

1 **Draft Programmatic Agreement**  
2 **Among**  
3 **The United States Army Corps of Engineers,**  
4 **Louisiana State Historic Preservation Officer,**  
5 **And**  
6 **The Advisory Council on Historic Preservation**  
7 **Regarding the**  
8 **West Shore Lake Pontchartrain Hurricane and Storm Damage Risk Reduction**  
9 **System**  
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11

12 WHEREAS, historically, residents and businesses of St. Charles, St. John the Baptist, and  
13 St. James Parishes, Louisiana have suffered major damage as a result of storms and  
14 hurricanes. Recent hurricanes that have impacted the area include Hurricanes Katrina  
15 and Rita in 2005, Hurricanes Gustav and Ike in 2008, and Hurricane Isaac in 2012, which  
16 caused a storm surge in the area that threatened lives and damaged more than 7,000  
17 homes; and  
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19 WHEREAS, the U.S. Congress recognized the need for a hurricane and storm damage  
20 risk reduction project in the area with two Congressional resolutions to authorize its  
21 study. The first was adopted on July 29, 1971 by the U.S. House of Representatives  
22 Committee on Public works.  
23

24 "RESOLVED BY THE COMMITTEE ON PUBLIC WORKS OF THE HOUSE OF  
25 REPRESENTATIVES, UNITED STATES, that the Board of Engineers for Rivers and  
26 Harbors is hereby requested to review the report of the Chief of Engineers on Lake  
27 Pontchartrain and Vicinity, Louisiana, published as House Document No. 231, 89th  
28 Congress, First Session, and other pertinent reports, with a view to determining whether  
29 modifications to the recommendations contained therein are advisable at this time, with  
30 particular reference to providing additional levees for hurricane protection and flood  
31 control in St. John the Baptist Parish and that part of St. Charles Parish west of the  
32 Bonnet Carré Spillway."  
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34 The U.S. Senate Committee on Public Works adopted a resolution on September 20,  
35 1974.  
36

37 "RESOLVED BY THE COMMITTEE ON PUBLIC WORKS OF THE UNITED  
38 STATES SENATE, that the Board for Rivers and Harbors is hereby requested to review  
39 the report of the Chief of Engineers on Lake Pontchartrain and Vicinity, Louisiana,  
40 published as House Document No. 231, 89th Congress, First Session, and other pertinent  
41 reports, with a view to determining whether modifications to the recommendations  
42 contained therein are advisable at this time, for hurricane protection and flood control in  
43 St. James Parish."  
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45 WHEREAS, the United States Army Corps of Engineers (USACE) has been working  
46 with state and local officials to study potential solutions to reduce damage caused by

1 hurricane and tropical storm surge in the three-parish area. This study has come to be  
2 known as the West Shore Lake Pontchartrain (WSLP) Hurricane and Storm Damage Risk  
3 Reduction Study; and

4  
5 WHEREAS, USACE has determined that the WSLP project is an “undertaking” pursuant  
6 to the National Historic Preservation Act of 1966 (16 U.S.C. 470), as amended, (NHPA),  
7 and may have an adverse effect on properties included or eligible for inclusion in the  
8 National Register of Historic Places (NRHP); and

9  
10 WHEREAS the USACE has elected to fulfill its obligations under Section 106 of the  
11 NHPA through the execution and implementation of a Programmatic Agreement (this  
12 Agreement) as provided in 36 CFR Part 800.14(b); and

13  
14 WHEREAS, the USACE notified the Advisory Council on Historic Preservation  
15 (ACHP) of the potential for this undertaking to adversely affect historic properties  
16 pursuant to the ACHP's implementing regulations (36 CFR Part 800); and

17  
18 WHEREAS, the ACHP accepted the invitation to participate in consultation to  
19 develop this Agreement and to seek ways to avoid, minimize, or mitigate adverse  
20 effects on historic properties; and

21  
22 WHEREAS, the USACE, consulted with the Louisiana State Historic Preservation  
23 Officer (LA SHPO), Tribal Historic Preservation Officers (THPO) and federally  
24 recognized Indian Tribes as defined under 36 CFR 800.16(m), and other appropriate  
25 consulting parties in developing this Agreement in order to define efficient and cost  
26 effective processes for taking into consideration the effects of the WSLP project upon  
27 historic properties pursuant to 36 CFR 800.14(b); and

28  
29 WHEREAS, the USACE acknowledges Indian Tribes as sovereign nations which have a  
30 unique government-to-government relationship with the federal government and its  
31 agencies; USACE further acknowledges its Trust Responsibility to those Indian Tribes;  
32 and

33  
34 WHEREAS, the USACE, made a reasonable and good faith effort to identify any Indian  
35 Tribes that may attach religious and cultural significance to historic properties that may  
36 be affected by the undertaking; and

37  
38 WHEREAS, the USACE has invited the Alabama-Coushatta Tribe of Texas, Caddo  
39 Nation of Oklahoma, Chitimacha Tribe of Louisiana, Choctaw Nation of Oklahoma,  
40 Coushatta Tribe of Louisiana, Jena Band of Choctaw Indians, Mississippi Band of  
41 Choctaw Indians, Quapaw Tribe of Oklahoma, Seminole Nation of Oklahoma, Seminole  
42 Tribe of Florida, and the Tunica-Biloxi Tribe of Louisiana to consult in the development  
43 of this Agreement. The Quapaw Tribe of Oklahoma and the Seminole Tribe of Florida  
44 have independently determined that the undertaking is not within their tribe's area of  
45 interest and do not wish to comment; and

46

1 WHEREAS, the USACE will invite any interested federally recognized Indian Tribe who  
2 participates in the development of this Agreement to sign this Agreement as an Invited  
3 Signatory Party, and those federally recognized Indian Tribes not requesting to sign this  
4 Agreement as an Invited Signatory Party will be invited to sign as a Concurring Party;  
5 and  
6

7 WHEREAS, the USACE has involved the public through the National Environmental  
8 Policy Act (NEPA) process, which affords all persons, organizations and government  
9 agencies the right to review and comment on proposed major federal actions that are  
10 evaluated by a NEPA document. Public meetings to collect input during planning were  
11 held in January 2009, February 2011, November 2012, April 2013, and May 2013. On  
12 August 23, 2013, the USACE released an Integrated Draft Feasibility Report and  
13 Environmental Impact Statement for the WSLP project (Draft Report) to the public for a  
14 review period of forty five (45) calendar days. The public review period was extended an  
15 additional 14 days to October 22, 2013 as compensation for Federal Government  
16 shutdown of 2013. This document included a general discussion of cultural resources  
17 within the study area. Public hearings of the Draft Report were held on September 10,  
18 September 17, and November 2, 2013. Comments received during the 59 day review and  
19 the public hearings are being incorporated into the Integrated Final Feasibility Report and  
20 Environmental Impact Statement; and  
21

22 WHEREAS, the USACE has taken appropriate measures to identify other parties that  
23 may be interested specifically in the development of this Agreement, by notification to  
24 Governments and Historical Societies of St. James, St. Charles, and St. John the Baptist  
25 Parishes, and has invited such parties to participate in the development and execution  
26 of this Agreement; and  
27

28 WHEREAS, the USACE is requesting the participation of local governments and the  
29 public in the development of this Agreement by sending letters of invitation to participate  
30 to the Parish Presidents of St. James, St. John the Baptist, and St. Charles Parishes, as  
31 well as to six (6) Historical associations within these three parishes. The USACE has  
32 also taken steps to notify the wider public with newspaper announcements in the Times-  
33 Picayune of New Orleans, and the Baton Rouge Advocate. The USACE will furthermore  
34 take appropriate steps to involve and notify parties, as appropriate, during the  
35 implementation of the terms of this Agreement;  
36

37 WHEREAS, the Louisiana Coastal Protection and Restoration Authority Board (CPRAB)  
38 is the local sponsor for WSLP project and will be a consulting party; and  
39

40 NOW, THEREFORE, the USACE, ACHP, and LA SHPO agree that the implementation  
41 of the following stipulations will evidence that the USACE has taken into account the  
42 effects of the WSLP project upon historic properties.  
43

#### 44 STIPULATIONS

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

1  
2 I. Official Method of Correspondence  
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4 Electronic mail (email) will serve as the official correspondence method for all  
5 communications regarding this Agreement and its provisions. See Appendix A  
6 for a list of contacts and email addresses. Contact information in Appendix A  
7 may be updated as needed without an amendment to this Agreement. It is the  
8 responsibility of each signatory to immediately inform USACE of any change in  
9 name, address, email address, or phone number of any point-of-contact. The  
10 USACE will forward this information to all signatories by email. Failure of any  
11 party to this Agreement to notify the USACE of changes in their point of contacts  
12 information shall not be grounds for asserting that notice of a proposed action was  
13 not received  
14

15 II. Tribal Consultation  
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17 The USACE shall conduct government-to-government consultation with federally  
18 recognized Indian Tribes as defined by 36 CFR 800.16 that have expressed a  
19 desire to consult. The Choctaw Nation of Oklahoma and the Mississippi Band of  
20 Choctaw Indians participated in the development of this Agreement and will sign  
21 this Agreement as an Invited Signatory Party (hereafter also known as “signatory  
22 Indian Tribes”). The Alabama-Coushatta Tribe of Texas, Chitimacha Tribe of  
23 Louisiana, and Coushatta Tribe of Louisiana have consulted in the development  
24 of this Agreement. The Seminole Tribe of Florida and the Quapaw Tribe of  
25 Oklahoma have independently determined that the undertaking is not within their  
26 tribe’s area of interest and do not wish to comment. The USACE will provide the  
27 signatory Indian Tribes with an executed copy of this Agreement and with copies  
28 of all plans, determinations, and findings provided to the LA SHPO to assist in  
29 identifying activities that may be of interest.  
30

31 III. Public Involvement  
32

33 A. The USACE, in consultation with the LA SHPO, shall continue to  
34 identify and provide members of the public likely to be interested in the  
35 effects of the WSLP project upon historic properties with a description  
36 of the undertaking and the provisions of this Agreement.  
37

38 B. Specific cultural resources data will not be released to the general  
39 public, or become released as part of NEPA documents.  
40

41 C. To the extent permitted under applicable federal laws and regulations, the  
42 USACE will release to the public, documents developed pursuant to this  
43 Agreement, effects determinations, and Interim Progress Reports.  
44

45 IV. Other Consulting Parties  
46

- 1 A. Any member of the public expressing interest, may become a consulting  
2 party by submitting a written request to USACE.  
3
- 4 B. The USACE, in coordination with LA SHPO, will continue efforts  
5 during the duration of this Agreement to identify other parties with  
6 demonstrated interests in the preservation of historic properties.  
7
- 8 C. The USACE will document the consulting parties in the consultation  
9 process for the WSLP project and maintain it as part of the  
10 administrative record.  
11
- 12 D. If any dispute arises about the right to be recognized as a consulting  
13 party, the USACE will contact the ACHP and provide all appropriate  
14 documentation. The ACHP will participate in the resolution of the issue.  
15

16 V. Identification, Evaluation, and Assessment of Effects Determinations  
17

- 18 A. The USACE, in consultation with the LA SHPO and Indian Tribes,  
19 will define and document the geographic areas within which an  
20 undertaking may directly or indirectly cause alterations in the character  
21 or use of historic properties, if any such properties exist, referred to as an  
22 area of potential effects (APE). Because WSLP contains borrow  
23 sources and mitigation areas that are spatially distinct from the risk  
24 reduction system, there will be multiple APE (collectively, the WSLP  
25 APE). Each APE will assist in identifying the potential for direct,  
26 indirect, and cumulative effects upon historic properties. The  
27 reasonable and good faith identification and evaluation efforts will be  
28 limited to identified WSLP APE.  
29
- 30 B. WSLP APE are defined at this time to include areas that may be directly  
31 or indirectly impacted by:
- 32 1. A 55-ft wide and 18.27 mile long levee located in St.  
33 John the Baptist Parish, including its associated features (i.e.,  
34 pump stations, canals, and drainage structures), as well as  
35 activities associated with construction (i.e., access roads and  
36 staging areas);  
37
  - 38 2. Three (3) 20-ft wide berms enclosing three residential  
39 communities located in St. James Parish with a  
40 combined total length of approximately 7 miles;  
41
  - 42 3. Installation of 145 flap gates on existing culverts  
43 below Highway 3125.  
44  
45

- 1 C. Borrow sources and mitigation sites are not yet fully defined, and will be  
2 coordinated for purposes of defining APE by USACE, LA SHPO, and  
3 Indian Tribes. Additional areas of WSLP APE will be identified as  
4 necessary.  
5
- 6 D. Following the delineation of final WSLP APE components, the USACE  
7 will conduct a reasonable and good faith effort to identify historic  
8 properties located within the WSLP APE. Level of survey to be  
9 conducted within the APE and methodology will be developed in  
10 consultation with the LA SHPO and both signatory and consulting  
11 Indian Tribes, in manner equivalent to the Section 106 Process of NHPA  
12 and equivalent to Reconnaissance or Phase I Investigations required by  
13 the Louisiana Division of Archaeology. Areas that are inaccessible or  
14 are determined to possess a low probability for containing historic  
15 properties may be excluded from survey after consultation with the LA  
16 SHPO and both signatory and consulting Indian Tribes.  
17
- 18 E. At the completion of this initial identification effort, consultation will  
19 occur to determine if and where further investigation is necessary.  
20 Historic properties that are identified may potentially be avoided through  
21 project design, and not all identified historic properties may require  
22 Phase II investigation in order to determine the potential for National  
23 Register of Historic Places (NRHP) eligibility. If eligible properties  
24 cannot be avoided, the USACE will proceed in accordance with  
25 Stipulation VII.  
26
- 27 F. The USACE will ensure that the results of the evaluation efforts are  
28 documented in a report that meets the standards of the Louisiana  
29 Division of Archaeology, and will ensure that the reports are  
30 submitted to the LA SHPO and both signatory and  
31 consulting Indian Tribes for review and comment. The  
32 USACE will ensure that the comments provided by the LA SHPO  
33 and signatory Indian Tribes are incorporated into a final report. The  
34 USACE will ensure that all collections and associated records are  
35 curated in accordance with 36 CFR 79.  
36
- 37 G. In the event of disagreement between the USACE, LA SHPO, and/or  
38 signatory Indian Tribes concerning the eligibility of a property for  
39 listing in the National Register of Historic Places under 36 CFR 60, the  
40 USACE shall request a formal determination of eligibility for that  
41 property from the Keeper of the National Register of Historic Places  
42 (Keeper). The determination by the Keeper will serve as the final  
43 decision regarding the National Register eligibility of the property.  
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46 VI. Coordination of Effects Determinations

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- A. All standard response timeframes established by 36 CFR 800 will apply to this Agreement, unless an alternative response timeframe is agreed to by the LA SHPO and signatory Indian Tribes. The USACE may request expedited review by the LA SHPO and signatory Indian Tribes on a case by case basis. Such expedited review period shall not be less than 10 working days.
  - B. 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 WSLP APE, the entire project activity will be reviewed accordingly.
  - C. Consultation under this Agreement will be concluded for USACE findings of *no historic properties affected* and *no adverse effect* when the LA SHPO and signatory Indian Tribes have reviewed the written documentation and concur with the USACE finding, and subject to the provisions of this Agreement.
  - D. Following submission of written documentation to the LA SHPO and signatory Indian 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.
  - E. In the event of an objection by the LA SHPO, signatory Indian 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 XI. Dispute Resolution.

## 41 VII. Resolution of Adverse Effects

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- A. In the event that the USACE, in consultation with the LA SHPO and signatory Indian 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

1 shall notify the LA SHPO, the ACHP, signatory and consulting Indian  
2 Tribes, other consulting parties and the public. If the project activity  
3 will affect a National Historic Landmark, USACE shall also notify the  
4 National Park Service (NPS). The notification of adverse effect shall  
5 include the following documentation, subject to the confidentiality  
6 provisions of 36 CFR 800.6:  
7

- 8 1. Summary description of the activity area;
- 9
- 10 2. Summary of identification efforts in accordance with this  
11 agreement;
- 12
- 13 3. Summary analysis of effects to historic properties;
- 14
- 15 4. Summary of alternatives considered to avoid or reduce adverse  
16 effects;
- 17
- 18 5. Proposed mitigation measures in accordance with Stipulation  
19 VIII. Standard Mitigation Measures when adverse effects  
20 cannot be avoided or conditioned to reach a determination of  
21 no adverse effect; and  
22
- 23 6. Request for ACHP comment and involvement, as appropriate.
- 24
- 25 B. The ACHP, LA SHPO, signatory Indian Tribes, consulting parties,  
26 including NPS, as appropriate, and the public shall be afforded an  
27 opportunity to review and to comment on the adverse effect notification  
28 for a period of thirty days (30) calendar days after receipt of the adverse  
29 effect notification.  
30
- 31 C. Should the USACE, LA SHPO, and signatory Indian Tribes disagree on  
32 the proposed mitigation measures, the USACE shall seek to resolve such  
33 objection through consultation in accordance with Stipulation XI.  
34 Dispute Resolution.  
35

### 36 VIII. Standard Mitigation Measures

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- 38 A. The USACE, in coordination with the LA SHPO, ACHP, signatory  
39 Indian Tribes, and other consulting parties, will identify Standard  
40 Mitigation Measures for adverse effects to historic properties. Standard  
41 mitigation measures will be tailored to the significance of the historic  
42 property, and may include, but are not necessarily limited to, one or  
43 more of the following:  
44
- 45 1. Public Interpretation;
- 46

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 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, ACHP, and/or signatory Indian Tribes determine that standard mitigation measures are not adequate to resolve adverse effects, the USACE, LA SHPO, and signatory Indian 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 consulting parties agree to the terms of the mitigation, such agreement will be formalized through an MOA executed and implemented pursuant to 36 CR 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 XI will be implemented.

#### IX. 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 Indian Tribes, during the execution of the project, the USACE immediately shall secure the immediate jobsite by

1 the most appropriate quickly available means, to include but not  
2 necessarily limited to a 50-foot radius buffer around the unexpected  
3 discovery, and suspend work in that buffered area of the affected  
4 resource. The USACE shall immediately notify the LA SHPO,  
5 signatory Indian Tribes, and other consulting parties including Indian  
6 Tribes as appropriate, of the finding. Any previously unidentified  
7 cultural resource will be treated as though it is eligible for the NRHP  
8 until other determination may be made. If consulting parties agree that  
9 the cultural resource should not be considered for the NRHP, then  
10 suspension of work will end. If consulting parties agree that the cultural  
11 resource should be considered for NRHP, then USACE, in consultation  
12 with the LA SHPO and signatory Indian Tribes, will develop a treatment  
13 plan or Standard Mitigation Measures agreement. USACE will  
14 implement the plan or Standard Mitigation Measures agreement once  
15 approved by the LA SHPO, Indian Tribes, and consulting parties, as  
16 appropriate.

17  
18 B. USACE shall insure that all contractors are made aware of the  
19 requirements of this Agreement. Language of Stipulation IX shall be  
20 included in Construction Plans and Specifications. In the event that a  
21 contractor discovers a previously unidentified cultural resource, the  
22 contractor shall immediately notify the USACE and refrain from further  
23 project activities within the immediate vicinity of the discovery and take  
24 reasonable efforts to avoid and minimize harm to the cultural resource.  
25 USACE shall implement any additional measures thought necessary to  
26 secure the historic property for safety and security concerns,.

27  
28 C. In the event that previously unidentified effects to historic properties are  
29 identified following the completion of work within an activity area, any  
30 party may provide the USACE with evidence of such effects for a period  
31 of twelve (12) months from the completion of the affecting work. The  
32 USACE, in consultation with the LA SHPO, signatory Indian Tribes,  
33 and ACHP, as appropriate, will review and if determined necessary will  
34 develop a treatment plan or Standard Mitigation Measures agreement.

35  
36 D. If the USACE, LA SHPO, Indian Tribes, consulting parties, or member  
37 of the public, as appropriate cannot agree on an appropriate course of  
38 action to address the discovery situation, the USACE shall initiate the  
39 dispute resolution process set forth in Stipulation XI. Dispute  
40 Resolution.

41  
42 X. Discovery of Human Remains

43  
44 A. Language of Stipulation X shall be included in Construction Plans and  
45 Specifications, to offer fullest knowledge of the importance therein.  
46

- 1 B. When human remains or indications of a burial are discovered, the  
2 individual(s) who made the discovery shall immediately notify the  
3 local law enforcement and the USACE, New Orleans District. All  
4 work shall cease within a buffer area surrounding the discovery, to  
5 be a 50-foot radius until and unless determined otherwise in  
6 consultation according to this Agreement.  
7
- 8 C. The USACE may authorize the activity in the direct discovery  
9 areas to resume, following the completion of all necessary steps as  
10 outlined below.  
11
- 12 D. In the event that the USACE is notified of a previously unidentified  
13 burial, including burial sites, human skeletal remains, or burial  
14 artifacts, on private or state land during the execution of any of the  
15 Undertakings, the USACE will ensure that the procedures established  
16 in the Louisiana Unmarked Human Burial Sites Preservation Act (La.  
17 R.S. 8:671-681) will be followed.  
18
- 19 E. In the event that the USACE is notified of a previously unidentified  
20 American Indian burial, including burial sites, human remains or  
21 funerary objects, on federal or tribal land during the execution of any  
22 of the undertakings, the USACE will ensure that procedures  
23 established by the Native American Graves Protection and  
24 Repatriation Act (NAGPRA) of 1990 and the regulations that  
25 implement it (43 CFR Part 10) will be followed.  
26
- 27 F. In the event that the USACE is notified of a previously unidentified  
28 burial, including burial sites, human remains or funerary objects, on  
29 federal or tribal land during the execution of any of the undertakings,  
30 the USACE will ensure that procedures established by the  
31 Archaeological Resources Protection Act of 1979 (Public Law 96-95;  
32 16 U.S.C. 470aa-mm), as amended, and implementing regulations  
33 (43 CFR Part 7) will be followed.  
34
- 35 G. The USACE shall have an archaeologist immediately survey or  
36 resurvey the general area where the remains were found to determine the  
37 nature of the remains and evaluate the possibility of preserving the  
38 remains in place or whether they will need to be exhumed/moved.  
39 Federally recognized Indian Tribes likely to have a cultural affiliation  
40 with the remains will be notified by telephone immediately in  
41 accordance with 43 CFR 10.4(b). If possible Tribal  
42 representative(s) shall be present to advise on appropriate treatment  
43 of the exposed remains and on the most appropriate long-term  
44 solution.  
45

- 1 H. The USACE shall provide information collected on the nature of the  
2 remains and a recommended plan of action pursuant to 43 CFR  
3 10.5(e) within five (5) working days to the signatory Indian Tribes  
4 and the LA SHPO. The USACE shall consult with all relevant parties  
5 to determine the appropriate course of action with regard to the human  
6 remains and any accompanying artifacts, grave goods, or funerary  
7 objects.  
8
- 9 I. All signatories to the PA agree that the most appropriate treatment, if  
10 feasible, is to protect the remains and permanently preserve the  
11 burial in situ.  
12
- 13 J. If the USACE, after consultation, determines that protection,  
14 avoidance, or repair is not feasible, disinterment shall be conducted in  
15 accordance with methods and procedures developed in accordance  
16 with the appropriate federal and state laws and in consultation with  
17 the signatory Indian Tribes and the LA SHPO.  
18  
19

20 XI. Dispute Resolution  
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- 22 A. Except for the resolution of eligibility issues, as set forth in Stipulation  
23 V Numbers D and E above, should the LA SHPO, Indian Tribes, or  
24 member of the public disagree on the implementation of the provisions  
25 of this agreement, they will notify the USACE, who will seek to resolve  
26 such objection through consultation.  
27
- 28 B. If the dispute cannot be resolved through consultation, USACE shall  
29 forward all documentation relevant to the dispute to the ACHP,  
30 including any proposed resolution identified during consultation. Within  
31 seven (7) calendar days after receipt of all pertinent documentation, the  
32 ACHP may:  
33
- 34 1. Provide USACE with recommendations to take into account in  
35 reaching final decision regarding the dispute; or
  - 36 2. Notify USACE that it will comment pursuant to 36 CFR  
37 800.7(c) and provide formal comments within twenty-one (21)  
38 calendar days.  
39
- 40
- 41 C. Any recommendation or comment provided by ACHP will be  
42 understood to pertain only to the subject of the dispute, and USACE's  
43 responsibilities to fulfill all actions that are not subject of the dispute  
44 will remain unchanged.  
45
- 46 D. If the ACHP does not provide USACE with recommendations or  
47 notification of its intent to provide formal comments within seven (7)

1 calendar days, USACE may assume that the ACHP does not object to its  
2 recommended approach and it will proceed accordingly.

3  
4 XII. Administration and Duration of this Agreement

- 5  
6 A. This Programmatic Agreement will remain in effect for five (5) years  
7 from the date of execution, unless extended for a two-year period by  
8 written agreement negotiated by all signatories.  
9  
10 B. The concurring and signatory parties to this Agreement shall meet  
11 annually to evaluate the effectiveness of this Agreement. The USACE  
12 shall coordinate such annual meetings following the execution of this  
13 Agreement.

14  
15 XII. Comprehensive Review

- 16  
17 A. At the conclusion of all Section 106 coordination activities necessary  
18 to address WSLP project actions, the USACE will analyze the  
19 undertaking holistically to identify cumulative effects upon historic  
20 properties.  
21  
22 B. The USACE, in coordination with the signatories to this  
23 Agreement, shall identify and shall implement additional  
24 mitigation measures to address adverse cumulative effects, as  
25 appropriate.  
26  
27 C. All Section 106 coordination activities necessary to address WSLP  
28 project actions shall be combined into a single Report discussion  
29 according to format required by the Louisiana Division of  
30 Archaeology, and shall be distributed to the signatories of this  
31 Agreement and to other interested parties.

32  
33 XIII. Amendment and Termination

- 34  
35 A. Notwithstanding any provision of this agreement, the signatories may  
36 request that it may be amended, whereupon the signatories will consult  
37 to consider such amendment. The USACE will facilitate such  
38 consultation within thirty (30) days of receipt of the written request.  
39 Any amendment will be in writing and will be signed by the USACE,  
40 the LA SHPO, the signatory Indian Tribes, and the ACHP, and shall be  
41 effective on the date of the final signature.  
42  
43 B. Any Invited Signatory Party may terminate its participation in this  
44 Agreement by providing thirty (30) days advance written notification to  
45 all other parties. In the event of termination by one signatory, the  
46 Agreement will remain in effect for the USACE and other signatories.

1  
2 Execution of this Agreement by the USACE, the LA SHPO, and ACHP and  
3 implementation of its terms, evidences that the USACE has taken into account the effects  
4 of the WSLP project upon historic properties and has afforded the ACHP an opportunity  
5 to comment.

DRAFT