

## **APPENDIX I**

### **CULTURAL RESOURCES PROGRAMMATIC AGREEMENT**

REVISED DRAFT PROGRAMMATIC AGREEMENT  
AMONG  
THE U. S. ARMY CORPS OF ENGINEERS, NEW YORK DISTRICT  
AND  
THE NEW JERSEY STATE HISTORIC PRESERVATION OFFICE  
REGARDING  
THE UNION BEACH  
COASTAL STORM RISK MANAGEMENT PROJECT  
BOROUGH OF UNION BEACH  
MONMOUTH COUNTY, NEW JERSEY

WHEREAS, the U.S. Army Corps of Engineers, New York District, (New York District) was authorized to conduct a feasibility study for the Raritan Bay and Sandy Hook Bay by a resolution of the Committee of Public Works and Transportation of the U.S. House of Representatives adopted 1 August 1990; and

WHEREAS, the feasibility study for the Union Beach section of the Raritan Bay and Sandy Hook Bay recommended a plan consisting of levees, floodwalls and road raising, tide gates, interior drainage, pump stations, terminal groins, sandy beach and dune construction, utilizing the offshore Sea Bright Borrow Area (SBBA) as the source for sand (Appendix A, Figures 1, 2 and 3); and

WHEREAS, the New York District was authorized to construct the Union Beach section by the Water Resources Development Act of 2007 (Public Law 110-114) on November 8, 2007, but received no appropriations for construction so the project was not constructed; 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 Union Beach section 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, the authorized project and existing conditions have been reviewed under the Hurricane Sandy Limited Re-evaluation Report (HSLRR) and draft Supplemental Environmental Impact Statement (SEIS) for the Union Beach Coastal Storm Risk Management Project to confirm that the authorized project is still the most suitable design (the Undertaking); and

~~WHEREAS, the HSLRR study lead to several modifications to project features, none of which were determined to potentially effect historic properties; and~~

WHEREAS, the New York District has defined the "Area of Potential Effect" (APE) for this Undertaking to consist of the footprints and associated work areas for proposed

levees, floodwalls and road raising, tide gates, interior drainage, pump stations, terminal groins, sandy beach, wetland and other mitigation sites, and the SBBA; and

~~WHEREAS, wetland mitigation sites have yet to be identified; and~~

WHEREAS, the New York District conducted a Phase I cultural resources survey of the onshore APE as defined at the time of the feasibility study, included testing for deeply buried deposits, and no properties listed on or eligible for the National Register of Historic Places (NRHP) were identified (see Appendix A, Figure 2); and

WHEREAS, the HSLRR study lead to several modifications to project features; the proposed realignment of the Undertaking following the 2016 delineation of the Coastal Barrier Resource System may effect historic properties (Appendix A, Figure 4); and

WHEREAS, wetland mitigation sites have yet to be identified; and

WHEREAS, potential impacts to cultural resources associated with use of the SBBA are addressed through stipulations contained in the Programmatic Agreement (PA) for the New York District's Atlantic Coast of New Jersey (ACNJ) Sandy Hook to Barnegat Inlet Beach Erosion Control Project signed in June 2014 and relevant stipulations therein are incorporated into this document; and

~~WHEREAS, renourishment contracts will be awarded when Federal and non-Federal funding is available for the remaining duration of the authorization; 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, the New Jersey Historic Preservation Office (NJHPO) has been provided all survey reports for review; 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, the Advisory Council on Historic Preservation (Council), the Delaware Nation and the Delaware Tribe of Indians have been invited to participate in this PA and have declined to be signatories to this document; and

WHEREAS, The New York District provided public review of the PA as part of the SEIS for the Undertaking under the National Environmental Policy Act (NEPA) which will serve as partial fulfillment of the New York District's Section 106 public coordination and shall conduct additional public outreach through the local community; 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 Section 106 responsibility for all individual undertakings of the Undertaking.

### Stipulations

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

#### I. IDENTIFICATION AND EVALUATION OF HISTORIC PROPERTIES OF WETLAND MITIGATION SITE(S) APE AND ALIGNMENT CHANGES

A. The New York District shall ensure that alignment changes and ~~when a~~ wetland mitigation site ~~(s) is identified it~~ will be subject to a cultural resources assessment to identify historic properties and consider project effects on any identified properties.

1. The New York District shall ensure that archaeological surveys, if required, 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 Jersey Historic Preservation Office's (HPO) Guidelines for Phase I Archaeological Investigations: Identification of Archaeological Resources (January 17, 1996).

2. The New York District, in consultation with the NJHPO, shall evaluate the eligibility of any resource encountered using the NRHP Criteria. The New York District will coordinate its determination(s) with the Council, Delaware Nation and the Delaware Tribe of Indians.

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

B. If historic properties are identified, the New York District shall apply the criteria of adverse effect to the historic properties within the APE and take into account the views of the NJHPO, the Council, Delaware Nation and the Delaware Tribe of Indians.

C. Any objections to a determination of eligibility or the application of adverse effect criteria will be resolved in accordance with Section VII.B, below.

#### II. SEA BRIGHT BORROW AREA (SBBA):

The New York District will implement the same stipulations addressing work in the SBBA that were developed for the New York District's ACNJ Sandy Hook to Barnegat Inlet Beach Erosion Control Project PA signed in June 2014. The stipulations are as follows:

#### A. Geomorphology and Native American Site Potential

1. 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 that is collected in the UXO screens.
2. Protocol for the monitoring program will be developed in coordination with NJHPO. A brief report will generated after each effort which shall be coordinated with NJHPO and other interested parties.
3. The protocol shall include measures the Corps will undertake should artifacts be encountered.
4. No further regular monitoring of dredged material will be carried out. However, the project archaeologist will 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 of 250 feet around each potential shipwreck identified through remote sensing surveys conducted for the ACNJ project. 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.
3. Should new borrow areas outside the surveyed area of the SBBA be required the proposed locations shall be surveyed for historic resources employing the survey standards of the time and shall be coordinated with NJHPO and other interested parties.

### III. 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. 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 taken into account

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 VII (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.

#### IV. 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.

#### V. HUMAN REMAINS

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.

#### VI. PROFESSIONAL QUALIFICATIONS

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.

#### VII. ADMINISTRATIVE TERMS

##### A. REVIEW PERIODS

The New York District shall ensure that all draft and final reports resulting from actions pursuant to this PA will be provided, to the NJHPO, Council, the Delaware Nation, the Delaware Tribe of Indians, and upon request, to other interested parties.

The NJHPO, Council, the Delaware Nation, the Delaware Tribe 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 Council's recommendations or request the comments of the Council in accordance with 36 CFR Part 800.4(d)(1)(iv)(A) through 36 CFR Part 800.4(d)(1)(iv)(C) and/or 36 CFR Part 800.7(c), depending upon the nature of the disagreement or dispute.

2. Any Council recommendations or comments provided in response will be considered in accordance with 36 CFR Part 800.4(d)(1)(iv)(A) through 36 CFR Part 800.4(d)(1)(iv)(C) and/or 36 CFR Part 800.7(c), with reference only to the subject of the dispute. The New York District shall respond to Council recommendations or comments indicating how the New York District has taken the Council's recommendations or comments into account and complied with same prior to proceeding with Undertaking 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 a thirty day 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 undertakings covered by this PA.

#### 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 Undertaking is terminated or authorization is rescinded or a period of five (5) years from execution of the PA has passed at which time the agreement may be extended as written provided all signatories concur.

#### 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 Council.

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

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

By: \_\_\_\_\_ Date: \_\_\_\_\_  
~~Col. Paul E. Owen, P.E.~~ David A. Caldwell  
Colonel, U.S. Army  
Commander  
~~District Engineer, New York District~~

NEW JERSEY STATE HISTORIC PRESERVATION OFFICE

By: \_\_\_\_\_ Date: \_\_\_\_\_  
~~Daniel D. Saunders~~ Katherine J. Marcopul, Deputy State Historic Preservation Officer



# Appendix A

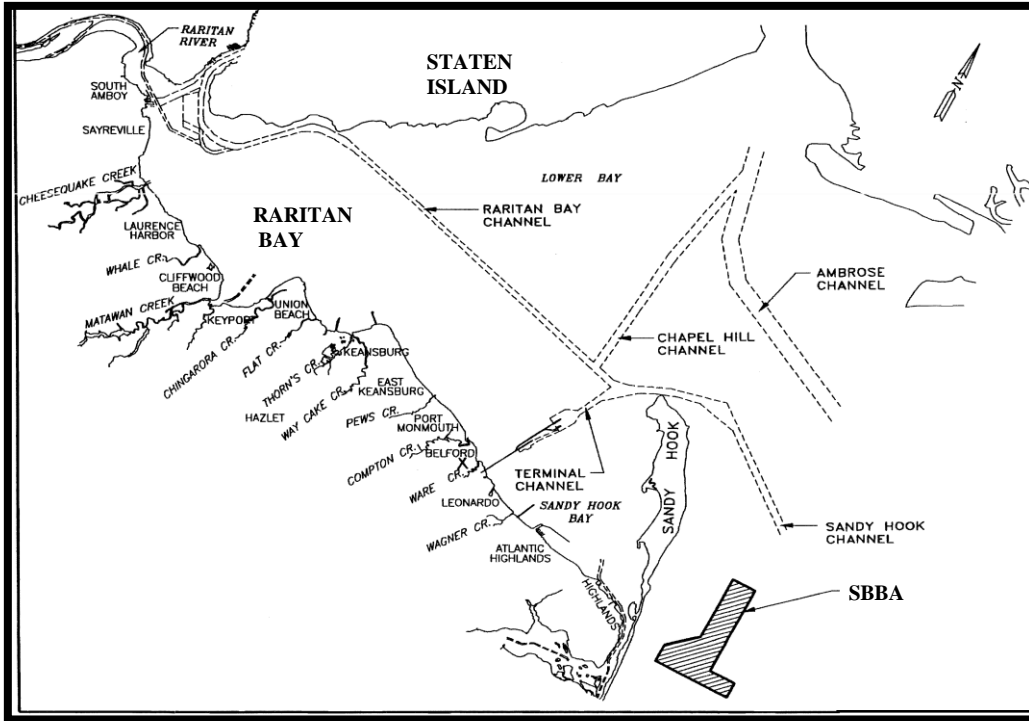
## Maps and Plans



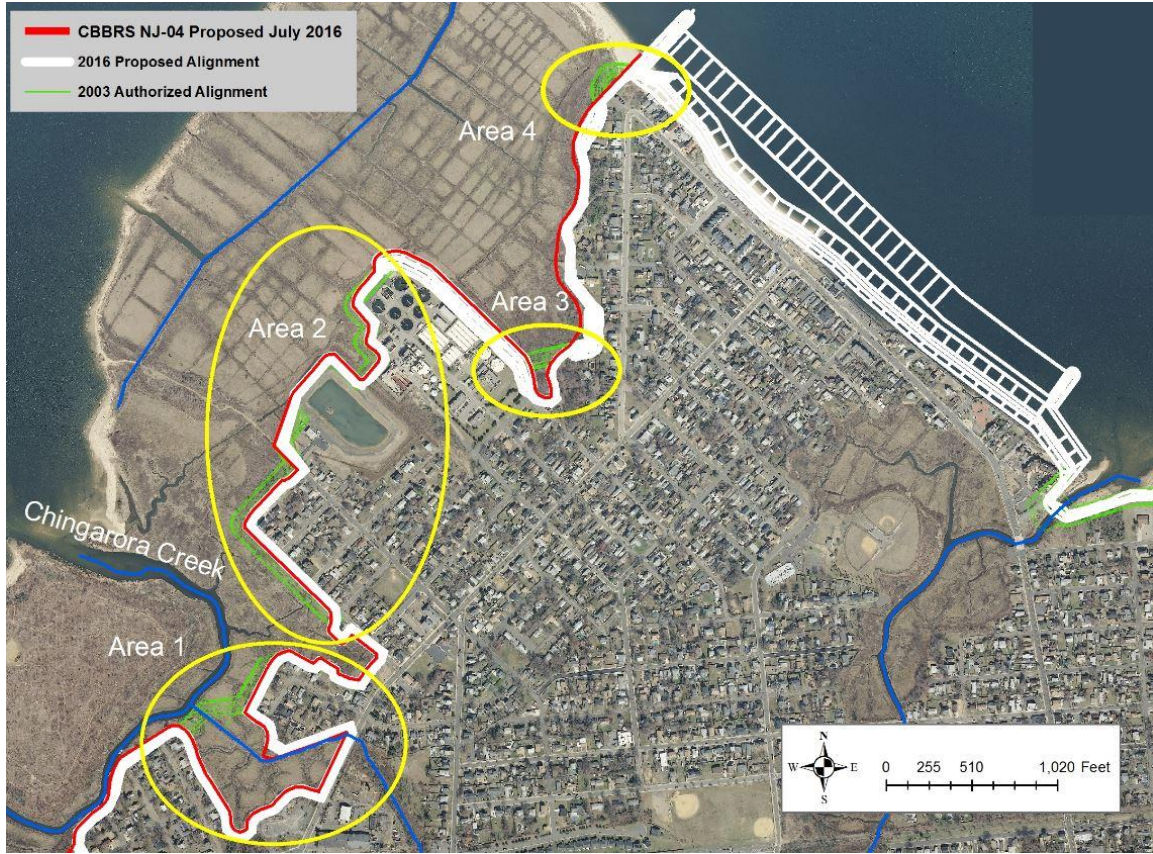
**Figure 1. Project Area Location**



**Figure 2: Overview of Authorized Project Alignment;**  
**White = Levees or Floodwalls**  
**Light Blue = Beach and Dune**



**Figure 3: Location of the Sea Bright Borrow Area (SBBA).**



**Figure 4: Proposed Changes in Alignment to Avoid Coastal Barrier Resource System.**