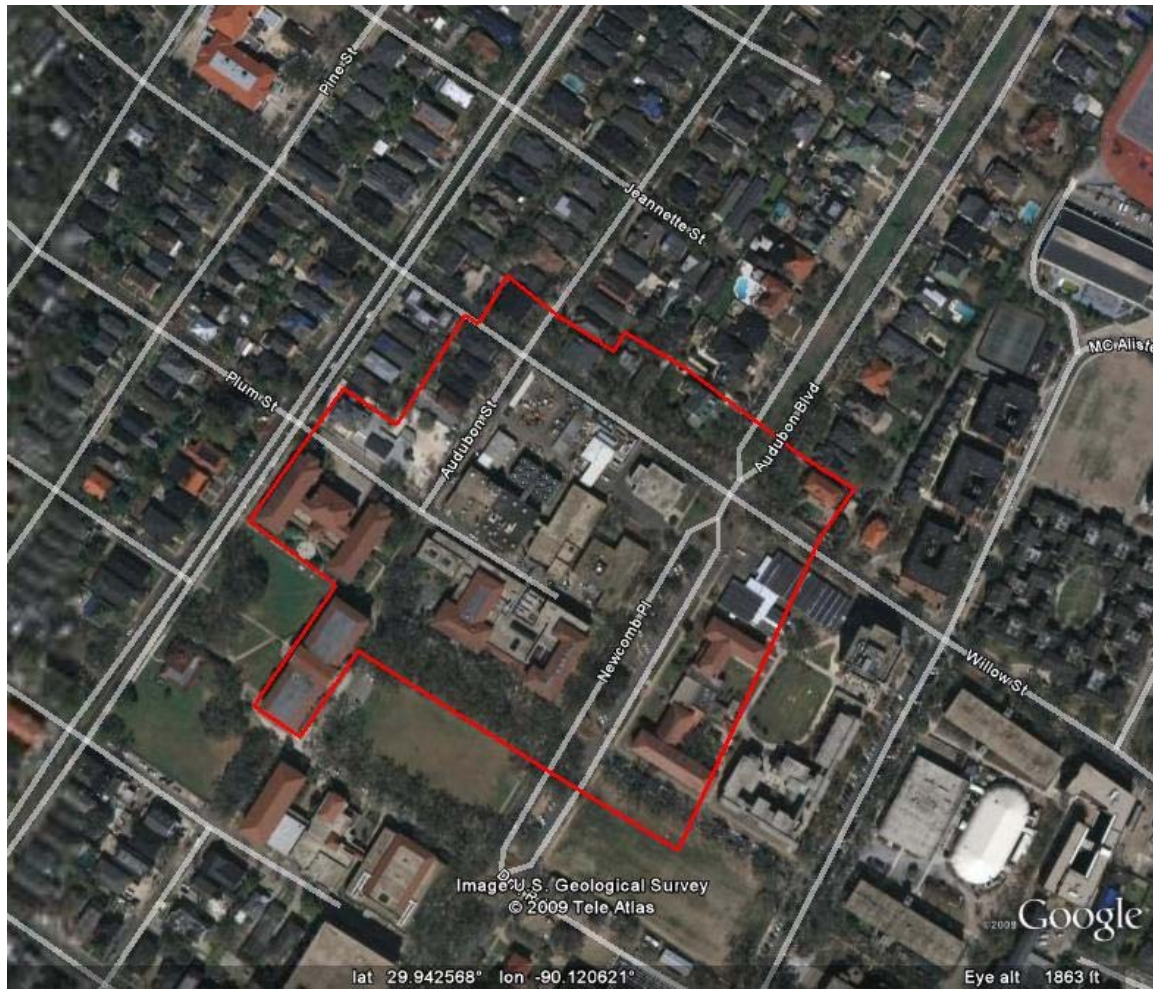


Figure 2: APE for Archaeological Resources is limited to those areas of likely ground disturbance between the red lines depicted on this figure. FEMA does not anticipate that ground disturbance on the interior of this block will be required to construct the retaining wall. This APE will be expanded to include areas that will be used for staging and other construction related activities.

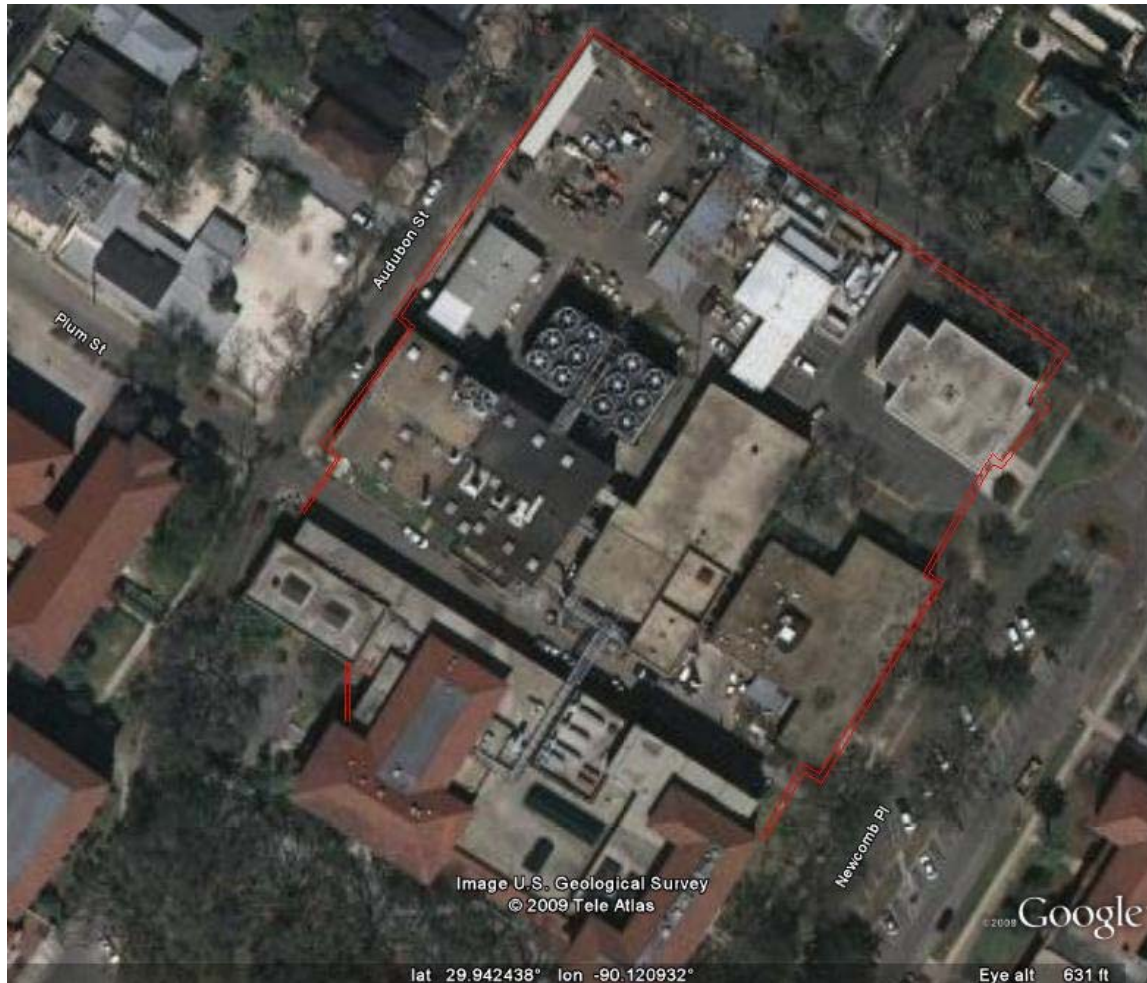


Figure 3: Map of Tulane National Register Historic District

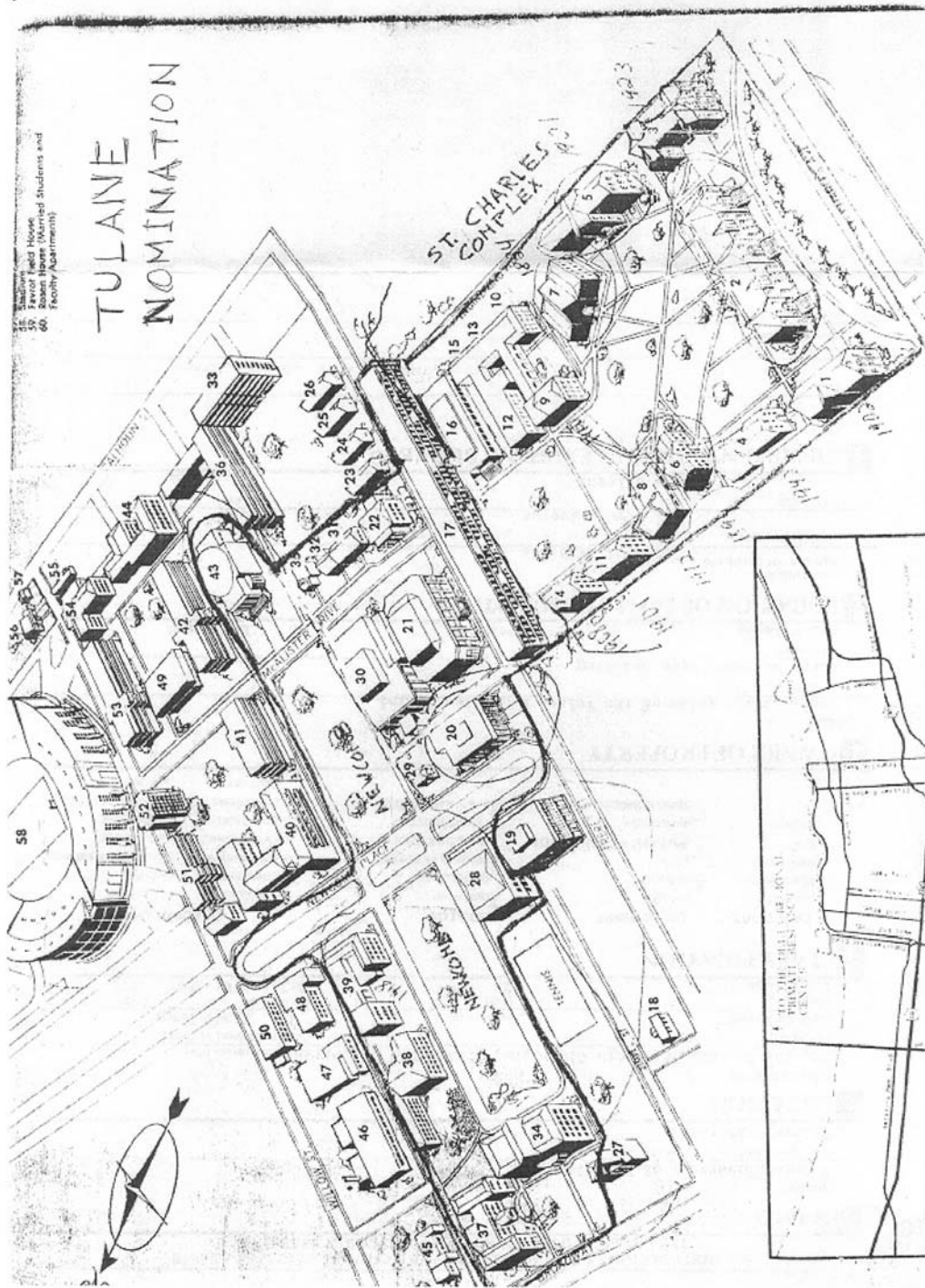


Figure 4: Map of Uptown National Register Historic District

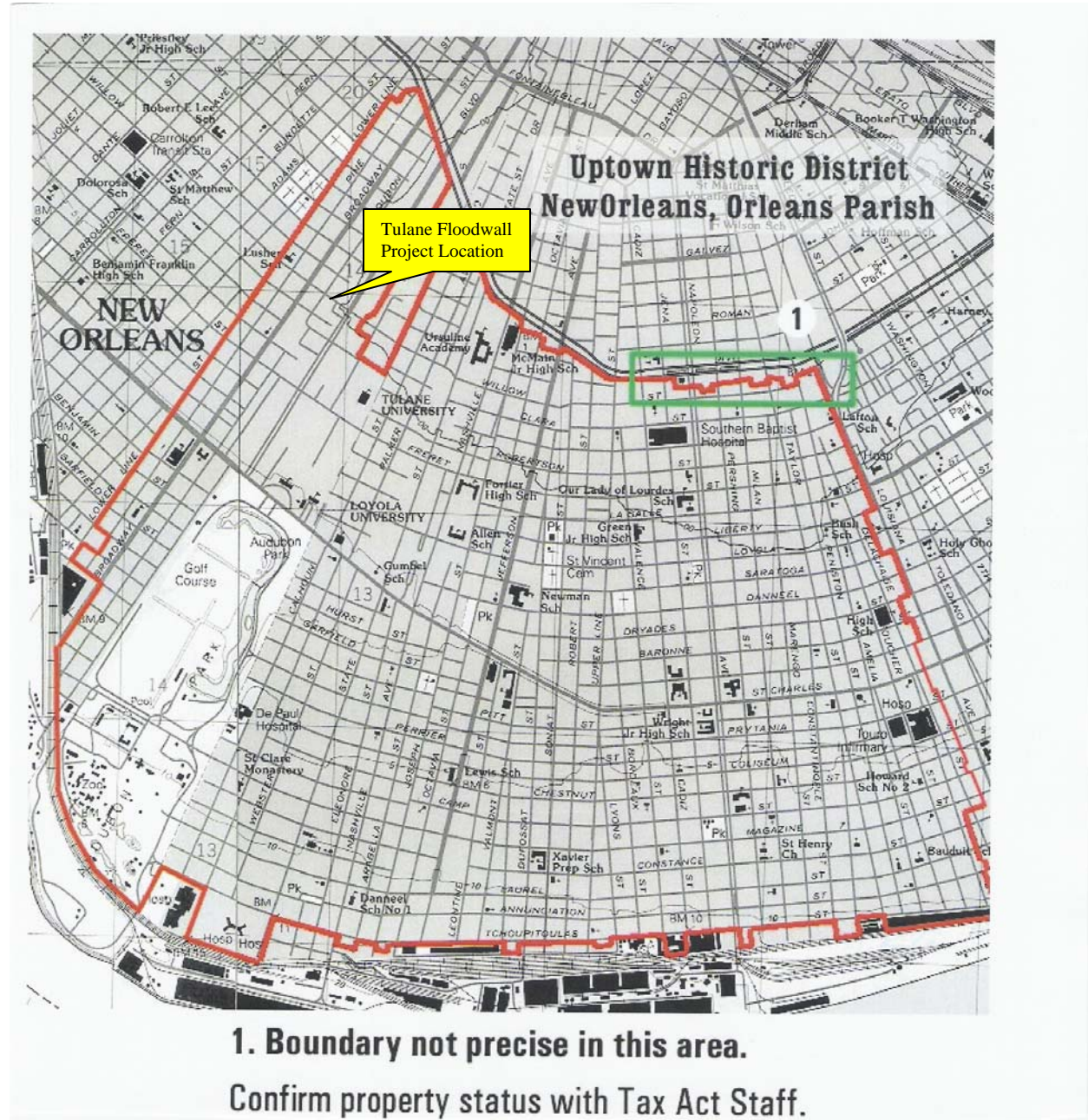


Figure 5: Preliminary Scope of Work for Photographic Recordation required by Stipulation VII – This list will be finalized by Tulane, FEMA, and SHPO following the review of the Schematic Designs described in Stipulation II as described in Stipulation VII.

Woldenberg Art Center East (U083)

1. Southeast façade
2. Detail of East corner where wall and sliding flood gate across Plum Street will be attached
3. Northeast façade from North showing where wall and sliding flood gate across Plum Street will be attached
4. Overall (Perspective/45°) of South corner, view from South facing North
5. Overall (Perspective/45°) of East corner, view from East facing West

Woldenberg Art Center West (U082)

6. Overall view of West corner where wall may be constructed
7. Close-up view of West corner where wall may be constructed
8. Straight-on view of Northwest façade
9. Detail of North corner where wall and sliding flood gate across Plum Street may be attached
10. Overall (Perspective/45°) of North corner, view from North facing South
11. Northeast façade from East showing where wall and sliding flood gate across Plum Street will be attached

Caroline Richardson Building (U084)

12. Southeast façade – straight-on from Southeast
13. Perspective /45° Southeast façade from South
14. Perspective/45° Southeast façade from East
15. Detail of main entryway on Southeast façade
16. Detail of hopper windows from exterior
17. Detail of hopper windows from interior
18. Detail of dedication plaque
19. Southwest façade from South showing South corner where wall and sliding flood gate across Plum Street will be attached
20. Southwest façade from West showing South corner where wall and sliding flood gate across Plum Street will be attached
21. Northeast façade from East showing East corner where wall and sliding flood gate will be attached
22. Northeast façade from North showing East corner where wall and sliding flood gate will be attached
23. Lobby from interior looking out towards Newcomb Place showing staircase
24. Lobby from interior looking out towards Newcomb Place showing wall with entrance to library

Student Health Service Building (U092)

25. Southeast façade - straight-on from Southeast
26. Southeast façade from South
27. Southeast façade from East
28. Southwest façade from South showing South corner where wall and sliding flood gate will be attached
29. Southwest façade from West showing South corner where wall and sliding flood gate will be attached
30. Northeast façade straight-on
31. Northeast façade from East
32. Northeast façade from North
33. East corner of Northeast façade where wall will be attached

Power Plant Building (U086)

34. Northwest façade straight-on
35. Oblique/45° close-up of Northwest façade from West showing corner where wall and sliding flood gate across Plum Street will be attached
36. Oblique/45° of Northwest façade from West showing corner where wall and sliding flood gate across Plum Street will be attached
37. Southwest façade straight-on
38. Oblique/45° close-up of Southwest façade from South showing corner where wall and sliding flood gate across Plum Street will be attached
39. Oblique/45° of Southwest façade from South showing corner where wall and sliding flood gate across Plum Street will be attached

Neighborhood Context Photos – these views must include photographs of the historic buildings in the Area of Potential Effects: Newcomb Hall; the Josephine Louise House, and Warren House

40. View from South looking toward Northeast on Newcomb Place
41. View from corner of Newcomb Place and Willow Street looking Southwest down Newcomb Street
42. View from corner of Newcomb Place and Willow Street looking Northwest up Willow Street
43. View from corner of Willow Street and Audubon Street looking Southeast on Willow Street
44. View from corner of Willow Street and Audubon Street looking Southwest down Audubon Street
45. View from corner of Plum Street and Audubon Street looking Northeast down Audubon Street