

PROGRAMMATIC AGREEMENT

AMONG

THE UNITED STATES ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT,

AND THE UTAH STATE HISTORIC PRESERVATION OFFICER,

REGARDING

NATIONAL HISTORIC PRESERVATION ACT RESPONSIBILITIES

FOR SMALL-SCALE UNDERTAKINGS

WHEREAS, this programmatic agreement (hereafter referred to as the “Agreement”) is made under the authority of Section 106 of the National Historic Preservation Act of 1966, as amended (“NHPA”) and its implementing regulations found at 36 C.F.R. Part 800, which provide federal agencies with the authority to negotiate programmatic agreements pursuant to 36 C.F.R. § 800.14 to govern the implementation of a program or to resolve adverse effects from complex projects or routine undertakings; and

WHEREAS, the United States Army Corps of Engineers’ Sacramento District (hereafter the “USACE”) administers a Department of the Army permit program (hereafter referred to as the “Regulatory Program”) under the authority of Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 403) and Section 404 of the Clean Water Act of 1972, as amended (33 U.S.C. § 1344), in the State of Utah; and

WHEREAS, applicants request authorization of the discharge of dredged or fill material into waters of the United States and/or the construction of structure(s) in or affecting navigable waters of the United States from the USACE pursuant to the Regulatory Program authorities, and the activity and/or structure proposed by the individual applicant, or the project which the activity and/or structure are components of, may constitute an undertaking subject to review by the USACE for compliance with Section 106 of the NHPA (hereafter referred to as “Section 106”) (54 U.S.C. § 306108) and its implementing regulations, “Protection of Historic Properties,” (36 C.F.R. Part 800); and

WHEREAS, the purpose of this Agreement is to identify categories of undertakings that can be streamlined from Section 106 reviews where the USACE has determined that the resulting action would result in either ‘no historic properties affected’ or ‘no adverse effect to historic properties’; and

WHEREAS, pursuant to the consultation conducted in accordance with 36 C.F.R. § 800.14(b)(3), the USACE and the Utah State Historic Preservation Officer (hereafter referred to as the “SHPO”) have developed this Agreement in order to establish an efficient and effective program alternative for taking into account the effects on historic properties by undertakings requiring permits from the USACE in the State of Utah; and

WHEREAS, the Advisory Council on Historic Preservation informed the USACE that they do not need to be a signatory to a Programmatic Agreement executed under 36 CFR 800.14(b)(3); and

WHEREAS, pursuant to 36 C.F.R. § 800.2(a)(4), 800.2(c)(2), 800.14(b)(3), and 800.14(f), the USACE sent invitations to the following federally-recognized tribes on June 6, 2025 to participate in the consultation to develop this Agreement: Confederated Tribes of the Goshute Reservation, Eastern Shoshone Tribe of the Wind River Reservation, Hopi Tribe of Arizona, Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Northwestern Band of the Shoshone Nation, Paiute Indian Tribe of Utah, San Juan Southern Paiute Tribe of Arizona, Shoshone-Bannock Tribes of the Fort Hall Reservation, Skull Valley Band of Goshute Indians of Utah, Ute Indian Tribe of the Uintah & Ouray Reservation, the Navajo Nation, and Ute Mountain Ute Tribe; and

WHEREAS, the Paiute Indian Tribe of Utah and the Ute Indian Tribe of the Uintah and Ouray Reservation (collectively ‘consulting tribes’) both responded to the USACE’s invitation in July 2025 and requested further consultation on the development of this Agreement, and pursuant to 36 C.F.R. § 800.2(c)(2) the USACE made multiple efforts to consult with the consulting tribes, but the consulting tribes never followed-up; and

WHEREAS, the USACE may invite additional tribes to concur in the terms of this Agreement in accordance with 36 C.F.R. § 800.14(f), and nothing in this Agreement prevents a tribe from entering into a separate agreement for administration of USACE Programs; and

WHEREAS, the USACE will continue to consult with all appropriate tribal governments regarding the implementation of its Section 106 responsibilities in accordance with 36 C.F.R. 800.2(c)(2); and

WHEREAS, the USACE issued a Public Notice on June 11, 2025, notifying the public of the development of this Agreement, providing the public with the proposed framework of the Agreement, and inviting the public to comment on the proposal and development of the Agreement; and

WHEREAS, the Utah Public Lands Policy Coordinating Office (hereafter the “PLPCO”), an entity that issues a Principal Investigator Permit to Conduct Archaeological Surveys and excavations is required on lands controlled by the State of Utah, its political subdivisions, or by the School and Institutional Trust Land Administration, and to access archaeological records maintained by the SHPO, requested to be a consulting party in the development of this PA and has participated in the development of this Agreement as a consulting party, and the USACE has invited the PLPCO to sign this Agreement as a concurring party; and

WHEREAS, the USACE invited the Utah Professional Archaeological Council (hereafter the “UPAC”) to consult in the development of this Agreement, and the UPAC did not respond; and

WHEREAS, all signatories agree the activities in Appendix A would not rise to the level of adverse effect under Section 106 and do not require review by a cultural resource professional.

WHEREAS, the USACE and the SHPO are signatories to this Agreement; and

NOW, THEREFORE, the USACE and the SHPO agree that the following stipulations shall govern USACE compliance with Section 106 for undertakings requiring authorization under the USACE's Regulatory Program in the State of Utah for which the USACE has made a finding of 'no historic properties affected' or 'no adverse effect' until this Agreement expires or is terminated.

Stipulations

I. USACE and the SHPO's Section 106 Process:

- A. **Applicability.** This Agreement is applicable when all of the following situations apply:
1. There is a USACE undertaking requiring a permit;
 2. The USACE is the only federal agency or the designated lead federal agency;
 3. The USACE undertaking does not occur on federal or tribal lands;
 4. The USACE undertaking would not have an adverse effect to historic properties;
 5. All applicable parts of Stipulation I.D of this Agreement are satisfied.
- B. **USACE Responsibilities.** In accordance with Section 106, the USACE will be responsible for documenting the findings related to inventorying, evaluating, and assessing the effects to historic properties prior to permit authorization. The USACE agency official, in consultation with the SHPO, will be responsible for making determinations of whether cultural and historic resource sites, buildings, structures, objects, and districts are eligible for listing on the National Register of Historic Places according to 36 C.F.R. § 60.4, and making findings of effects to historic properties according to 36 C.F.R. § 800.4 and 36 C.F.R. § 800.5.
- C. **Identification and Evaluation of Historic Properties:** The USACE shall make a reasonable and good faith effort to identify historic properties and potential historic properties that are located partially or wholly within an undertaking's Area of Potential Effects (APE) in accordance with 36 C.F.R. § 800.4.
1. For each individual undertaking that is covered by this Agreement, and that the USACE chooses to review under its terms, the USACE shall identify consulting parties, including federally-recognized tribes and non-federally recognized tribes, and solicit comment and involvement on the scope, conduct, and results of the identification effort.
 2. The USACE shall contact appropriate interested and consulting parties, provide information about the undertaking that requires the USACE's authorization, provide information about the USACE's permit area and APE, and invite them to participate in the USACE's review of the undertaking under Section 106.
 3. Identification of historic properties shall be consistent with the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (48 Fed. Reg. 44,716-44,738 (1983)), the SHPO's most recent Cultural Resource Compliance Guidance, other applicable SHPO

guidance, USACE Guidelines¹, ACHP guidance, and any other guidance, methodologies, agreements, or protocols that the signatories agree should be used to identify historic properties ([Appendix B to this Agreement](#)). Nothing in this paragraph precludes seeking consistency with any other pertinent guidance such as that provided by tribes or other federal agencies.

4. Pursuant to 54 U.S.C. § 302706(b), the USACE shall make a reasonable and good faith effort to identify and consult with any tribes to assist in identifying properties that may be located within an undertaking's APE and who may attach religious and cultural significance to those cultural resources that may be affected by the undertaking.
5. Following existing guidance from the SHPO and other applicable agencies, the USACE will ensure that all identified cultural resources within an undertaking's APE are evaluated for their eligibility for listing to the National Register of Historic Places in a manner consistent with 36 C.F.R. § 60.4. For those undertakings that are eligible to be streamlined the USACE can informally consult the SHPO on any identified cultural resource to ensure appropriate eligibility determinations are being made.

D. Thresholds that Do Not Require SHPO Review:

1. The USACE will not request the SHPO to review Section 106 documentation related to the USACE's efforts to identify, evaluate, and assess historic properties and the effects of proposed undertakings when all of the following applicable conditions are met. Applicants for federal permits may provide the following documentation to the USACE for their review of its applicability and approval per this Agreement.
 - i. The entire proposed APE is less than 50 acres or 5 linear miles in size; and
 - ii. The undertaking would not affect archeological sites that the USACE treats as eligible for that particular undertaking, were previously found eligible with SHPO concurrence, or are listed in the National Register, such as from construction-related ground disturbing activities; or
 - iii. The undertaking would not change physical features and qualifying characteristics that contribute to historic significance of a historic property, including alterations to that historic property affecting the historic setting and feeling of an adjacent historic district; or
 - iv. The undertaking would not change traffic patterns that may affect the setting, feeling, and association of a historic district; or

¹ <https://www.spk.usace.army.mil/Portals/12/documents/regulatory/sec-106-tribal/2020.10.29-Section%20106%20Submittal%20Guidelines.pdf>

- v. The undertaking would not alter any of the characteristics of a historic property that qualify it for inclusion in the National Register, such as based on the need for temporary construction, detours, or rights-of-way; or
- vi. The requirements of any applicable ACHP Program Comment or Exemption that apply which does not require additional consultation with the SHPO; or
- vii. The USACE determines that no historic properties would be affected by the proposed undertaking; or
- viii. The USACE determines that a historic property would not be adversely affected by the proposed undertaking. Furthermore:
 - 1. The USACE may require special conditions be included in the USACE authorization for the undertaking to ensure the historic properties are not adversely affected, including, but not limited to:
 - a. pre-construction placement of high visibility fencing for avoidance;
 - b. monitoring during construction activities by a person or persons who meet the Secretary of the Interior's Professional Qualifications Standards in the appropriate discipline;
 - c. placement of temporary or permanent screening materials;
 - d. pre-construction and post-construction photographs; and/or
 - e. post-construction monitoring reports.

E. Thresholds that Do Require SHPO Review:

- 1. The USACE will request the SHPO to review and concur with USACE documentation related to the inventory, evaluation, and assessment of effects to historic properties prior to proceeding with a proposed undertaking when any of the following conditions are met:
 - i. The APE surpasses 50 acres in size or 5 linear miles even if no historic properties were identified; or
 - ii. The undertaking would affect a NRHP-eligible or listed archaeological site, or change the physical features or other qualifying characteristics of a historic property, including a historic district; or
 - iii. A qualified USACE cultural resource professional determines that a historic property may be adversely affected by the proposed undertaking; or
 - iv. The proposed undertaking would take place across multiple federal, state, and/or tribal land management agency jurisdictions and the

USACE is not the lead federal agency. Consultation with the tribal historic preservation officer may be required pursuant to the applicable part of 36 CFR 800.2(c)(1).

- F. **Other Requests for SHPO Review:** USACE staff may also bring any particular proposed undertaking to the attention of the SHPO, even if SHPO review is not required under this Agreement.
- G. **Authorizing Applicants to Consult.** The USACE may authorize an applicant or group of applicants to initiate consultation with the SHPO and others regarding eligibility determinations pursuant to 36 C.F.R. § 800.2(c)(4), will notify SHPO and other consulting parties when such authorization has been granted, and the USACE will be responsible for following the identified process therein. However, the USACE remains legally responsible for eligibility determinations made by an applicant or group of applicants and will confer with the SHPO whenever any consulting party raises questions or objections about eligibility and/or effects.

II. Annual Reporting and Coordination Commitments

- A. **USACE Reporting:** Each June 1st following the execution of this Agreement until it expires or is terminated, USACE shall provide all parties to the Agreement a summary report detailing work undertaken pursuant to its terms. Such report shall include any problems encountered, and any disputes and objections received in USACE's efforts to carry out the terms of this Agreement.
- B. **USACE Reporting Information Requirements:** The Annual Report will include a project title, permit authorization date, name of proponent, description of undertaking, and description of cultural resources and historic properties affected (if needed).
 - 1. Each cultural resource inventory, site form, and associated digital data for all streamlined projects will be included in this annual report per the SHPO digital standards in Appendix H of the SHPO's Cultural Resource Compliance Guide.
 - 2. One SHPO e106 case for Annual Reporting and all submissions is acceptable with appropriately labeled and submitted files.
- C. The USACE and SHPO will provide a yearly training for all regulatory and cultural resources staff that have responsibilities under this Agreement. The training will cover digital data standards, protected data access, cultural resources topical discussions including but not limited to National Register of Historic Places evaluations, assessment of adverse effects, and other similar topics.

III. Native American Consultation

Regardless of whether or not an undertaking meets the SHPO review thresholds outlined in this Agreement, USACE will continue to meet its tribal consultation and government-to-government responsibilities for all undertakings. These responsibilities are included in Section 106 and its implementing regulations at 36 C.F.R. Part 800, and all other applicable statutes, regulations, and policies guiding USACE's government-to-government and nation-to-nation consultation efforts with America's Indian Tribes and tribal nations.

IV. Confidentiality

The parties to this Agreement acknowledge that historic properties covered by this Agreement are subject to the provisions of Section 304 of the NHPA (54 U.S.C. § 307103) and 36 C.F.R. § 800.11(c), relating to the disclosure to the public of information about the location, character, or ownership of a historic property. The USACE shall withhold sensitive information about historic properties as appropriate and will ensure that all actions and documentation prescribed by this Agreement are consistent with Section 304 of the NHPA, 36 C.F.R. § 800.11(c), and 5 U.S.C. § 552, as amended (Freedom of Information Act).

V. Public Notification

USACE remains committed to seeking and considering the views of the public when carrying-out its Section 106 responsibilities under the terms of this Agreement. As required by the NHPA's implementing regulations at 36 C.F.R. § 800.2(d)(3), the USACE will notify the public of actions taken under this Agreement through environmental review and land use planning processes established under the National Environmental Policy Act and the Clean Water Act.

VI. Emergency Situations.

In accordance with 36 C.F.R. § 800.12, this Agreement includes procedures for taking historic properties into account during a disaster or emergency. A disaster or emergency is a situation that is declared by the President, a tribal government, or the Governor of a State or which respond to other immediate threats to life or property. USACE staff may follow this Agreement's procedures, located in [Appendix C to this Agreement](#), for taking into account the effects of emergency undertakings on historic properties. Alternatively, or in addition, the USACE may follow their separate Regulatory Division emergency procedures, if any exist.

VII. Post-Section 106 Review Discoveries of Historic Properties

In the event that potentially eligible cultural and/or historic properties are discovered during the implementation of an undertaking after the Section 106 process has been completed, USACE will follow the procedures outlined at 36 C.F.R. § 800.13.

VIII. Dispute Resolution Procedures

Should any signatory or concurring party to this Agreement object at any time to any actions proposed or the manner in which the terms of this Agreement are implemented, the USACE shall consult with such party to resolve the objection. If USACE determines that such objection cannot be resolved, USACE will:

- A. Forward all documentation relevant to the dispute, including USACE's proposed resolution, to the ACHP. The ACHP shall provide USACE with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, USACE shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories and concurring parties, and provide them with a copy of this written response. USACE will then proceed according to the final decision.
- B. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day period, USACE may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, USACE shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the Agreement and provide them and the ACHP with a copy of such written response.
- C. USACE's responsibility to carry out all other actions subject to the terms of this Agreement that are not the subject of the dispute remain unchanged.

IX. Amendments to the Agreement

Any signatory to this Agreement may at any time propose an amendment, whereupon all parties to this Agreement shall consult to consider such amendment pursuant to procedures at 36 C.F.R. §§ 800.6(c)(7) and 800.6(c)(8). If the USACE determines that a proposed amendment is potentially of significant interest to one or more consulting parties, apart from the parties to this Agreement, those parties will be engaged in the consultation as well. This Agreement may be amended only upon written concurrence of all signatories. Amendments to this Agreement shall take effect on the dates they are fully executed by the USACE and the SHPO.

X. Termination of the Agreement

If any signatory to this Agreement determines that its terms will not or cannot be carried out, that party shall immediately consult with the other signatories to attempt to develop an amendment per Stipulation IX, above. If within ninety (90) days an amendment cannot be reached, any signatory may terminate the Agreement upon written notification to the other signatories.

Once the Agreement is terminated, and prior to work continuing on the undertaking, the USACE may either (a) execute a new programmatic agreement pursuant to 36 C.F.R. § 800.14 or (b) request, take into account, and respond to the comments of the ACHP under 36 C.F.R. § 800.7. The USACE shall notify the signatories as to the course of action it will pursue.

XI. Agreement Duration

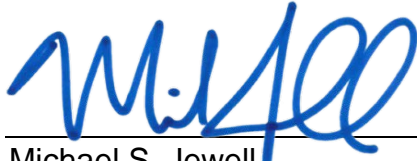
This Agreement shall be in effect for ten (10) years from the effective date unless it is terminated prior to that time. No later than 18 months prior to the expiration date of the Agreement, the signatories shall initiate consultation to determine whether the Agreement continues to meet their needs and therefore should be extended for another ten (10) years. If the signatories unanimously agree to extend the term of the Agreement, they may document that decision with an exchange of letters or by executing an amendment in accordance with Stipulation IX. If the signatories do not unanimously agree to extend the Agreement, then the Agreement shall automatically expire and have no further force or effect.

XII. Effective Date

This Agreement shall take effect on the date it is fully executed by the USACE and the SHPO.

Execution and implementation of this Agreement evidence that USACE has afforded the ACHP a reasonable opportunity to comment, that SHPO and USACE have taken into account the effects of small-scale undertakings on historic properties, and that USACE has complied with Section 106 and 36 C.F.R. Part 800 for small-scale undertakings subject to the Regulatory Program in Utah.

SIGNATORIES



15 October 2025

Michael S. Jewell
Chief, Regulatory Division
U.S. Army Corps of Engineers, Sacramento District

Date



10/15/25

Christopher Merritt
Utah State Historic Preservation Officer

Date

CONCURRING PARTIES



Redge Johnson
Director
Utah Public Lands Policy Coordination Office

10-15-2025

Date

Appendix A: Activities Exempted from Section 106 Review

The USACE, in consultation with the SHPO, has determined that the following categories of undertakings, in conjunction with the applicability of Stipulation I of this agreement, would result in a finding of either ‘no historic properties affected’ or ‘no adverse effect to historic properties’, and no consultation with the SHPO in accordance with Subpart B of 36 CFR 800 regulations would be required.

Activity	Description	Excluded Only under the Following conditions
Maintenance	The repair, rehabilitation, or replacement of any previously USACE-authorized, currently serviceable structure, or fill, or of any currently serviceable structure or fill authorized by 33 C.F.R. § 330.3, provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original USACE authorization or the most recently authorized modification.	The structure must not be a historic property, or if the structure is a historic property the permitted work must not adversely affect any of the qualifying characteristics per 36 C.F.R. § 800.5(a)(1).
Scientific Measurement Devices	Devices, whose purpose is to measure and record scientific data, such as staff gages, tide and current gages, meteorological stations, water recording and biological observation devices, water quality testing and improvement devices, and similar structures. Small weirs and flumes constructed primarily to record water quantity and velocity are also included.	No additional requirements outside of those addressed under Stipulation I.D.
Survey Activities	Survey activities, such as core sampling, seismic exploratory operations, plugging of seismic shot holes and other exploratory-type bore holes, exploratory trenching, soil surveys, sampling, sample plots or transects for wetland delineations, and historic resources surveys.	No additional requirements outside of those addressed under Stipulation I.D.
Outfall Structures and Associated Intake Structures	Activities related to the construction or modification of outfall structures and associated intake structures.	No additional requirements outside of those addressed under Stipulation I.D.

Oil or Natural Gas Pipeline Activities	Activities required for the construction, maintenance, repair, and removal of oil and natural gas pipelines and associated facilities in waters of the United States.	No additional requirements outside of those addressed under Stipulation I.D. The ACHPs Natural Gas Pipeline Exemption may also apply.
Bank Stabilization	Bank stabilization activities necessary for erosion control or prevention, such as vegetative stabilization, bioengineering, sills, rip rap, revetment, gabion baskets, stream barbs, and bulkheads, or combinations of bank stabilization techniques.	No additional requirements outside of those addressed under Stipulation I.D.
Linear Transportation Projects	Activities required for crossings of waters of the United States associated with the construction, expansion, modification, or improvement of linear transportation projects (e.g., roads, highways, railways, trails, driveways, airport runways, and taxiways) in waters of the United States.	No additional requirements outside of those addressed under Stipulation I.D. The ACHPs Post-1945 Program Comment may also apply.
Minor Discharges	Minor discharges of dredged or fill material into all waters of the United States, provided the quantity of discharged material and the volume of area excavated do not exceed 25 cubic yards below the plane of the ordinary high water mark or the high tide line.	No additional requirements outside of those addressed under Stipulation I.D.
Removal of Vessels	Temporary structures or minor discharges of dredged or fill material required for the removal of wrecked, abandoned, or disabled vessels, or the removal of manmade obstructions to navigation.	This category is not applicable when the vessel is at least 50 years old, and the Abandoned Shipwreck Act (1988) or the Sunken Military Craft Act (2004) applies.
Aquatic Habitat Restoration, Enhancement, and Establishment Activities	Activities in waters of the United States associated with the restoration, enhancement, and establishment of tidal and non-tidal wetlands and riparian areas, the restoration and enhancement of non-tidal streams and other non-tidal open waters, and the rehabilitation or enhancement of tidal streams, tidal wetlands, and tidal open waters, provided	No additional requirements outside of those addressed under Stipulation I.D.

	those activities result in net increases in aquatic resource functions and services.	
Residential Developments	Discharges of dredged or fill material into non-tidal waters of the United States for the construction or expansion of a single residence, a multiple unit residential development, or a residential subdivision.	No additional requirements outside of those addressed under Stipulation I.D.
Maintenance of Existing Flood Control Facilities	Discharges of dredged or fill material resulting from activities associated with the maintenance of existing flood control facilities, including debris basins, retention/detention basins, levees, and channels that: (i) were previously authorized by the USACE, or did not require a permit at the time they were constructed, or (ii) were constructed by the USACE and transferred to a non-Federal sponsor for operation and maintenance.	No additional requirements outside of those addressed under Stipulation I.D.
Temporary Construction, Access and Dewatering	Temporary structures, work, and discharges, including cofferdams, necessary for construction activities or access fills or dewatering of construction sites.	No additional requirements outside of those addressed under Stipulation I.D.
Maintenance Dredging of Existing Basins	Excavation and removal of accumulated sediment for maintenance of existing marina basins, access channels to marinas or boat slips, and boat slips to previously authorized depths or controlling depths for ingress/egress, whichever is less.	No additional requirements outside of those addressed under Stipulation I.D.
Boat Ramps	Activities required for the construction of boat ramps, provided: (a) the discharge into waters of the United States does not exceed 50 cubic yards of concrete, rock, crushed stone or gravel into forms, or in the form of pre-cast concrete planks or slabs, (b) the boat ramp does not exceed 20 feet in length, and (c) the base material is crushed stone, gravel or other suitable material.	No additional requirements outside of those addressed under Stipulation I.D.
Commercial and Institutional Developments	Discharges of dredged or fill material into non-tidal waters of the United States for the construction or expansion of commercial and institutional building foundations and building pads and	No additional requirements outside of those addressed under Stipulation I.D.

	attendant features that are necessary for the use and maintenance of the structures.	
Recreational Facilities	Discharges of dredged or fill material into non-tidal waters of the United States for the construction or expansion of recreational facilities.	No additional requirements outside of those addressed under Stipulation I.D.
Stormwater Management Facilities	Discharges of dredged or fill material into nontidal waters of the United States for the construction of stormwater management facilities, including stormwater detention basins and retention basins and other stormwater management facilities; the construction of water control structures, outfall structures and emergency spillways; the construction of low impact development integrated management features such as bioretention facilities (e.g., rain gardens), vegetated filter strips, grassed swales, and infiltration trenches; and the construction of pollutant reduction green infrastructure features designed to reduce inputs of sediments, nutrients, and other pollutants into waters, such as features needed to meet reduction targets established under Total Maximum Daily Loads set under the Clean Water Act.	No additional requirements outside of those addressed under Stipulation I.D.
Discharges in Ditches	Discharges of dredged or fill material into non-tidal ditches that are: (1) constructed in uplands, (2) receive water from an area determined to be a water of the United States prior to the construction of the ditch, (3) divert water to an area determined to be a water of the United States prior to the construction of the ditch, and (4) determined to be waters of the United States.	The ditch must not be a historic property, or if the ditch is a historic property the permitted work must not adversely affect any of the qualifying characteristics per 36 C.F.R. § 800.5(a)(1).
Docks and Piers	The installation and maintenance of small, private, recreational, fixed or floating, boat docks and associated access (e.g. gangway, ramp, stairs, etc.) within waters of the United States, provided it meets the following requirements: (1) the area of the boat dock and associated access, combined,	The dock/pier must not be a historic property, or if the dock/pier is a historic property the permitted maintenance work must not adversely affect any of the qualifying characteristics

	do not exceed 1,000 square feet below the plane of the ordinary high water mark (OHWM) for non-tidal waters or mean high water mark (MHWM) for tidal waters, (2) the boat dock will only be used for private recreational purposes, and (3) as measured from the OHWM or MHWM, the dock and associated access may not extend beyond the waterward edge of the nearest adjacent facilities on the same bank of the waterway, more than 100-feet, or 30% of the distance across the water way (whichever is more restrictive).	per 36 C.F.R. § 800.5(a)(1).
Aggregate Mining	Activities for the mining of aggregate material from active river channels, including construction of new or use of existing access routes to/from the channel, and construction or new or use of existing material staging areas adjacent to the channel. This does not include processing facilities for sorting, crushing, cleaning, or otherwise treating the aggregate material.	No additional requirements outside of those addressed under Stipulation I.D.

Appendix B: References

Secretary of the Interior

- Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (48 FR pages 44716-44738)

SHPO

- The SHPO's most recent Archaeological Compliance Guidance:
https://ushpo.utah.gov/wp-content/uploads/2024/08/UTSHPO-Cultural-Resource-Compliance-Guidance_2024.pdf

USACE

- <https://www.spk.usace.army.mil/Portals/12/documents/regulatory/sec-106-tribal/2020.10.29-Section%20106%20Submittal%20Guidelines.pdf>

Appendix C: Emergency Situation Procedures

A disaster or emergency is a situation that is declared by the President, a tribal government, or the Governor of a State or which respond to other immediate threats to life or property. USACE staff may follow this Agreement's procedures for taking into account the effects of emergency undertakings on historic properties. Alternatively, or in addition, the USACE may follow their separate Regulatory Division emergency notification procedures, per USACE's Regional General Permit 8 or 325.2(e)(4), as applicable.

Applicability. The procedures in this appendix only apply to undertakings that will be implemented within 30 days after the disaster or emergency has been formally declared by the appropriate authority or authorized by the USACE. Prior to authorizing the emergency undertaking, the USACE will complete the Section 106 process, to the extent practicable and as time allows, and this may be in conjunction with the applicant and their team, by completing the following tasks:

- A. **APE, Identification, Eligibility.** Conduct a historic property investigation of the APE by reviewing the applicable historic property databases or results of the same, historic aerials, other appropriate information and documentation, and if available review current photos of any listed, eligible, or potentially eligible historic properties identified within the APE.
 1. Complete an inventory of documented historic properties in the APE within the declared disaster area.
 2. If historic properties, or previously unevaluated resources, are identified within the APE, assess their current condition, including, if applicable, from post-disaster photos or site visits, and evaluate the integrity of each property as a result of the disaster, and if time and circumstances allow make a reasonable effort to determine their eligibility pursuant to 36 C.F.R. § 800.4(c).
 3. Unevaluated resources may be treated as eligible or not eligible based on existing information, their current condition and integrity, and circumstances of the emergency which may not allow a more thorough eligibility evaluation.
- B. **Effects.** Determine the effect the emergency undertaking would have on historic properties.
- C. **Notification not required.** The USACE will not be required to notify consulting parties, including the relevant SHPO or THPO, Indian tribes, and the ACHP, if the historic property investigation did not identify historic properties, or the emergency undertaking would not affect or not adversely affect historic properties.

- D. **Notification required.** The USACE shall notify consulting parties, including the relevant SHPO or THPO, Indian tribes that may attach religious and cultural significance to affected historic properties, the ACHP, and any other appropriate state, local and tribal points of contact if a historic property or National Historic Landmark (NHL) was identified, the emergency situation previously affected a historic property or NHL, including compromising its integrity, or the forthcoming USACE emergency undertaking authorization would result in a new or continued adverse effect to a historic property or NHL. The following notification process shall be followed.
1. The USACE shall provide documentation associated with the proposed undertaking, the anticipated APE, photographs, maps, drawings, as necessary, the current scope of historic property identification efforts, any new eligibility determinations and documentation to support eligibility, why the undertaking would have an adverse effect to a historic property or NHL, and any practicable methods to avoid or minimize adverse effects.
 2. The USACE will afford these parties an opportunity to comment within seven (7) days of notification, or a shorter time period to the extent and time the emergency situation allows.
 3. If USACE identifies adverse effects to any NHL, USACE shall, to the maximum extent possible, ensure harm to the NHL is minimized and shall notify the National Park Service (NPS) and invite NPS to comment in the time allowed.
- E. **Other Notification Situations.** The USACE may also bring any other proposed emergency undertakings to the attention of the aforementioned consulting parties, including any post-review discoveries as a result of a permittee performing the permitted work.
- F. **Permit Conditions.** The USACE may require special conditions be included in the USACE authorization for the emergency undertaking to ensure the historic properties are not adversely affected, including, but not limited to:
- a. pre-construction placement of high visibility fencing for avoidance;
 - b. monitoring during construction activities by a person or persons who meet the Secretary of the Interior's Professional Qualifications Standards in the appropriate discipline;
 - c. placement of temporary or permanent screening materials;
 - d. pre-construction and post-construction photographs; and/or
 - e. post-construction monitoring reports.
- G. **Adverse Effect.** If an adverse effect to a historic property would occur as a result of the emergency undertaking authorized by the USACE, the USACE and SHPO/THPO should quickly consult on the appropriate way to resolve the adverse effect, including providing mitigation options, such as standard treatments, for certain types of properties likely to be adversely affected. In identifying and developing proposed mitigation measures, the federal agency is free to, and typically should, within its statutory and regulatory authorities,

consider mitigation that responds to threats that would result from the undertaking. Resolving an adverse effect during an emergency undertaking does not need to be formalized into a memorandum of agreement but can be included separately as a USACE permit condition.

- H. **Post-Review Discovery.** If the permittee discovers any previously unknown historic or archeological remains while accomplishing the emergency authorization, the permittee must immediately notify the USACE. The USACE will initiate consultation with the appropriate parties in order to determine if the discovery warrants a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
- I. **Final Report.** The USACE, in conjunction with the permittee, may compile a final summary report of all actions permitted, approved, and exempted during the disaster or emergency within 45 days of completion of the permitted work. This may include a summary table of USACE action numbers, how many historic properties were identified in the APE, the effect the undertaking had on each identified historic property (if any exist), the SHPO/THPO notification and consultation initiation and completion dates, and any other relevant summary notes. There will be a separate written discussion of agency actions, referenced by the agency action number (in chronological order), the location of historic properties identified in the APE, the historic property reference number (if one exists), the condition of the historic property as a result of the disaster or emergency (including representative photos of the condition of the historic property, if available, which proponents may email or text to the USACE contact), and any additional effects as a result of the undertaking, including any mitigation to resolve adverse effects.

Exemptions. In accordance with 36 C.F.R. § 800.12(d), immediate rescue and salvage operations conducted to preserve life or property are exempt from the provisions of Section 106 and 36 C.F.R. Part 800,. The agency determines whether its undertaking meets the criteria for this exemption. The agency determines whether the action needs to be carried out immediately to save people or property from death or destruction (assuming destruction has not yet occurred but is imminent). The immediacy of this work should be clear and not delayed or hindered by bureaucracy.

EXAMPLES of Emergency Exemptions

- Replacement of collapsed bridges in an active evacuation route;
- Any actions to stop or slow down an existing, unplanned, and uncontrolled fire or flood from spreading;
- Removal of debris or portions of a building to reach trapped persons.

Non-Emergencies. If the undertaking does not meet the definition of an emergency, but requires expedited review, USACE will coordinate with all appropriate agencies accordingly indicating that expeditious review is requested for a review less than 30 days.