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**ENVIRONMENTAL APPENDIX  
TIER 1 CULTURAL RESOURCES**

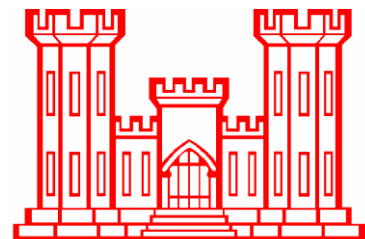
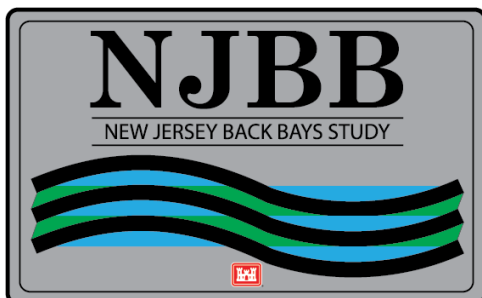
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**NEW JERSEY BACK BAYS  
COASTAL STORM RISK MANAGEMENT  
FEASIBILITY STUDY**

**PHILADELPHIA, PENNSYLVANIA**

**APPENDIX F.5**

**August 2021**



**U.S. Army Corps of Engineers  
Philadelphia District**

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## 1.0 DRAFT PROGRAMMATIC AGREEMENT

PROGRAMMATIC AGREEMENT  
REGARDING COMPLIANCE WITH SECTION 106 OF THE NATIONAL HISTORIC  
PRESERVATION ACT  
FOR  
NEW JERSEY BACK BAYS COASTAL STORM RISK MANAGEMENT PROJECT  
AMONG  
THE U.S. ARMY CORPS OF ENGINEERS, PHILADELPHIA DISTRICT  
AND  
THE NEW JERSEY STATE HISTORIC PRESERVATION OFFICE

WHEREAS, the U.S. Army Corps of Engineers, Philadelphia District (USACE), is authorized by Public Law (PL) 113-2, Disaster Relief Appropriations Act, 2013 to study coastal storm risk management in areas of New Jersey affected by Hurricane Sandy. Chapter 4 of PL 113-2 identifies USACE specific reports for congress, including the North Atlantic Coast Comprehensive Study (NACCS) to identify areas in need of coastal flooding and sea level rise risk management. The New Jersey Back Bays Coastal Storm Risk Management Study (NJBB CSRM) is one of these focus areas. The NJBB CSRM Study is authorized by the New Jersey Shore Protection Authority of 1987; and

WHEREAS, the USACE proposes to continue to refine the Tentatively Selected Plan (TSP) which includes three (3) storm surge barriers at Manasquan Inlet, Barnegat Inlet and Great Egg Harbor Inlet, two (2) bay closures at Absecon Boulevard and southern Ocean City and nonstructural solutions for 18,800 structures including elevation and floodproofing; and

WHEREAS, the USACE has determined that the proposed Undertaking may have the potential to cause an adverse effect on properties eligible for or listed on the NRHP pursuant to Section 106 of the National Historic Preservation Act (54 U.S.C 306108) (NHPA) and its implementing regulation, "Protection of Historic Properties" (36 CFR § 800); and

WHEREAS, the New Jersey Department of Environmental Protection (NJDEP) is the non-federal partner with the USACE for this Undertaking and is providing all lands, easements, rights-of-way, and other areas needed for the proposed project; and

WHEREAS, the USACE has consulted with the New Jersey State Historic Preservation Office (NJSHPO) to advise and assist the USACE in the identification of NRHP eligible and listed properties within the Area of Potential Effect (APE) pursuant to 36 CFR § 800.3(c); and

WHEREAS, the USACE, in consultation with the NJSHPO, has determined the Area of Potential Effects (APE) to include all areas within which the Undertaking may directly or indirectly alter the character defining features of historic properties, if any such properties exist; and

WHEREAS, in accordance with 36 CFR § 800.14(b)(2)(i), the USACE shall identify potential consulting parties as the Undertaking is refined; and

WHEREAS, in accordance with 36 CFR § 800.14(b)(2)(i), the USACE has invited the Delaware Nation, the Delaware Tribe, the Eastern Shawnee Tribe of Oklahoma, the Oneida Indian Nation, the Saint Regis Mohawk Tribe, the Seneca Nation of New York and the Stockbridge-Munsee Community of Mohican Indians into consultation; and

WHEREAS, the USACE, the NJSHPO, the NPS and the Tribes agree that it is advisable to accomplish compliance with Section 106 of the NHPA through the development and execution of this Programmatic Agreement (PA) in accordance with 36 CFR § 800.6 and § 800.14 (b)(1)(ii); and

WHEREAS, the USACE is coordinating, and shall continue to coordinate a public outreach program for this Undertaking which in the past has consisted of a number of public meetings and the circulation of cultural resource and environmental documents related to the Section 106 and NEPA review processes; and

WHEREAS, in accordance with 36 CFR § 800.6(a)(1)(i)(C) and in accordance with 36 CFR § 800.14(b), the USACE has invited the Advisory Council on Historic Preservation (ACHP) to participate in consultation via the ACHP e106 submission on (WILL BE ENTERED ONCE SUBMITTED); and

NOW, THEREFORE, the USACE and the NJSHPO agree that the proposed Undertaking shall be implemented in accordance with the following stipulations in order to take into account the effects of the Undertaking on historic properties and to satisfy the USACE Section 106 responsibilities for all individual aspects of the Undertaking.

### **Stipulation I**

#### **Identification, Evaluation, Effect Determination and Resolution**

- A. *Scope of Undertaking.* This PA shall be applicable to all construction activities related to the proposed Undertaking's selected alternative. The Area of Potential Effects (APE) shall be established by the USACE in consultation with the NJSHPO and shall include all areas within which the Undertaking may directly or indirectly alter the character defining features of historic properties, if any such properties exist.
- B. *Qualifications and Standards.* The USACE shall ensure that all work conducted in conjunction with this PA is performed in a manner consistent with the Secretary of Interior's "Standards and Guidelines for Archeology and Historic Preservation" (48 Federal Register 44716-44740; September 23, 1983), as amended, or the Secretary of the Interior's Standards for the Treatment of Historic Properties (36 CFR Part 68), as appropriate. The USACE shall ensure that the all cultural resource investigations and reviews carried out pursuant to this agreement are carried out by or under the direct supervision of a person or persons meeting at a minimum, the appropriate standards set

forth in the Secretary of the Interior's Professional Qualifications Standards (48 FR 44738-44739).

- C. *Definitions.* The definitions set forth in § 800.16 are incorporated herein by reference and apply throughout this PA.
- D. *Identification of Historic Properties.* Prior to the initiation of any irretrievable commitment of construction funds, the USACE shall make a reasonable and good faith effort to identify historic properties located within the APE. These steps may include, but are not limited to, background research, consultation, oral history interviews, sample field investigation, field survey, phased archaeological survey, and intensive level architectural survey. The level of effort for these activities shall be determined in consultation with the NJSHPO and any Tribe that attaches religious and cultural significance to identified properties. If no historic properties are identified within the APE, the USACE shall document this finding pursuant to § 800.11(d) and retain this documentation in USACE files for at least seven (7) years.
- E. *Evaluation of National Register Eligibility.* If potential historic properties are identified within the APE, the USACE shall determine their eligibility for listing on the National Register of Historic Places in accordance with the process described in § 800.4(c) and criteria established in 36 CFR § 60.4. The determination of cultural significance shall be conducted in consultation with the NJSHPO and Tribes that attach religious and cultural significance to identified properties. Should the USACE and the NJSHPO agree that a property is or is not eligible; such consensus shall be deemed conclusive for the purpose of the PA. Should the USACE and NJSHPO not agree regarding the eligibility of a property, the USACE shall obtain a determination of eligibility from the Keeper of the National Register pursuant to 36 CFR Part 63.
- F. *No Historic Properties Affected.* The USACE shall make a reasonable and good faith effort to evaluate the effect of each Undertaking on historic properties within the APE. The USACE through consultation may conclude that no historic properties are affected by an Undertaking if no historic properties are present in the APE, or the Undertaking will have no effect as defined in §800.16(i). This finding shall be documented in compliance with § 800.11(d) and the documentation shall be retained by the USACE for at least seven (7) years and provided to the NJSHPO upon request. The USACE shall provide information on the finding to the public upon request, consistent with the confidentiality requirements of § 800.11(c).
- G. *Assessment of Effects*
  - 1. *Finding of No Adverse Effect.* The USACE, in consultation with the NJSHPO and Tribes that attach religious and cultural significance to identified historic properties, shall apply the criteria of adverse effect to historic properties within the APE in accordance with § 800.5. The USACE may propose a finding of no adverse effect if the Undertaking's effects do not meet the criteria of § 800.5(a)(2) or the Undertaking

is modified to avoid adverse effects in accordance with 36 CFR Part 68. The USACE shall provide to the NJSHPO documentation of this finding meeting the requirements of § 800.11(e). The NJSHPO shall have 30 calendar days in which to review the findings and provide a written response to the USACE. The USACE may proceed upon receipt of written concurrence from the NJSHPO. Failure of the NJSHPO to respond within 30 days of receipt of the finding shall be considered agreement with the finding. The USACE shall maintain a record of the finding and provide information on the finding to the public upon request, consistent with the confidentiality requirements of § 800.11(c).

2. *Resolution of Adverse Effect.* If the USACE determines that the Undertaking will have an adverse effect on historic properties as measured by criteria in § 800.5(a), the agency shall consult with the NJSHPO, the Tribes, and other consulting parties (CPs), to resolve adverse effects in accordance with § 800.6.

a. For historic properties that the USACE and NJSHPO agree will be adversely affected, the USACE shall:

- 1) Consult with the NJSHPO to identify other individuals or organizations to be invited to become CPs. If additional CPs are identified, the USACE shall provide them copies of documentation specified in § 800.11(e) subject to confidentiality provisions of § 800.11(c).
  - 2) Afford the public and interested parties an opportunity to express their views on resolving adverse effects in a manner appropriate to the magnitude of the project and its likely effects on historic properties.
  - 3) Consult with the NJSHPO, the NJDEP, the Tribes, and other CPs which have indicated an interest in the Undertaking to seek ways to avoid, minimize, or mitigate adverse effects.
  - 4) The USACE, in consultation with NJSHPO, the Tribes, and other CPs as appropriate, shall prepare an historic property treatment plan which describes mitigation measures the USACE proposes to resolve the Undertaking's adverse effects and provide this plan for review and comment to the NJSHPO, the Tribes and other CPs that have indicated an interest in the Undertaking. All parties shall have 30 calendar days in which to provide a written response to the USACE. Please include any comments or edits, and whether you concur with the plan to resolve adverse effects.
- b. If the USACE and NJSHPO fail to agree on how adverse effects will be resolved, the USACE shall request that the Council join the consultation and provide the Council with documentation pursuant to § 800.11(g).
- 1) If the Council agrees to join the consultation, the USACE shall proceed in accordance with § 800.9.

- 2) If, after consulting to resolve adverse effects pursuant to Stipulations I or II of this PA, the Council, USACE, NJSHPO or Tribes determines that further consultation will not be productive, then any party may terminate consultation in accordance with the notification requirement and process prescribed by § 800.7.

## **Stipulation II**

### Post Review Changes and Discoveries

- A. *Changes in the Undertaking.* If construction on the Undertaking has not commenced and the USACE determines that it will not conduct the Undertaking as originally coordinated, the USACE shall reopen consultation pursuant to Stipulation I D – G.
- B. *Unanticipated Discoveries or Effects.* Pursuant to § 800.13(a)(1), if historic properties are discovered or unanticipated effects on historic properties are found after construction on an Undertaking has commenced, the USACE shall ensure that all operations with the potential to effect an historic property are immediately ceased, develop a treatment plan to resolve adverse effects, and notify the NJSHPO and the Tribes within 48 hours of the discovery. The notification shall include the USACE assessment of National Register eligibility of affected properties and proposed actions to resolve the adverse effects. Comments received from the NJSHPO and Tribes which have expressed an interest in the Undertaking within 48 business hours of the notification shall be taken into account by the USACE in carrying out the proposed treatment plan. The USACE may assume NJSHPO concurrence in its eligibility assessment unless otherwise notified by the NJSHPO. The USACE shall provide the NJSHPO and the Tribes which have expressed an interest in the Undertaking a report of the USACE actions when they are completed.
- C. *Treatment of Human Remains.*
  1. If any human remains and/or grave-associated artifacts are encountered, the USACE, the NJSHPO and the Tribes shall consult to develop a treatment plan that is responsive to the ACHP’s “Policy Statement Regarding Treatment of Burial Sites, Human Remains and Funerary Objects” (23 February 2007), the Native American Grave Protection and Repatriation Act, as amended (PL 101-601, 25 U.S.C. 3001 et seq.), and the USACE Tribal Consultation Policy (4 October 2012).
  2. Human remains must be treated with the utmost respect and dignity. All work must stop in the vicinity of the find and the site will be secured.
  3. The medical examiner/coroner, local law enforcement, the NJSHPO and the Tribes will be notified immediately. The coroner and local law enforcement will determine if the remains are forensic or archaeological in nature.



4. If the remains are determined to be archaeological in nature, a forensic/physical anthropologist will be employed to determine whether the remains are Native American or of other origin.
5. If the human remains are determined to be Native American they shall be left in place and protected from further disturbance until a treatment plan has been developed and approved by the USACE, the NJSHPO and the Tribes.
6. If human remains are determined to be non-Native American, the remains will be left in place and protected from further disturbance until a plan for avoidance or removal is developed and approved by the USACE, the NJSHPO, the Tribes and other parties, as appropriate.

### **Stipulation III**

#### Coordination of Reviews for Study Activities

- A. All plans, documents, reports and materials shall be submitted by the USACE to the NJSHPO, the Tribes and other CPs by mail for a 30 day review period unless otherwise stipulated in this PA. If the NJSHPO and other parties fail to comment within the specified time the USACE shall assume the agencies concurrence.
- B. The USACE shall ensure that all submissions to the NJSHPO, the Tribes and other CPs include all the relevant information required to facilitate their review. The USACE shall provide all additional information requested within a timely manner unless the signatories to this PA agree otherwise.
- C. The USACE shall ensure that all draft and final reports resulting from actions pursuant to the Stipulations of this PA will be provided to the NJSHPO, the Tribes and other CPs and will identify the Principal Investigator responsible for the report. All reports will be responsible to contemporary standards and to NJSHPO report standards.

### **Stipulation IV**

#### Curation and Disposition of Artifacts and Records

The USACE shall ensure that all archeological materials and associated records owned by the State which are recovered and conserved as a result of the identification, evaluation, and treatment efforts conducted under this PA, shall be transported and accessioned into a suitable university, museum, or other scientific or educational institution that meets the standards of 36 CFR Part 79. Copies of associated archaeological records and data shall be made available to the NJSHPO and the Tribes upon request. Archeological items and materials from privately-owned lands shall be returned to their owners upon completion of analyses required for Section 106 compliance under this PA.

### **Stipulation V**

#### PA Amendments, Disputes and Termination

A. *Amendments.* Any party to this PA may propose to the other parties that it be amended, whereupon the parties will consult in accordance with § 800.6(c)(7) to consider such an amendment.

B. *Disputes.* Disputes regarding the completion of the terms of this agreement shall be resolved by the signatories. If the signatories cannot agree regarding a dispute, any one of the signatories may request the participation of the ACHP in resolving the dispute in accordance with the procedures outlined in § 800.9.

C. *Termination of PA.* Any party to this PA may terminate it by providing sixty (60) days notice to the other parties, provided that the parties will consult during the period prior to the termination to seek agreement on amendments or other actions that will avoid termination. In the event of termination of this PA by the NJSHPO, the USACE shall comply with the provisions of § 800 Subpart B.

D. *Anti-Deficiency Act.* All requirements set forth in this PA requiring expenditure of funds by the District are expressly subject to the availability of appropriations and the requirements of the Anti-Deficiency Act (31 U.S.C. 1341). No obligation undertaken by the District under the terms of this PA shall require or be interpreted to require a commitment to expend funds not appropriated for a particular purpose. If the District cannot perform any obligation set forth in this PA because of unavailability of funds that obligation must be renegotiated among the District and the signatories as necessary.

#### **Stipulation VI**

##### Termination of Consultation

If, after consulting to resolve adverse effects pursuant to Stipulation I or II of this PA, the USACE or NJSHPO determines that further consultation will not be productive, then either party may terminate consultation in accordance with the notification requirements and process prescribed by § 800.7

#### **Stipulation VII**

##### Term of this Agreement

This PA will continue in full force and effect until the construction of the Undertaking is complete and all terms of this PA are met. After a period of seven (7) years from execution of the PA, unless the Project has been completed, it did not receive Congressional authorization, or its authorization was rescinded, the signatories will coordinate to decide whether to extend the agreement as it is written or to update it provided all signatories concur.

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REGARDING COMPLIANCE WITH SECTION 106 OF THE NATIONAL HISTORIC  
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AMONG  
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Execution and implementation of this PA evidences that the USACE has satisfied its Section 106 responsibilities for all individual Undertakings of the Project, and that the USACE has afforded the ACHP an opportunity to comment on the Undertaking and its effects on historic properties.

**U.S. ARMY CORPS OF ENGINEERS, PHILADELPHIA DISTRICT**

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**LTC David Park, District Commander**

**Date**

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**NEW JERSEY STATE HISTORIC PRESERVATION OFFICER**

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**Katherine J. Marcopul, Deputy State Historic Preservation Officer**

**Date**

## 2.0 TRIBAL RESPONSE TO SCOPING



Historic Preservation Representatives  
P.O. Box 64  
Wilmington, PA 19804  
[temple@delawaretribe.org](mailto:temple@delawaretribe.org)

August 9, 2016

Department of the Army  
Philadelphia District, Corps of Engineers  
Wanamaker Building, 100 Penn Square East  
Philadelphia, PA 19107

RE: New Jersey Back Bays Study

Dear Ms. Cooper Minnichbach,

Thank you for informing the Delaware Tribe of the above referenced project. The Delaware Tribe is committed to protecting historic sites important to our tribal heritage, culture and religion. Our initial review indicates that there are many known religious or culturally significant sites within this project area and we would like to enter into consultation as the project progresses.

We do ask that in the event that a concentration of artifacts and/or in the event any human remains are accidentally unearthed during the course of the project that all work is halted until the Delaware Tribe of Indians is informed of the inadvertent discovery and a qualified archaeologist can evaluate the find.

If you have any questions, feel free to contact this office by phone at (610) 761-7452 or by e-mail at [temple@delawaretribe.org](mailto:temple@delawaretribe.org).

Sincerely,

A handwritten signature in black ink, appearing to read "Susan Bachor", is written on a light-colored rectangular background.

Susan Bachor  
Delaware Tribe Historic Preservation Representative