

PROGRAMMATIC AGREEMENT
AMONG
THE U. S. ARMY CORPS OF ENGINEERS, NEW YORK DISTRICT,
AND
THE NEW JERSEY STATE HISTORIC PRESERVATION OFFICE
REGARDING
RARITAN BAY AND SANDY HOOK BAY, HIGHLANDS, NEW JERSEY
COASTAL STORM RISK MANAGEMENT FEASIBILITY STUDY
MONMOUTH COUNTY, NEW JERSEY

WHEREAS, the U.S. Army Corps of Engineers, New York District, (New York District) has been authorized to conduct a coastal storm risk management feasibility study along the Raritan Bay shore in the Borough of Highlands, Monmouth County, New Jersey, and

WHEREAS, the New York District was originally authorized to undertake a feasibility study through a resolution by the Committee on Public Works and Transportation of the U.S. House of Representatives, dated August 1990 for the purposes of erosion control and storm damage prevention within Raritan Bay and Sandy Hook Bay, NJ; and

WHEREAS, authorization to complete the feasibility study for 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, as proposed, spans a geographic distance of approximately 8,000 linear feet of protection along the coast of Highlands and ties into high ground at each end. As the project follows the actual perimeter of the shoreline, its total length is 10,737 linear ft., consisting floodwalls and raised ground surfaces built to elevation +14 feet North American Vertical Datum of 1988. A closure gate is proposed to cross Bay Avenue. Interior drainage features, such as ponding area and/or diversion culvert are proposed. (Appendix A); 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 floodwalls, raised ground surfaces, interior drainage features, and any required environmental mitigation measures and staging areas; 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 surveys within a substantial portion of the APE (Appendix B) and has determined NRHP eligibility of properties (Appendix C), with the recognition that additional identifications and evaluations are required for project actions that have subsequently been modified or which have not yet been finalized; and

106 consultation process; the ACHP has opted to not participate in the process at this time; no other comments were received; and

WHEREAS the New York District made the Draft Programmatic Agreement (PA) available for public review in the Draft Environmental Assessment 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 NJHPO 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 NJHPO regarding plans and surveys to identify, evaluate and treat historic properties as the New York District implements all phases of the Undertaking; and

WHEREAS, the New York District will implement the provisions for the PA as funding for the project is appropriated in future years; 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 actions of the Undertaking.

Stipulations

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

I. IDENTIFICATION

A. The New York District shall consult with the NJHPO to develop plans to complete the identification of historic properties within the Undertaking's APE.

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

C. 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.

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 NJHPO 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 NJHPO, 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 NJHPO 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 NJHPO, 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 NJHPO, 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 NJHPO 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 NJHPO and prior to the implementation of project-related activities within or in the vicinity of the archaeological sites.

V. RESOLUTION OF ADVERSE EFFECTS

A. When the New York District, in consultation with the NJHPO, 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 NJHPO; 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 NJHPO, 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 NJHPO 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 NJHPO for review and approval by certified mail. The NJHPO shall have 30 days from receipt of adequate information in which to review and comment on the SMA(s). If the NJHPO 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 NJHPO, 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 NJHPO 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 NJHPO 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

VII. TREATMENT OF HUMAN REMAINS:

If any human remains and/or grave-associated artifacts are encountered, the New York District, the NJHPO 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 the U.S. Army Corps of Engineers, Tribal Consultation Policy (4 October 2012).

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 NJHPO 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, NJHPO 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, NJHPO, Federally Recognized Tribes and other parties, as appropriate.

E. Avoidance of human remains is the preferred treatment.

VIII. ADMINISTRATIVE TERMS

A. REVIEW PERIODS


The NJHPO, ACHP, the Delaware Nation, the Delaware Tribe of Indians, the Shawnee Tribe of Oklahoma 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.

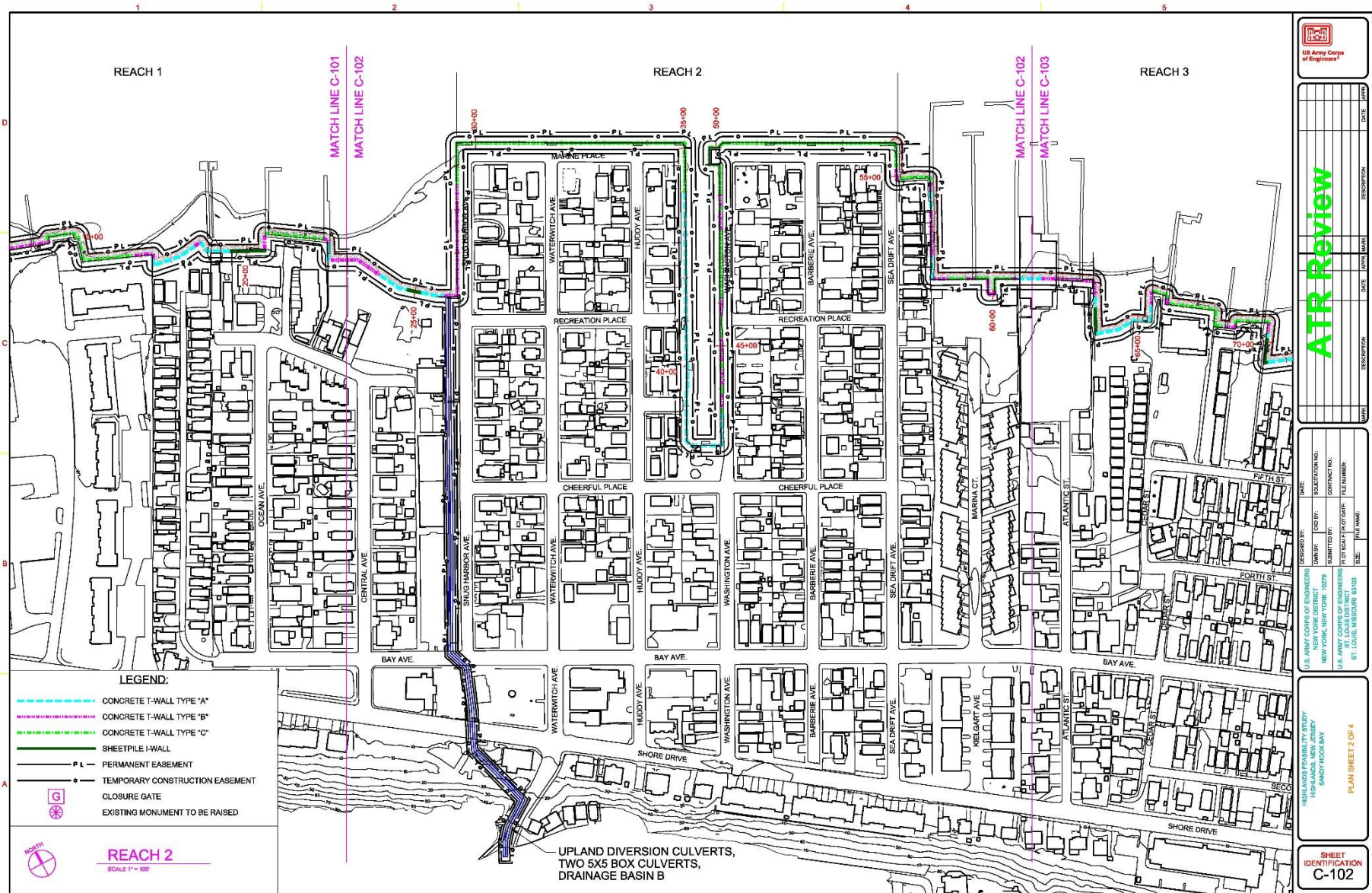
Execution and implementation of this PA evidences that the New York District has satisfied its Section 106 responsibilities for all individual Undertakings of the Project, and that the New York District has afforded the ACHP an opportunity to comment on the Undertaking and its effects on historic properties.

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

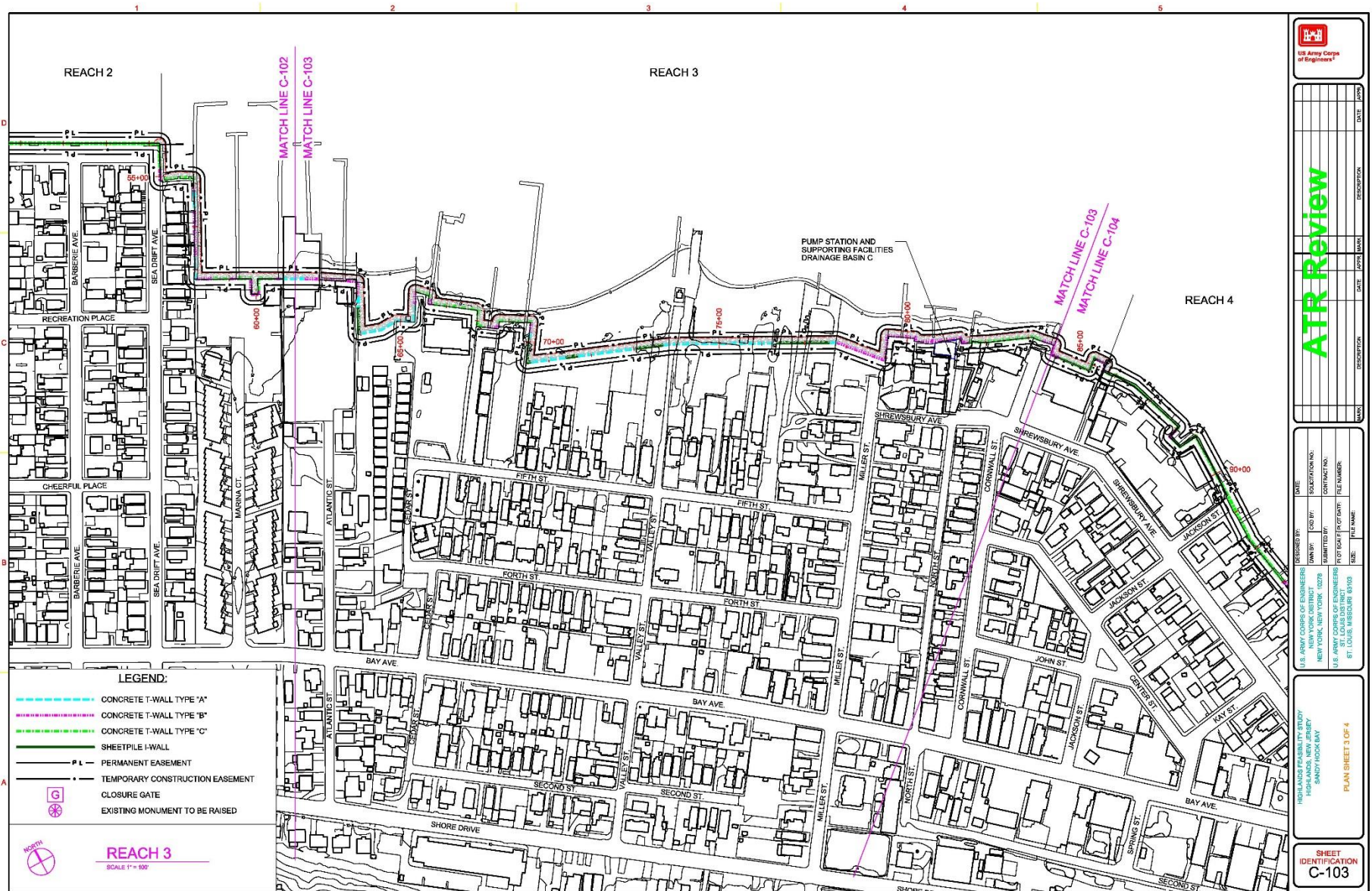
By:  Date: 30 Nov 16
David A. Caldwell
Colonel, U.S. Army
Commander

NEW JERSEY STATE HISTORIC PRESERVATION OFFICE

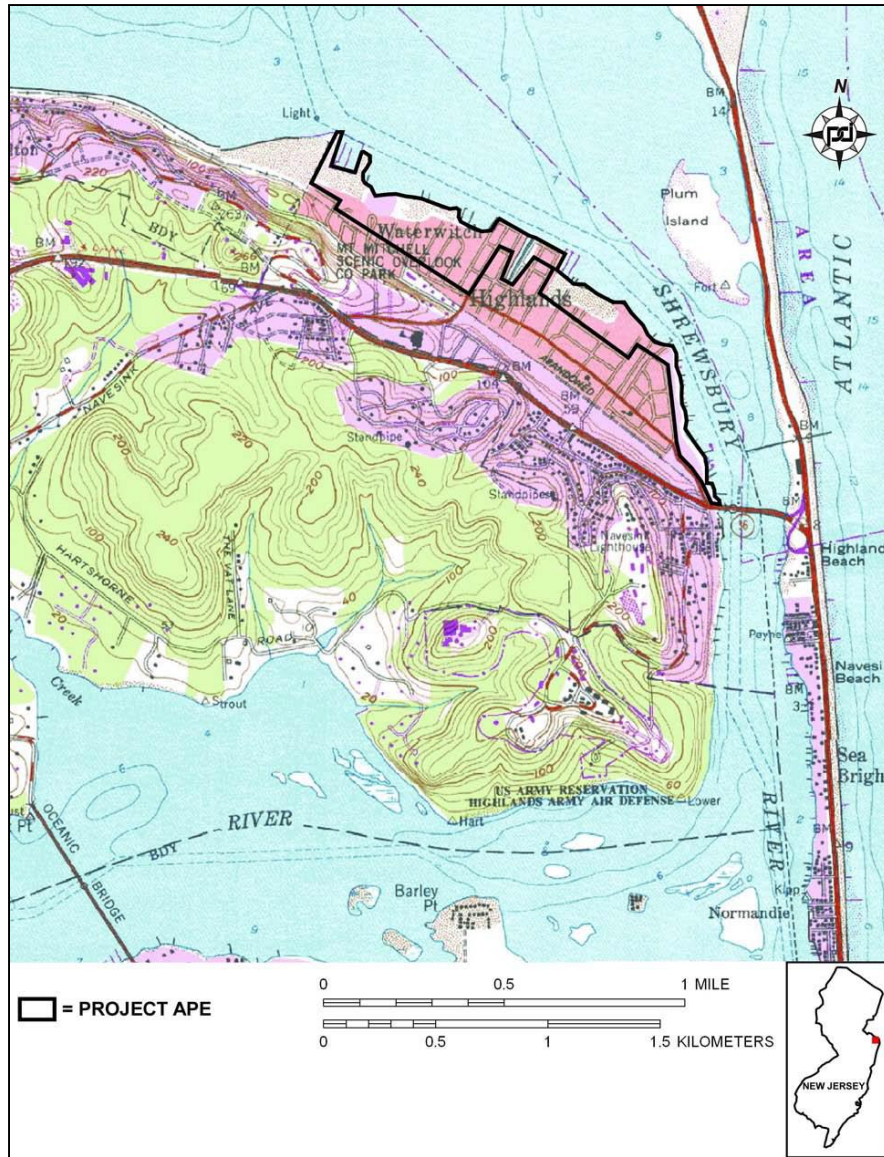
By:  Date: 1/10/2017
Katherine J. Marcopul, Deputy State Historic Preservation Officer



Appendix A(ii). Recommended Plan (the Undertaking)



Appendix A(iii). Recommended Plan (the Undertaking)



Appendix B. Investigated portion of Area of Potential Effect (APE). Historic architectural survey and archaeological assessment were conducted. Borough of Highlands, Monmouth County, NJ (Sandy Hook Quadrangle, USGS 1981 [1954]).

Appendix C: Identified Properties within the APE and NRHP-eligibility Determinations

| Name | Address | NRHP Eligibility |
|---|-----------------------------------|----------------------|
| Honeysuckle Lodge | Between Atlantic and Cedar Street | Potentially eligible |
| 58 Fifth Street Bungalows | 58 Fifth Street | Potentially eligible |
| Shrewsbury Avenue District | 26 – 34 Shrewsbury Avenue | Not eligible |
| Clam Shanty | Bay end of Miller Street | Not eligible |
| Bay Avenue Historic District | | Potentially eligible |
| The following Bay Avenue properties may be found to be contributing elements to the potential Bay Avenue Historic District. Individual eligibility is given below for each structure. | | |
| FLoBar Apartments (Creighton Hotel) | 24 Bay Avenue | Potentially eligible |
| Sculthorpe's Auditorium (the "Purple Building") | 78 Bay Avenue | Potentially eligible |
| Sasha's Boutique Outlet | 1 Bay Avenue | Not eligible |
| Bahrs Real Estate | 15 Bay Avenue | Not eligible |
| Mewes Bros. Dairy | 19 Bay Avenue | Not eligible |
| Sears, Roebuck & Co. kit house | 257 Bay Avenue | Not eligible |
| | | |
| Dwelling | 60 Bay Avenue | Potentially eligible |
| | | |
| Bahr's Landing Restaurant and Marina | 2 Bay Avenue | Eligible |

