

PROGRAMMATIC AGREEMENT AMONG
THE U. S. ARMY CORPS OF ENGINEERS, NEW YORK DISTRICT AND
THE NEW JERSEY STATE HISTORIC PRESERVATION OFFICE,
THE BUREAU OF OCEAN ENERGY MANAGMENT, AND
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING THE ATLANTIC COAST OF NEW JERSEY
SANDY HOOK TO BARNEGAT INLET BEACH EROSION CONTROL UNDERTAKING

WHEREAS, the U.S. Army Corps of Engineers, New York District, (New York District) is proposing to undertake measures to reduce coastal storm damages and minimize impact along the Atlantic Coast of New Jersey (ACNJ) as a component of the Sandy Hook to Barnegat Inlet Beach Erosion Control Project (the Undertaking) as authorized by the Rivers and Harbors Act of 1958, P.L. 85-500; and subsequently amended by Section 854 of the Water Resources Development Act (WRDA) of 1986; Section 4 of WRDA of 1988, P.L. 100-676; and Section 102 (r) of WRDA of 1992, P.L. 102-580; and

WHEREAS, the Undertaking was separated into three (3) sections of which Section I– Sea Bright to Ocean Township and Section II – Asbury Park to Manasquan are within the New York District boundaries (Appendix 1). Section III, from Manasquan to Barnegat Inlet is within the Philadelphia District boundaries so has not been addressed by the New York District and will not be addressed in this document; and

WHEREAS, the State of New Jersey Department of Environmental Protection, is the non-federal sponsor; and

WHEREAS, the Undertaking consists of beach erosion control, which is provided by constructing a 100-foot-wide beach berm to a total elevation of 12 feet above mean low water, notching existing groins, and extending existing outfall pipes. The Undertaking includes periodic nourishment of the restored beaches on a 6-year cycle for a period of 50 years from the start of initial construction. The borrow areas include, but are not limited to the off-shore Sea Bright Borrow Area (SBBA) and Belmar Borrow Areas (see Appendix 1); and

WHEREAS, the New York District has defined the "Area of Potential Effect" (APE) for this Undertaking to consist of the immediate on-shore beach area, entire near shore sand placement and outfall extension areas, which may include but are not limited to all conveyance of sediment from the borrow area to the beach via pipelines with their associated anchor points either directly from the dredge or via an offshore pumpout and any offshore borrow areas, which include but are not limited to, the entire SBBA and Belmar Borrow Areas; and

WHEREAS, construction of this Undertaking was initiated in 1994 and completed in 2001; however construction of the reach between Elberon and Loch Arbour in Section I was deferred to 2015-2016 as all necessary real estate could not be acquired (see Appendix 1); and

WHEREAS, in response to extensive storm damages resulting from Hurricane Sandy (October 2012), the New York District constructed emergency repairs under Public Law 84-99, Flood Control and Coastal Emergency Act (33 U.S.C. 701n) to restore the constructed Undertakings to their pre-storm conditions; and

WHEREAS, in response to extensive storm damages resulting from Hurricane Sandy (October 2012) and an increased vulnerability to future events, Congress passed the Disaster Relief Appropriations Act

of 2013 (P.L. 113-2). The Elberon to Loch Arbour Beach Erosion Control Project was identified to Congress as authorized but unconstructed and therefore, the proposed work in this reach is being funded under P.L. 113-2; and

WHEREAS, renourishment contracts will be awarded when Federal and non-Federal funding is available for the remaining duration of the authorization; and

WHEREAS, a Memorandum of Agreement (MOA) was executed on 5 February 1991 among the New York District, the New Jersey State Historic Preservation Office (NJHPO) and the Advisory Council on Historic Preservation (Council), for Section I and a separate MOA was executed among the same parties on 20 May 1993 for Section II (Appendix 2), and

WHEREAS, the New York District combined the two executed MOAs into a single PA, which was executed on 18 June 2014 among the New York District, NJHPO and the Delaware Tribe of Indians, which encompassed both Sections I and II of the ACNJ Project, and the SBBA; and

WHEREAS, the New York District shall consolidate the two executed MOAs, and the prior PA, which included a sunset clause requiring renewal after five years, into this one agreement that will encompass both Sections I and II of the ACNJ Project, the SBBA, the Belmar Borrow Areas as well as any potential or future Borrow Areas, the execution of this agreement shall supersede all previous agreements for this Undertaking; and

WHEREAS, the New York District shall implement the provisions of this PA as funding for the Undertaking is appropriated in future years; and

WHEREAS, pursuant to 36 CFR Part 800, the regulations implementing Section 106 of the National Historic Preservation Act (NHPA) (54 U.S.C § 306108), the District has determined through numerous cultural resource surveys of the APE, in accordance with 36 CFR 800.6(c) that implementation of Project actions will have the potential to effect properties listed on or eligible for listing on the National Register of Historic Places (NRHP), including in Section I the wrecks *Adonis/Rusland* and *Chauncey Jerome, Jr.*, and in Section II the *Western World*; and

WHEREAS, Native American artifacts were collected from the beach following one episode of beach renourishment in 1995 using sediment dredged from SBBA. The New York District subsequently conducted a monitoring program during three subsequent renourishment episodes to inspect for artifacts in dredged material screened through 0.75-inch screens employed to collect Unexploded Ordnance (UXO) and no significant cultural material was recovered; and

WHEREAS, investigations in 2014 indicate that there are no landforms within the near shore area between Elberon and Loch Arbor sensitive for inundated Native American sites but there are landforms within in the SBBA sensitive for inundated Native American sites; and

WHEREAS, studies for the New York District have determined it unsafe to excavate borings in the SBBA due to the presence of UXO, and

WHEREAS, investigations in 2014 identified remote sensing targets in the near shore area between Elberon and Loch Arbor and in the SBBA as potential historic properties; and

WHEREAS, the New Jersey Historic Preservation Office (NJHPO) has been provided all survey reports for review; and

WHEREAS, pursuant to Section 8 of the Outer Continental Shelf Lands Act (OCSLA),⁴³ U.S.C. § 1337(k), certain activities related to the Undertaking – namely, borrow-area dredging for beach nourishment located on the submerged Federal lands of the Outer Continental Shelf – constitute undertakings by the U.S. Department of the Interior, Bureau of Ocean Energy Management (BOEM), for which BOEM has designated the New York District to be the Lead Federal Agency pursuant to 36 C.F.R. § 800.2(a)(2) for these activities; and

WHEREAS, this Agreement applies only to activities by the New York District associated with the Undertaking, including certain actions that also constitute undertakings by the BOEM that are associated with the utilization of Outer Continental Shelf mineral resources for shore protection, beach or coastal wetlands restoration, or other projects; and

WHEREAS, the Corps has decided that this Agreement will not be applicable for undertakings on tribal lands or undertakings which may impact historic properties on tribal lands, and will instead follow 36 C.F.R. Part 800; and

WHEREAS, in accordance with 36 C.F.R. § 800.6(a)(1) and 36 C.F.R. § 800.14(b), the Corps has notified the Advisory Council on Historic Preservation (ACHP) of its intent to develop this Agreement to govern the implementation of the Undertaking and

WHEREAS, in accordance with 36 C.F.R. § 800.14(b)(2)(i), the Corps invited BOEM to participate as a Consulting Party or sign this Agreement as a Signatory; BOEM elected to participate as a Signatory; and

WHEREAS, in accordance with 36 C.F.R. § 800.14(b)(2)(i), the Corps has invited the Delaware Nation, the Stockbridge Munsee, Absentee Shawnee Tribe of Oklahoma, the Shawnee Tribe and the Delaware Tribe of Indians to participate as Consulting Parties or sign this Agreement as a Concurring Party; the XXX elected/declined to participate as a Concurring Party and will remain a Consulting Party and

WHEREAS, the implementation of this Agreement does not preclude additional consultation with Indian Tribes, NJHPO, local governments, or interested members of the public; and

WHEREAS, the NJHPO, BOEM, and the Corps hereinafter are referred to as Signatory Parties; and

WHEREAS, NJHPO, BOEM and Interested Tribe(s) hereinafter are referred to as Consulting Parties; and

WHEREAS, in accordance with 36 C.F.R. § 800.6(a)(4) and 36 C.F.R. § 800.14(b)(2)(ii), the New York District involved the general public through public scoping and review periods of the National Environmental Policy Act (NEPA) process, which affords all persons, organizations, and government agencies the right to review and comment on proposed major federal actions that are evaluated by a NEPA document and participate in public meetings during the review of the feasibility report, as well as soliciting additional public comment on this Agreement by utilizing the Corps NAN Environmental Documents Website and shall provide a link to that location through social media and/or a press release; and

WHEREAS, the definitions set forth in 36 C.F.R. § 800.16 are incorporated herein by reference and apply throughout this Agreement; and

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

Stipulations

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

I. NEW OFFSHORE BORROW AREAS

A. Geomorphology and Native American Site Potential

1. The New York District shall conduct a maritime remote sensing survey(s), which shall include side-scan sonar, magnetometer and CHIRP style sub-bottom profiler, of all submerged areas of the APE that may have not been previously surveyed or have not been previously dredged or disturbed by the placement of sand. The investigations shall include a review of the geotechnical investigations carried out for the borrow area. For those areas that have been previously surveyed but not yet dredged or disturbed, the methods utilized in the identification survey will be compared to existing guidance (either from the State of New Jersey or, for portions of the APE located on the Outer Continental Shelf, from BOEM) to determine whether the original survey remains sufficient.

a. *Belmar Borrow Areas*

- All portions of the Belmar Borrow Areas consisting of, Belmar 8 North, Belmar 8 South, Belmar 9 North, Belmar 9 South, Belmar 10 North and Belmar 10 South, will be surveyed. At minimum, the remote sensing survey will consist of side-scan sonar, magnetometer and CHIRP style sub-bottom profiler. A report will be generated after the survey effort and will be shared with NJHPO and other interested parties. All associated reporting of survey results shall conform to the Requirements for Archaeological Survey Reports – Standards for Report Sufficiency at N.J.A.C. 7:4-8.5.
2. The maritime remote sensing survey(s) will be consistent with the *Secretary of Interior's Standards and Guidelines for Archaeology and Historic Preservation* (48 F.R. 44716–44740). All associated reporting of survey results shall conform to the Requirements for Archaeological Survey Reports – Standards for Report Sufficiency at N.J.A.C. 7:4-8.5. If the APE is located on the OCS, in consultation with BOEM, surveys will also follow the applicable parts of BOEM's *Guidelines for Providing Archaeological and Historic Property Information Pursuant to 30 CFR Part 585* (2020, or as amended) The Corps will make a reasonable and good faith effort to identify historic properties within the APE consistent with these guidelines.
 3. For all undertakings on the OCS, the New York District will coordinate the development of any maritime remote sensing surveys, and provide to BOEM a copy of the report and, upon request, supporting data (both raw and processed datasets) for BOEM's review, use, or archive. If targets/anomalies or paleo features are identified during maritime remote sensing surveys, the New York District will designate a buffer zone around each potential cultural resource, as determined by the nature of the anomaly/return and in consultation with Consulting Parties.
 4. Buffer zone(s) shall be clearly delineated on construction plans. No construction activities (e.g., dredging, pipeline corridors, and anchoring), which could potentially impact the potential

cultural resource, will occur within the designated buffer zones. However, at the discretion of the New York District, placement of dredge material may occur within a buffer area when it has been determined that placement will have no potential to affect historic properties or may serve to protect historic properties, provided subsequent removal of material will not be conducted without consideration as to the continued protection of said historic properties.

5. If any targets, anomalies, or paleo landforms cannot be avoided, the District will undertake consultation as identified in Stipulation IX.A below to determine the need for one or more of the following activities: diving, documentation, additional reconnaissance diving, and cultural resource evaluations.
6. A geomorphological study of the offshore borrows areas to aid in the identification of borrow areas that have the potential for buried land surfaces may also be conducted as appropriate. This investigation may include, but not limited to, the research and analysis of locations of ancient watercourses and/or the analysis of soil cores, etc.
 - a. The District will coordinate the results of any geomorphological studies/investigations in accordance with the process identified in IX.A.
 - b. Areas determined sensitive for paleo landforms will be avoided as practicable. If avoidance is not feasible the New York District shall implement a program to monitor the material from these areas.
7. Any protocol for a monitoring program will be developed in consultation with NJHPO and, for portions of the APE located on the Outer Continental Shelf, with BOEM. A report will be generated after each effort which shall be coordinated with NJHPO and other interested parties. All associated reporting of survey results shall conform to the Requirements for Archaeological Survey Reports – Standards for Report Sufficiency at N.J.A.C. 7:4-8.5.
8. The protocol shall include measures the Corps will undertake should artifacts be encountered.
9. If it is determined that a buffer zone cannot be employed in an area as sand from that location is critical for the Undertaking, the New York District will conduct further study to determine if a target is a cultural resource and evaluate its NRHP eligibility. If determined eligible the District shall consult with the NJHPO to develop treatment plans and, for portions of the APE located on the Outer Continental Shelf, with BOEM.

II. SEA BRIGHT BORROW AREA (SBBA):

A. Geomorphology and Native American Site Potential

1. Areas determined sensitive for paleo landforms will continue to be avoided as practicable. If avoidance is not feasible the New York District shall implement a program to monitor the material from these areas that is collected in the UXO screens.
2. If it is determined by the New York District that additional protocol for the monitoring program is needed, said protocol will be developed in consultation with NJHPO. A report will be generated after each effort which shall be coordinated with NJHPO and other interested parties.

3. No further regular monitoring of dredged material will be carried out by the New York District. However, the project archaeologist will continue to educate the UXO specialists at the beginning of each renourishment cycle on the types of archaeological materials that could be encountered so that they will be more likely to identify these materials when or if they are pumped onto the beach. Early detection could allow the archaeologist time to halt the pumping operation, inspect the material, and consult with the NJHPO to make a determination for monitoring or for moving the dredge operation elsewhere.

B. Shipwrecks

1. The New York District shall designate a buffer zone with minimum of 250 feet around each potential shipwreck identified through remote sensing surveys conducted for the Undertaking. The buffer requirement may increase depending on project specific conditions. Buffer zone(s) shall be clearly delineated on construction plans. No construction activities that could potentially impact the wrecks will occur within the designated zones.
2. If it is determined that a buffer zone cannot be employed in an area as sand from that location is critical for the Undertaking, the District will conduct further study to determine if a target is a cultural resource and evaluate its NRHP eligibility. If determined eligible the District shall consult with the NJHPO to develop treatment plans.

10.

III. NEAR SHORE - IDENTIFICATION OF TARGETS

- A. Following the execution of the 2014 PA, the New York District conducted a remote sensing survey of Section I between Sea Bright and Elberon to identify potential historic properties (Pan-American 2015). Comprised of a magnetometer, side scan sonar, and CHIRP style sub bottom profiler survey, the remote sensing phase of the investigation identified seven magnetic anomaly clusters and six anomaly clusters with associated sonar contacts. With the exception of Cluster 11, the NRHP listed wreck site of the *Chauncey Jerome, Jr.*, all of the clusters were unknown as to origin. However, archival research indicated the potential for historic shipwrecks within the 2014 survey area, some at the locations of several of the clusters. These include the *Germania*, the *Cornelius Grinnell*, and the "Spike Wreck. Because the Undertaking was constructed and renourished previously, no impacts were anticipated to the potentially significant remote sensing targets. It was therefore recommended that no further archaeological work is necessary.
- B. In order to complete the identification of cultural resources within the project area and to ensure that future activities relating to the project can avoid impacting significant cultural resources the New York District conducted a dive survey to investigate the clusters identified as potential cultural resources in the near shore area from Elberon to Loch Arbour to determine if they are in fact cultural resources (Pan-American 2015). In addition to the results from the near shore survey, findings from the diving investigations of the ten targets in the Elberon to Loch Arbour Reach were negative, with the target areas considered to consist of modern debris not indicative of potentially significant cultural resources (i.e., a shipwreck). No further investigation of the targets was recommended.

IV. NEAR SHORE - VESSEL MONITORING PROGRAM:

- A. The New York District will continue to monitor the *Adonis/Rusland* and *Chauncey Jerome, Jr.*, in Section I and the *Western World* in Section II with each renourishment cycle to determine the

effect of sand placement on each cultural resource. The *Amity* in Section II will continue to serve as a control site for this effort. The results of this monitoring program will aid in determining whether or not burial of these shipwrecks by sand: 1) constitutes no effect on these historic properties; 2) is an appropriate measure to ensure preservation-in place; or 3) constitutes an adverse effect to these sites.

- B. New York District shall employ those procedures set up by the District for this monitoring program in 2000 in which specific parameters were established to evaluate changes observed on the wrecks at each inspection period (Pan-American 2000). However, the monitoring effort will omit obsolete techniques and methods defined in the 2000 report and will employ those technologies and methods, such as multibeam, that are industry standards at the time the surveys are conducted.
- C. After each monitoring inspection the New York District shall prepare a report documenting the condition of the wreck(s) surveyed and shall coordinate the report with NJHPO and other interested parties. All associated reporting of survey results shall conform to the Requirements for Archaeological Survey Reports – Standards for Report Sufficiency at N.J.A.C. 7:4-8.5.
- D. The monitoring program will be undertaken as funding for beach renourishment is appropriated and monitoring will be limited to only those wrecks within the area scheduled for renourishment.

V. NEAR SHORE - VESSEL MONITORING PROGRAM REEVALUATION

- A. Following the second (2) monitoring inspection of at least one single vessel the New York District, NJHPO and other interested parties will reevaluate the program to determine if the program should continue in the same manner, whether a new inspection program should be employed or provide a recommendation for no further monitoring of all properties.
- B. The New York District will coordinate this determination with the consulting parties.
- C. Upon completion or discontinuation of the monitoring program the New York District shall prepare a final report documenting the findings of the overall monitoring effort and assessing the effects of the Undertaking on the cultural resources.

IV. PUBLIC INVOLVEMENT and OUTREACH

- A. The New York District shall inform the interested public of the existence of this PA and the New York District plan for meeting the terms of this PA through press releases, social media or the Federal Register. Copies of this PA and relevant documentation prepared pursuant to the terms of this PA shall be made available for public inspection (information regarding the locations of archaeological sites will be withheld in accordance with the Freedom of Information Act and National Register Bulletin 29, if it appears that this information could jeopardize archaeological sites). Any comments received from the public under this PA shall be considered by the New York District.
- B. Public Objections. The New York District shall review and resolve timely substantive public objections. Public objections shall be considered timely when they are provided within the

review periods specified in Section IX (A) of this PA. The New York District shall consult with the NJHPO, and as appropriate with the Council, to resolve objections. Study actions which are not the subject of the objection may proceed while the consultation is conducted.

- C. The New York District shall develop in consultation with the NJHPO and interested parties publicly accessible information about the cultural resources of the ACNJ Undertaking in the form of a publication, exhibit or website.

VI. RESOLUTION OF ADVERSE EFFECTS

- A. The New York District shall continue consultation in accordance with Stipulation IX below, as appropriate, pursuant to 36 CFR Part 800.6 to avoid, minimize or mitigate adverse effects to historic properties.
- B. The New York District shall notify the consulting parties where appropriate, for adverse effects to historic properties within its boundaries, municipalities, and property owners and others as necessary to provide documentation regarding the identification and evaluation of the historic properties. The New York District will work with the Signatories and Consulting Parties, municipalities, and property owners and others as necessary to determine how best to resolve any adverse effects and document the proposed resolution.
- C. Once there is agreement between Signatories on how the adverse effects will be resolved, the New York District shall prepare a treatment plan that will identify the activities to be implemented that will resolve the adverse effects. The treatment plan will be provided for review and comment by the Signatories prior to implementation.
- D. If there are disputes and/or disagreements on the resolution of adverse effects, the New York District shall seek to resolve such objections through consultation in accordance with procedures outlined in Stipulation IX.B.

VI. UNANTICIPATED DISCOVERY

- A. If previously unidentified and unanticipated properties are discovered during the Undertaking implementation, the New York District shall cease all work in the vicinity of the discovered historic property until it can be evaluated. If the property is determined to be eligible, the New York District shall consult with the NJHPO to develop a treatment plan.
- B. The New York District shall implement the treatment plan once approved by NJHPO.

VII. HUMAN REMAINS

- A. If any human remains and/or grave-associated artifacts are encountered during data recovery, the New York District, the NJHPO, the Council, the Delaware Nation and the Delaware Tribe of Indians, shall consult to develop a treatment plan for human remains that is responsive to the Council's "Policy Statement on Human Remains" (September 27, 1988), the Native American Grave Protection and Repatriation Act (PL 101-601) and, U.S. Army Corps of Engineers, Policy Guidance Letter No. 57, (1998) Indian Sovereignty and Government-to-Government Relations With Indian Tribes.

- B. The following language shall be included in the construction plans and specifications for the Project:

“When human remains, suspected human remains, or indications of a burial are discovered during the execution of a Project, the individual(s) who made the discovery shall immediately notify the local law enforcement, coroner/medical examiner, and the Project COR and the District, and make a reasonable effort to protect the remains from any harm. The human remains shall not be touched, moved, or further disturbed. All activities shall cease within a minimum of 50 feet from the area of the find (50-foot radius ‘no work’ buffer) until authorized by the District.”

VIII. PROFESSIONAL QUALIFICATIONS

- A. The New York District shall ensure that qualified professionals meeting the National Park Service 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.
- B. For submerged portions of the APE, the archaeological survey should be designed with input from a qualified marine archaeologist and specialists in other fields as appropriate (e.g., geology and geomorphology), in a manner that is capable of identifying the precontact and historic period site types that are present offshore New Jersey. The Report and analyses presented therein should be prepared by a qualified marine archaeologist and specialists in other fields as appropriate (e.g., geology, geomorphology). A qualified marine archaeologist must meet the Secretary of the Interior's Professional Qualification Standards (48 F.R. 44738-44739) and have experience in conducting high-resolution geophysical surveys of submerged environments and processing and interpreting the resulting data for archaeological potential.

IX. ADMINISTRATIVE TERMS

A. COORDINATION, CONSULTATION, AND REVIEW PERIODS

1. The New York District shall ensure that all draft and final reports resulting from actions pursuant to this PA will be provided to the Signatories and Consulting Parties, and upon request, to other interested parties.
2. All draft and final reports pertaining to investigations of borrow areas associated with this Undertaking will be provided to the NJHPO, BOEM, and interested Tribes for review. All consultation on eligibility determinations, the need for additional investigations for targets and anomalies will include the NJHPO and interested Tribes.
3. With the submission of final reports, the New York District will respond to comments, identifying how comments were/were not considered as part of report revisions or recommendation for additional action.

4. If a response is not received by the end of the review period, the New York District will assume concurrence with the subject determination, evaluation, plan, report, or other document submitted.

B. DISPUTE RESOLUTION

1. Should any Signatory object in writing to the New York District at any time to any actions proposed or the manner in which the terms of this PA are implemented, the New York District and the Signatories shall attempt to resolve any disagreement arising from implementation of this PA.

2. If there is a determination that the disagreement cannot be resolved, the New York District shall forward all documentation relevant to the dispute to the ACHP and request the ACHP's recommendations or request the comments of the ACHP in accordance with 36 CFR Part 800.7(c).

3. The ACHP shall provide the New York District with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Any ACHP recommendations or comments provided in response will be considered in accordance with 36 CFR Part 800.7(c), 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 the ACHP's recommendations or comments prior to proceeding with the Undertaking activities that are the subject to dispute. Responsibility to carry out all other actions under this PA that are not the subject of the dispute will remain unchanged.

4. If the ACHP does not provide its advice regarding the dispute within the thirty (30) calendar day period, the New York District may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the New York District shall prepare a written response that considers any timely comments regarding the dispute from the signatories to the PA and provide them and the ACHP with a copy of such written response.

C. WITHDRAWAL AND TERMINATION

1. Any signatory may withdraw its participation in this PA by providing thirty (30) days advance written notification to all other signatories. In the event of withdrawal, any signatory to this PA may terminate it by providing 30 calendar days, written notice to the signatories. In the event of withdrawal, this PA will remain in effect for the remaining signatories.

2. This agreement may be terminated in accordance with 36 CFR Part 800, provided that the signatories consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. Any signatory requesting termination of this PA will provide thirty (30) days advance written notification to all other signatories.

3. In the event of termination, the District will comply with 36 CFR 800.4 through 800.6 with regard to individual undertakings covered by this Agreement.

D. DURATION AND SUNSET CLAUSE.

1. This PA shall take effect upon execution by the District, the New York SHPO, and the signatories with the date of the final signature.
2. 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 Undertaking is terminated or authorization is rescinded or a period of five years from execution of the PA has passed, at which time the agreement may be extended as written provided all signatories concur.

E. AMENDMENT

1. This PA may be amended upon agreement in writing by all signatories. Within thirty (30) days of a written request to the District, the District will facilitate consultation between the signatories regarding the proposed amendment.
2. Any amendments will be in writing and will be in effect on the date the amended PA is filed with the ACHP.

3. 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 Undertaking, and that the New York District has afforded the NJHPO, ACHP, the Delaware Nation and the Delaware Tribe of Indians, and BOEM an opportunity to comment on the undertaking and its effects on historic properties.

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REGARDING
NEW YORK AND NEW JERSEY HARBOR DEEPENING CHANNEL
IMPROVEMENTS STUDY
ESSEX, HUDSON, MONMOUTH AND UNION COUNTIES, NEW JERSEY
KINGS, QUEENS AND RICHMOND COUNTIES, NEW YORK

Execution of this PA by the New York District, NYSHPO, and NJSHPO and implementation of its terms evidence that the New York District has taken into account the effects of this Undertaking on historic properties and afforded the ACHP an opportunity to comment.

By: _____ Date: _____
Signatory
Matthew W. Luzzatto
Colonel, U.S. Army
New York District
Army Corps of Engineers

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By: _____ Date: _____
Signatory
Katherine J. Marcopul
Deputy State Historic Preservation Officer
New Jersey State Historic Preservation Office

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Execution of this PA by the New York District, NYSHPO, and NJSHPO and implementation of its terms evidence that the New York District has taken into account the effects of this Undertaking on historic properties and afforded the ACHP an opportunity to comment.

By: _____ Date: _____
Megan Carr,
Chief, Office of Strategic Resources

DELAWARE NATION

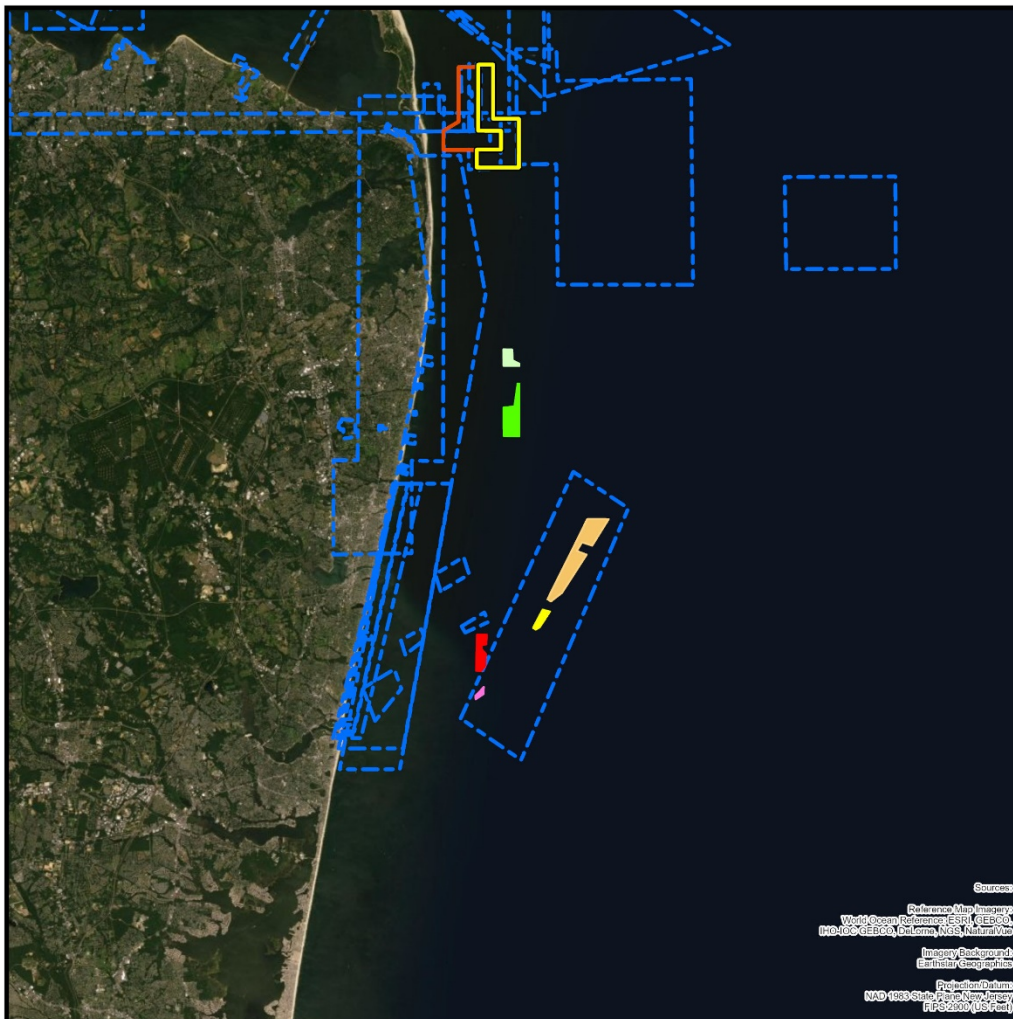
By: _____ Date: _____
C.J. Watkins, Vice President

DELAWARE TRIBE OF INDIANS

By: _____ Date: _____
Paula Pechonick, Chief

Appendix 1

Maps



- Belmar 10 South
- Belmar 10 North
- Belmar 9 South
- Belmar 9 North
- Belmar 8 South
- Belmar 8 North
- Cultural Resource Survey Areas
- SBBA East
- SBBA West

0 5 10 Miles



ATLANTIC COAST NEW JERSEY

Belmar/SBBA Cultural Resource Surveys



U.S. ARMY CORPS OF ENGINEERS
NEW YORK DISTRICT

Appendix 2

MOA Section I (1991) and MOA Section II (1993) And PA (2014)

MEMORANDUM OF AGREEMENT

WHEREAS, the U.S. Army Corps of Engineers, New York District (COE) has determined that implementation of the Atlantic Coast of New Jersey, Sandy Hook to Barnegat Inlet Beach Erosion Control Project, Section 1 - Sea Bright to Ocean Township, New Jersey may have an effect upon historic properties eligible for inclusion in the National Register of Historic Places (National Register) and has consulted with the New Jersey State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (Council) pursuant to Section 106 of the National Historic Preservation Act (16 U.S.C. 470) and its implementing regulations, "Protection of Historic Properties" (36 CFR Part 800);

WHEREAS, historic properties, for purposes of this agreement, are defined as the shipwrecks in the southern half of Section 1 identified in Appendix A; and,

WHEREAS, the preliminary Case Report and Project Map are attached as Appendix A;

NOW, THEREFORE, the COE, the New Jersey SHPO, and the Council agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

STIPULATIONS

COE shall ensure that the following measures are carried out.

I. Pre-Construction Activities

Prior to the placement of sand in the South Reach, the COE shall implement the following measures:

1. Evaluation

In consultation with the SHPO, the COE shall evaluate all shipwrecks in the near shore, sand placement area of the South Reach of Section 1 in accordance with the National Register Criteria set forth at 36 CFR Section 60.4. If the SHPO concurs in COE's determination of eligibility for a particular property or group of properties, such concurrence shall be deemed conclusive for purposes of this agreement. If the SHPO fails to respond within 30 days of receipt of the COE's request for concurrence in the determination of eligibility then the COE's

determination shall be deemed conclusive for purposes of this agreement. If the SHPO disagrees with COE's determination within 30 days, COE shall request a formal determination of eligibility from the Keeper of the National Register in accordance with 36 CFR Part 63.

2. Sampling

In consultation with the SHPO, the COE shall select a representative sample of National Register eligible shipwrecks suitable for monitoring. These shipwrecks shall be selected from the historic properties identified through the evaluation process describe in Stipulation I(1). These selected shipwrecks shall herein be the subjects of this agreement and shall be referred to as "historic properties" and shall be the subject of a post-construction effects determination in accordance with Stipulation II(1). If the SHPO concurs in COE's determinations of a representative sample, such concurrence shall be deemed conclusive for purposes of this agreement. If the SHPO fails to respond within 30 days of receipt of the COE's request for concurrence in the determination then the COE's determination shall be deemed conclusive for purposes of this agreement. If the SHPO disagrees with COE's determination within 30 days, COE shall seek the further comments of the Council.

3. Treatment

a. Historic properties shall be recorded to the standards of the Historic American Engineering Record, published in "Guidelines for Recording Historic Ships" (1988).

b. The COE shall ensure that a report is prepared which will include the results of the identification, evaluation, effects assessment, treatment, and monitoring program. The report shall be submitted to the SHPO and the Council for review and comment.

II. Post-Construction Activities

1. Monitoring Program

a. In consultation with the SHPO, the COE shall develop a monitoring program to assess the effects of the undertaking on historic properties. The objective shall be to determine whether the undertaking has no effect on historic properties, is an appropriate measure to ensure preservation-in-place of historic properties, or constitutes an adverse effect to historic properties. If the SHPO concurs in COE's proposal for the monitoring program, such concurrence shall be deemed conclusive for purposes of this agreement. If the SHPO fails to respond within 30 days of receipt of the COE's request for comments then the COE's proposal shall be deemed conclusive for purposes of

of the dispute; the COE's responsibility to carry out all actions under this agreement that are not the subjects of the dispute will remain unchanged.

Execution of this Memorandum of Agreement evidences that COE has afforded the Council a reasonable opportunity to comment on the Atlantic Coast of New Jersey, Sandy Hook to Barnegat Inlet Beach Erosion Control Project, Section 1 - Sea Bright to Ocean Township, New Jersey and its effects on historic properties and that COE has taken into account the effects of its undertaking on historic properties.

U.S. CORPS OF ENGINEERS, NEW YORK DISTRICT

By: *R.M. Danielson* Date: 30 Jan 91
Colonel R. M. Danielson, District Engineer

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: *Robert D. Bush* Date: 12/26/90
Robert D. Bush, Executive Director

NEW JERSEY STATE HISTORIC PRESERVATION OFFICER

By: *Nancy L. Zerbe* Date: 2/5/91
Nancy L. Zerbe, Deputy State Historic Preservation Officer



MEMORANDUM OF AGREEMENT

WHEREAS, the U.S. Army Corps of Engineers, New York District (COE) has determined that undertaking the Atlantic Coast of New Jersey, Sandy Hook to Barnegat Inlet Beach Erosion Control Project, Section II - Asbury Park to Manasquan, New Jersey may have an effect upon historic properties eligible for inclusion in the National Register of Historic Places (National Register) in that the undertaking may result in partial or complete burial of the historic properties in sand, at the time of initial beach fill and again at the time of replenishment; and

WHEREAS, the COE has consulted with the New Jersey State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (Council) pursuant to Section 106 of the National Historic Preservation Act (16 U.S.C. Section 470) and its implementing regulations, "Protection of Historic and Cultural Properties" (36 CFR Part 800); and

WHEREAS, historic properties, for purposes of this Agreement, are defined as three possible shipwrecks, two of which are preliminarily identified as the 1813 Thistle and the 1885 Malta, and a third unidentified wrecksite, all located in the South Constructable Reach of Section II identified on Project Map 2 in Appendix A; and

WHEREAS, Project Maps are attached as Appendix A;

NOW, THEREFORE, COE, the New Jersey SHPO and the Council agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on the historic properties.

STIPULATIONS

COE shall ensure that the following measures are carried out.

I. Pre-Construction Activities

Prior to the placement of sand in the South Constructable Reach, the COE shall implement the following measures:

1. Evaluation.

In consultation with the SHPO, COE shall evaluate the three historic properties in the South Constructable Reach of Section II, and shall determine the eligibility of each property for listing upon the National Register of Historic Places. Evaluation shall be in accordance with the National Register Criteria set forth at 36 CFR Section 60.4. If the SHPO concurs in COE's determination of eligibility for any of the properties, such concurrence shall be deemed conclusive for purposes of this Agreement. If the SHPO fails to respond in writing within 30 days of receipt of the COE's request for concurrence in COE's determination of eligibility, then the COE's determination shall be deemed conclusive for purposes of this Agreement. If the SHPO disagrees with COE's determination within 30 days and notifies COE of its disagreement in writing or if the Council or Secretary so request, COE shall request a formal determination of eligibility from the Keeper of the National Register in accordance with 36 CFR Part 63.

2. Treatment

If determined to be eligible for inclusion in the National Register, historic properties shall be recorded to the standards of the Historic American Engineering Record, published in "Guidelines for Recording Historic Ships" (1988).

II. Activities During Construction

1. Monitoring Program

a. In consultation with the SHPO, the COE shall develop a monitoring program to assess the effects of the undertaking on historic properties. The monitoring program shall take into account the results of monitoring programs implemented for similar projects. The objective shall be to determine whether the undertaking has no effect on historic properties, includes appropriate measures to ensure preservation-in-place

of historic properties, or constitutes an adverse effect to historic properties.

b. If the SHPO concurs in the COE's determination of effect on a particular property or group of properties, such concurrence shall be deemed conclusive for purposes of this agreement. If the SHPO fails to respond in writing within 30 days to the COE's request for concurrence in a determination of effect, then the COE's determination shall be deemed conclusive for purposes of this Agreement. If the SHPO disagrees with the COE's determination and notifies the COE of its disagreement in writing within 30 days, COE shall request the further comments of the Council pursuant to 36 CFR Section 800.6(a)(1)(iii).

c. The monitoring program shall be implemented within a period not to exceed two (2) years from the end of the construction of the South Constructable Reach and will collect information for a period ending six (6) years after completion of initial construction. The monitoring program shall include, but not be limited to, a list of the selected shipwrecks; a schedule for performing the monitoring operations and effects assessments, and the methods to be employed with a justification for their selection.

2. The COE shall ensure that a final report is prepared which will include the results of the evaluation, effects assessment, treatment, and monitoring program. The report shall be submitted to the SHPO and the Council for review and comment as needed.

III. Administrative Activities

1. Professional Qualifications

COE shall ensure that all historical and underwater archaeological work conducted pursuant to this Agreement is carried out by or under the direct supervision of a person or persons meeting at a minimum the appropriate qualifications set forth in the Secretary of the Interior's Standards and Guideline for Archeology and Historic Preservation (Federal Register, Vol. 48, No. 190, September 29, 1983, pp. 44738 and 44739).

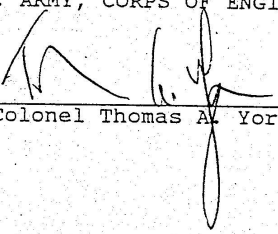
2. Dispute Resolution

At any time during implementation of the measures stipulated by this Agreement, should an objection to any such measure be raised by a local government, the SHPO, or a member of the

public, COE shall take the objection into account and shall consult with the objecting party and the SHPO, as appropriate, to resolve the objection. If COE determines that the objection cannot be resolved, COE shall request the further comments of the Council pursuant to 36 CFR Section 800.6(b).

Execution of this Memorandum of Agreement evidences that COE has afforded the Council a reasonable opportunity to comment on the Atlantic Coast of New Jersey, Sandy Hook to Barnegat Inlet Beach Erosion Control Project, Section II - Asbury Park to Manasquan, New Jersey and its effects on historic properties and that COE has taken into account the effects of its undertaking on historic properties.

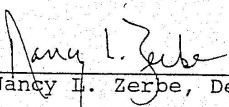
U.S. ARMY, CORPS OF ENGINEERS, NEW YORK DISTRICT

By:  Date: 24 February 1993
Colonel Thomas A. York, District Engineer

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By:  Date: 5/20/93
Robert D. Bush, Executive Director

NEW JERSEY STATE HISTORIC PRESERVATION OFFICER

By:  Date: 3/19/93
Nancy L. Zerpe, Deputy State Historic Preservation Officer