

**PROGRAMMATIC AGREEMENT
AMONG
THE U.S. ARMY CORPS OF ENGINEERS, GALVESTON DISTRICT,
THE TEXAS STATE HISTORIC PRESERVATION OFFICER,
THE SABINE-NECHES NAVIGATION DISTRICT,
AND JEFFERSON COUNTY, TEXAS
REGARDING COMPLIANCE WITH SECTION 106 OF THE
NATIONAL HISTORIC PRESERVATION ACT FOR
THE JEFFERSON COUNTY ECOSYSTEM RESTORATION STUDY AND
ENVIRONMENTAL ASSESSMENT
IN
JEFFERSON COUNTY, TEXAS**

WHEREAS, the U.S. Army Corps of Engineers, Galveston District (USACE) is cost sharing with the Sabine-Neches Navigation District and Jefferson County, Texas for the implementation of the Jefferson County Ecosystem Restoration Study, which presents an alternative (Alternative 4Abu) that incorporates marsh and Gulf Intracoastal Waterway (GIWW) shoreline restoration features, which are critical to the stabilization and sustainment of the Jefferson County coastline marsh resources; and

WHEREAS, the Jefferson County Ecosystem Restoration Study is authorized by Section 110 of the River and Harbors Act of 1962 (Public Law 87-874) to develop a comprehensive plan for severe erosion along coastal Texas for the purposes of shoreline erosion and coastal storm damages, providing for environmental restoration and protection, increasing natural sediment supply to the coast, restoring and preserving marshes and wetlands, improving water quality, and other related purposes to the interrelated ecosystem along the Jefferson County coastline; and

WHEREAS, Alternative 4Abu in the Jefferson County Ecosystem Restoration Study (hereinafter, “undertaking”) consists of performing 6,048 acres of marsh elevation modification utilizing dredged material from the Sabine-Neches Waterway, and armoring 5,170 linear feet of the GIWW; and

WHEREAS, USACE has defined the undertaking’s preliminary area of potential effects (APE) as described in **Appendix B-Project Summary**; however, the final horizontal and vertical APE cannot be fully determined until the pre-construction, engineering and design phase of the study, and will be developed in consultation with the SHPO and those Tribal Nations requesting consulting party status (hereinafter, “Tribal Nations”) prior to a cultural resource survey being performed; and

WHEREAS, during the pre-construction, engineering and design phase of the study, the construction footprint of the undertaking will be developed through revisions and redesigning, with the final work plan being developed in consultation with all signatories and consulting parties to this PA; and

WHEREAS, USACE has determined that all activities associated with the undertaking have the potential to affect historic properties eligible for listing in the National Register of Historic Places (NRHP) (hereinafter, “historic properties”), pursuant to Section 106 of the National Historic Preservation Act (54 U.S.C. § 306108) (NHPA), as amended, and its implementing regulations (36 CFR Part 800); and

WHEREAS, the Sabine-Neches Navigation District (SNND) and Jefferson County, Texas are the non-Federal partners with the USACE for this undertaking, and are providing the necessary lands, easements, relocations, rights-of-way and disposal areas; and

WHEREAS, marsh measures proposed as part of this undertaking would take place on public lands managed by the United States Fish and Wildlife Service (USFWS) within the McFaddin National Wildlife Refuge; implementation of those measures will require coordination between the USACE and the USFWS; and failure to reach an agreement and/or conflicting USFWS priorities could affect implementation of those measures; and

WHEREAS, USACE has developed this Programmatic Agreement (PA) to describe the process that will be followed for identifying historic properties, assessing effects, and resolving any identified adverse effects within the horizontal footprint of the undertaking, prior to construction, and the process USACE will follow in the event that unanticipated discoveries are identified during construction and maintenance activities, and to ensure that the Section 106 process is fulfilled for the Jefferson County Ecosystem Restoration Study Integrated Feasibility Report and Environmental Assessment; and

WHEREAS, the USACE, has consulted with the Texas State Historic Preservation Officer (SHPO), pursuant to 36 CFR 800, the regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. § 470f) in developing a PA for the implementation of the undertaking, in accordance with 36 CFR § 800.6 and 36 CFR § 800.14(b)(1)(ii); and

WHEREAS, in 2018, the USACE has consulted with the Alabama-Coushatta Tribe of Texas, Alabama-Quassarte Tribal Town, the Caddo Nation, the Mescalero Apache Tribe, the Tunica Biloxi Tribe, the United Keetoowah Band of Cherokee Indians, the Apache Tribe of Oklahoma, the Cherokee Nation of Oklahoma, the Delaware Nation, Kialegee Tribal Town, Kickapoo Traditional Tribe of Texas, Kickapoo Tribe of Oklahoma, Poarch Band of Creek Indians, Quapaw Tribe of Oklahoma, Seminole Nation of Oklahoma, Thlopthlocco Tribal town, Wichita and Affiliated Tribes, the Coushatta Tribe of Louisiana, the Kiowa Indian Tribe of Oklahoma, the Tonkawa Tribe of Oklahoma, and the Northern Arapaho, for which the undertaking was believed to be in these Tribal Nations area of interest, and for which historic properties within the focused study area of the undertaking are believed to have religious and cultural significance to these Tribal Nations; and

WHEREAS, in accordance with 36 CFR § 800.6 (a)(2), the Coushatta Tribe of Louisiana, the Kiowa Indian Tribe of Oklahoma, the Northern Arapaho Tribe, the Tonkawa Tribe of

Oklahoma, the Caddo Nation, the Kickapoo Tribe of Oklahoma, the Seminole Nation of Oklahoma, the Tunica-Biloxi Indian Tribe of Louisiana, the Delaware Nation and the Alabama-Quassarte Tribal Town are consulting parties to this PA (**Appendix A**); and

WHEREAS, in accordance with 36 CFR § 800.6 (c)(2), the USACE has invited the SNND and Jefferson County, Texas to be signatories in this PA; and

WHEREAS, the USACE has invited the Advisory Council on Historic Preservation (ACHP) to participate and the ACHP has chosen not to participate; and

WHEREAS, since 2017 the USACE has involved the public in this study by providing news releases to the local paper, holding public scoping meetings, and publishing the studies draft Integrated Feasibility Report and Environmental Assessment on the Galveston Districts website for a public comment period; and

NOW, THEREFORE, the USACE, the SHPO, the SNND, and Jefferson County, Texas agree that the proposed undertaking shall be implemented and administered in accordance with the following stipulations in order to take into account the effects of the undertaking on historic properties.

STIPULATIONS

I. Identification, Evaluation, Effects Determination, and Resolution

- A. Scope of undertaking. This PA shall be applicable to all activities associated with the construction of Alternative 4Abu of the Jefferson County Ecosystem Restoration Study. The final APE shall be established by the USACE in consultation with the SHPO and Tribal Nations to include all areas that will be affected by new construction, terrestrial and marine construction staging and access areas, parameters of dredging, locations of breakwater materials, ecological mitigation features-marsh elevation, terrestrial and marine equipment placement needs during use in construction activities, access routes, and project maintenance activities that will result from this undertaking. The establishment of the APE will not exceed thirty (30) calendar days of receipt of the cover letter that is sent to the SHPO and Tribal Nations initiating consultation.
- 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 FR 44716-44740; September 23, 1983), as amended, the Secretary of the Interior's "Standards for the Treatment of Historic Properties" (36 CFR § 68), National Register Bulletin 15 "How to Apply the National Register Criteria for Evaluation" (NPS 1990), and the requirements for archaeological survey as outlined in the Archeological Survey Standards for Texas (Texas Historical Commission), as appropriate. The USACE shall ensure that the Principal

Investigator hired to conduct the work will meet the Secretary of Interior's standards, and is able to be issued a Texas Antiquities Permit.

- C. Definitions. The definitions set forth in 36 CFR § 800.16 are incorporated herein by reference and apply throughout this PA.

- D. Identification of Historic Properties (Cultural Resource Survey). Prior to the initiation of construction, 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 investigations, and a cultural resource field survey. The level of effort for these activities shall be determined in consultation with the SHPO and Tribal Nations. All draft reports of survey shall be submitted to the SHPO and Tribal Nations for review and comment. If the SHPO and Tribal Nations comments are not received by the USACE within thirty (30) calendar days of receipt, the reports and their recommendations shall be considered adequate by the SHPO. If the Tribal Nations' comments are not received by the USACE within thirty (30) calendar days of receipt, the USACE will contact the Tribal Nations by phone to elicit their intent to comment. Comments received by the USACE from the SHPO and Tribal Nations shall be addressed in the final reports, which shall be provided to all consulting parties. If no historic properties are identified in the APE, the USACE shall document this finding pursuant to 36 CFR § 800.11(d), and provide this documentation to the SHPO and Tribal Nations.

- E. Evaluation of National Register Eligibility. If cultural resources are identified within the APE, the USACE shall determine their eligibility for the NRHP in accordance with the process described in 36 CFR § 800.4(c) and criteria established in 36 CFR § 60. Any potential historic properties identified on state public land shall also be assessed as potential State Antiquities Landmarks. All draft reports of NRHP site testing/draft research design or other NRHP investigations shall be submitted to the SHPO/Tribal Nations/additional consulting parties identified in consultation with SHPO for review and comment. If SHPO/additional consulting parties comments are not received by the USACE within thirty (30) calendar days of receipt, the reports/draft research design or investigations and their recommendations shall be considered adequate by the SHPO. If Tribal Nations comments are not received by the USACE within thirty (30) calendar days of receipt, the USACE will contact the Tribal Nations by phone to elicit their intent to comment. Comments received by the USACE from the SHPO or Tribal Nations shall be addressed in the final report/draft research design, which shall be provided to all consulting parties. The determinations of eligibility shall be conducted in consultation and concurrence with the SHPO and Tribal Nations. Should the USACE, SHPO, and Tribal Nations agree that a property is or is not eligible, then such consensus shall be deemed conclusive for the purpose of this PA. Should the USACE, SHPO and Tribal Nations 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 § 63. For cultural resources found not eligible for the NRHP, no further protection or consideration of the site will be afforded for compliance purposes.

F. Assessment of Adverse Effects.

1. No Historic Properties Affected. The USACE shall make a reasonable and good faith effort to evaluate the effect of the undertaking on identified and determined historic properties in the APE. The USACE may conclude that no historic properties are affected by the undertaking if no historic properties are present in the APE, or the undertaking will have no effect as defined in 36 CFR § 800.16(i). This finding shall be documented in compliance with 36 CFR § 800.11(d), and the documentation (cultural resource report, per Stipulation I. D.) shall be provided to the SHPO and Tribal Nations. The USACE shall provide information on the finding to the public upon request, consistent with the confidentiality requirements of 36 CFR § 800.11(c) and Section 304 of the NHPA.
2. Finding of No Adverse Effect. The USACE, in consultation with the SHPO, and Tribal Nations shall apply the criteria of adverse effect to historic properties within the APE in accordance with 36 CFR § 800.5. The USACE may propose a finding of no adverse effect if the undertaking's effects do not meet the criteria of 36 CFR § 800.5(a)(1) or the undertaking is modified to avoid adverse effects in accordance with 36 CFR § 68. The USACE shall provide to the SHPO and Tribal Nations documentation of this finding meeting the requirements of 36 CFR § 800.11(e) and the documentation (cultural resource report, per Stipulation I. D.) shall be provided to the SHPO and Tribal Nations. 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 CFR § 800.11(c) and Section 304 of the NHPA.
3. Resolution of Adverse Effect. If the USACE determines that the undertaking will have an adverse effect on historic properties as measured by criteria in 36 CFR § 800.5(a)(1), the USACE shall consult with the SHPO and Tribal Nations to resolve adverse effects in accordance with 36 CFR § 800.6 (a). In accordance with 36 CFR § 800.6 (a)(1), USACE shall notify the ACHP of the adverse effect finding by providing the documentation specified in 36 CFR § 800.11 (e).
 - a) For historic properties that the USACE, SHPO, and Tribal Nations agree will be adversely affected, the USACE shall:
 - (1) Consult with the SHPO to identify other individuals or organizations to be invited to become consulting parties. If additional consulting parties are identified, the USACE shall provide them copies of

documentation specified in 36 CFR § 800.11(e) subject to confidentiality provisions of 36 CFR § 800.11(c) and Section 304 of the NHPA.

- (2) 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.
 - (3) Consult with the SHPO, Tribal Nations, and any additional consulting parties to seek ways to avoid, minimize or mitigate adverse effects.
 - (4) Prepare a mitigation plan (Prepared in consultation once adverse effect determination is reached) which describes mitigation measures the USACE proposes to resolve the undertaking's adverse effects and provide this mitigation plan for review and comment to all consulting parties. All parties have 30 calendar days in which to provide a written response to the USACE. Once 30 calendar days has passed any received comments will be incorporated into the mitigation plan, then reviewed by the appropriate USACE approving official. Once approved and signed by the appropriate USACE approving official, the mitigation plan will be executed. Once the mitigation plan is fulfilled all consulting parties will be notified in writing.
- b) If the USACE, SHPO, and Tribal Nations fail to agree on how adverse effects will be resolved, the USACE shall request that the Council join the consultation in accordance with 36 CFR § 800.6 (b)(v).
 - c) If the Council agrees to participate in the consultation, the USACE shall proceed in accordance with 36 CFR § 800.6 (b)(2).
 - d) If, after consulting to resolve adverse effects, the Council, the USACE, SHPO, or Tribal Nations determines that further consultation will not be productive, then procedures outlined in Stipulation VII should be followed.

II. Post Review Changes and Discoveries

- A. Changes in the Scope of 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 notify all consulting parties to this PA in writing of the change in scope, and provide maps illustrating the proposed changes to the undertaking requesting comments within 30 calendar days of receipt. If no comments are received within 30 calendar days, USACE will assume all consulting parties notified have no comments and the undertaking will proceed with the proposed changes.

- B. Unanticipated Discoveries or Effects. Pursuant to 36 CFR § 800.13(b)(3), if archaeological resources are discovered or unanticipated effects on historic properties are found after construction on an undertaking that has commenced, the USACE shall follow these steps:
1. The USACE archaeologist shall notify the appropriate Tribal Nations and SHPO of an unanticipated discovery.
 2. The USACE archaeologist will immediately direct a *Stop Work* order within a ninety (90) meter radius of the discovery to the Contractor's Site Foreman to flag or fence off the archaeological discovery location and direct the Contractor to take measures to ensure site security. Any discovery made on a weekend or overnight hours will be protected until all appropriate parties are notified of the discovery. The Contractor will not restart work in the ninety (90) meter radius area of the find until USACE, in consultation and concurrence with the interested Tribal Nations and SHPO, has granted clearance.
 3. Within twenty-four (24) hours of receipt of notification of the discovery (as conditions permit), the USACE archaeologist shall:
 - a) Inspect the work site and determine the extent of the affected archaeological resource and ensure that construction activities have halted;
 - b) Ensure the area of the discovery is marked by means of flagging or fencing within the ninety (90) meter radius to protect the area from looting and vandalism; and
 4. The USACE archaeologist will conduct a preliminary assessment of the find to determine if the find is of historic or less than fifty (50) years of age and whether the cultural material represents an archaeological site of unknown or potential significance.
 - a) If the find is determined to not be a potentially significant archaeological site and receives concurrence by the interested Tribal Nations and SHPO, the USACE will notify the Contractor's Work Foreman to resume work.
 - b) If the USACE archaeologist determines the find represents an archaeological site of unknown or potential significance, the USACE will notify the interested Tribal Nations and SHPO within twenty-four hours (24) hours. Work will not resume at this location until USACE has provided authorization.
 5. The USACE archaeologist will begin a more detailed assessment of the find's significance and the potential project effects in a manner consistent with National Register Bulletin 15 "How to Apply the National Register Criteria

for Evaluation” (NPS 1990), and the requirements for archaeological survey as outlined in the Archeological Survey Standards for Texas (Texas Historical Commission). The USACE archaeologist will dispatch an archaeological team to the site to determine the nature and extent of the archaeological deposits; USACE will ensure that the team has full access to the required site area and be accommodated by the Contractor to complete this investigation within fourteen (14) calendar days. The USACE, interested Tribal Nations, or SHPO may extend this fourteen (14)-day calendar period one time (this time extension and its duration, must be approved by all parties) with the party requesting extension providing written notice to the other parties prior to the expiration date of the said fourteen (14)-day calendar period.

6. The USACE archaeologist will provide the interested Tribal Nations and SHPO a draft report of the archaeological team’s findings and recommendations, indicating whether the archaeological deposits are assessed not to be significant, or describe a proposed scope of work for evaluating the significance of the find and evaluating project effects-requesting review and comment within 30 calendar days of receipt. If no comments are received within 30 calendar days of receipt the USACE will assume concurrence with the draft report provided and proceed accordingly.
7. Teleconferences may be held with interested Tribal Nations, SHPO, and the USACE archaeologist to discuss options and recommendations.
8. Upon request, SHPO, the interested Tribal Nations and Tribal representatives shall be able to visit the site with the USACE archaeologist. The SHPO, any interested Tribal Nations, or Tribal representatives may not be reimbursed by the USACE, or Contractor for the site visit.
9. If the archaeological deposits are determined to be a significant cultural resource and it is threatened by further project development, the USACE archaeologist, in consultation with interested Tribal Nations, SHPO, and consulting parties, will develop a cultural resource mitigation or treatment plan that will outline how adverse effects will be mitigated/treated to allow work to commence.
10. Following consultation and concurrence by interested Tribal Nations, SHPO, and relevant consulting parties, the USACE archaeologist will implement the archaeological or other cultural mitigation or treatment plan.
11. A meeting, site visit, or teleconference may be held with the USACE archaeologist, interested Tribal Nations, SHPO, and consulting parties once the field investigation for site mitigation has been completed to review the work accomplished. The SHPO, any interested Tribal Nations, or Tribal representatives may not be reimbursed by the USACE, or Contractor for any meeting, or site visit.

12. Duration of any work stoppages will be contingent upon the significance, size, and depth of the identified archaeological resource (s) and consultation and concurrence amongst the USACE archaeologist, interested Tribal Nations, SHPO, and consulting parties will determine the appropriate measures to avoid, minimize, or mitigate any adverse effects to the site.
 13. The USACE will seek and take into account the recommendations of the ACHP in resolving any disagreements that may arise regarding eligibility of a site to the National Register of Historic Places or resolution of adverse effects.
- C. Unanticipated Discoveries of Human Remains and/or Funerary Objects. In the event that human remains and/or funerary objects are found on state or private land during an undertaking's historic properties investigations, construction, operations, or maintenance activities, USACE will ensure that all Signatories, consulting parties, USACE personnel, and contractors involved in the discovery will comply with §711 of the Texas Health and Safety Code and Chapter 22 of the Texas Administrative Code, Title 13, Part 2, as applicable. If on federal land, the implementing regulations of NAGPRA, 43 CFR Part 10, shall be strictly followed. USACE will treat any human remains and/or funerary objects encountered during the undertaking in a manner guided by the ACHP's *Policy Statement Regarding Treatment of Burial Sites, Human Remains, and Funerary Objects* (2007). In the event that human remains and/or funerary objects are discovered during construction of the undertaking, the USACE will implement the following steps:
1. The USACE archaeologist will immediately notify the appropriate Tribal Nations and SHPO of an unanticipated discovery of potential human remains and/or funerary objects.
 2. The USACE archaeologist will immediately direct a *Stop Work* order within a ninety (90) 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. Any discovery made on a weekend or overnight hours will be protected until all appropriate parties are notified of the discovery. The Contractor will not restart work within the ninety (90) meter radius area of the find until USACE, in consultation and concurrence with the interested Tribal Nations and SHPO, has granted clearance.
 3. Within ten days of receipt of notification of the discovery, the USACE archaeologist shall:
 - a) Inspect the work site and determine the extent of the affected human remains and/or funerary objects and ensure that construction activities have halted;

- b) Ensure the area of the discovery is marked by means of flagging or fencing within the ninety (90) meter radius to protect the area from looting and vandalism.
4. At all times human remains and/or funerary objects must be treated with the utmost dignity and respect. Human remains and/or associated artifacts will be left in place and not disturbed. No skeletal remains or materials associated with the remains will be collected or removed until appropriate consultation has taken place and a plan of action has been developed. No photographs are to be taken of any human remains. In addition, no skeletal remains shall be removed until the requirements of §711 of the Texas Health and Safety Code have been met/satisfied, as applicable.
 5. The USACE archaeologist will immediately notify the appropriate Tribal Nations and SHPO of the human remains and/or funerary objects, as well as the local police, and appropriate Medical Examiner's/Coroner's Office.
 6. The contractor will provide an opportunity for local law enforcement and, if necessary, a representative of the Medical Examiner's/Coroner's Office, to visit and inspect the site to determine whether the site constitutes a crime scene.
 - a) If it is declared a criminal matter, the USACE archaeologist will have no further involvement and the decision to declare it a *Cleared Site* for construction will be made by the appropriate legal authorities.
 - b) If the find is determined not to be a criminal matter, USACE will consult with the SHPO and descendants or other interested parties if it can be determined that the human remains and/or funerary objects are not American Indian.
 - c) If the find is more likely American Indian, the USACE archaeologist, in consultation with interested Tribal Nations and SHPO, will comprehensively evaluate the potential to avoid and/or minimize the undertaking's effects to the human remains and/or funerary objects. If no feasible avoidance plan can be developed to allow the human remains and/or funerary objects to stay in place, in consultation with interested Tribal Nations and SHPO, USACE will engage in the development of a site-specific disinterment/re-interment plan. Until there is evidence to the contrary, all human remains will be treated as potentially American Indian with appropriate Tribal Nation notification and consultation.
 - d) Human remains and/or funerary objects will be left in place and protected from further disturbance until a site-specific work plan for their avoidance or removal can be generated. Please note that avoidance is the preferred choice of the Tribal Nations.

- e) Upon request, SHPO, the Tribal Nations, Tribal representatives or descendants shall be able to visit the site with the USACE archaeologist. The SHPO, any interested Tribal Nations, or Tribal representatives may not be reimbursed by the USACE, or Contractor for the site visit.

III. Curation and Disposition of Recovered Materials, Records, and Reports

- A. Curation. The USACE shall ensure that all archeological materials and associated records, 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 CFR 79, and as applicable, 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. Archeological materials from privately owned lands will **NOT** be collected, and as such will require in-field analysis by senior staff with laboratory experience and knowledge of regional artifacts.
- B. Reports. The USACE shall provide copies of final technical reports of investigations and mitigation to the consulting parties and the SHPO, as well as additional copies (specific site locational data removed) for public distribution. All consulting parties shall withhold site location information or other data that may be of a confidential or sensitive nature pursuant to 36 CFR § 800.11(c).

IV. Treatment of Native American Human Remains

- A. Prior Consultation. If the USACE's investigations, conducted pursuant to Stipulation I of this PA, indicate a high likelihood that Native American Indian human remains may be encountered, the USACE shall develop a treatment plan for these remains in consultation with the SHPO and Tribal Nations. The USACE shall ensure that Tribal Nations, indicating an interest in the undertaking, are notified and given 30 calendar days (from date of notification) to identify concerns, provide advice on identification and evaluation, and participation in the resolution of adverse effects in compliance with the terms of this PA. If no response is received within 30 calendar days from Tribal Nations, the USACE will assume that Tribal Nations have no concerns.
- B. Inadvertent Discovery. Immediately upon the inadvertent discovery of human remains during historic properties investigations or construction activities conducted pursuant to this PA, the USACE shall ensure that all ground disturbing activities cease in the vicinity of the human remains and any associated grave goods and that the site is secured from further disturbance or vandalism. The USACE shall be responsible for immediately notifying local law enforcement officials, and within 48 hours of the discovery, shall initiate consultation with the SHPO and Tribal Nations to develop a plan for resolving the adverse effects.

- C. Dispute Resolution. If, during consultation conducted under paragraphs A and B of Stipulation IV, all consulting parties cannot agree upon a consensus plan for resolving adverse effects, the matter shall be referred to the Council for resolution in accordance with the procedures outlined in Stipulation V.

V. Dispute Resolution

Should any signatory or consulting party to this PA object at any time to any actions proposed or the manner in which the terms of this PA are implemented, USACE shall consult with such party to resolve the objection. If USACE determines that such objection cannot be resolved, USACE will:

- A. Forward all documentation relevant to the dispute, including the USACE's proposed resolution, to the ACHP. The ACHP shall provide USACE with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, USACE shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories and consulting parties, and provide them with a copy of this written response. USACE will then proceed according to its final decision.
- B. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, USACE may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, USACE shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and consulting parties to the PA, and provide them and the ACHP with a copy of such written response.

VI. Amendments

This PA may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all the signatories is filed with the ACHP.

VII. Termination

If any signatory to this PA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other signatories to attempt to develop an amendment per Stipulation VI, above. If within (30) days (or another time period agreed to by all signatories) an amendment cannot be reached, any signatory may terminate the PA upon written notification to the other signatories.

Once the PA is terminated, and prior to work continuing on the undertaking, USACE must either (a) execute an MOA pursuant to 36 CFR § 800.6 or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. USACE shall notify the signatories as to the course of action it will pursue.

Execution of this MOA by the USACE, SHPO, SNND and Jefferson County, Texas, and implementation of its terms evidence that USACE has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.

VIII. Anti-Deficiency Clause

The stipulations of this agreement are subject to the provisions of the Anti-Deficiency Act. If compliance with the Anti-Deficiency Act alters or impairs the USACE's ability to implement the stipulations of the agreement, the USACE will consult according to the amendment and termination provisions found at Stipulations VI and VII of this agreement.

IX. Term of this Agreement

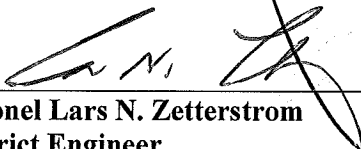
The USACE intends the term of this PA document to be in effect for 10 years from the date of execution of this agreement, unless terminated pursuant to Stipulation VII.

Execution of this PA and implementation of its terms evidences that the USACE has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.

EXECUTION AND IMPLEMENTATION of this PA evidences that the USACE has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.

SIGNATORIES include the USACE Galveston District, Texas State Historic Preservation Officer, the Sabine-Neches Navigation District, and Jefferson County, Texas. Separate signature pages for each agency follow.

USACE GALVESTON DISTRICT

 COL, EN
Date: 6 JUN 19

Colonel Lars N. Zetterstrom
District Engineer

EXECUTION AND IMPLEMENTATION

SIGNATORIES include the USACE Galveston District, Texas State Historic Preservation Officer, the Sabine-Neches Navigation District, and Jefferson County, Texas.

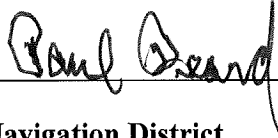
TEXAS STATE HISTORIC PRESERVATION OFFICER


_____ Date: 6/4/19
Mark Wolfe
Texas State Historic Preservation Officer

EXECUTION AND IMPLEMENTATION

SIGNATORIES include the USACE Galveston District, Texas State Historic Preservation Officer, the Sabine-Neches Navigation District, and Jefferson County, Texas.

SABINE-NECHES NAVIGATION DISTRICT



Date: 5.21.19
Paul Beard
Sabine-Neches Navigation District

EXECUTION AND IMPLEMENTATION

SIGNATORIES include the USACE Galveston District, Texas State Historic Preservation Officer, the Sabine-Neches Navigation District, and Jefferson County, Texas.

JEFFERSON COUNTY, TEXAS



Jeff Branick
Jefferson County, Texas

Date: 06-03-2019

APPENDIX A

The following Federally Recognized Tribal Nations have responded with an interest in this study and are Consulting Parties to this PA:

The Coushatta Tribe of Louisiana

Dr. Linda Langley
Tribal Historic Preservation Officer
Coushatta Tribe of Louisiana
P.O. Box 10
Elton, LA 70532

The Kiowa Indian Tribe of Oklahoma

Ms. Kellie Lewis
Tribal Historic Preservation Officer
Kiowa Indian Tribe of Oklahoma
P.O. Box 369
Carnegie, OK 73015

Northern Arapaho Tribe

Mr. Devin Oldman
Tribal Historic Preservation Officer
Northern Arapaho Tribe
P.O. Box 67
St. Stevens, WY 82524

Tonkawa Tribe of Oklahoma

Ms. Lauren Brown
NAGPRA Coordinator, Consultant & Cultural Clerk
Tonkawa Tribe of Oklahoma
1 Rush Buffalo Road
Tonkawa, OK 74653

Caddo Nation of Oklahoma

Derek Hill
Cultural Preservation Department
Caddo Nation of Oklahoma
P.O. Box 487
Binger, OK 73009

Kickapoo Tribe of Oklahoma

Pam Wesley
Administrative Assistant
Kickapoo Tribe of Oklahoma
P.O. Box 70
McLoud, OK 74851

Seminole Nation of Oklahoma

Theodore Isham
Historic Preservation Officer
Seminole Nation of Oklahoma
P.O. Box 1498
Wewoka, OK 74884

Tunica-Biloxi Indian Tribe of Louisiana

Earl J. Barbry, Jr.
Tribal Historic Preservation Officer
Tunica-Biloxi Indian Tribe of Louisiana
P.O. Box 1589
Marksville, LA 71351

Delaware Nation

Kim Penrod
Director, Cultural Resources/106
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Appendix B-Project Summary

Study Purpose

The US Army Corps of Engineers (USACE) has prepared an Integrated Feasibility Report and Environmental Assessment (IFR-EA) that presents the results of a feasibility study to recommend for Congressional approval, an alternative that will improve the Jefferson County, Texas coastal shoreline and interior marsh landforms, while providing a significant buffer to communities, businesses, infrastructure, and critical habitats during major storm events. Authorization for the study is derived from a resolution from Section 110 of the Rivers and Harbors Act of 1962 and Resolution – Docket 2620 from the House of Representatives Committee on Transportation and Infrastructure adopted February 16, 2000 and entitled “Sabine Pass to Galveston Bay, Texas”

“Resolved by the Committee on Transportation and Infrastructure of the United States House of Representatives, That in accordance with Section 110 of the Rivers and Harbors Act of 1962 the Secretary of the Army is requested to review the feasibility of providing shore protection and related improvements between Sabine Pass and the entrance to Galveston Bay, Texas, in the interest of protecting and restoring environmental resources on and behind the beach, to include the 77,000 acres of freshwater wetlands and the maritime resources of east Galveston Bay and Rollover Bay, and including the feasibility of providing shoreline erosion protection and related improvements to the Galveston Island Beach, Texas, with consideration of the need to develop a comprehensive body of knowledge, information, and data on coastal area changes and processes to include impacts from federally constructed projects in the vicinity of Galveston Island.”

The study fits into the overall concept of the authorization to conduct an integrated and coordinated approach to locating and implementing opportunities for ecosystem restoration (ER). The purpose of this study is to recommend for Congressional approval a regional ER project that encompasses Jefferson County, which is one county of the six coastal counties of the Upper Texas Coast between Sabine Pass and Galveston Bay. Pursuant to the National Environmental Policy Act (NEPA), an Environmental Assessment (EA) will be integrated into the Interim Feasibility Report (IFR). The non-federal sponsors for this study are the Sabine Neches Navigation District and Jefferson County, Texas. This document has been prepared to provide background information supporting coordination of a Programmatic Agreement to ensure that Section 106 requirements will be fulfilled for the studies Environmental Assessment.

Information is presented on the recommended plan, cultural resources in the focused study area, the preliminary Area of Potential Effects (APE), and the USACE’s determination on potential project effects on these properties.

Recommended Plan: Alternative 4Abu

Alternative 4Abu was chosen as the tentatively selected plan (the plan) based on preliminary analyses because it meets the study objectives, reasonably maximizes benefits for the associated costs, and includes key restoration features to restore and sustain the form and function of the coastal system in a portion of the study area. This plan incorporates marsh and GIWW shoreline restoration features which are critical to the stabilization and sustainment of the critical marsh resources now and into the future. Marsh measures consist of marsh restoration and/or nourishment to increase land coverage in the area and improve terrestrial wildlife habitat, hydrology, water quality, and fish nurseries. Shoreline measures include construction of rock breakwater features that would mitigate some effects of ship wake induced erosion along the GIWW. The structures dissipate wave energies, stabilize shorelines, reduce land loss, reduce saltwater intrusion, and support reestablishment of emergent marsh along the GIWW shoreline through retention of sediments. Measures for this alternative would be constructed on lands owned by Texas Parks and Wildlife Department (TPWD) JD Murphree Wildlife Management Area (WMA), and the US Fish and Wildlife Service McFaddin National Wildlife Refuge (NWR) (Table 1).

Table 1. Measures in Acreage and Feet.

Ownership	Marsh Measures (acres)	Shoreline Measures (linear feet)
JD Murphree WMA	5,365	5,170
McFaddin NWR	683	0

Alternative 4Abu measures and the accompanying Adaptive Management Plan have been developed to a feasibility level of design (i.e. estimates, design level that is not detailed enough for construction) based on currently available data and information developed during plan formulation. There is significant institutional knowledge regarding the construction of the restoration measures; therefore, there is minimal uncertainty from a construction standpoint. Uncertainties relating to measure design and performance are mainly centered on site specific, design-level details (e.g. exact sediment quantities, invasive species removal needs, extent of erosion control needs,

construction staging area locations, pipeline pathways, timing and duration of construction, engineering challenges, etc.), which would be addressed during the pre-engineering and design phase (PED).

An Adaptive Management and Monitoring Plan has also been developed for 4Abu which provides a coherent process for making decisions in the face of uncertainty and increases the likelihood of achieving desired project outcomes based on the identified monitoring program. The Adaptive Management Plan addresses uncertainties associated with ecosystem function and how the ecosystem components of interest will respond to the restoration efforts in light of changing conditions (e.g. sea-level change is different than anticipated) or new information (e.g. surveys indicate the design needs modification in order to function properly).

Marsh Measures

Marsh restoration measures involve placement of borrow material dredged from the Sabine-Neches Waterway (SNWW) into these locations. Material placed into the marsh would have similar properties to the existing native material. Under the existing and projected future dredging cycles, there is sufficient quantities of suitable material available to meet all restoration needs without seeking other borrow sources (e.g. off-shore, upland placement areas). 4Abu would restore and nourish approximately 6,048 acres of technically significant marsh habitat surrounding Keith Lake in Jefferson County, Texas. Within each of the six marsh restoration units, material dredged from the SNWW would be hydraulically pumped into open water and low lying areas assuming that 65% of the restoration unit will have a post-construction settlement target elevation of +1.2 feet MSL. As necessary, earthen containment dikes would be employed to efficiently achieve the desired initial construction elevation. Dikes would be breached following construction to allow dewatering and settlement to the final target marsh elevation. A future marsh renourishment at year 30 was initially considered as part of the recommended plan, but has been removed due to policy constraints. It is acknowledged that a future nourishment may be required in all marsh restoration locations at some point in the future; however, the timing and extent would be dependent on observed future conditions. At that time, additional coordination would occur. It is estimated that 5.1 million cubic yards (MCY) of dredged material would be required to initially restore the 6,048 acres of marsh. Following marsh restoration actions, non-native/undesirable species monitoring would be implemented. If species are found, measures would be taken to stop or slow the expansion of the species within the restoration units.

Shoreline Measures

GIWW armoring would involve constructing 5,170 linear feet of breakwater structures. The structures would be built in shallow water (<3 feet deep) along the southern edge of the GIWW, at varying distances from the shoreline and where soils are conducive to supporting the weight of the stone without significant subsidence. The distance from the shoreline would be determined during PED, after site specific surveys have been completed, but sufficiently offset from the boundaries of the GIWW navigation channel to ensure continued safe navigation. The design would be a trapezoidal structure built of rock up to a height of +3.0 MSL, which will yield approximately 1-1.5 feet of rock exposed above the mean high tide level. Other approximate features of the design include a 5-foot wide crown, a 1.5:1 slope, and a base that is roughly 29 feet wide. The base of the structure would be on filter cloth ballasted to the water bottom to secure placement and prevent displacement of the outboard edges. The number of openings and width of each would be determined during PED and dependent on the location of major channel entrances or access points required for fishery access or circulation. Initially, constructing the 5,170 linear feet of breakwaters would require 527,340 cubic feet of material which equates to about 31,245 tons of rock. It is anticipated that the breakwaters would need to be raised at least two times throughout the 50-year period of analysis to keep up with relative sea level change and remain effective. For purposes of the study, materials would need to be added in year 15 (7,810 tons of rock), but timing and quantities could vary depending on observed local conditions and identified need to continue functioning as designed.

Equipment Needs and Access Routes

Sediment transport equipment would most likely include hopper or cutterhead dredges, pipelines (submerged, floating, and land) and booster pumps. Heavy machinery would be used to move sediment and facilitate construction. Heavy equipment could include bulldozers, front-end loaders, track-hoes, marshbuggy, track-hoes, and backhoes. For GIWW armoring construction, rock would be purchased from a commercial quarry and transported to the site by barge, where it would then be placed by crane or hopper barge. Various support equipment would also be used, such as crew and work boats, trucks, trailers, construction trailers, all-terrain vehicles, and floating docks and temporary access channels to facilitate loading and unloading of personnel and equipment. Identification of staging areas, temporary access channels, and placement of floatation docks would occur during PED. Each disturbance for access and staging would be placed outside of environmentally sensitive areas to the greatest extent practicable. All ground disturbance for access

and staging areas would be temporary and fully restored to result in no permanent loss.

Timing

Timing of initial construction of this project is dependent on a number of factors including: timing of authorization, duration of pre-engineering and design phase, identification of a cost-share sponsor, and Federal- and non-federal funding cycles. It was assumed that construction would take 60 months to complete all restoration actions, in which it was assumed that only one restoration unit would be undertaken at a time. For the GIWW armoring, it was assumed that dune construction and beach nourishment would occur simultaneously. Implementation of the marsh restoration measures is highly dependent on dredging cycles. Currently, seasonal timing restrictions related to Endangered Species Act compliance includes a seasonal dredging window for hopper dredge use between December 1 and March 31, unless work outside this window cannot be completed, in which NMFS would need to approve the deviation. Hopper dredges would be used for dredging offshore areas of the entrance channel to just inside the jetties. Non-hopper dredges (e.g. cutterhead pipeline dredges) may be used from April to November. This type of dredge would be used anywhere else within the SNWW.

Focused Study Area

Each component of Alternative 4Abu, and up to a kilometer around each (focused study area), was examined for the presence of any known cultural resources using the Texas Historical Commission's (Atlas) database. Forty four archaeological sites have been recorded and/or identified within the focused study area of Alternative 4Abu, 12 remote sensing targets, as well as one identified architectural resource (Table 2). The recorded sites were reported to the Texas Historical Commission; not all identified archaeological sites have been evaluated for NRHP eligibility. Although the review identified previous surveys, it is important to note that the majority of the focused study area has not be culturally surveyed.

The primary considerations concerning cultural resources are threats from direct impacts to intact terrestrial and marine archeological sites and direct and indirect impacts to historic structures from new construction and/or improvements. Portions of the focused study area have been altered by urban development, oil/gas production, transportation, and farming; however, most of the focused study area is owned and managed by various state and federal agencies, resulting in minimal/regulated development.

Table 2. Cultural Resources Located within the Focused Study Area.

Resource	Type	Component	Description	NR Status
41JF12	Archaeological	Prehistoric	Shell midden	Eligible-1983
41JF13	Archaeological	Prehistoric	Mound/Associated potsherds and fragments of arrowpoints	Eligible-1983
41JF14	Archaeological	Prehistoric	Shell midden	Eligible-1983
41JF15	Archaeological	Prehistoric	Mound/Associated fragments of bone and potsherds	Eligible-1983
41JF21	Archaeological	Prehistoric	Shell midden	Eligible-1983
41JF22	Archaeological	Prehistoric	Shell midden	Eligible-1983
41JF25	Archaeological	Prehistoric	Rangia shell midden	Eligible-1983
41JF28	Archaeological	Prehistoric	Shell Midden	Undetermined
41JF36	Archaeological	Historic	Historic-Civil War	Eligible-2001
41JF37	Archaeological	Prehistoric	Shell midden	Undetermined-2012
41JF38	Archaeological	Prehistoric	Shell midden	Eligible-1983
41JF39	Archaeological	Prehistoric	Shell Midden	Undetermined-2004
41JF40	Archaeological	Prehistoric	Shell midden	Eligible-1983
41JF41	Archaeological	Prehistoric	Shell midden	Eligible-1983
41JF42	Archaeological	Prehistoric	Shell midden	Eligible-1983
41JF49	Archaeological	Prehistoric	Shell midden	Eligible-1983
41JF61	Archaeological	Prehistoric	Purported Shell Midden	Undetermined
41JF65	Archaeological	Historic	USS Clifton Shipwreck (THC No. 652)	Eligible-1994
41JF98	Archaeological	Prehistoric	Shell midden	Undetermined
-----	Archaeological	Historic	Clarke Oil Barge No. 1 Shipwreck (THC No. 183)	Undetermined
-----	Archaeological	Historic	Clarke Oil Barge No. 2 Shipwreck (THC No. 184)	Undetermined
-----	Archaeological	Historic	<i>John Sealy</i> Shipwreck (THC No. 324)	Undetermined
-----	Archaeological	Historic	<i>Terry Walker</i> Shipwreck (THC No. 495)	Undetermined
-----	Archaeological	Historic	<i>Morning Light</i> Shipwreck (THC No. 656)	Undetermined
-----	Archaeological	Historic	<i>Revenge</i> Shipwreck (THC No. 657)	Undetermined
-----	Archaeological	Historic	<i>Ella</i> Shipwreck (THC No. 1007)	Undetermined
-----	Archaeological	Historic	Unknown Shipwreck (THC No. 1114)	Undetermined
-----	Archaeological	Historic	Unknown Shipwreck (THC No. 1244)	Undetermined
-----	Archaeological	Historic	Unknown Shipwreck (THC No. 1245)	Undetermined
-----	Archaeological	Historic	Unknown Shipwreck (THC No. 1246)	Undetermined
-----	Archaeological	Historic	Unknown Shipwreck (TCH No. 1247)	Undetermined

Table 2. Cultural Resources Located within the Focused Study Area (Continued).

Resource	Type	Component	Description	NR Status
-----	Archaeological	Historic	Unknown Shipwreck (THC No. 1250)	Undetermined
-----	Archaeological	Historic	Unknown Shipwreck (THC No. 1253)	Undetermined
-----	Archaeological	Historic	<i>John P. Smith</i> Shipwreck (THC No. 1312)	Undetermined
-----	Archaeological	Historic	<i>Sachem</i> Shipwreck (THC No. 1519)	Undetermined
-----	Archaeological	Historic	<i>Julius Caesar</i> Shipwreck (THC No. 1957)	Undetermined
16CM144	Archaeological	Historic	<i>Dan</i> Shipwreck (THC No. 2405)	Undetermined
-----	Archaeological	Historic	<i>Pearl Plant</i> Shipwreck (THC No. 2406)	Undetermined
-----	Archaeological	Historic	<i>Annie Taylor</i> Shipwreck (THC No. 2470)	Undetermined
-----	Archaeological	Historic	<i>Catherine</i> Shipwreck (THC No. 2475)	Undetermined
-----	Archaeological	Historic	<i>Gillum</i> Shipwreck (THC No. 2478)	Undetermined
-----	Archaeological	Historic	<i>Stonewall</i> Shipwreck (THC No. 2487)	Undetermined
-----	Archaeological	Historic	Unknown Shipwreck (THC No. 2490)	Undetermined
-----	Archaeological	Historic	<i>Delaware Sun</i> Shipwreck (THC No. 3708)	Undetermined
OS2.4	Magnetometer	Target	-----	-----
OS2.5	Magnetometer	Target	-----	-----
OS1.1	Magnetometer	Target	-----	-----
OS1.2	Magnetometer	Target	-----	-----
OS1.3	Magnetometer	Target	-----	-----
IS1.4	Magnetometer	Target	-----	-----
IS1.5	Magnetometer	Target	-----	-----
IS1.6	Magnetometer	Target	-----	-----
IS1.10s	Magnetometer	Target	-----	-----
IS1.1s	Magnetometer	Target	-----	-----
IS2.1	Magnetometer	Target	-----	-----
IS2.14s	Magnetometer	Target	-----	-----
Structure	Architectural	Historic	Gulf Intracoastal Waterway (GIWW)	Undetermined

Preliminary APE

The activities associated with the proposed undertaking include all new construction, improvements, and maintenance activities related to the proposed Jefferson County Ecosystem Restoration project. The preliminary APE includes the maximum horizontal footprint of all areas of direct and indirect impacts from dredging, marsh elevation modification through the placement of beneficial use of dredged material, armoring of GIWW, and all terrestrial and marine horizontal and vertical disturbance activities that will occur as a result of this undertaking. Known terrestrial archaeological sites that have the potential to be directly affected by the recommended plan consist of four shell middens (41JF21, 41JF25, 41JF42, and 41JF49) determined to be eligible in 1983, and one mound site (41JF13), with associated potsherds and fragments of arrow points, also determined to be eligible in 1983. Known marine archaeological sites that have the potential to be directly and indirectly affected by the recommended plan consist of 24 reported shipwrecks, in

addition to archaeological sites *Clifton* (41JF65) and *Dan* (16CM144). In addition to the archaeological sites, significant remote-sensing targets OS2.4, OS2.5, OS1.1, OS1.2, OS1.3, IS1.4, IS1.5, IS1.6, IS1.10s, IS11s, IS2.1, and IS2.14s, discovered during the an archaeological remote-sensing survey in 2005 (Enright and Gearhart 2005, TAC Permit No. 3061) stand to be directly and/or indirectly affected if not avoided. If these targets cannot be avoided then additional archeological investigations, in the form of ground-truthing, is required. The GIWW is older than 50 years in age, and as such is considered an historical architectural resource; the GIWW (within the focused study area) has not been evaluated for NRHP eligibility. Prior to any armoring, this historical architectural resource will require Section 106 NRHP evaluation.

Limited cultural resource surveys have been performed for much of the surrounding region and only a small portion of the preliminary APE has been previously surveyed. The recommended plan does overlap known eligible and/or unevaluated archaeological sites based on background research, with the majority of the terrestrial portion of the recommended plan not being previously culturally surveyed to identify historic properties, pursuant to 36 CFR 800.4.

Based on the current information for the proposed construction activities associated with Alternative 4Abu, there is a potential to affect historic properties. The USACE recommends intensive Section 106 cultural resource investigations to identify and evaluate any historic properties within proposed construction areas. The scope of these investigations will be determined in consultation with the Texas State Historic Preservation Officer and appropriate Native American Tribal Nations in accordance with the Programmatic Agreement developed for cultural resources for this study.

References Cited

Enright, J.M., and R.L. Gearhart

2005 *Historic Properties Identification, Oyster Reef Identification, and Pipeline and Obstruction Identification of the Sabine/Neches Waterway Widening and Deepening, Jefferson and Orange Counties, Texas and Cameron Parish, Louisiana*. Prepared by PBS & J. Texas Antiquities Permit 3061.

Port Arthur, TX

Sabine Lake

Gulf of Mexico

Legend

-  Focused Study Area
-  Preliminary APE
-  State Owned Land
-  Federal Owned Land

