



US Army Corps  
of Engineers®  
Jacksonville District

# SAN JUAN METROPOLITAN AREA, PUERTO RICO

## COASTAL STORM RISK MANAGEMENT STUDY DRAFT INTEGRATED FEASIBILITY STUDY AND ENVIRONMENTAL ASSESSMENT

JULY 2020

### APPENDIX I: CULTURAL RESOURCES



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**GOBIERNO DE PUERTO RICO**

**Oficina Estatal de Conservación Histórica  
State Historic Preservation Office**

Tuesday, November 27, 2018

**Gina Paduano Ralph, Ph.D.**

Chief, Environmental Branch  
Attn. Planning Division  
Department of the Army  
Corps of Engineers, Jacksonville District  
701 San Marco Boulevard  
Jacksonville, Florida 32207-8915

**SHPO: 10-23-18-01 SAN JUAN METRO AREA COASTAL STORM DAMAGE  
REDUCTION STUDY, ISLANDWIDE, PUERTO RICO**

Dear Dr. Paduano Ralph,

We acknowledge the receipt of your letter on October 31, 2018 regarding the above referenced project, supported with an aerial photograph depicting the general study area.

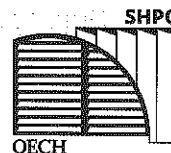
The purpose of your letter is to formally initiate the scoping process for the above referenced undertaking. During this process, a NEPA document will assess the effects of the preliminary alternatives under consideration to reduce coastal storm damages along portions of the coastline of the San Juan and Carolina municipalities.

The proposed project comprises an area with a high density of terrestrial and submerged archaeological sites, historic buildings and structures, as well as historic districts, included and determined eligible to be included in the **National Register of Historic Places**. Furthermore, the project's area of potential effects will most likely cover historic properties of outstanding value and the highest level of protection: the *Old San Juan Historic District*, designated **National Historic Landmark**, as well as structural components of the *San Juan National Historic Site*, included in the **UNESCO World Heritage List**.

Our Office is committed to helping the US Army Corps of Engineers fulfill its historic preservation responsibilities. Considering the above, we encourage you to continue communicating with our office so we may advise and assist you properly during the early planning stages of this endeavor.

Cuartel de Ballajá (Tercer Piso),  
Calle Norzagaray, Esquina Beneficencia, Viejo San Juan, P.R. 00901

PO Box 9023935, San Juan, P.R. 00902-3935  
Tel: 787-721-3737 Fax: 787-721-3773  
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**SHPO**  
**OFICINA ESTATAL DE  
CONSERVACIÓN HISTÓRICA**  
OFICINA DEL GOBERNADOR  
**STATE HISTORIC  
PRESERVATION OFFICE**  
OFFICE OF THE GOVERNOR

Gina Paduano Ralph, Ph.D.  
November 27, 2018  
Page 2

SHPO: 10-23-18-01 SAN JUAN METRO AREA COASTAL STORM DAMAGE REDUCTION STUDY,  
ISLANDWIDE, PUERTO RICO

If you have any questions concerning our comments, do not hesitate to contact  
our Office at (787) 721-3737 or [ediaz@prshpo.pr.gov](mailto:ediaz@prshpo.pr.gov).

***Sincerely,***

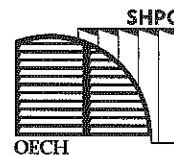


**Carlos A. Rubio-Cancela**  
State Historic Preservation Officer

CARC/GMO/MC

Cuartel de Ballajá (Tercer Piso),  
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DEPARTMENT OF THE ARMY  
CORPS OF ENGINEERS, JACKSONVILLE DISTRICT  
701 SAN MARCO BLVD  
JACKSONVILLE, FL 32207-8175

Planning and Policy Division  
Environmental Branch

MAR 12 2020

Prof. Carlos R. Ruiz Cortés  
Executive Director  
Instituto de Cultura Puertorriqueña  
Apartado 9024184  
San Juan, Puerto Rico  
00902-4184

Re: San Juan Metropolitan Area (Back Bay) Coastal Storm Risk Management Project,  
Cataño, Guaynabo, and San Juan, Puerto Rico (SHPO No.: 12-27-18-01)

Dear Prof. Ruiz:

The U.S. Army Corps of Engineers, Jacksonville District (Corps) is currently studying the feasibility and environmental effects of alternatives proposed to manage risks associated with back bay flooding in the San Juan, Puerto Rico metropolitan area. The dense settlement around the bay is threatened by flooding which creates life safety and economic consequences. The current study is evaluating an array alternatives that include a combination of levees, coastal hardening, property buyouts, containment areas, and floodgates to reduce the risk of damages associated with flooding.

Pursuant to Section 106 of the National Historic Preservation Act (NHPA) (54 USC 306108), and its implementing regulations (36 CFR 800), the Corps has determined that the San Juan Metropolitan Area (Back Bay) Coastal Storm Risk Management Project (Project) constitutes an undertaking as defined in 36 CFR § 800.16(y). The Corps previously initiated consultation with your office on this Project by letter dated October 16, 2018. The feasibility study for the Project is ongoing, and a tentatively selected plan has not been identified. However, as part of the continuation of consultation for the Project, the Corps has tentatively identified the areas of potential effects (APE) for the undertaking to encompass all areas of proposed ground disturbance for all measures under consideration, including access, staging, and construction areas (Figure 1). The APE will be subject to further refinement as the study progresses.

The Corps currently proposes to develop a programmatic agreement with your office to comply with Section 106 of the NHPA for the feasibility study. The feasibility study was authorized under Section 204 of the River and Harbor and Flood Control Acts of 1970 (PL 91-611) and funded through Supplemental Appropriations in the Bipartisan Budget Act of 2018 (Public Law 115-123). The Corps intends to initiate identification surveys, but current uncertainty regarding the tentatively selected plan and timing constraints for the study may

mean the Corps will not complete all of the necessary surveys to identify and evaluate cultural resources and determine effects of the Project prior to completing the appropriate National Environmental Policy Act (NEPA) documentation. Therefore, pursuant to 54 U.S.C. 306108 and 36 CFR § 800.4(b)(2), it may be necessary for the Corps to defer final identification and evaluation of historic properties until after the Project is congressionally authorized, funding is appropriated, and prior to construction by executing a programmatic agreement with the SHPO and the ACHP, if inclined to participate. The Institute of Puerto Rican Cultural would be invited to participate in any agreements as a Consulting Party. The programmatic agreement would outline the efforts and schedule for identifying historic properties, assessing the effects of proposed measures on historic properties, and avoiding, minimizing, and/or mitigating the effects of the measures on historic properties.

Pursuant to 36 CFR 800.4(1) the Corps kindly requests your comments on the proposed APE within 30 days from receipt of this letter. If there are any questions, please contact Mr. Christopher Altes by telephone at 904-232-1694 or e-mail at Christopher.F.Altes@usace.army.mil.

Sincerely,



Angela E. Dunn  
Chief, Environmental Branch

Enclosure





Figure 1. Approximate footprint of measures under consideration in the San Juan Metropolitan Area (Back Bay) Coastal Storm Flood Risk Management Project.





DEPARTMENT OF THE ARMY  
CORPS OF ENGINEERS, JACKSONVILLE DISTRICT  
701 SAN MARCO BLVD  
JACKSONVILLE, FL 32207-8175

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Environmental Branch

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State Historic Preservation Officer  
Office of the Governor  
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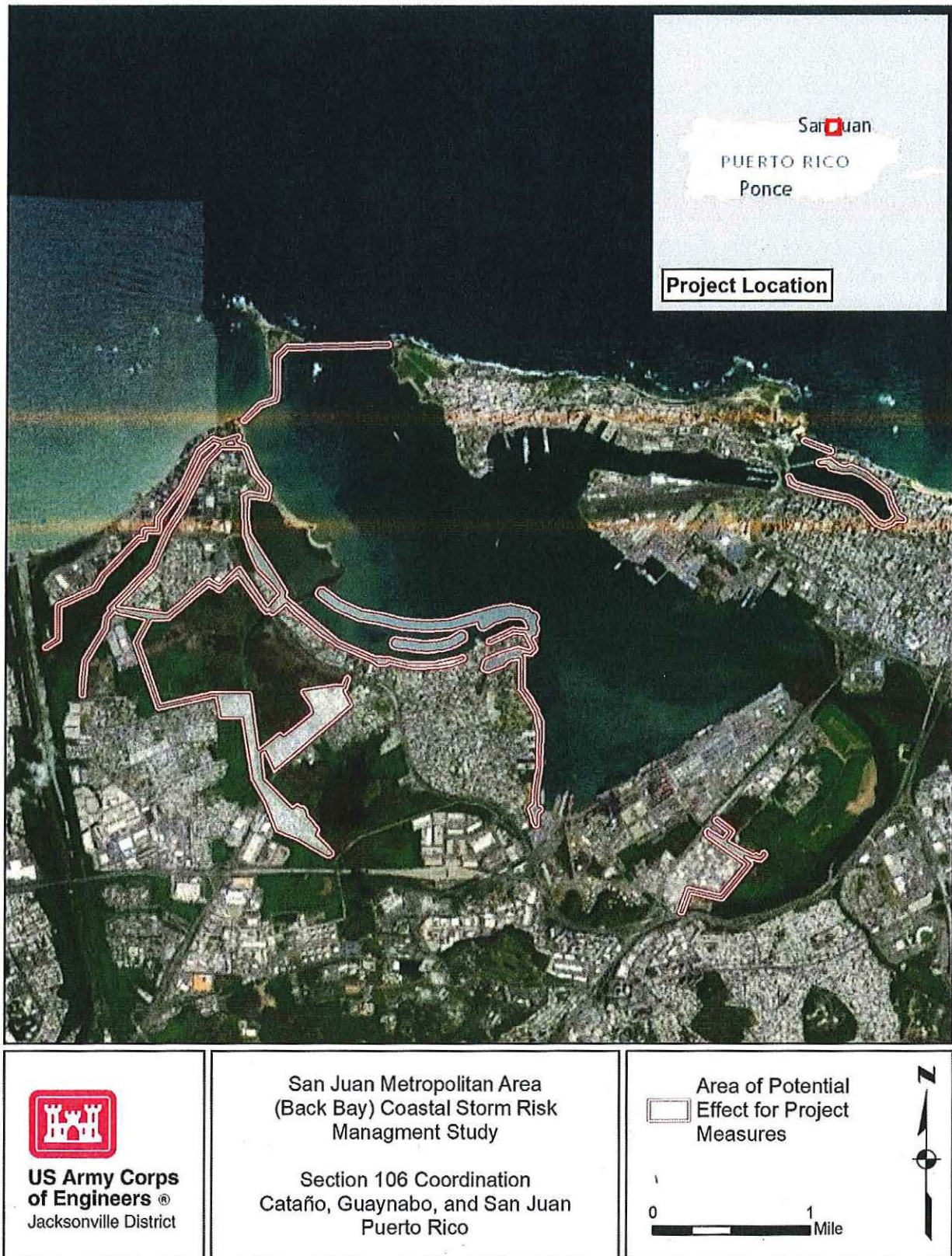


Figure 1. Approximate footprint of measures under consideration in the San Juan Metropolitan Area (Back Bay) Coastal Storm Flood Risk Management Project.





GOBIERNO DE PUERTO RICO  
Oficina Estatal de Conservación Histórica

Wednesday, May 20, 2020

**Angela E. Dunn**

Chief, Environmental Branch  
Department of the Army  
Corps of Engineers, Jacksonville District  
701 San Marco Blvd.  
Jacksonville, FL 32207-8175

**SHPO: 10-23-18-01 SAN JUAN METROPOLITAN AREA (BACK BAY) COASTAL STORM RISK MANAGEMENT PROJECT, ISLANDWIDE, PUERTO RICO**

Dear Ms. Dunn,

We acknowledge the receipt of your letter dated March 12, 2020 related to the above referenced undertaking, supplemented with one satellite photograph depicting its approximate footprint/Area of Potential Effects (APE).

Your letter establishes the undertaking and notifies the US Army Corps of Engineers (Corps) is currently carrying out feasibility and environmental effects studies of alternatives. The Corps proposes the development of a Programmatic Agreement (PA) to comply with Section 106 of the National Historic Preservation Act for the feasibility study. This would provide for a phased approach in the completion of identification and evaluation efforts, the determination of project's effects, as well as avoiding, minimizing and/or mitigating the effects on historic properties after authorization and appropriation of funds, and before construction.

Regarding the proposed approximate APE, we believe that once the scope of the project is refined, we will be in a better position to assist you in defining the APE. The SHPO agrees with the Corps recommendation for the development of a PA for the feasibility study and will be looking forward to continuing supporting your agency with this undertaking.

If you have any questions concerning our comments, do not hesitate to contact our Office.

*Sincerely,*

**Carlos A. Rubio-Cancela**  
State Historic Preservation Officer

CARC/GMO/MC







**DEPARTMENT OF THE ARMY**  
**CORPS OF ENGINEERS, JACKSONVILLE DISTRICT**  
**701 SAN MARCO BOULEVARD**  
**JACKSONVILLE, FLORIDA 32207-8175**

Planning and Policy Division  
Environmental Branch

1 June 2020

Mr. Carlos Rubio-Cancela  
State Historic Preservation Officer  
Office of the Governor  
P.O. Box 9023935  
San Juan, Puerto Rico 00902-3935

Re: San Juan Metropolitan Area (Back Bay) Coastal Storm Risk Management Project,  
Cataño, Guaynabo, and San Juan, Puerto Rico (SHPO No.: 12-27-18-01)

Dear Mr. Rubio-Cancela:

The U.S. Army Corps of Engineers, Jacksonville District (Corps) is currently studying the feasibility and environmental effects of alternatives proposed to manage risks associated with back bay flooding in the San Juan metropolitan area, Puerto Rico (Figure 1). The San Juan Metropolitan Area (Back Bay) Coastal Storm Risk Management Project (Project) is evaluating an array alternatives that include a combination of levees, coastal hardening, property buyouts, containment areas, and floodgates to reduce the risk of damages associated with flooding.

The Corps previously initiated consultation with your office on this Project pursuant to Section 106 of the National Historic Preservation Act (54 USC 306108), and its implementing regulations (36 CFR Part 800), by letter dated December 17, 2018. The Corps provided an area of potential effects and proposed to develop a programmatic agreement (Agreement) by letter dated March 12, 2020.

Enclosed is a draft Agreement for your review and comment. The Agreement outlines the efforts and schedule for identifying historic properties, assessing the effects of proposed measures on historic properties, and avoiding, minimizing, and/or mitigating the effects of the measures on historic properties. Pursuant to 36 CFR 800.14 the Corps kindly requests your comments on the draft Agreement within 30 days from receipt of this letter. If there are any questions, please contact Mr. Christopher Altes by telephone at 904-232-1694 or e-mail at [Christopher.F.Alt@usace.army.mil](mailto:Christopher.F.Alt@usace.army.mil).

Sincerely,

Angela E. Dunn  
Chief, Environmental Branch

Encls



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1 June 2020

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The Corps previously initiated consultation with your office on this Project pursuant to Section 106 of the National Historic Preservation Act (54 USC 306108), and its implementing regulations (36 CFR Part 800), by letter dated December 17, 2018. The Corps provided an area of potential effects and invited your office to participate in the development of a programmatic agreement (Agreement) by letter dated March 12, 2020.

Enclosed is a draft Agreement for your review and comment. The Agreement outlines the efforts and schedule for identifying historic properties, assessing the effects of proposed measures on historic properties, and avoiding, minimizing, and/or mitigating the effects of the measures on historic properties. Pursuant to 36 CFR 800.14 the Corps kindly requests your comments on the draft Agreement within 30 days from receipt of this letter. If there are any questions, please contact Mr. Christopher Altes by telephone at 904-232-1694 or e-mail at [Christopher.F.Altes@usace.army.mil](mailto:Christopher.F.Altes@usace.army.mil).

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Chief, Environmental Branch

Encls





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**PROGRAMMATIC AGREEMENT AMONG  
THE U.S. ARMY CORPS OF ENGINEERS, THE PUERTO RICO STATE HISTORIC PRESERVATION  
OFFICER, AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION (IF PARTICIPATING)  
REGARDING THE SAN JUAN METROPOLITAN AREA COASTAL STORM RISK MANAGEMENT  
PROJECT, TOA BAJA, CATAÑO, GUAYNABO, AND SAN JUAN, PUERTO RICO**

**WHEREAS**, the U.S. Army Corps of Engineers, Jacksonville District (Corps), is studying the effects of constructing a coastal storm risk management features in Cataño, Guaynabo, and San Juan, Puerto Rico for the San Juan Metropolitan Area Coastal Storm Risk Management Project (Project), as authorized and funded through Supplemental Appropriations in the Bipartisan Budget Act of 2018 (PL 115-123); and

**WHEREAS**, the Project is being developed to reduce the risk of the coastal storm damage from hurricanes and large storms which result in danger to residents and damage to residential, public, and commercial property in Palmas, Palo Seco, and Cataño Barrios, Cataño Municipality, Pueblo Viejo Barrio, Guaynabo Municipality, Gobernador Piñero, Hato Rey Norte, Santurce and San Juan Antiguo Barrio, San Juan Municipality; and

**WHEREAS**, the Corps has determined that the Project constitutes an undertaking, as defined in 36 CFR § 800.16(y), and therefore, is subject to Section 106 of the National Historic Preservation Act of 1966 (Section 106 of the NHPA), 54 USC § 306108; and

**WHEREAS**, proposed project features surge barriers, breakwaters, buyouts, living shoreline, levees, and seawalls; and

**WHEREAS**, the Corps has cannot determine the complete area of potential effects (APE), as defined in 36 CFR § 800.15(d), for the Project until economic and engineering analyses planned to determine the most effective methods, designs, and footprints of Project features in the Preconstruction, Engineering, and Design (PED) phase; and

**WHEREAS**, the Corps has determined that the Project has the potential to affect properties eligible for listing in the National Register of Historic Places (NRHP) and has consulted with the Puerto Rico State Historic Preservation Officer (SHPO) pursuant to Section 106 of the NHPA; and

**WHEREAS**, the preliminary APE for the proposed measures are located in the historically and culturally significant area of San Juan, near or overlapping historic districts and structures listed in the National Register of Historic Places including the Zona Historica de San Juan, Distrito Historico del Viejo San Juan, Puerta de la Tierra, the U.S. Customs House, La Fortaleza, Fort San Geronimo, the Advanced Defense Line, San Antonio Railroad Bridge, and the Bacardi Distillery, and additional potential historic properties may be unrecorded within the APE; and

**WHEREAS**, due to the preliminary nature of the APE and the inability to gain access to private property, the Corps cannot conduct the necessary surveys to identify and evaluate cultural resources and determine effects of the Project prior to completing the appropriate National Environmental Policy Act documentation; and

**WHEREAS**, the Corps, with the concurrence of SHPO, will comply with Section 106 of the NHPA for the undertaking through the execution and implementation of this Programmatic Agreement (Agreement), following 36 CFR § 800.14(b); and

**WHEREAS**, the nonfederal sponsor for the Project is the Department of Natural Resources of Puerto Rico and has been invited to participate in this Agreement as a Concurring Party; and

**WHEREAS**, the Institute for Puerto Rican Culture has been invited to participate in this Agreement as a Consulting Party and **accepted/declined**; and

**WHEREAS**, in accordance with 36 CFR § 800.14(b), the Corps notified the Advisory Council on Historic Preservation (ACHP) to participate in this Agreement as a Signatory and the ACHP has **elected (or declined)** to participate as a Signatory; and

**WHEREAS**, in accordance with 36 CFR § 800.6(a)(4) and 36 CFR § 800.14(b)(2)(ii), the Corps held public meetings to notify the public of the Project and provided an opportunity for members of the public to comment on the Project and the Section 106 process. Multiple public and local agency meetings for this project occurred in including on November 13, 2018, and on June 1 and 20, August 1, and September 19, 2019; and

**WHEREAS**, during the implementation of this Agreement, the Corps will consult with SHPO, DNER, ICP, and ACHP (Consulting Parties) as detailed below; and

**NOW, THEREFORE**, the Corps, SHPO, and **ACHP (if participating)** (hereinafter referred to as Signatories) agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effects of the undertaking on historic properties.

## **STIPULATIONS**

The Corps shall ensure that the following measures are carried out:

### **I. TIME FRAMES AND REVIEW PROCEDURES**

**Document and Deliverable Review.** For all documents and deliverables produced in compliance with this Agreement, the Corps shall provide a hard copy draft document via mail to the SHPO for review and concurrence and other Consulting Parties for review and comment. If Consulting Parties agree, draft documents may be sent electronically for formal review and for communications amongst themselves for activities in support of this Agreement. Any written comments provided by the Consulting Parties within 30 calendar days from the date of receipt shall be considered in the revision of the document or deliverable. If no comments are received from the Consulting Parties within the 30 calendar-day review period, the Corps may assume that the non-responsive party has no comment. The Corps shall document and report any written comments received for the document or deliverable and how comments were addressed. If comments were received and incorporated into the final document or deliverable, the Corps



shall provide a revised final to the SHPO for concurrence. The SHPO shall have 30 calendar days to respond. Failure of the SHPO to respond within 30 calendar days of receipt of any document or deliverable shall not preclude the Corps from moving to the next step in this Agreement. A copy of the final document shall be provided to the Consulting Parties, subject to the limitations in Stipulation VII (Confidentiality).

## **II. AREA OF POTENTIAL EFFECTS**

- A. The Corps has determined a preliminary APE based on the possible project reaches and management measures, potential staging areas, and identified sand sources. The preliminary APE for these features is shown in Appendix A.
- B. If the Corps revises the APE, the Corps shall consult on that revision in accordance with Stipulation I (Timeframes and Review Procedures), and the Corps shall determine the potential for Project activities in a revised APE to affect potential historic properties pursuant to 36 CFR §§ 800.3 - 800.5. If the Corps determines that changes to the APE will affect historic properties, the Corps shall consult on this finding of effect in accordance with Stipulation I (Timeframes and Review Procedures).

## **III. TREATMENT OF HISTORIC PROPERTIES**

### **A. IDENTIFICATION AND EVALUATION**

The Corps shall complete any identification and evaluation of historic properties in consultation with the SHPO prior to beginning construction, defined as ground-disturbing activities which have the potential to effect historic properties. If the Project is authorized and receives appropriations for the Preconstruction Engineering and Design, the Corps will see the following steps are carried out. This will be prior to any ground-disturbing construction activities.

1. Identification of historic properties: An inventory of properties within the final APE, agreed to under Stipulation II (Area of Potential Effects), consistent with the *Secretary of Interior's Standards and Guidelines for Archeology and Historic Preservation* (48 FR 44716–44740) will be initiated for the undertaking when the Project received authorization and appropriation.
  - a. All cultural resources surveys and associated reporting will comply with all applicable SHPO guidelines (*Guía para Preparar Informes Arqueológicos, Fases I, II, III*). Survey recordation shall include features, isolates, and re-recordation of previously recorded sites, as necessary. The survey shall ensure that historic properties such as historical structures and buildings, historical engineering features, landscapes, viewsheds, and traditional cultural properties (TCPs), are recorded in addition to archaeological sites. Recordation of historic structures, buildings, objects, and sites shall be prepared using the SHPO Site File forms (*Hoja de Registro de Yacimientos Arqueológicos*).
  - b. The Corps shall submit Identification and Evaluation reports for SHPO and Concurring Parties for review and comment consistent with Stipulation I (Timeframes and Review Procedures).
2. Determinations of Eligibility: The Corps shall review or determine NHRP eligibility based on identification and evaluation efforts, and consult with SHPO regarding these determinations. Should SHPO disagree with the determination of eligibility, the Corps shall either:

- a. Elect to consult further with the objecting party until the objection is resolved;
- b. Treat the property as eligible for the National Register; or
- c. Obtain a formal determination of eligibility from the Keeper of the National Register.  
The Keeper's determination will be final in accordance with 36 CFR § 63.4.

A. DETERMINATION OF EFFECTS

1. Findings of **No Historic Properties Affected**:

- a. Basis for Finding. The Corps shall make a finding of "no historic properties affected" under the following circumstances:
  - i. If no historic properties are present in the APE; or
  - ii. The undertaking shall avoid effects to historic properties (including cumulative effects).
- b. The Corps shall notify Consulting Parties of this finding and provide supporting documentation in accordance with 36 CFR § 800.11(d). Unless SHPO objects to the finding within 30 days, the Section 106 review of the undertaking will have concluded.
- c. If SHPO objects to a finding of "no historic properties affected," the Corps shall consult with the objecting party to resolve the disagreement.
  - i. If the objection is resolved, the Corps either may proceed with the undertaking in accordance with the resolution or reconsider effects on the historic property by applying the criteria of adverse effect pursuant to 36 CFR § 800.5(a)(1).
  - ii. If the Corps is unable to resolve the disagreement, it will forward the finding and supporting documentation to ACHP and request that ACHP review the Corps' finding in accordance with the process described Section VIII (Dispute Resolution). The Corps shall prepare a summary of its decision that contains the rationale for the decision and evidence of consideration of the ACHP's opinion, and provide this to the SHPO. If the Corps' final determination is to reaffirm its "no historic properties affected" finding, the Section 106 review of the undertaking will have concluded. If the Corps revises its finding then it shall proceed to Stipulation III.B.2 or Stipulation III.B.3 (below).

2. **Findings of No Adverse Effect**: If the Corps determines that the undertaking does not meet the adverse effect criteria, the Corps shall propose a finding of "no adverse effect" and consult with SHPO in accordance with 36 CFR § 800.5(b) and following steps a-c below.

- a. The Corps shall notify Consulting Parties of its finding; describe any project specific conditions and/or modifications required to the undertaking to avoid or minimize effects to historic properties; and provide supporting documentation pursuant to 36 CFR § 800.11(e).
- b. Unless a Signatory objects within 30 days, the Corps will proceed with its "no adverse effect" determination and conclude the Section 106 review.
- c. If a Signatory objects to a finding of "no adverse effect," the Corps will consult with the objecting party to resolve the disagreement.
  - i. If the objection is resolved, the Corps shall proceed with the undertaking in accordance with the resolution; or
  - ii. If the objection cannot be resolved, the Corps shall request that ACHP review the findings in accordance with 36 CFR § 800.5(c)(3)(i)-(ii) and submit the required supporting documentation. The Corps shall, pursuant 36 CFR § 800.5(c)(3)(ii)(B), prepare a summary of its decision that contains the rationale for the decision and evidence of consideration of the ACHP's opinion, and provide this to the SHPO. If the Corps' final determination is to reaffirm its "no adverse effect" finding, the Section

106 review of the undertaking will have concluded. If the Corps will revise its finding then it shall proceed to Stipulation III.B.3 below.

- d. Avoidance and Minimization of Adverse Effects: Avoidance of adverse effects to historic properties is the preferred treatment approach. The Corps will consider redesign of elements of the undertaking in order to avoid and/or minimize historic properties and Project effects that may be adverse. If the Corps determines that the undertaking cannot be modified to avoid or minimize effects, the Corps will make a determination of Adverse Effect.
3. **Determination of Adverse Effects:** If the Corps determines that an undertaking may adversely affect a historic property, it shall notify Consulting Parties of the determination and consult to resolve the effects as outlined in Section III.C Historic Properties Treatment Plan.

#### B. HISTORIC PROPERTIES TREATMENT PLAN

If it is determined that project activities will result in adverse effects, the Corps, in consultation with the SHPO, Concurring Parties, and other interested parties, shall develop a Historic Properties Treatment Plan (HPTP) to resolve all adverse effects resulting from the Project, which would be attached to this Agreement without amending the Agreement. The HPTP shall outline the minimization and mitigation measures necessary to resolve the adverse effects to historic properties. Proposed mitigation measures may include, but are not limited to, historic markers, interpretive brochures, data recovery, and publications, depending on their criterion for eligibility. Development of appropriate measures shall include consideration of historic property types and provisions for avoidance or protection of historic properties where possible. If it is determined that archaeological monitoring is appropriate, the HPTP shall include a Monitoring Plan. Should the Signatories be unable to agree on a HPTP, the Signatories shall proceed in accordance with Stipulation VIII (Dispute Resolution)

If adverse effects are identified, the HPTP shall be in effect before construction commences. The Corps would submit the HPTP for review, in accordance with Stipulation I (Timeframes and Review Procedures). The Corps shall ensure that the provisions of the HPTP, as outlined in the consultation and agreed to by SHPO, are documented in writing and implemented. The use of these Treatment Measures in a Treatment Plan shall not require the execution of an individual MOA or Programmatic Agreement.

1. Review: the Corps shall submit the Draft HPTP to the Signatories for review and comment pursuant to Stipulation I (Timeframes and Review Procedures).
2. Reporting: Reports and other data pertaining to the treatment of effects to historic properties will be distributed to Signatories and other members of the public, consistent with Stipulation VII (Confidentiality) of this PA, unless a Signatory(s) have indicated through consultation that they do not want to receive a report or data. Reports will be consistent with the procedures outlined in the *Guía para Preparar Informes Arqueológicos, Fases I, II, III*.
3. Amendments/Addendums/Revisions: If a historic property that is not covered by the existing HPTP is discovered within the APE subsequent to the initial inventory effort, or if there are previously unexpected effects to a historic property, or if the Corps and SHPO agree that a modification to the HPTP is necessary, the Corps shall prepare an addendum to the HPTP. If necessary, the Corps shall then submit the addendum to the Signatories and follow the provisions of Stipulation I (Timeframes and Review Procedures). The HPTP may cover multiple discoveries for the same property type.
4. Data Recovery: When data recovery is proposed, the Corps, in consultation with the



Signatories, shall ensure that specific Research Designs are developed consistent with the *Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation, Guía para Preparar Informes Arqueológicos, Fases I, II, III*, and the ACHP's "Recommended Approach for Consultation on Recovery of Significant Information from Archaeological Sites" (ACHP, May 18, 1999).

5. Final Report Documenting Implementation of the Historic Properties Treatment Plan: Within one year after the completion of all work for the Project, the Corps shall submit to the Signatories a Final Report documenting the results of all work prepared under the HPTP, and the information learned from each of the historic properties. The submittal of the Final Report shall be in accordance with Stipulation I (Timeframes and Review Procedures).

#### **IV. QUALIFICATIONS**

- A. Professional Qualifications. All technical work required for historic preservation activities implemented pursuant to this Agreement shall be carried out by or under the direct supervision of a person or persons meeting, at a minimum, the *Secretary of the Interior's Historic Preservation Professional Qualification Standards* for archeology, history, or architecture as appropriate (48 FR 44739). "Technical work" here means all efforts to inventory, evaluate, and perform subsequent treatment such as data recovery excavation or recordation of potential historic properties that is required under this Agreement. This stipulation shall not be construed to limit peer review, guidance, or editing of documents by SHPO and associated Project consultants.
- B. Historic Preservation Standards. Historic preservation activities carried out pursuant to this Agreement shall meet the *Secretary of Interior's Standards and Guidelines for Archaeology and Historic Preservation* (48 FR 44716-44740, September 29, 1983), as well as standards and guidelines for historic preservation activities established by the SHPO. The Corps shall ensure that all reports prepared pursuant to this Agreement will be provided to the Signatories, and are distributed in accordance with Stipulation VII (Confidentiality), and meet published standards of the Puerto Rico State Historic Preservation Office, specifically, *Guía para Preparar Informes Arqueológicos, Fases I, II, III*.

#### **V. TREATMENT OF HUMAN REMAINS**

Human remains and grave goods encountered during the undertaking that are located on non-federal lands will be treated in accordance with the February 23, 2007 ACHP's *Policy Statement Regarding Treatment of Burial Sites, Human Remains and Funerary Objects*.

#### **VI. PUBLIC CONSULTATION AND PUBLIC NOTICE**

The interested public will be invited to provide input during the implementation of this Agreement. The Corps shall carry this out through letters of notification, public meetings, environmental assessment/environmental impact statements, site visits and/or other appropriate methods. The Corps shall ensure that any comments received from members of the public are taken under consideration and incorporated where appropriate. Review periods shall be consistent with Stipulation I (Timeframes and

Review Procedures). In seeking input from the interested public, locations of historic properties will be handled in accordance with Stipulation VII (Confidentiality). In cases where the release of location information may cause harm to the historic property, this information will be withheld from the public in accordance with Section 304 of the NHPA (54 USC § 307103).

## **VII. CONFIDENTIALITY**

The Signatories to this Agreement acknowledge that historic properties are subject to the provisions of Section 304 of the NHPA (54 USC § 307103) and 36 CFR § 800.11(c), relating to the disclosure of information about the location, character or ownership of a historic property, and will ensure that any disclosure of information under this Agreement is consistent with the terms of this Agreement and with Section 304 of the NHPA, 36 CFR § 800.11(c), and the Freedom of Information Act (5 USC § 552), as amended. Confidentiality regarding the specific nature and location of the archaeological sites and any other cultural resources discussed in this Agreement shall be maintained to the extent allowable by law. Dissemination of such information shall be limited to appropriate personnel within the Corps (including their contractors), the Signatories, and those parties involved in planning, reviewing, and implementing this Agreement. When information is provided to the Corps by SHPO or others who wish to control the dissemination of that information more than described above, the Corps will make a good faith effort to do so, to the extent permissible by federal law.

## **VIII. DISPUTE RESOLUTION**

- A. Objection by a Signatory. Should any Signatory to this Agreement object at any time to any actions proposed or the manner in which the terms of this agreement are implemented, the Corps shall consult with such party to resolve the objection. If the Corps determines that such objection cannot be resolved, the Corps will:
  - 1. Forward all documentation relevant to the dispute, including the Corps' proposed resolution, to the ACHP. The ACHP shall provide the Corps with its advice on the resolution of the objection within 30 days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the Corps shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP and Signatories, and provide them with a copy of this written response. The Corps will then proceed according to its final decision.
  - 2. If the ACHP does not provide its advice regarding the dispute within the 30 day time period, the Corps may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the Corps shall prepare a written response that takes into account any timely comments regarding the dispute from the Signatories to the Agreement, and provide them and the ACHP with a copy of such written response.
  - 3. The Corps' responsibility to carry out all other actions subject to the terms of this Agreement that are not the subject of the dispute remain unchanged.
- B. Objection by a Concurring Party or the Public. At any time during implementation of the measures stipulated in this Agreement, should an objection pertaining to the Agreement be raised by a Concurring Party or member of the public, the Corps shall notify the Signatories and take the

objection under consideration, consulting with the objecting party and, should the objecting party request, any of the Signatories to this Agreement, for no longer than 15 calendar days. The Corps shall consider the objection, and in reaching its decision, will consider all comments provided by the other Signatories. Within 15 calendar days following closure of the comment period, the Corps will render a decision regarding the objection and respond to the objecting party. The Corps will promptly provide written notification of its decision to the other Signatories, including a copy of the response to the objecting party. The Corps' decision regarding resolution of the objection will be final. Following issuance of its final decision, the Corps may authorize the action that was the subject of the dispute to proceed in accordance with the terms of that decision. The Corps' responsibility to carry out all other actions under this Agreement shall remain unchanged.

- C. Objection on NRHP Eligibility. Should any Signatory Party to this Agreement object in writing to the determination of National Register eligibility, the objection will be addressed pursuant to 36 CFR § 800.4(c)(2) and Stipulation III.A.2.

## **IX. NOTICES**

All notices, demands, requests, consents, approvals or communications from all parties to this Agreement to other parties to this Agreement shall be either personally delivered, sent by United States Mail, or electronic mail. All parties shall be considered in receipt of the materials on the day after it being sent by electronic mail.

If Signatories agree in advance, in writing or by electronic mail, facsimiles, copies, or electronic versions of signed documents may be used as if they bore original signatures.

If Signatories agree, hard copies and/or electronic communications may be used for formal communication amongst themselves for activities in support of Stipulation I (Time Frames and Review Procedures).

## **X. AMENDMENTS AND TERMINATION**

- A. Amendment. Any Signatory Party to this Agreement may propose that the Agreement be amended, whereupon the Corps shall consult with the Signatories to consider such amendment. This Agreement may be amended when such an amendment is agreed to in writing by all Signatories. The amendment will be effective on the date a copy signed by all of the Signatories is filed with the ACHP.

All appendices to this Agreement, and other instruments prepared pursuant to this agreement including, but not limited to, the maps of the APE may be individually revised or updated through consultation consistent with Stipulation I (Timeframes and Review Procedures) and agreement in writing of the Signatories without requiring amendment of this Agreement, unless the Signatories through such consultation decide otherwise. In accordance and Stipulation VI (Public Consultation and Public Notice), the Signatories and interested members of the public, will receive



amendments to the Project's APE as appropriate, and copies of any amendment(s) to the Agreement.

- B. Termination. Any Signatory to this Agreement may terminate this Agreement. If this Agreement is not amended as provided for in Stipulation X.A., or if any Signatory proposes termination of this Agreement, the Signatory proposing termination shall notify the other Signatories in writing, explain the reasons for proposing termination, and consult with the other Signatories to seek alternatives to termination, within 30 calendar days of the notification.
1. Should such consultation result in an agreement on an alternative to termination, the Signatories shall proceed in accordance with that agreement and amend the Agreement as required.
  2. Should such consultation fail, the Signatory proposing termination may terminate this Agreement by promptly notifying the other Signatories in writing.
  3. Beginning with the date of termination, the Corps shall ensure that until and unless a new agreement is executed for the actions covered by this Agreement, such undertakings shall be reviewed individually in accordance with 36 CFR §§ 800.4-800.6.

#### **XI. DURATION**

This Agreement shall remain in effect for a period of 15 years after the date it takes effect and shall automatically expire and have no further force or effect at the end of this period unless it is terminated prior to that time. No later than 90 calendar days prior to the expiration date of the Agreement, the Corps shall initiate consultation to determine if the Agreement should be allowed to expire automatically or whether it should be extended, with or without amendments, as the Signatories may determine. Unless the Signatories unanimously agree through such consultation on an alternative to automatic expiration of this Agreement, this Agreement shall automatically expire and have no further force or effect in accordance with the timetable stipulated herein.

#### **XII. EFFECTIVE DATE**

This Agreement shall take effect on the date that it has been fully executed by the Corps, the SHPO, and the ACHP if participating.

#### **XIII. EXECUTION**

Execution of this Agreement by the Corps, the SHPO, and the ACHP (if participating), and the implementation of its terms evidence that the Corps has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.

## **Appendix A**

### **Map of the Preliminary Area of Potential Effects**


draft



**US Army Corps  
of Engineers®**  
Jacksonville District

San Juan Metropolitan Area  
Back Bay Coastal Storm Risk  
Management Study

Section 106 Coordination  
Cataño, Guaynabo, and San Juan  
Puerto Rico

 Preliminary Area of  
Potential Effect for  
Project Measures

0 1 Mile






SIGNATORY TO THE PROGRAMMATIC AGREEMENT AMONG  
THE U.S. ARMY CORPS OF ENGINEERS, THE PUERTO RICO STATE HISTORIC PRESERVATION  
OFFICER, AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION (IF PARTICIPATING)  
REGARDING THE SAN JUAN METROPOLITAN AREA COASTAL STORM RISK MANAGEMENT  
PROJECT, TOA BAJA, CATAÑO, GUAYNABO, AND SAN JUAN, PUERTO RICO

U.S. ARMY CORPS OF ENGINEERS, JACKSONVILLE DISTRICT

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

Andrew Kelly  
Colonel, U.S. Army  
District Commander

SIGNATORY TO THE PROGRAMMATIC AGREEMENT AMONG  
THE U.S. ARMY CORPS OF ENGINEERS, THE PUERTO RICO STATE HISTORIC PRESERVATION  
OFFICER, AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION (IF PARTICIPATING)  
REGARDING THE SAN JUAN METROPOLITAN AREA COASTAL STORM RISK MANAGEMENT  
PROJECT, TOA BAJA, CATAÑO, GUAYNABO, AND SAN JUAN, PUERTO RICO

PUERTO RICO STATE HISTORIC PRESERVATION OFFICER

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

Carlos A. Rubio-Cancela  
State Historic Preservation Officer

SIGNATORY TO THE PROGRAMMATIC AGREEMENT AMONG  
THE U.S. ARMY CORPS OF ENGINEERS, THE PUERTO RICO STATE HISTORIC PRESERVATION  
OFFICER, AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION (IF PARTICIPATING)  
REGARDING THE SAN JUAN METROPOLITAN AREA COASTAL STORM RISK MANAGEMENT  
PROJECT, TOA BAJA, CATAÑO, GUAYNABO, AND SAN JUAN, PUERTO RICO

ADVISORY COUNCIL ON HISTORIC PRESERVATION

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

John Fowler  
Executive Director

CONCURRING PARTY TO THE PROGRAMMATIC AGREEMENT AMONG  
THE U.S. ARMY CORPS OF ENGINEERS, THE PUERTO RICO STATE HISTORIC PRESERVATION  
OFFICER, **AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION (IF PARTICIPATING)**  
REGARDING THE SAN JUAN METROPOLITAN AREA COASTAL STORM RISK MANAGEMENT  
PROJECT, TOA BAJA, CATAÑO, GUAYNABO, AND SAN JUAN, PUERTO RICO

Department of Natural Resources of Puerto Rico

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

Prof. Carlos R. Ruiz Cortés  
Executive Director