



**US Army Corps  
of Engineers**®  
Galveston District

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**DRAFT  
SUPPLEMENTAL  
ENVIRONMENTAL ASSESSMENT  
CULTURAL PROGRAMMATIC AGREEMENT  
APPENDIX E**

**Sabine Pass to Galveston Bay  
Port Arthur and Vicinity  
Segments 2, 3, 4, 5 and 5A**

**U.S. Army Corps of Engineers  
Southwestern Division  
Galveston District**

**NOVEMBER 2024**

# SWG ROUTING AND TRANSMITTAL FORM

**TO:** COMMANDER  
**SUBJECT:** Programmatic Agreement regarding compliance with Section 106 of the National Historic Preservation Act for the Gulf Intracoastal Water

**FROM:** CESWF-PEE  
**DATE:** 08/26/24

**SUMMARY OF ACTION REQUIRED, NOTES, REMARKS, ETC:**

In accordance with Section 106 of the National Historic Preservation Act (NHPA), the enclosed Programmatic Agreement (PA) has been developed in order to avoid, minimize, and mitigate potential impacts to historic properties associated with the Sabine to Galveston Coastal Storm Risk Management project.

The PA has undergone legal review by SWG Office of Counsel and has been signed by the Texas State Historic Preservation Officer.

Upon review and signature by Galveston District Engineer, the executed PA will be submitted to the invited signatories for signature and then filed with the Advisory Council on Historic Preservation.

**ACTION POINT OF CONTACT:** Amanda Pesce 817-876-8059  
**TELEPHONE NO:**

OFFICE /STAFF COORDINATION			
OFFICE	CONCUR	NON-CONCUR	DATE
CESWF-PEE Pesce	<small>PESCE AMANDA A.KAY.1698118 620</small>		
CESWG-OC McConnell	<small>MCCONNELL S TAKELY.G.1545 866355</small>		
CESWF-PEE Shingleton	<small>SHINGLETON KEN METH LEE JR.112 827353</small>		
CESWF-PBE Morrow	<small>MORROW ROB ERT.M.1047602 260</small>		
CESWF-PE McGuire	<small>MCGUIRE AMANDA M.19992332</small>		

EXECUTIVE COORDINATION			
	APPROVE	DISAPPROVE	SEE ME
<b>EXECUTIVE ASSISTANT</b>	<small>MCGUIRE AMANDA M.19992332 20</small>		
<b>EXECUTIVE OFFICER</b>			
<b>DEPUTY DISTRICT ENGINEER</b>	BDL		
<b>DEPUTY COMMANDER</b>			
<b>COMMANDER</b>	29 Oct 24		

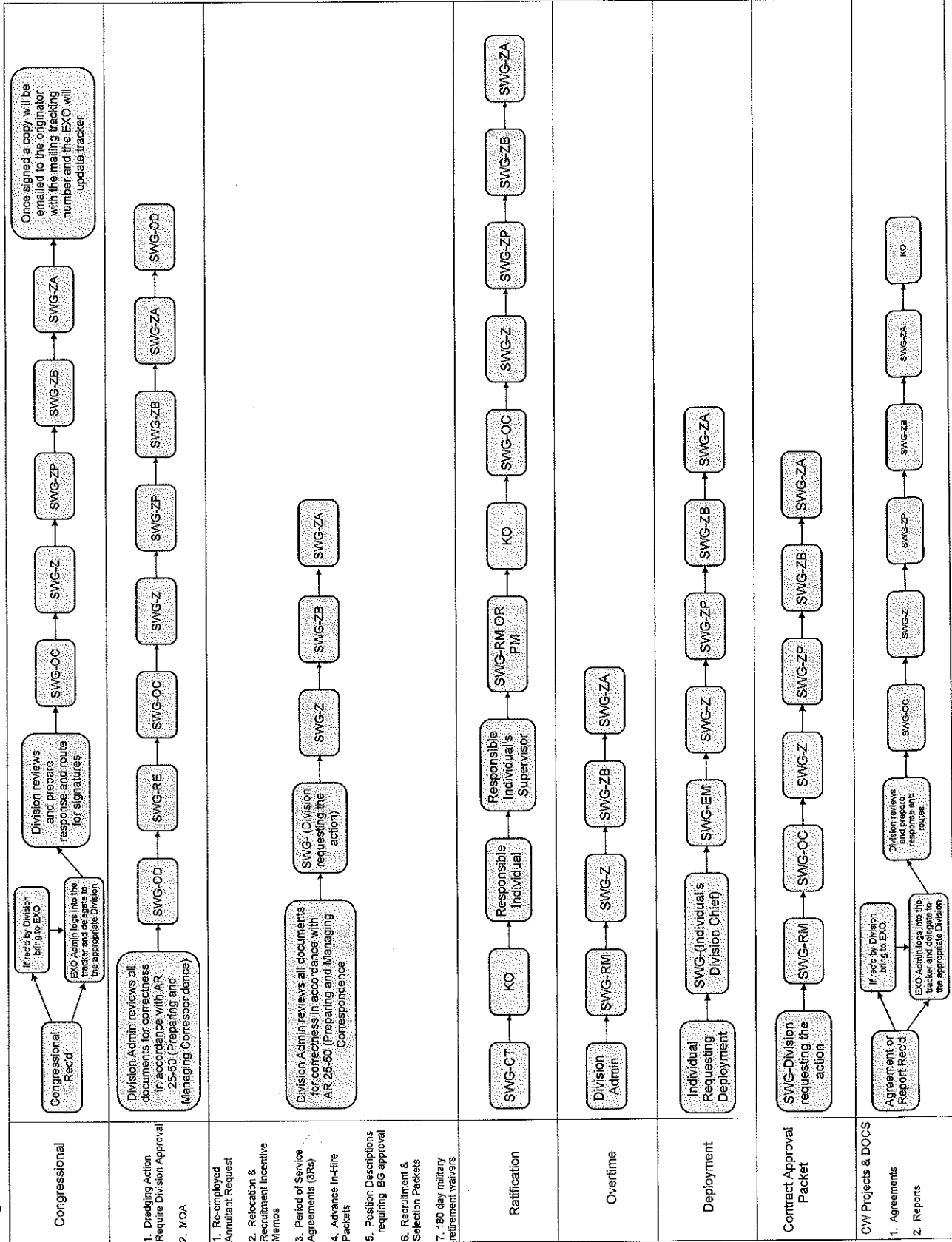
**EXECUTIVE REMARKS:**  
 10-015  
 Received: 21 Oct 24  
 Completed: 29 Oct 24  
 Not a fan of all signatures on separate pages?? But ok!  
 BDL

**DOCUMENT ROUTING PROCEDURES:**  
 See Attached Flow Chart.  
 Emailed Meath + asked him to #pages

**Offices Abbreviations:**  
 Contracting Division - CD  
 Emergency Management - EM  
 Equal Employment Opportunity - EEO  
 Engineering and Construction - E&C  
 Information Technology - ACE-IT  
 Internal Review - IR  
 Logistics - ULA

Office of Counsel - OC  
 Operations Division - OD  
 Programs and Projects Management Division - PPM/D  
 Public Affairs Office - PAO  
 Resource Management - RM  
 Real Estate - RE  
 Safety and Occupational Health - SO

**EXO Office Symbols:**  
 Commander - CESWG-ZA  
 Deputy Commander - CESWG-ZB  
 District Programs Manager - CESWG-ZP  
 Executive Officer - CESWG-Z



**PROGRAMMATIC AGREEMENT**  
**AMONG**  
**THE U.S. ARMY CORPS OF ENGINEERS, GALVESTON DISTRICT,**  
**AND**  
**THE TEXAS STATE HISTORIC PRESERVATION OFFICER**  
**REGARDING**  
**THE SABINE PASS TO GALVESTON BAY COASTAL STORM RISK**  
**MANAGEMENT PROJECT**

WHEREAS, this Programmatic Agreement (PA) is entered into by and between the United States Army Corps of Engineers, Fort Worth District (USACE), and the Texas State Historic Preservation Officer (SHPO); and

WHEREAS, the Sabine Pass to Galveston Bay Coastal Storm Risk Management and Ecosystem Restoration Study was authorized by resolution by the Committee of Transportation and Infrastructure of the United States House of Representatives dated February 16, 2000, in accordance with Section 110 of the Rivers and Harbors Act of 1962 requesting the Secretary of the Army to review the feasibility of providing shore protection and related improvements between Sabine Pass and the entrance of Galveston Bay; and

WHEREAS, the U.S. Army Corps of Engineers, Galveston District (USACE) has determined that the Sabine Pass to Galveston Bay Coastal Storm Risk Management Project constitutes a federal undertaking (henceforth referred to as the "Undertaking"), with the potential to affect historic properties subject to Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C. § 306108, and implementing regulations 36 C.F.R. Part 800; and

WHEREAS, previous compliance with the NHPA, as amended, for the planned construction of the Undertaking determined that the Undertaking had the potential to affect historic properties and that those effects could not be fully determined prior to approval of the Undertaking. Thus, a programmatic agreement entitled *Programmatic Agreement Regarding Compliance with Section 106 of the National Historic Preservation Act for the Sabine Pass to Galveston Bay Coastal Storm Risk Management and Ecosystem Restoration Project in Orange, Jefferson, Chambers, Galveston, Harris, and Brazoria Counties, Texas Among the U.S. Army Corps of Engineers, Galveston District, the Texas State Historic Preservation Officer, and Orange County, Texas, Jefferson County Drainage District No. 7, and the Velasco Drainage District* that was executed on February 24, 2017, in accordance with 36 C.F.R. § 800.14; and

WHEREAS, modifications to the proposed construction sequence of the Undertaking necessitate phased identification and evaluation in accordance with 36 C.F.R § 800.4(b)(2), and replacement of the 2017 PA with a new agreement address current project conditions; and

WHEREAS, the Area of Potential Effect (APE) includes the footprint of all the areas of ground disturbance and a 1,500-foot buffer for impacts to standing structures or buildings, as a result of new construction, improvements to existing facilities, and maintenance of existing facilities; and

WHEREAS, the Undertaking consists of three distinct non-contiguous project areas located in Port Arthur, Jefferson County, Texas; and Orange County, Texas; and



WHEREAS, Jefferson County Drainage District No. 7 as the non-Federal Sponsor (NFS) under a Project Cooperation Agreement dated November 29, 2019, for the Port Arthur portion of the Undertaking is providing the necessary lands, easements, relocations and rights-of-way for the Port Arthur project and is responsible for ongoing and future operation and maintenance of the Undertaking and is therefore, an Invited Signatory to the PA; and

WHEREAS, the Gulf Coast Protection District (GCPD) as the non-Federal Sponsor (NFS) under a Project Partnership Agreement dated April 29, 2022, for the Orange portion of the Undertaking is providing the necessary lands, easements, relocations and rights-of-way for the Orange project and is responsible for ongoing and future operation and maintenance of the Undertaking and is therefore, an Invited Signatory to the PA; and

WHEREAS, the USACE has invited the Advisory Council on Historic Preservation (ACHP) to participate, and the ACHP has declined to participate in a letter dated March 21, 2024; and

WHEREAS, in accordance with 36 C.F.R. § 800.14(b), the USACE has invited the Alabama-Coushatta Tribe of Texas; Comanche Nation, Oklahoma; Coushatta Tribe of Louisiana; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Kiowa Indian Tribe of Oklahoma; and the Tonkawa Tribe of Indians of Oklahoma to participate in the development and execution of this PA; and

WHEREAS, none of the tribes have elected to participate in the PA; and

NOW, THEREFORE, the USACE, the SHPO, Jefferson County Drainage District No. 7, and GCPD, agree that the Undertaking shall be implemented in accordance with the following stipulations to take into account the effect of the Undertaking on historic properties.

## **STIPULATIONS**

The USACE shall ensure that the following stipulations are carried out:

### **I. General**

- A. *Scope of Undertaking.* This PA shall be applicable to all excavation, modification of existing flood risk management infrastructure, construction of temporary access routes and/or staging areas, any ground disturbing activities, and any other activities with the potential to effect historic properties proposed by the Coastal Storm Risk Management and Ecosystem Restoration project. Activities inside the APE shall include but may not be limited to construction, staging and access areas, new or extensions of existing levees or borrow areas, and ecological mitigation features.



- 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 the Interior's "Standards and Guidelines for Archeology and Historic Preservation" (48 FR 44716-44740; September 23, 1983), as amended, or the Secretary of the Interior's "Standards for the Treatment of Historic Properties" (36 C.F.R § 68), as appropriate.
- C. *Definitions.* The definitions set forth in 36 C.F.R. § 800.16 are incorporated herein by reference and apply throughout this PA.

## **II. Identification, Evaluation, and Effect Determinations**

- A. *Phased Identification and Evaluation.* In accordance with 36 C.F.R § 800.4(b)(2), the USACE has determined that it is necessary to conduct identification and evaluation efforts in phases associated with construction priority, due to the large size and discontinuous nature of the undertaking, and restricted access to portions of the APE. The USACE shall make a reasonable and good faith effort during the Pre-construction, Engineering and Design phase to identify and evaluate historic properties located within the APE of each proposed construction element. The APE of each construction element shall be defined as any area that may experience physical or visual impacts, including but not limited to those described in Stipulation I.A., resulting from that particular phase of construction. Any work conducted on state or local public property shall adhere to the Antiquities Code of Texas (Texas Natural Resource Code, Chapter 191).
  - 1. *Documentation.* The USACE shall determine the resources' eligibility for the National Register of Historic Places (NRHP) in accordance with the process described in 36 C.F.R § 800.4(c) and criteria established in 36 C.F.R § 60 and National Register Bulletin 15 "How to Apply the National Register Criteria for Evaluation" (NPS1990). The USACE shall submit adequate documentation of these determinations, including but not limited to draft reports of survey or site testing investigations, to the SHPO and consulting parties for thirty (30) day review upon receipt. If concurrence cannot be reached regarding the NRHP eligibility, the USACE shall seek and take into account the recommendations of the Secretary of the Interior in accordance with 36 C.F.R § 800.4(c)(2).
- B. *Assessment of Effect.* The USACE shall evaluate the effect of the undertaking on each identified historic property within the APE of each proposed construction element, if present, in accordance with 36 C.F.R § 800.5(a)(1) and 36 C.F.R § 800.5(a)(3). The USACE may propose a finding of no adverse effect if the undertaking's effects do not meet the criteria of 36 C.F.R § 800.5(a)(1) or the undertaking is modified to avoid adverse effects in accordance with 36 C.F.R § 68. The USACE shall submit adequate documentation of the effect determinations in accordance with 36 C.F.R § 800.11 to all consulting parties for thirty (30) day review and comment upon receipt. Failure of the SHPO to respond with 30 calendar 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 36 C.F.R § 800.11(c).





### **III. Resolution of Adverse Effects.**

- A. If the USACE, in consultation with the SHPO, determines that the undertaking will have an adverse effect on historic properties as measured by criteria in 36 C.F.R § 800.5(a)(1), the USACE shall:
  - 1. Consult with the SHPO and Tribes to seek ways to avoid, minimize, or mitigate adverse effects in accordance with 36 C.F.R § 800.6, which shall be documented in one or more Historic Properties Treatment Plans (HPTP). Each HPTP may address adverse effects to one or more phases of construction.
  - 2. Ensure that adverse effects are resolved in accordance with each HPTP prior to initiating the associated phase of construction.
  - 3. Afford the public 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.
- B. If the USACE and the SHPO fail to agree on how adverse effects will be resolved, the USACE shall request that the ACHP join the consultation and proceed with the process as described in 36 C.F.R § 800.6(v).

### **IV. 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 II.
- B. Unanticipated Discoveries or Effects. Pursuant to 36 C.F.R § 800.13(6)(3), if historic properties are discovered or unanticipated effects on historic properties are found after construction on an undertaking has commenced, the USACE shall develop a treatment plan to resolve adverse effects and notify the SHPO and Tribes within 48 hours of the discovery. The notification shall include the USACE assessment of the NRHP eligibility of affected properties and proposed actions to resolve the adverse effects. Comments received from the SHPO and Tribes within 48 hours of the notification shall be taken into account by the USACE in carrying out the proposed treatment plan. The USACE may assume SHPO concurrence in its eligibility assessment and treatment plan unless otherwise notified by the SHPO within 48 hours of notification. USACE shall provide the SHPO and Tribes a report of the USACE actions when they are completed.
- C. Unanticipated Discoveries of Human Remains and/or Funerary Objects. The USACE shall treat any human remains and/or funerary objects encountered during the Undertaking in a manner guided by the ACHP's Policy Statement on Burial Sites, Human Remains, and Funerary Objects (2023), in conjunction with the Texas Health and Safety Code Chapter 711. In the event that human remains and/or funerary objects are discovered during construction, the USACE shall implement the following steps:



1. The Contractor shall immediately notify the USACE of an unanticipated discovery of potential human remains and/or funerary objects. The USACE shall immediately direct a Stop Work order within a thirty (30) meter radius of the discovery to the Contractor's Site Foreman to flag or fence off the discovery location and direct the Contractor to take measures to ensure site security. The Contractor shall not restart work within a minimum of the thirty (30) meter radius area of the find until USACE, in consultation and concurrence with the Signatories and Invited Signatories of the PA including Tribes, has granted clearance.
2. The Contractor shall indicate the location and date of the discovery on the project plans by a notation of "sensitive avoidance area" and notify the USACE archaeologist.
3. The USACE archaeologist shall immediately notify local law enforcement and the office of the Chief Medical Examiner of the human remains and/or funerary objects. They shall be allowed access to the location of the discovery to conduct their investigation.
4. Within twenty-four (24) hours of receipt of notification of the discovery, the USACE archaeologist shall notify all parties to the PA of the discovery in writing.
5. At all times human remains and/or funerary objects must be treated with the utmost dignity and respect. Human remains and/or associated artifacts shall be left in place and not disturbed until appropriate consultation has taken place and a site-specific plan of action has been developed. If it is declared a criminal matter, the USACE archaeologist shall have no further involvement and the decision to declare it a Cleared Site for construction shall be made by the appropriate legal authorities.

#### **V. Curation and Disposition of Recovered Materials, Records, and Reports**

- A. Curation. The USACE shall ensure that all archeological materials and associated records owned by the State of Texas or the NFS, which result from identification, evaluation, and treatment efforts conducted under this PA, are accessioned into a curation facility in accordance with the standards of 36 C.F.R 79, the Antiquities Code of Texas (Texas Natural Resource Code, Chapter 191), the Texas Administrative Code 13 TAC §29.5, and the Council of Texas Archeologists Guidelines and Standards for Curation, except as specified in Stipulation IV for human remains. Any collected items owned by the State of Texas or the NFS shall be curated in perpetuity by the NFS at a repository certified by the Texas Historical Commission. 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, unless the owners agree to donate the items for curation in perpetuity.
- B. Reports. The USACE shall provide copies of draft and final technical reports of investigations and mitigation to the consulting parties and the SHPO. All consulting parties shall withhold site location information or other data that may be of a confidential or sensitive nature pursuant to 36 C.F.R § 800.11(c).

#### **VI. PA Amendments, Disputes and Termination**

- A. Amendments. Any party to the PA may propose to the other parties that it be amended, whereupon the parties will consult in accordance with 36 C.F.R § 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 36 C.F.R § 800.9. The USACE shall forward to the ACHP and all consulting parties within fifteen (15) days of such a request all documentation relevant to the dispute, including the USACE's proposed resolution of the dispute. The ACHP will respond to the request within thirty (30) days of receiving all documentation. The USACE will take any recommendations or comments from the ACHP into account in resolving the dispute. In the event that the ACHP fails to respond to the request within thirty (30) days of receiving all documentation, the USACE may assume the ACHP's concurrence with its proposed resolution and proceed with resolving the dispute.
- C. Termination of PA. Any party to this PA may terminate it by providing a sixty (60) day 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 the USACE shall comply with the provisions of 36 C.F.R § 800, Subpart B.

## **VII. Term of this Agreement**

- A. Term. This Programmatic Agreement shall remain in force for a period of fifteen (15) years from the date of its execution by all Signatories or at such time as the USACE completes all excavation and construction activities and all the project objectives are operational, which include maintenance and stabilization actions, unless terminated pursuant to Stipulation VI.C. Sixty (60) calendar days prior to the conclusion of the fifteen (15) year period, the USACE shall notify all parties in writing of the end of the fifteen year period to determine if they have any objections to extending the term of this PA. If there are no objections received prior to expiration, the PA shall continue to remain in force for a new fifteen (15) year period.
- B. Status. Execution of this PA and implementation of its terms evidences that the USACE has taken into account the effects of the Undertaking and fulfilled Section 106 responsibilities regarding the Undertaking.



Signature Page for U.S. Army Corps of Engineers

PROGRAMMATIC AGREEMENT  
AMONG  
THE U.S. ARMY CORPS OF ENGINEERS, GALVESTON DISTRICT,  
AND  
THE TEXAS STATE HISTORIC PRESERVATION OFFICER  
REGARDING  
THE SABINE PASS TO GALVESTON BAY COASTAL STORM RISK MANAGEMENT PROJECT

Execution of this agreement and Implementation of its terms provides confirmation that the USACE has afforded all parties an opportunity to comment on the Sabine Pass to Galveston Bay Coastal Storm Risk Management Project, and its effects on historic properties, and that the USACE has taken into account the effects of the project on historic properties.

Signatories include the USACE and SHPO. Invited Signatories include Jefferson County District No. 7, and Gulf Coast Protection District.

Separate signature pages for each party follow.

Signatory  
U.S. Army Corps of Engineers, Galveston District



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Col. Rhett A Blackmon, P.E.,  
District Commander

Date





Signature Page for State Historic Preservation Officer

PROGRAMMATIC AGREEMENT  
AMONG  
THE U.S. ARMY CORPS OF ENGINEERS, GALVESTON DISTRICT,  
AND  
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Separate signature pages for each party follow.

Signatory  
Texas State Historic Preservation Office



Bradford Patterson  
Chief Deputy State Historic Preservation Officer

8/20/24  
Date



*Signature Page for Jefferson County Drainage District No. 7*

PROGRAMMATIC AGREEMENT  
AMONG  
THE U.S. ARMY CORPS OF ENGINEERS, GALVESTON DISTRICT,  
AND  
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Separate signature pages for each party follow.

Invited Signatory  
Jefferson County Drainage District No. 7

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Phil Kelley  
General Manager

Date



*Signature Page for Gulf Coast Protection District*

PROGRAMMATIC AGREEMENT  
AMONG  
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Signatories include the USACE and SHPO. Invited Signatories include Jefferson County District No. 7, and Gulf Coast Protection District.

Separate signature pages for each party follow.

Invited Signatory  
Gulf Coast Protection District

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Nicole Sunstrum  
Executive Director

Date

