

Appendix F

Programmatic Agreement

DRAFT PROGRAMMATIC AGREEMENT
AMONG
THE U. S. ARMY CORPS OF ENGINEERS, NEW YORK DISTRICT,
THE NATIONAL PARK SERVICE, AND
THE NEW YORK STATE HISTORIC PRESERVATION OFFICE
REGARDING
THE SOUTH SHORE OF STATEN ISLAND
COASTAL STORM DAMAGE REDUCTION PROJECT
RICHMOND COUNTY, NEW YORK

WHEREAS, the U.S. Army Corps of Engineers, New York District, (New York District) proposes to construct Phase I of a coastal storm damage reduction project along the south shore of Staten Island, from just south of Fort Wadsworth to Oakwood Beach, Richmond County, New York; and

WHEREAS, the New York District was originally authorized to undertake a feasibility study by resolution of the US House of representatives Committee on Public Works and Transportation, adopted 13 May 1993; and

WHEREAS, conditional authorization to undertake construction of this Undertaking has been provided to the New York District under P.L. 113-2, the Disaster Relief Appropriations Act of 2013, following October 2012 Hurricane Sandy; and

WHEREAS, the Undertaking is proposed to include a buried seawall/armored levee along a majority of the reach (approximately 80%) serving as the first line of defense against severe coastal surge flooding and wave forces. The remainder of the Line of Protection (LOP) consists of a T-Type Vertical Floodwall, and Levee. The LOP also includes a stop-log closure structure at Hylan Boulevard, drainage control structures for existing storm water outfalls, tide gate structures, vehicle and pedestrian access structures, and demolition of the existing boardwalk and the Interior Drainage Plan includes pond excavation, construction of tide gates and gate chambers along the LOP, road raisings, and other minor interior drainage facilities, environmental mitigation measures, as needed, may be included, as part of the South Shore of Staten Island Coastal Storm Damage Reduction Project (Undertaking) (Appendix A); and

WHEREAS, the New York District will implement the provisions of this Programmatic Agreement (PA) as funding for the project is appropriated in future years; and

WHEREAS, the New York District has defined the Area of Potential Effect (APE) for this Undertaking to include all areas impacted by activities required to construct the buried seawall/armored levee, floodwalls, levees, stop-log closure structure, drainage control structures, tide gate structures, vehicle and pedestrian access structures and any required environmental mitigation measures; the locations for some project features have yet to be determined; and

WHEREAS, the New York District is applying the National Register of Historic Places (NRHP) Criteria (Criteria) to properties identified within the APE on a phased basis, and to date has completed substantial surveys within the APE (Appendix B) which shall be hereafter referred to as the "Investigated Portion of the APE" with the recognition that additional identifications and evaluations are required for project actions which have not yet been finalized; and

WHEREAS, the bungalow community at Cedar Grove was determined eligible for the NRHP by the New York State Historic Preservation Office (NYSHPO) in 2011 and its proposed demolition was to be mitigated by the New York City Department of Parks and Recreation (NYCDPR) the property owner, and all but two structures were subsequently destroyed by the October 2012 Hurricane Sandy, and the remaining two are slated for demolition by NYCDPR, the New York District shall undertake no further work at Cedar Grove in relation to the bungalow community; and

WHEREAS, the LOP will cross lands owned by the National Park Service (NPS) at Gateway National Recreation Area (GNRA), which include the Miller Army Airfield Historic District, a NRHP-listed historic district and the 1943 World War II (WWII) Fire Control Tower, which requires further evaluation as to its eligibility; and

WHEREAS, the LOP will be constructed adjacent to lands owned by the National Park Service (NPS) Gateway National Recreation Area (GNRA), Fort Wadsworth Historic District at one end and Great Kills at the other; and

WHEREAS, for the purposes of the Undertaking, the NPS and the New York District have agreed that the New York District will act as the lead for compliance with Section 106 on behalf of the NPS for the portion that crosses NPS lands [36 CFR 800.2(a)(2)], and the NPS will be a signatory to this PA; and

WHEREAS, much of the facilities required for the Interior Drainage Plan is within the New York City Department of Environmental Protection (NYCDEP) Staten Island Blue Belt Program for which a cultural resources study was completed resulting in no identified NRHP-eligible resources but included recommendations for archaeological testing in selected locations of high ground; and

WHEREAS, the New York District has invited the Advisory Council on Historic Preservation (ACHP), the Delaware Nation, The Delaware Tribe of Indians, the Stockbridge-Munsee Band of Mohican Indians, New York City Landmarks Preservation Commission (NYCLPC), the Staten Island Historical Society, The Staten Island Museum, the Staten Island Historian and the Preservation League of Staten Island to participate in the Section 106 consultation process; and

WHEREAS the New York District made the Draft PA available for public review in the Draft Environmental Impact Statement prepared under the National Environmental Policy Act which will serve as the District's Section 106 public coordination for this undertaking; and

WHEREAS, in accordance with 36 CFR Part 800.14, the New York District and the NYSHPO have determined that execution of this PA will establish alternative procedures to streamline the coordination of the Project; and

WHEREAS, the New York District shall continue to consult with the NYSHPO, NYCLPC and with the NPS for portions of the Undertaking that affect NPS land and resources, regarding plans and surveys to identify, evaluate and treat historic properties as the New York District implements all phases of the Undertaking; and

NOW, THEREFORE, the New York District, the NPS, and the NYSHPO agree that the Undertaking shall be administered in accordance with the following stipulations to satisfy the New York District's Section 106 responsibility for all individual actions of the Undertaking.

Stipulations

The New York District shall ensure that the following measures are carried out:

I. IDENTIFICATION AND EVALUATION

A. The New York District in consultation with the NYSHPO has determined that there is the potential to encounter deeply buried landforms and Native American sites in the APE which shall be investigated by the New York District through the excavation of borings along the project alignment in locations where construction techniques will entail ground disturbance in the form of open trenching. This work will be overseen by a geoarchaeologist who will determine the locations of the borings. The New York District shall consult with the NYSHPO to develop Archaeological Work Plans to address this work.

B. Should paleo-surfaces or archaeological remains be encountered through the work conducted under Stipulation 1(A), the New York District shall consult with the NYSHPO and other interested parties to develop plans to evaluate NRHP-eligibility of such remains. If determined significant and avoidance is not feasible a data recovery plan will be developed as per Stipulation II (F).

C. The New York District will follow the recommendations contained in the NYCDEP Staten Island Blue Belt Program cultural resources study for areas where the interior drainage plan overlaps with the Blue Belt area.

D. The New York District shall consult with the NYSHPO to develop plans to complete the identification of historic properties within the uninvestigated portion of the Undertaking's APE (Appendix B).

E. The New York District shall revise plans to address comments and recommendations provided by the NYSHPO prior to proceeding with identification and evaluation activities.

F. The New York District shall ensure that qualified professionals meeting the NPS professional qualifications for the appropriate discipline [National Park Service Professional

Qualification Standards, Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation (48 FR 44738-39)] are used to complete all identification and evaluation plans related to this undertaking, to include archaeological surveys and testing, historic structure inventories, and documentation.

G. The New York District and the NYSHPO shall consider the views of the public or interested parties in completing its identification and evaluation responsibilities.

H. The New York District shall maintain records of all decisions it makes related to the NRHP eligibility of properties.

I. Application of Criteria

1. The New York District, in consultation with the NYSHPO, shall evaluate historic properties using the Criteria established for the NRHP [36 CFR 800.4(c)(1)]:

a. If the New York District and the NYSHPO, and NPS for properties on NPS land, agree that the Criteria apply or do not apply, in evaluating the NRHP eligibility of a property, the property shall be treated accordingly for purposes of this PA.

b. If the New York District and the NYSHPO disagree regarding NRHP eligibility, or if the ACHP or the NPS so request, prior to the start of any project-related work at the site or in the vicinity of the property, the New York District shall obtain a formal Determination of Eligibility (DOE) from the Keeper of the National Register (Keeper), National Park Service, whose determination shall be final.

2. Prior to the initiation of construction related activities which may affect historic properties, the New York District, in consultation with the NYSHPO, shall identify and evaluate:

a. Archaeological Sites

i. The New York District shall ensure that archaeological surveys within the uninvestigated portions of the APE are conducted in a manner consistent with the Secretary of the Interior's Standards and Guidelines for Identification (48 FR 44720-23) and the New York Archaeological Council Standards for Cultural Resource Investigations and the Curation of Archaeological Collections in New York State (1994, adopted by NYSHPO in 1995), and take into account the National Park Service publication The Archaeological Survey: Methods and Uses (1978) and the statewide historic contexts developed by the NYSHPO.

ii. The survey shall be conducted following consultation with the NYSHPO, and a report of the survey, consistent with the District's cultural resource report standards and format, shall be submitted to the NYSHPO for review and consultation.

b. Traditional Cultural Properties.

The New York District, NYSHPO and Federally Recognized Tribes have agreed that no Traditional Cultural Properties are known to be within the Investigated Portion of the Area of Potential Effect.

ii. The New York District shall ensure that future surveys within the

uninvestigated portions of the APE includes procedures to identify Traditional Cultural Properties and to consult with Federally Recognized Tribes and other affected parties in accordance with the guidelines provided by National Park Service Bulletin 38, Guidelines for Evaluating and Documenting Traditional Cultural Properties.

iii. In the event that a Federally Recognized Tribe or affected group contacts the New York District regarding its recognition of a Traditional Cultural Property, located within the APE, the New York District shall notify the NYSHPO, and NYCPLC and NPS as necessary, to initiate discussions with all parties to evaluate whether the property is a Traditional Cultural Property that meets the Criteria.

c. Buildings and Structures

i. The New York District shall ensure that surveys are conducted for buildings and structures in the Undertaking's uninvestigated portion of the APE in a manner consistent with the Secretary of the Interior's Standards and Guidelines for Identification (48 FR 44720-23) and which takes into account the statewide historic contexts developed by the NYSHPO. The survey shall be conducted following consultation with the NYSHPO, and a report of the survey, consistent with the NYSHPO's Recommended Standards for Historic Resources Surveys, shall be submitted to the NYSHPO for review and consultation.

ii. The New York District, in consultation with the NYSHPO, shall identify and evaluate buildings and structures that are located adjacent to listed or eligible NRHP Historic Districts to determine whether such properties should be considered as part of the Historic District or an expanded District.

d. Historic Landscapes and Viewsheds

i. The New York District shall consult with the NYSHPO to identify and evaluate historic landscapes and viewsheds located within the uninvestigated portion of the Undertaking's APE. The New York District shall consult National Park Service Bulletins 18, How to Evaluate and Nominate Designed Historic Landscapes, and 30 Guidelines for Evaluating and Documenting Rural Historic Landscapes, National Park Service Preservation Brief 36, Protecting Cultural Landscapes, and other publications and materials made available by the NYSHPO to assist in defining the criteria that should be applied to such properties.

ii. The objective in conducting the surveys is to identify NRHP listed or potentially eligible Historic Landscapes and affected View Sheds within the project area that may be adversely affected by the Undertaking implementation, and to determine whether they meet the NRHP criteria set forth in 36 CFR Part 60.4.

3. The New York District shall ensure that the identification and evaluation of historic properties that may be affected by each phase of the Undertaking is completed prior to the initiation of any formal action by the Corps including rehabilitation, relocation, demolition, etc.

II. TREATMENT OF HISTORIC PROPERTIES.

The New York District shall adhere to the following treatment strategies in order to avoid adverse effect to historic properties.

A. The New York District, in consultation with the NYSHPO, shall develop appropriate treatment plans for historic properties identified within the APE which may be affected by the Undertaking. Unless the NYSHPO objects within 30 days of receipt of any plan, the New York District shall ensure that treatment plans are implemented by the New York District or its representative(s). The New York District shall revise Plans to address comments and recommendations provided by the NYSHPO.

B. The New York District shall ensure that qualified professionals meeting the NPS professional qualifications for the appropriate discipline [National Park Service Professional Qualification Standards, Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation (48 FR 44738-39)] are used to develop and implement all treatment plans.

C. Avoidance. The preferred treatment is avoidance of effects to historic properties. The New York District shall, to the extent feasible, avoid historic properties either through project design changes, use of temporary fencing or barricades, realignments, landscaping, or other measures that will protect historic properties. The New York District, and the NYSHPO shall consult to develop plans for avoiding effects to historic properties. The New York District shall incorporate feasible avoidance measures into project activities as part of the implementation of the Undertaking. If, in consultation with the NYSHPO, avoidance is determined to be infeasible, the New York District shall develop and implement treatment/mitigation plans consistent with Stipulation II of this PA.

D. Preservation In Place. When the New York District and NYSHPO agree that complete avoidance of historic properties is infeasible, the New York District shall explore preservation in place, if appropriate. Preservation in place may entail partial avoidance or protection of historic properties against project-related activities in proximity to the property. The New York District shall preserve properties in place through project design, i.e. incorporating color, texture, scale, and/or materials which are compatible with the architectural or historic character of the historic property; use of fencing, berms or barricades; and/or preservation of vegetation including mature trees, landscaping and planting which screen the property. If the New York District, in consultation with the NYSHPO, determines that preservation in place is infeasible, the New York District shall develop and implement treatment/mitigation plans consistent with Stipulation II of this PA.

E. Buildings and Structures and Districts. The New York District, in consultation with the NYSHPO, shall determine the effect the Undertaking will have on listed or eligible historic building, district, and structure and ensure that a treatment plan be developed for these properties.

F. Archaeological Sites

a. Archaeological Data Recovery: The District shall develop a data recovery plan for archaeological sites eligible solely under NRHP Criterion D which the New York District and the NYSHPO agree cannot be avoided or appropriately preserved in place. The data recovery plan to retrieve significant archaeological information will be developed and implemented by the New York District or its representative(s), following approval from the NYSHPO and prior to the implementation of project-related activities within or in the vicinity of the archaeological sites.

b. The New York District shall ensure that the data recovery plan for each eligible site addresses substantive research questions developed in consultation with the NYSHPO, Federally Recognized Tribes and NYCLPC, as appropriate. The plan shall be consistent with the Secretary of the Interior's Standards and Guidelines for Archaeological Documentation (48 FR 44734-37) and take into account the ACHP's publication, Treatment of Archaeological Properties.

c. The New York District shall submit data recovery plans to the NYSHPO for review and approval. The New York District and NYSHPO shall consult to resolve any objections to the data recovery plan as proposed. The data recovery plan shall then be implemented by the New York District once approved by the NYSHPO. If no response is received from the NYSHPO after 30 days of receipt of adequate documentation, the New York District may assume the NYSHPO's concurrence and proceed with implementation of the plan submitted.

G. Historic Landscapes

a. The New York District, in consultation with the NYSHPO, shall develop a plan to identify and evaluate design alternatives which will avoid, minimize, or compensate for impacts when it is determined that a historic landscape will be affected by Undertaking activities.

b. Treatment measures for historic landscapes shall consider, in order of priority, preservation, rehabilitation, restoration, reconstruction, and additions in accordance with The Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for the Treatment of Cultural Landscapes (1996) and Protecting Cultural Landscapes, National Park Service Preservation Brief Number 36.

H. Curation and Dissemination of Information:

The New York District or its designee, in consultation with the NYSHPO shall ensure that all materials and records resulting from the survey, evaluation, and data recovery conducted for the Undertaking will be curated in accordance with 36 CFR Part 79 "Curation of Federally-Owned and Administered Archaeological Collections" and ER 1130-2- 433 "Project Operations: Collections Management and Curation of Archaeological and Historical Data." All material and records recovered from non-Federally owned land shall be maintained in accordance with 36 CFR Part 79 until their analysis is complete and, if necessary, are returned to their owner(s). All material and records recovered from NPS lands shall be maintained in accordance with 36 CFR Part 79 until their analysis is complete and then returned to the NPS.

I. Disagreements on effect determinations. Should the New York District and NYSHPO disagree as to whether the criteria of adverse effect apply to the effects of the Undertaking on particular historic properties, the New York District will request the ACHP to review the finding and request their written opinion within 30 days, in accordance with 36 CFR 800.5(c). The New York District will take the ACHP's opinion into account when reaching a final decision.

III. RESOLUTION OF ADVERSE EFFECTS

A. When the New York District, in consultation with the NYSHPO, determines that Undertaking related activities cannot adhere to treatment plans developed in accordance with Stipulation II.E. or would otherwise have an adverse effect, the New York District shall:

1. Develop a Standard Mitigation Agreement (SMA) with the NYSHPO; or
2. Consult with the ACHP to develop a Memorandum of Agreement (MOA) in accordance with 36 CFR Part 800.6 (c).

B. The New York District shall invite the ACHP to participate in consultation when:

1. The New York District and SHPO determine that an agreement or a SMA cannot be reached;
2. a National Historic Landmark is involved;
3. human remains have been identified; or
4. there is widespread public interest in a historic property or properties.

C. The New York District and the NYSHPO, and interested parties as appropriate, shall consult to develop alternatives to mitigate or minimize adverse effects. The analysis of alternatives shall consider program needs, cost, public benefit and values, and design feasibility.

D. Development of Standard Mitigation Agreements (SMA).

1. The New York District, in consultation with the NYSHPO and interested parties, as appropriate, shall develop SMAs for historic properties which will be adversely affected by the Undertaking. The New York District shall submit the SMA to the NYSHPO for review and approval by certified mail. The NYSHPO shall have 30 days from receipt of adequate information in which to review and comment on the SMA(s). If the NYSHPO fails to respond within 30 days, or if there is disagreement, the New York District shall notify the ACHP and consult to develop the proposed SMA into an MOA and submit copies of background information and the proposed SMA to facilitate consultation to develop an MOA in accordance with 36 CFR Part 800. After signing by the New York District and NYSHPO, the New York District shall file all SMAs with the ACHP.

Standard Mitigation Agreements (SMA)

1. SMAs developed between the New York District and the NYSHPO may include one or more of the following stipulations which address routine adverse effects that may occur to historic properties as a result of project implementation.

2. Recordation. The New York District shall consult with the NYSHPO or Historic American Building Survey/Historic American Engineering Record (HABS/HAER) to determine the

appropriate level and type of recordation for affected resources. For historic properties with state and/or local significance, recordation shall be consistent with the requirements and standards of the Department of the Interior (April 2003). All documentation must be submitted to NYSHPO and HABS/HAER for acceptance, prior to the initiation of project activities, unless otherwise agreed to by the NYSHPO or NPS.

3. **Salvage and Donation of Significant Architectural Elements.** Prior to demolition, partial demolition, or substantial alteration of historic properties, the New York District, in consultation with the NYSHPO, shall develop a salvage and donation plan to identify appropriate parties willing and capable of receiving and preserving the salvaged significant architectural elements. The New York District shall submit the plans to the NYSHPO for review and approval.

4. **Alternative Treatments or Design Plan which meet the Standards.** Prior to demolition partial demolition, or substantial alteration of historic properties, the New York District, in consultation with the NYSHPO, shall develop a plan identifying protocols for developing treatment guidelines and evaluating design standards for new construction within historic districts in keeping with the Secretary's Standards. The New York District shall submit the plans to the NYSHPO for review and approval.

5. **Data recovery for archaeological sites eligible under Criterion D and others and data recovery and treatment of archaeological sites where data recovery will not result in a finding of no adverse effect.** The New York District shall conduct data recovery on archaeological sites following agreement on the prospective data recovery and treatment plans between the New York District and the NYSHPO when the archaeological sites are eligible for National Register inclusion under additional Criteria than Criterion D (for the information which they contain) or when the full informational value of the site cannot be substantially preserved through the conduct of appropriate research to professional standards and guidelines. To the maximum extent feasible, data recovery and treatment plans shall be developed to take into account and mitigate for the fullest range of archaeological site values and significance. Prior to construction, the New York District shall develop a data recovery plan for archaeological sites eligible under Criterion D and others. The New York District shall submit the plans to the NYSHPO for review and approval.

IV. DISCOVERY

A. If previously unidentified properties are discovered during Undertaking implementation, the New York District shall cease all work in the vicinity of the discovered property until it can be evaluated pursuant to the guidelines in Stipulation I of this PA. If the property is determined to be eligible, the New York District shall consult with the NYSHPO to develop a treatment plan or SMA in accordance with Stipulation II of this PA.

B. The New York District shall implement the treatment or SMA once approved by the NYSHPO.

V. TREATMENT OF HUMAN REMAINS:

If any human remains and/or grave-associated artifacts are encountered, the New York District, the NYSHPO and 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" (February 23, 2007), the Native American Grave Protection and Repatriation Act, As Amended (PL 101-601, 25 U.S.C. 3001 et seq.) and, U.S. Army Corps of Engineers, Tribal Consultation Policy (4 October 2012) and the NYSHPO Human Remains Discovery Protocol (October 2013).

- A. 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.
- B. The medical examiner/coroner, local law enforcement, the NYSHPO and tribes will be notified. The coroner and local law enforcement will determine if the remains are forensic or archaeological in nature.
- C. 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 New York District, NYSHPO and Tribes.
- D. 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 New York District, NYSHPO, Federally Recognized Tribes and other parties, as appropriate.
- E. Avoidance of human remains is the preferred treatment.

VI. ACTIVITIES ON NATIONAL PARK SERVICE LANDS

For those portions of the Undertaking which take place on NPS lands, the New York District will fully engage the NPS in all consultations and secure NPS concurrence for all decisions related to identification, evaluation, effect determinations, and treatment of adverse effects. USACE will submit all documentation and determination findings for properties on NPS land to NPS for review and concurrence prior to submission to NY SHPO or ACHP. The NPS will be a signatory to any SMA or MOA developed related to NPS properties. If the NPS, New York District, and NYSHPO cannot come to agreement on any such matters, the provisions of stipulations I.I (b), II.I, or VIII.B will apply, as most appropriate.

VII. ACTIVITIES ON NEW YORK CITY LANDS

For those portions of the Undertaking which take place on New York City (NYC) owned property, the New York District will fully engage the NYCLPC in all consultations and secure NYCLPC concurrence for all decisions related to identification, evaluation, effect determinations, and treatment of adverse effects. USACE will submit all documentation and

determination findings for properties on NYC land to the NYCLPC for review and concurrence prior to submission to NYSHPO or ACHP. If the NYCLPC, New York District, and NYSHPO cannot come to agreement on any such matters, the provisions of stipulations I.I (b), II.I, or VIII.B will apply, as most appropriate.

VIII. ADMINISTRATIVE TERMS

A. REVIEW PERIODS

The NYSHPO, ACHP, the NPS, NYCLPC, the Delaware Nation, the Delaware Tribe of Indians, the Stockbridge-Munsee Community Mohican Band of Indians and any other interested party shall have 30 days to review and/or object to determinations, evaluations, plans, reports, and other documents submitted to them by the New York District.

B. DISPUTE RESOLUTION

1. The New York District and the signatories shall attempt to resolve any disagreement arising from implementation of this PA. If there is a determination that the disagreement cannot be resolved, the New York District shall request the ACHP's recommendations or request the comments of the ACHP in accordance with 36 CFR Part 800.7.

2. Any ACHP recommendations or comments provided in response will be considered in accordance with 36 CFR Part 800.7, with reference only to the subject of the dispute. The New York District shall respond to ACHP recommendations or comments indicating how the New York District has taken the ACHP's recommendations or comments into account and complied with same prior to proceeding with Undertaking's activities that are subject to dispute. Responsibility to carry out all other actions under this PA that are not the subject of the dispute will remain unchanged.

C. TERMINATION

Any signatory to this PA may terminate it by providing thirty days notice to the signatories, provided that the signatories will consult during the period prior to termination by certified mail to seek agreement on amendments or other actions that would avoid termination. In the event of termination, the New York District will comply with 36 CFR Parts 800.4 through 800.6 with regard to individual Undertaking actions covered by this Agreement.

D. SUNSET CLAUSE

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, unless the Project is terminated or authorization is rescinded.

E. AMENDMENT

This PA may be amended upon agreement in writing by all signatories. The amendment will be effective on the date a copy signed by all of the signatories is filed with the ACHP.

F. ANTI-DEFICIENCY ACT

All requirements set forth in this PA requiring expenditure of funds by the New York 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 New York District under the terms of this PA shall require or be interpreted to require a commitment to extend funds not appropriated for a particular purpose. If the New York District cannot perform any obligation set forth in this PA because of unavailability of funds, that obligation must be renegotiated among the New York District and the signatories as necessary.

Execution and implementation of this PA evidences that the New York District has satisfied its Section 106 responsibilities for all individual Undertakings of the Project, and that the New York District has afforded the ACHP an opportunity to comment on the Undertaking and its effects on historic properties.

U.S. ARMY CORPS OF ENGINEERS

By: _____ Date: _____
Col. Paul E. Owen, P.E.
District Engineer, New York District

NEW YORK STATE HISTORIC PRESERVATION OFFICE

By: _____ Date: _____
Ruth Pierpont, Deputy State Historic Preservation Officer

NATIONAL PARK SERVICE

By: _____ Date: _____
Jennifer T. Nersesian, Superintendent
Gateway National Recreation Area