

1 **PROGRAMMATIC AGREEMENT**

2 **AMONG**

3 **THE U.S. ARMY CORPS OF ENGINEERS, MEMPHIS DISTRICT,**
4 **THE ARKANSAS STATE HISTORIC PRESERVATION OFFICER,**
5 **TENNESSEE STATE HISTORIC PRESERVATION OFFICER, THE**
6 **TENNESSEE DIVISION OF ARCHAEOLOGY, THE LOWER**
7 **MISSISSIPPI RIVER CONSERVATION COMMITTEE,**
8 **AND THE OSAGE NATION (ADDITIONAL TRIBES TO BE LISTED**
9 **HERE)**

10 **REGARDING THE MANAGEMENT MEASURES TO BE IMPLEMENTED**
11 **AS A RESULT OF THE HATCHIE-LOOSAHATCHIE MISSISSIPPI**
12 **RIVER ECOSYSTEM RESTORATION STUDY: CRITTENDEN AND**
13 **MISSISSIPPI COUNTIES, ARKANSAS AND LAUDERDALE, TIPTON,**
14 **AND SHELBY COUNTIES, TENNESSEE**

15
16 **PREAMBLE**

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18 **WHEREAS**, the U.S. Army Corps of Engineers, Memphis District (USACE), is
19 conducting a feasibility study (Study) as authorized by Section 402 of the Water Resources
20 Development Act of 2000, Public Law 106-541, Congress authorized the Lower Mississippi
21 River Resource Assessment (LMRRA) to examine information needed for river-related
22 management; the needs of natural habitats and the species they support; and the need for more
23 river-related recreation and public access. The 1996 Memphis Metro Authority and a House
24 Resolution issued on 7 March 1996 stating that a review of the Wolf River and its tributaries,
25 Tennessee River, and Mississippi River shall evaluate the effectiveness of existing Federal and
26 non-Federal improvements and determine the need for additional improvements to flooding from
27 storm water, to restore environmental resources, and to improve the quality of water entering the
28 Mississippi River and its tributaries; and

29
30 **WHEREAS**, the Study is being conducted to identify and respond to problems and
31 opportunities associated with ecosystem degradation in the Lower Mississippi River (LMR) and
32 its floodplain between approximate Mississippi River mile 775-736. It is anticipated that the
33 Study will identify an ecosystem restoration plan that reasonably maximizes National Ecosystem
34 Restoration (NER) benefits; and

35
36 **WHEREAS**, USACE proposes to study alternatives and measures that restore floodplain
37 connectivity, enhance, and restore aquatic channels and waterbodies, and enhance and restore
38 natural vegetation including, but not limited to, the following measures: earth work, dredging,
39 and other geomorphic modifications, bank protection, bridge replacement, water level
40 management structures, forest and wetland restoration strategies, structures to improve aquatic
41 habitat, and measures to increase recreational opportunities; and

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43 **WHEREAS**, USACE is the lead federal agency for purposes of the National
44 Environmental Policy Act of 1969 (NEPA) and its implementing regulations, set out at 40 CFR
45 Parts 1500-1508 (43 FR 55978), “Section 106” of the National Historic Preservation Act (NHPA)
46 [54 U.S.C. § 300101 et seq.], as amended (54 U.S.C. § 306108), and its implementing
47 regulations, set out at 36 CFR Part 800, and in accordance with 36 CFR § §800.2(a)(2) and
48 800.8; and
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50 **WHEREAS**, USACE has determined that the Study, and any subsequent associated
51 project activities constitute an Undertaking, as defined in 36 CFR § 800.16(y), and therefore is
52 subject to Section 106 of the National Historic Preservation Act of 1966, 54 U.S.C. § 306108
53 (NHPA); and
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55 **WHEREAS**, USACE has defined the undertaking’s preliminary area of potential effects
56 (APE) as a 39-mile reach of the Mississippi River and the surrounding batture, the lands and
57 waters between the mainline levee or natural bluffs and the main channel extending from
58 approximate River Mile 775 to Mile 736, encompassing parts of Lauderdale, Tipton, and Shelby
59 counties in Tennessee and Mississippi and Crittenden counties, Arkansas (Appendix A); and
60

61 **WHEREAS**, multiple properties are known to be present within the APE, many of which
62 have not been evaluated for National Register eligibility, and although extensive archaeological
63 inventory has been completed within the APE under other projects, some portions of the APE
64 have not been inventoried for Historic Properties; and
65

66 **WHEREAS**, USACE initiated consultation with the Arkansas State Historic Preservation
67 Officer (AR SHPO), the Tennessee State Historic Preservation Officer (TN SHPO), the
68 Absentee-Shawnee Tribe of Indians, the Alabama-Quassarte Tribal town, the Cherokee Nation,
69 The Chickasaw Nation, the Choctaw Nation of Oklahoma, the Coushatta Tribe of Louisiana, the
70 Eastern Band of Cherokee Indians, the Eastern Shawnee Tribe of Oklahoma, the Jena Band of
71 Choctaw Indians, the Kialegee Tribal Town, the Kickapoo Tribe of Kansas, the Mississippi Band
72 of Choctaw Indians, the Muscogee (Creek) Nation, the Osage Nation, the Poarch Band of Creek
73 Indians, the Ponca Tribe of Oklahoma, the Quapaw Nation, the Sac and Fox Nation of
74 Oklahoma, the Seminole Nation of Oklahoma, the Shawnee Tribe, the Thlopthlocco Tribal
75 Town, the Tunica-Biloxi Tribe of Louisiana, and the United Keetoowah Band of Cherokee
76 Indians via letter sent on January 25, 2022, and the Tennessee Division of Archaeology (TDOA)
77 via letter sent May 16, 2023, pursuant to the NHPA; and
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79 **WHEREAS**, USACE, with the concurrence of the above consulted tribes, TDOA and
80 SHPOs, has determined that compliance with Section 106 of the NHPA for the Undertaking
81 would be accomplished through the execution and implementation of this Programmatic
82 Agreement (PA) because USACE cannot fully determine the effects of the Undertaking on
83 Historic Properties [36 CFR § 800.14(b)(1)(ii)], for all segments of the Undertaking at this time;
84 and
85

86 **WHEREAS**, this PA shall establish the process USACE shall follow for compliance
87 with 54 U.S.C. § 306108 (referred to hereinafter as “Section 106”), taking into consideration the
88 views of the Signatories, Invited Signatories, and Concurring Parties; and

89
90 **WHEREAS**, the Lower Mississippi River Conservation Committee (LMRCC) is the
91 non-Federal Sponsor (NFS) for the study and has been invited to participate in the development
92 of this PA, and

93
94 **WHEREAS**, in accordance with 36 CFR §§ 800.2(c)(2)(ii)(A), 800.3(f)(2), and
95 800.14(b)(2)(i), USACE has contacted Federally-recognized Native American Tribes via
96 letter(s), phone call(s), email(s), and meeting(s), to invite them to consult on this PA, including
97 the Absentee-Shawnee Tribe of Indians, Alabama-Quassarte Tribal Town, Cherokee Nation,
98 Choctaw Nation, Coushatta Tribe of Louisiana, Eastern Band of Cherokee Indians, Eastern
99 Shawnee Tribe of Oklahoma, Jena Band of Choctaw Indians, Kialegee Tribal Town, Kickapoo
100 Tribe of Kansas, Mississippi Band of Choctaw Indians, Muscogee (Creek) Nation, Osage
101 Nation, Poarch Band of Creek Indians, Ponca Tribe of Oklahoma, Quapaw Nation, Sac and Fox
102 Nation of Oklahoma, Seminole Nation, Shawnee Tribe, The Chickasaw Nation, Thlopthlocco
103 Tribal Town, Tunica-Biloxi Tribe of Louisiana, and the United Keetowah Band of Cherokee
104 Indians; USACE has invited them to participate as Invited Signatories or Concurring Parties to
105 this PA; and USACE will continue consultation throughout the duration of this PA; and

106
107 **WHEREAS**, the Osage Nation has participated in the development of this Agreement
108 and USACE has invited them to sign this Agreement as an Invited Signatory; and

109
110 **WHEREAS**, (TBD) has participated in the development of this Agreement and USACE
111 has invited them to concur in this Agreement; and

112
113 **WHEREAS**, USACE has and will continue to consult with any interested Federally-
114 recognized Tribe who may have not yet requested to consult; and

115
116 **WHEREAS**, the definitions set forth in 36 CFR § 800.16 are incorporated herein by
117 reference and apply throughout this PA; and

118
119 **WHEREAS**, the definitions for Signatory Parties set forth in 36 CFR § 800.6(c)(1), the
120 definitions for Invited Signatory Parties set forth in 36 CFR § 800.6(c)(2), and the definitions for
121 Concurring Parties set forth in 36 CFR § 800.6(c)(3), are incorporated herein by reference and
122 apply throughout this PA: and

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124 **WHEREAS**, in accordance with 36 CFR § 800.6(a)(1), USACE has notified the
125 Advisory Council on Historic Preservation (ACHP) of its intent to develop a Programmatic
126 Agreement with specified documentation, and the ACHP has chosen not to participate in the
127 consultation pursuant to 36 CFR § 800.6(a)(1)(iii) through written documentation received 29
128 March 2023; and

129
130 **WHEREAS**, in accordance with 36 CFR § 800.6(a)(4) and 36 CFR § 800.14(b)(2)(ii),
131 USACE has notified the public of the Undertaking and provided an opportunity for members of
132 the public to comment on the project and the Section 106 process as outlined in this PA; and

133

134 **NOW THEREFORE**, Signatories and Invited Signatories agree that the Undertaking
135 shall be implemented in accordance with the following stipulations in order to take into account
136 the effect of the Undertaking on Historic Properties.

137 **STIPULATIONS**

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139 To the extent of its legal authority, and in coordination with other Signatories, USACE shall
140 ensure that the following stipulations are implemented and shall not authorize an individual
141 Undertaking until Section 106 review is completed pursuant to this PA.
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143 **I. APPLICABILITY**

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145 **A.** This Agreement applies to Undertakings within the preliminary and final Area of
146 Potential Effects (APE) of this Study which are subsequently recommended in any
147 Chief's Report, specifically including USACE actions in the Hatchie-Loosahatchie
148 reach of the Mississippi River between approximate River Miles 775-736.
149

150 **B.** If another federal program or federal agency has concluded Section 106 consultation
151 review and approved an Undertaking within the past five (5) years, and no new
152 substantial information has been revealed, USACE has no further requirement for
153 Section 106 compliance regarding that Undertaking provided that USACE:
154

155 1. Confirms that the APE and effect [as defined by 36 CFR § 800.16(i)] of its
156 Undertaking are the same as that of the Undertaking reviewed by the previous
157 agency, and;
158

159 2. Determines that the previous agency complied with Section 106, including
160 consultation and concurrence on determinations and/or resolutions of adverse
161 effects with all Tribes and the appropriate SHPO participating in this Agreement,
162 and;
163

164 3. Adopts the findings and determinations of the previous agency.
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166 4. USACE shall notify the Signatories, Invited Signatories, and Consulting Parties
167 regarding this determination. If USACE, in consultation with the
168 aforementioned parties determine that the previous Section 106 review was
169 insufficient or involved interagency disagreements about eligibility, effect
170 determinations, and/or resolution of adverse effects (implementation of
171 Treatment Measures), USACE shall conduct additional Section 106 consultation
172 in accordance with the terms of this Agreement.
173

174 5. USACE shall document these findings in its project file in order to confirm that
175 the requirements of Section 106 have been satisfied.
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177 "Substantial information" shall be determined through consultation with the Signatories,
178 Invited Signatories, and Consulting Parties via the Section 106 review process.

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C. USACE has determined that the following types of activities have limited or no potential to affect historic properties and USACE has no further Section 106 responsibilities with regard to them, pursuant to 36 CFR § 800.3(a)(1):

1. Administrative actions such as personnel actions, travel, procurement of services, and supplies (including vehicles and equipment) for the support of day-to-day operational activities, and the temporary storage of materials provided storage occurs within existing facilities.
2. Providing funding for planning, studies, and design and engineering costs that involve no commitment of resources other than staffing and associated funding .
3. Funding the administrative action of acquiring properties, including the real estate transactions, but not transfers of property out of federal ownership.
4. Non-ground disturbing boundary surveying, monitoring, data gathering, and reporting in support of planning or design activities.
5. Demarcation of project areas and resources on maps as “No Work Zones” (e.g., cultural sites, wetlands, threatened and endangered species habitat).

II. ROLES AND RESPONSIBILITIES OF THE CONSULTING PARTIES

A. USACE:

1. Shall not authorize implementation of an individual Undertaking until Section 106 review is completed pursuant to this Agreement.
2. Shall notify and consult with the Signatories, Invited Signatories, and Consulting Parties. Consultations may include face-to-face meetings, as well as communications by internet, U.S. mail, e-mail, facsimile, and/or telephone. Times and places of meetings, as well as an agenda for meetings, will be developed with mutual acceptance and done in a timely manner.
3. Shall consult with any Tribes on a government-to-government basis in recognition of its sovereign status, whether a signatory to this Agreement or not, but particularly regarding sites that may have traditional, religious, and/or cultural importance to Tribes. In meeting its federal trust responsibility, USACE alone shall conduct all government-to-government consultation with Tribes.
4. Shall be responsible for determining the APE, identifying historic properties located within the APE, providing National Register of Historic Places

224 (NRHP) eligibility determinations, and findings of effect, in consultation and
225 concurrence with Signatories, Invited Signatories, and Consulting Parties.

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- 227 5. Shall ensure all Cultural Resources review is conducted by qualified
228 professional staff as outlined in Stipulation V.
229
- 230 6. Shall ensure that all documentation generated as part of the NHPA process
231 resulting from these Undertakings shall be consistent with applicable
232 Standards (State and Federal) (Stipulation V) and confidentiality provisions
233 outlined in Stipulation III.
234
- 235 7. Shall use federal staff who meet the Professional Qualifications Standards as
236 set forth in the Federal Register at 48 Fed. Reg., Vol. 190, 44716-01
237 (September 29, 1983), as amended (Qualified Staff) in defining APE
238 boundaries, completing identification and evaluation of all historic properties,
239 and making determinations of effects.
240
- 241 8. Shall ensure that the Signatories, Invited Signatories and Consulting Parties
242 are consulted at the same time. And will, prior to submitting any
243 determinations of eligibility and/or finding of effect as part of the
244 consultation, review National Register eligibility recommendations provided
245 by a cultural resources contractor and make its own determination.
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- 247 9. USACE contractors shall not consult directly with the Signatories, Invited
248 Signatories, and Consulting Parties, unless the aforementioned parties request
249 communication with the contractors.
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- 251 10. Consultation with the Signatories, Invited Signatories, and Consulting Parties
252 remains a federal responsibility. This is/will be documented in any Scope of
253 Work (SOW) for Cultural Resource Management activities or other
254 construction work.
255
- 256 11. Shall, when authorizing individual Undertakings requiring
257 environmental/cultural conditions pursuant to this Agreement, include all
258 stipulations and conditions negotiated as part of the Section 106 Process.
259 USACE will ensure that this information is communicated to the USACE
260 contractor and will be available for technical questions related to its
261 implementation. This information is conveyed through the Buildability,
262 Constructability, Operability, Environmental and Sustainability Reviews
263 (BCOES Process), per Engineering Regulation 415-1-11, leading to
264 solicitation.
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267 B. SHPO(s):
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- 269 1. The SHPO(s) shall consult with USACE, to identify Consulting Parties,
270 including any communities, organizations, or individuals that may have an
271 interest in a specific Undertaking and its effects on historic properties.
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- 273 2. The SHPO(s) shall consult with USACE regarding USACE’s determination of
274 the APE, National Register eligibility, and findings of effect responding
275 within timeframes set out in Stipulation IV.B.
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- 277 3. The SHPO(s) shall provide, as part of the consultation, available information
278 about historic properties (both above and below ground resources) for the
279 purposes of addressing effects to historic properties. Only Qualified Staff, per
280 Stipulation V. A. 1. shall be afforded access to protected historic property
281 information. USACE and the SHPO(s) may execute a written agreement to
282 clarify and memorialize data sharing if it extends beyond any basic fee
283 structure or access schedule.
284
- 285 4. The SHPO(s) staff shall be reasonably available as a resource and for
286 consultation through site visits, written requests, telephone conversations or
287 electronic media. In those instances where consultation has occurred, USACE
288 shall provide a written summary via e-mail or regular mail to SHPO(s),
289 including any decisions that were reached within two (2) to three (3) business
290 days.
291

292 C. TDOA:
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- 294 1. TDOA shall consult with USACE regarding USACE’s determination of the
295 APE, National Register eligibility, and findings of effect responding within
296 timeframes set out in Stipulation IV. B.
297
- 298 2. TDOA shall provide, as part of the consultation, available information about
299 historic properties (below ground resources) for the purposes of addressing
300 effects to historic properties. Only Qualified Staff, per Stipulation V. A. 1.
301 shall be afforded access to protected historic property information. USACE
302 and TDOA may execute a written agreement to clarify and memorialize data
303 sharing if it extends beyond any basic fee structure or access schedule.
304
- 305 3. All archaeological investigations conducted on land owned, managed, or
306 controlled by the state of Tennessee requires a TDOA permit pursuant to
307 Tennessee Code Annotated 11-6-105. The TDOA shall review all permit
308 applications and, provided that archaeologists meeting the professional
309 qualifications established in the *Tennessee SHPO Standards and Guidelines*
310 *for Archaeological Resource Management Studies* serve as Principal
311 Investigator and Field Director, respectively, issue permits within fifteen (15)
312 business days of receipt of a completed application.
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4. TDOA shall be reasonably available as a resource and for consultation through site visits, written requests, telephone conversations or electronic media. In those instances where consultation has occurred, USACE shall provide a written summary via e-mail or regular mail to TDOA, including any decisions that were reached within two (2) to three (3) business days.

C. TRIBES:

1. USACE acknowledges that Tribes possess special expertise in assessing the National Register eligibility of properties with religious and cultural significance to that particular Tribe. Tribal leaders, or their designated representatives, shall designate an individual(s) for the Tribe’s review of Undertakings affecting properties with religious and cultural significance to that particular Tribe. Designations such as this will follow the intent and processes laid out at a minimum in USACE’s 2012 Tribal Consultation Policy or any updated USACE Tribal Consultation Policy.
2. Tribes may consult with USACE regarding USACE’s determination of the APE, National Register eligibility, and findings of effect responding within timeframes set out in Stipulation IV.B.
3. Tribes may provide, as part of the consultation, available information about historic properties (such as access to site files, GIS data, survey information, geographic areas of concern) for the purposes of addressing effects to historic properties. Only Qualified USACE Staff, per Stipulation V.A. 1. shall be afforded access to protected historic property information. USACE and any Tribe may execute a written agreement to clarify and memorialize data sharing, if it extends beyond any basic fee structure or access schedule.
4. Tribes shall be reasonably available as a resource and for consultation through site visits, written requests, telephone conversations or electronic media. In those instances where consultation has occurred, USACE shall provide a written summary via e-mail or regular mail to Tribes, including any decisions that were reached within two (2) to three (3) business days.

D. NON-FEDERAL SPONSOR

1. The NFS shall coordinate with USACE to identify Consulting Parties, including any communities, organizations, private landowners, or other individuals that may have an interest in a specific Undertaking and its effects on historic properties.

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2. The NFS shall participate in meetings, as needed, and any other roles appropriate to the completion of the goals of this PA.
3. The NFS shall participate in meetings convened by USACE or any other Signatory, Invited Signatory, or Consulting Party to review the effectiveness of this PA.
4. The NFS shall be reasonably available as a resource and for consultation through site visits, written requests, telephone conversations, or electronic media. In those instances where consultation has occurred, USACE shall provide a written summary via e-mail or regular mail to the NFS within two (2) to three (3) business days, including any decisions that were reached.
5. The NFS shall assist in coordinating with any private landowners regarding any state collections donations forms, if needed.

III. CONFIDENTIALITY OF HISTORIC PROPERTY INFORMATION

- A. USACE will safeguard information about historic properties to the extent allowed by Section 304 of NHPA (54 U.S.C. § 307103), Section 9 of the Archaeological Resources Protection Act (ARPA), and other applicable federal laws, as well as implementing restrictions conveyed to USACE by Signatories, Invited Signatories, and Consulting Parties consistent with state and tribal guidelines. These safeguards will be included in any developed cultural resources Scopes of Work, as well.
- B. Only USACE staff meeting the Professional Standards (Stipulation V. A. 1.), shall be afforded access to protected historic property information provided by any Signatories, Invited Signatories, and Consulting Parties;
- C. Regarding sensitive information shared by Tribes, USACE, in accordance with provisions of federal law, will not share non-public information, without first confirming (in writing with the provider of the information) the appropriateness of sharing.
- D. USACE shall provide to all Signatories, Invited Signatories, and Consulting Parties the documentation specified in 36 CFR § 800.11 subject to the confidentiality provisions of 36 CFR § 800.11(c) and such other documentation as may be developed during consultation to resolve adverse effects to the extent permitted by federal law.
- E. Signatories, Invited Signatories, and Consulting Parties shall safeguard historic property information (locational and other non-public) in accordance with the

401 provisions of Section 304 of the NHPA and applicable state and tribal legal
402 authorities.

- 403
- 404 F. USACE anticipates the presentation of historic property data as part of any Standard
405 Treatment Measure (STM) or Memorandum of Agreement Treatment Measure
406 (MOA TM) but shall ensure that these products, presentations, or other publications
407 are adequately coordinated and consulted upon Signatories, Invited Signatories, and
408 Consulting Parties before release/presentation to ensure that any otherwise protected
409 information is being represented appropriately.

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412 **IV. CONSULTATION STANDARDS, TIME FRAMES, AND CORRESPONDENCE**

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414 A. Consultation Standards:

- 415
- 416 1. Consultation among all Consulting Parties to this PA will continue throughout
417 the implementation of this PA. Consultation is mutual, meaningful dialogue
418 regarding the fulfillment of this PA, the process of Section 106 compliance,
419 and the treatment of historic properties that may be affected by USACE
420 undertakings.
- 421
- 422 2. USACE, when consulting with any Tribe, whether a signatory to this PA or
423 not, will do so on a government-to-government basis in recognition of their
424 sovereign status.
- 425
- 426 3. USACE will consult with the Signatories, Invited Signatories, and Consulting
427 Parties, based on expressed areas of interest in the case of Tribes, jurisdiction
428 in case of SHPO(s) offices, and/ or TDOA. Consultations may include face-
429 to-face meetings, as well as communications by regular mail, electronic mail,
430 and/or telephone. Times and places of meetings, as well as an agenda for
431 meetings, will be developed with mutual acceptance and done in a timely
432 manner.
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434 B. Timeframes:

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- 436 1. All time designations in this PA shall be in calendar days unless otherwise
437 expressly stipulated in writing in this PA:
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- 439 a. For emergency Undertakings as reviewed under Stipulation VI.A,
440 USACE shall follow the timeframes as indicated in 36 CFR 800.12 (b)
441 (2.).
- 442
- 443 b. For Undertakings associated with all other activities as reviewed under
444 the Streamlined Project Review Stipulations of this PA, the response
445 time for each request for concurrence shall be a maximum of forty-five
446 (45) days, unless otherwise agreed to by the Signatories, Invited

447 Signatories, and Consulting Parties to the specific consultation on a
448 case-by-case basis.

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- 450 2. The review period will be extended until the next business day, if a review
451 period included in this PA concludes on a Saturday, Sunday, state, or federal,
452 or tribal holiday. If requested, USACE may consider an extension of a review
453 period consistent with the time designations in this PA for parties affected by
454 an unanticipated state or tribal office closure (e.g., hurricane, tornado or
455 similar), or any other extenuating circumstances.
- 456
- 457 3. Any electronic communication forwarding plans or other documents for
458 review under the terms of this PA that is sent after 4:00 pm Central Time will
459 be deemed to have been received by the reviewing party on the next business
460 day.
- 461
- 462 4. E-mail comments by the Signatories, Invited Signatories, and Consulting
463 Parties on any documents submitted for review under this PA are timely if
464 they are received at any time on or before the last day of a review period.
465 Responses sent by mail will be accepted as timely if they are postmarked by
466 the last day allowed for the review.
- 467
- 468 5. Signatories, Invited Signatories, and Consulting Parties may provide comment
469 at any time during the Section 106 process.
- 470
- 471 6. If any Signatories, Invited Signatories, or Consulting Parties do not object to
472 USACE's finding or determination related to an Undertaking within an agreed
473 upon timeframe, USACE may proceed to the next step in the consultation
474 process as described in Stipulation VI, Project Review.
- 475
- 476 7. Timeframes are contingent upon USACE ensuring that its findings and
477 determinations are made by Qualified Staff and supported by documentation
478 as required by 36 CFR § 800.11(d) and 36 CFR § 800.11(e), and consistent
479 with USACE guidance.

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481 C. Correspondence:

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- 483 1. The Signatories, Invited Signatories, and Consulting Parties may send and
484 accept official notices, comments, requests for further information and
485 documentation, and other communications required by this PA in accordance
486 with the protocol in Appendix B.
- 487
- 488 a. If the size of an e-mail message is unusually large or an e-mail is
489 returned to a sender because its size prevents delivery, the sender will
490 contact the intended recipient(s) and determine alternative methods to
491 deliver the information (including available file sharing platforms).

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493 b. Time-sensitive information that is not sent by e-mail should be sent
494 by overnight mail, courier, hand-delivered with a follow up phone
495 call to the recipient. The timeframe for requests for review not sent by
496 e-mail will be measured by the date the delivery is signed for by the
497 Signatories, Invited Signatories, or Consulting Parties.

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499 **V. STANDARDS**

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501 A. In addition to the definitions utilized in 36 CFR § 800, this PA uses the definitions
502 presented in the subsequent paragraphs to establish standards for performing all
503 cultural resource project reviews and investigations required under the terms of
504 this PA including, but not limited to, site identification, NRHP eligibility
505 evaluations, and as appropriate, STM or MOA TM for the resolution of adverse
506 effects to historic properties:

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508 1. “Qualified Staff” - shall mean staff who meet, at a minimum, the SOI
509 Professional Qualifications Standards set forth at 48 FR 44738 (September
510 29, 1983), for History, Archaeology, Architectural History, Architecture,
511 or Historic Architecture (36 CFR Part 61, Appendix A).

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513 2. “Standards” - shall mean the Secretary of the Interior’s (SOI) Standards
514 and Guidelines for Archaeology and Historic Preservation [Federal
515 Register 48(190) 1983:44716-44737];

516

517 3. “Meeting Professional Standards” -- shall mean that all cultural resource
518 investigations shall be performed by, or under the direct (in-field)
519 supervision of appropriate professional(s) or by contractors, who are
520 “Qualified Staff”;

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522 4. “Field and Reporting Standards” – shall mean the current historic standing
523 structure and archaeological guidance from the Signatories, Invited
524 Signatories or Consulting Parties.

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526 5. “Policies and Guidelines” - shall mean guidance from any of the
527 following:

528 a) The National Park Service publication The Archaeological
529 Survey: Methods and Uses (National Park Service 1978);

530 b) ACHP’s Treatment of Archeological Properties: A
531 Handbook (1980)

- 532 c) Identification of Historic Properties: A Decision-making
533 Guide for Managers (1988, joint ACHP-NPS publication);
- 534 d) Consulting About Archeology Under Section 106 (1990);
- 535 e) ACHP’s Recommended Approach for Consultation on
536 Recovery of Significant Information from Archeological
537 Sites (1999);
- 538
- 539 f) ACHP’s Policy Statement Regarding the Treatment of
540 Burial Sites, Human Remains and Funerary Objects (2007)
541 ; and
- 542 g) Section 106 Archaeology Guidance: A reference guide to
543 assist federal agencies in making effective decisions about
544 archaeological sites(2009)

545 B. In developing SOW for identification and evaluation studies, STM or MOA
546 TM(s), or any other cultural resources activities required under the terms of this
547 PA, USACE will comply with the requirements of the Standards, Field and
548 Reporting Standards, and the Policies and Guidelines, in existence at the time this
549 work is performed.

550 C. Additionally, in developing SOW for identification and evaluation studies, STM
551 or MOA TM(s), or any other cultural resources activities required under the terms
552 of this PA, and where geographically appropriate, USACE will take into account
553 the following guidance:

- 554 1. Osage Nation Historic Preservation Office National Historic Preservation Act
555 Section 106 Consultation Procedures (2023); and
- 556 2. Osage Nation Historic Preservation Office Archaeological Survey Standards
557 (2023)

558

559 VI. PROJECT REVIEW

560

561 A. Review for Emergency Undertakings

562

- 563 1. For review of actions that are emergencies, an essential and immediate response
564 to a disaster or emergency declared by the President, a tribal government, or the
565 Governor of a State or another immediate threat to life or property USACE shall
566 follow the provisions of 36 CFR 800.12 (b).

567

568 B. Streamlined Project Review:

569 USACE shall ensure that the following project review steps are implemented. In the
570 interest of streamlining, USACE may combine some or all of these steps during
571 consultation in accordance with 36 CFR § 800.3(g).

572 1. APE: The APE for Project activities includes the construction footprint of the
573 activity and a reasonable buffer determined through consultation and concurrence
574 among the Signatories, Invited Signatories, and Consulting Parties and USACE
575 and takes into account the likelihood of direct and indirect effects to Historic
576 Properties resulting from the Undertaking. Appendix A includes an overall APE
577 map for the Undertaking.

578
579 The APE will be defined as all areas to be affected by construction activities and
580 areas of associated ground disturbance including but not limited to haul roads,
581 borrow areas, staging and stockpiling areas. The APE would generally include all
582 areas for which a Right-of-Entry is sought by USACE. Additional effects that
583 will be considered shall include visual, auditory, and off-site anticipated erosion
584 resulting from the constructed feature.

585
586 2. Identification and Evaluation: Qualified Staff shall determine, in consultation
587 with Signatories, Invited Signatories, and Consulting Parties, if the APE
588 contains historic properties, including properties of religious and cultural
589 significance to Tribes. This may include the review of newly developed or
590 previously produced documentation in coordination with Signatories, Invited
591 Signatories, and Consulting Parties All Identification and Evaluation studies
592 will comply with the Standards (Stipulation V).

593 Level of Effort:

594 a. USACE shall make a reasonable and good faith effort to identify historic
595 properties in accordance with 36 CFR § 800.4(b)(1). USACE shall consult with
596 the Signatories, Invited Signatories, and Consulting Parties to determine the level
597 of effort, methodology necessary to identify and evaluate a variety of historic
598 property types, and any reporting requirements.

599 b. For properties of religious and cultural significance to affected Tribe(s),
600 USACE shall consult with the affected Tribe(s) to determine if the APE contains
601 such properties and determine the necessary level of effort to identify and
602 evaluate or avoid any such historic properties if it differs from standard practices
603 (36 CFR § 800.4(a)(4)).

604 3. Timing:

605 i. With respect to each part of the Undertaking, USACE shall achieve
606 compliance with all relevant terms of this Agreement prior to initiating
607 physical construction.

608 ii. The results of all field investigations will be subject to a review and
609 comment period of no less than forty-five (45) days by the appropriate
610 Signatories, Invited Signatories, and Consulting Parties following the
611 receipt by the aforementioned Parties of the completed reporting document,
612 architectural survey, identification surveys, evaluation reports, and any other
613 supporting documentation.

614 iii. Coordination of consultation will be through the designated Point of Contact
615 (POC).

616 3. Determinations of Eligibility: USACE shall make determinations of National
617 Register eligibility based on identification and evaluation efforts, and consult with
618 Signatories, Invited Signatories, and Consulting Parties regarding these
619 determinations. Should the aforementioned Parties disagree with the
620 determination of eligibility, USACE shall:

621 a. Consult further with the objecting party to resolve the objection;

622 b. Treat the property as eligible for the National Register; or

623
624 c. Obtain a determination of eligibility from the Keeper of the National Register
625 in accordance with 36 CFR § 63.2(d)-(e) and 36 CFR § 800.4 (c).
626

627
628
629 4. Determination of Effects: Avoidance of adverse effects to Historic Properties is
630 the preferred treatment approach. USACE will consider redesign of undertakings
631 elements in order to avoid Historic Properties and Undertaking effects that may be
632 adverse. However, it may not be possible to redesign the Undertaking in order to
633 avoid adverse effects to Historic Properties.

634
635 USACE will apply the criteria of adverse effect, pursuant to 36 CFR §
636 800.5(a)(1), to all Historic Properties within the APE. USACE shall prepare and
637 submit the finding of effect documentation in accordance with Stipulation IV. If
638 effects to Historic Properties are determined to be adverse, see Stipulation VII
639 (Historic Properties Treatment Plan).
640

641 5. Reports:

642
643 a. USACE shall ensure that all reports and other documents resulting from the
644 actions pursuant to this Agreement will be provided in a format acceptable to
645 the Signatories, Invited Signatories, and Consulting Parties. USACE will
646 ensure that all such reports (e.g., identification surveys, survey forms,
647 evaluation reports, treatment plans, data recovery reports, and any other
648 required forms) meet or exceed the Department of the Interior's Format
649 Standards for Final Reports of Data Recovery (42 FR 5377-79) and the Field
650 and Report Standards identified in Stipulation V.A.4.
651

- 652 b. USACE shall provide all documentation for these efforts to the Signatories,
653 Invited Signatories, or Consulting Parties, as appropriate, consistent with the
654 confidentiality provisions of Stipulation III of this Agreement.
655
- 656 c. Once supporting documentation is received, Signatories, Invited Signatories,
657 and Consulting Parties will have forty-five (45) days to review supporting
658 documentation . If the Signatories, Invited Signatories, or Consulting Parties
659 intend to review and comment on documentation, and are unable to do so
660 within the forty-five (45)-day review period, a request for additional review
661 time must be made in writing to USACE and specify the anticipated
662 completion date. USACE will consider the request and work with the
663 requesting party to come to a mutually agreeable timeframe. USACE will
664 notify Parties of any mutually approved extension by e-mail.
665

666 **VII. HISTORIC PROPERTIES TREATMENT PLAN**

667
668 If it is determined that project activities will result in adverse effects, USACE, in
669 consultation with the Signatories, Invited Signatories, and Consulting Parties shall
670 develop a Historic Properties Treatment Plan (HPTP) to resolve all adverse effects
671 resulting from the Project. The HPTP shall outline the minimization and mitigation
672 measures necessary to resolve the adverse effects to Historic Properties. Proposed
673 mitigation measures may include, but are not limited to, oral history, historic markers,
674 interpretive brochures, data recovery, and publications depending on the criterion for
675 eligibility. Development of appropriate measures shall include consideration of Historic
676 Property types and provisions for avoidance or protection of Historic Properties where
677 possible. If it is determined that archaeological and/or tribal monitors are appropriate, the
678 HPTP shall include a Monitoring Plan. If adverse effects are identified, the HPTP shall
679 be in effect before construction commences.
680

681 **VIII. CURATION**

682
683 Recovered archaeological collections from a USACE-required archaeological survey,
684 evaluation, and/or mitigation remain the property of the landowner (either private, state,
685 federal, etc.). USACE, in coordination with the Signatories, Invited Signatories, and
686 Consulting Parties may, as determined through consultation, encourage private
687 landowners to transfer any recovered artifacts and related documentation to an
688 appropriate archive or public or Tribal entity. USACE, in coordination with the
689 aforementioned Parties, shall work with all tribal, state, and local agents to support steps
690 that ensure the long-term curation of these artifacts and documents through the transfer of
691 the materials to a suitable repository as agreed to by the Signatories, Invited Signatories,
692 and Consulting Parties and following applicable state or tribal guidelines which also meet
693 federal standards (36 C.F.R. 79).
694

695 All artifacts recovered from land owned, managed, or controlled by the state of
696 Tennessee must be turned over to the TDOA pursuant to Tennessee Code Annotated 11-
697 6-104 and as a stipulated requirement of the permit issued under T.C.A. 11-6-105. This

698 also includes all records generated as a result of archaeological investigations on state
699 lands and data collected under T.C.A. 11-6-105. See permit requirements for full list.
700

701 **IX. TREATMENT OF HUMAN REMAINS AND ITEMS OF RELIGIOUS AND**
702 **CULTURAL IMPORTANCE**
703

704 A. Documenting Human Remains: The recordation of human remains in a burial context
705 or as individual elements is a task that requires sensitivity and good judgment, as
706 defined through consultation. Consultation is a necessary part of documenting any
707 human remains (in a discovery situation or during the treatment of historic properties)
708 following the provisions of this stipulation. In planning how to document human
709 remains, the determination will be made in consultation and concurrence with the
710 SHPO(s), Tribe(s), and, as appropriate, other descendant communities. The USACE
711 will maintain records for the purpose of management of the human remains, with the
712 intent of satisfying the protection provisions of the federal and state laws governing
713 human remains, the records will be hardcopy and digital. When the records are
714 digital, they will not be connected to externally available electronic resources like
715 GIS servers or other and marked as restricted (per NHPA, FOIA, and, as appropriate,
716 ARPA). As part of the consultation for each Undertaking where Human Remains are
717 present, the USACE will ensure that the consultation happens to determine the course
718 of action for each situation.
719

720 B. General Human Remains Discovery Process:

- 721 1. In the event that previously unreported or unanticipated human remains, burials,
722 funerary objects, Native American sacred objects, or Native American objects of
723 cultural patrimony are encountered during field investigations, laboratory work,
724 or during construction or maintenance activities originating from federal, state, or
725 private lands, (Federal and Non-Federal Lands) USACE shall **notify local law**
726 **enforcement and/or medical examiner or county coroner**, the SHPO, and Tribal
727 representatives within 24 hours of the discovery. Concurrently, USACE will
728 implement the provisions 2 thru 6, below:
729
- 730 2. Any USACE employee or contractor(s) who knows or has reason to know that
731 they have inadvertently discovered human remains, burials, funerary objects,
732 Native American sacred objects, or Native American objects of cultural
733 patrimony must provide immediate telephone notification of the inadvertent
734 discovery to the responsible Federal construction official, with written
735 confirmation, to the Memphis District Archaeologist. The written notification
736 should contain the results, if any, of the field evaluation. The Memphis District
737 Archaeologist will begin to develop a plan of action to inform the District
738 Commander of the consultation tasks necessary to address the discovery. No
739 photographs should be taken at this time of the human remains.
740
- 741 3. All fieldwork, construction or maintenance activities, must stop immediately
742 within a one hundred (100) meter (328 ft.) radius buffer zone around the point of
743 discovery; unless there is reason to believe that the area of the discovery may

744 extend beyond the one hundred (100) meter (328 ft.) radius buffer zone in which
745 case the buffer zone will be expanded appropriately, within the APE. USACE will
746 implement measures to protect the discovery from theft and vandalism. Any
747 human remains or other items in the immediate vicinity of the discovery must not
748 be removed or otherwise disturbed. USACE will take immediate steps, if
749 necessary, to further secure and protect inadvertently discovered human remains,
750 burials, funerary objects, Native American sacred objects, or Native American
751 objects of cultural patrimony, as appropriate, including stabilization, or covering
752 the find location. Only natural materials such as muslin or canvas shall be used if
753 stabilization or covering measures come in direct contact with the inadvertently
754 discovered human remains or cultural items.
755

- 756 4. USACE will notify local law enforcement, coroner, or medical examiner, as
757 appropriate, the Tribes, TDOA, as appropriate, and the SHPO, per the POC in
758 Appendix B, by telephone to assess the nature and age of the human skeletal
759 remains within twenty-four (24) hours of the discovery of unmarked human
760 remains and accompany local law enforcement personnel during all field
761 investigations. If the appropriate local law enforcement official determines that
762 the remains are not involved in a criminal investigation, USACE will follow
763 jurisdictional guidelines as provided for based on land ownership (per Stipulation
764 IX. B.).
 - 765 a. In cases where human remains, burials, funerary objects, Native American
766 sacred objects, or Native American objects of cultural patrimony are
767 discovered during the implementation of a USACE-funded undertaking on
768 Federal Land, USACE will notify by telephone and e-mail, the SHPO, Tribes,
769 TDOA, as appropriate, and other affected parties (e.g., living descendants)
770 that may that might attach religious and cultural significance to the discovery
771 at the earliest possible time, but no later than forty-eight (48) hours and inform
772 them of the steps already taken to address the discovery.
773
774
 - 775 b. In cases where the human remains are discovered on Non-Federal Lands and
776 are determined to be Native American, USACE will notify and coordinate
777 with Tribes as required by the appropriate state law, but not later than forty-
778 eight (48)-hours from the time of their notification. As requested and to the
779 extent of its legal authority, USACE will consult with Tribes and affected
780 parties, as appropriate.
781
 - 782 c. In cases where the human remains are discovered on Non-Federal Lands and
783 determined to be other than Native American, USACE will follow the
784 appropriate state laws (Appendix C).
785
786
- 787 5. Following the outcome of any consultation (Federal Lands or Non-Federal Lands)
788 to address the discovery of human remains, USACE will coordinate with any
789 contractor(s) regarding any required scope of project modification necessary to

790 implement recommendations from the consultation and facilitate proceeding with
791 the Undertaking.
792
793

794 C. Specific Authorities and Processes for Addressing Human Remains: If human
795 remains, funerary objects, Native American sacred objects, or Native American
796 objects of cultural patrimony are encountered during project field investigations or
797 laboratory work or during construction activities, the USACE will comply with the
798 provisions based on the nature of the land ownership at the time remains or objects
799 are encountered, in accordance with Engineering Regulation 1105-2-100 (Policy &
800 Guidance), Appendix C-4.

801
802 1. Non-Federal Lands: If human remains are recovered from state or other private
803 land,

804
805 a. Arkansas: Arkansas Burial Law

806
807 i. Arkansas Act 753 of 1991, as amended – “An act to prohibit the
808 desecration of human skeletal burial remains in unregistered
809 cemeteries; to prohibit trade of commercial display of human skeletal
810 remains or associated burial furniture; and for other purposes.”

811
812 ii. Arkansas Act 1533 of 1999 – “An act to increase the penalties for
813 displaying human skeletal remains and desecrating burial grounds.”

814
815 iii. Arkansas Act 705 of 2011 – “An act to amend Arkansas law
816 concerning burial furniture associated with human skeletal burial
817 remains.”

818
819 iv. In the event of an inadvertent discovery of a human burial on Non-
820 Federal Lands, the state recommends securing the area to include a
821 cessation of work at the site, establishing an appropriate buffer,
822 providing protection as necessary, and notifying the following: local
823 law enforcement, the federal agency Point of Contact, the State
824 Archaeologist, and the Director and/or Section 106 Manager of the
825 Arkansas Historic Preservation Program. Personnel should refrain
826 from taking photographs except as necessary and directed by
827 authorized authorities. All burials and associated furniture should be
828 treated with respect and dignity. In the event the burial is determined
829 to be archaeological in nature, the Arkansas Historic Preservation
830 Program staff will work with the federal agency, State Archaeologist,
831 and other parties, consult and enact appropriate measures in
832 accordance with existing Arkansas law.
833

834 v. Excavation of an unregistered burial by qualified personnel will
835 require completion of a Burial Permit-Application for Excavation
836 Authorization and compliance with Sections 7 through 9 of Act 753.
837

838 b. Tennessee: Tennessee statutes related to the discovery and treatment of
839 human remains are collected below.
840

841
842 i. Discovery of sites, artifacts, or human remains notice to division,
843 contractors and authorities: TCA 11-6-107d;
844

845 ii. Desecration of Venerated Objects and Proper Treatment of Corpses:
846 TCA 39-17-(311-312);
847

848 iii. Termination of Use of Land as Cemetery: TCA 46-4;
849

850 iv. Excavation of Areas Containing Native American Indian Human
851 Remains – On Site Representatives – Notice of Intent to Remove
852 Remains: TCA 11-6-116
853

854 v. For unanticipated discoveries on private, county, or state land in
855 Tennessee, USACE will consult with the SHPO, TDOA, Tribe(s),
856 landowner, and descendants as appropriate to determine the necessary
857 course of action. The SHPO and TDOA prefer that human remains be
858 left in situ whenever possible.
859

860
861 D. If the human remains recovered are determined to be Native American, USACE, will
862 explore ways to avoid moving human remains if it is determined necessary. It is the
863 preference Tribes that burials are left in place and project activities are adapted for
864 avoidance. Should, in consultation and with concurrence from Tribes, a determination
865 is made that removal is necessary, USACE will identify and secure a mutually
866 agreeable reburial location in which to reinter the human remains removed from the
867 project area and follow the appropriate state removal/relocation burial laws Other
868 arrangements may be defined at the time it is determined that Native American
869 human remains have been recovered, but will include at a minimum:
870

871 a. In person consultation regarding the human remains and any objects;
872

873 b. An opportunity to visit the location and be provided an on-site orientation of
874 the location where the human remains were discovered prior to any further
875 disturbance or excavation in the location;
876

877 c. The identification of a reburial location as close to the disinterment location as
878 feasible;
879

- 880 d. A commitment on the part of USACE to facilitate the reburial by an affiliated
881 Tribe and to protect the human remains and associated grave goods, at no cost
882 to the Tribes, or the SHPO.
883
- 884 e. Acknowledgment of the establishment of the cemetery in the administrative
885 record and in the real estate records as determined best at time of reburial.
886
- 887 E. If the remains are determined NOT to be Native American in origin, USACE will
888 follow the principals outlined in the 2007 ACHP “Policy Statement Regarding
889 Treatment of Burial Sites, Human Remains and Funerary Objects” to respectfully
890 treat the remains and determine proper disposition, disinterment, re-interment, and
891 memorialization, as well as any USACE real estate guidance at the time of the
892 discovery, and any appropriate state laws.
893

894 **X. PROVISIONS FOR POST-REVIEW DISCOVERIES (NON-HUMAN REMAINS)**
895

- 896 A. USACE is responsible for complying with 36 C.F.R. § 800.13(a) in the event of
897 inadvertent discoveries of Historic Properties during implementation of the Undertaking.
898 Discoveries of previously unidentified Historic Properties or unanticipated adverse
899 effects to known Historic Properties are not anticipated, however if there is an inadvertent
900 discovery or unanticipated effect, USACE will ensure that the following stipulations are
901 met. These provisions will be included in all construction, operations, and maintenance
902 plans and project managers will brief field personnel.
903
- 904 B. If previously unreported properties that are significant to Tribes or that may be eligible
905 for nomination to the NRHP, and/or, if unanticipated effects on historic properties are
906 found during the construction phase, USACE will implement the provisions outlined
907 below that are intended to ensure that the Undertaking is in compliance with all
908 applicable federal and state laws and regulations, including Section 106 of the NHPA:
909
- 910 C. If there is no reasonable expectation that the property contains human remains, funerary
911 objects, Native American sacred objects, or Native American objects of cultural
912 patrimony, all work within a fifty (50) meter (164 ft.) radius buffer zone must stop
913 immediately. USACE will notify Tribes and the SHPO, as appropriate, as well as any
914 other affected party, of the discovery, and implement interim measures to protect the
915 discovery from theft and vandalism. Construction may continue outside the fifty (50)
916 meter (164 ft.) radius buffer zone. Within seventy-two (72) hours of receipt of
917 notification of the discovery, USACE, as appropriate, will:
918
- 919 1. Inspect the work site to determine the extent of the discovery (Refer to Standards A)
920 and ensure that work activities have halted within the fifty (50) meter (164 ft.) radius
921 buffer zone;
 - 922
 - 923 2. Clearly mark the area of the discovery;
 - 924

- 925 3. Implement additional measures, as appropriate, to protect the discovery from theft
926 and vandalism; and
927
- 928 4. Provide an initial assessment of the site's condition and eligibility to the Tribes and
929 SHPO of jurisdiction; and
930
- 931 5. Notify other Invited Signatories, if applicable, of the discovery.
932
- 933 D. If USACE, in consultation with the Tribes, SHPO, and other Invited Signatories, as
934 appropriate, determines the site is either isolated, does not retain integrity sufficient for
935 listing on the NRHP, or will not be further disturbed by construction activities,
936 construction may resume within the fifty (50) meter (164 ft.) radius buffer zone.
937
- 938 E. If USACE determines that the cultural resource either is, or may be, eligible for inclusion
939 on the NRHP, USACE will consult with the Tribes, SHPO, and other Invited
940 Signatories, as appropriate, regarding appropriate measures for a treatment plan
941 pursuant to 36 C.F.R. § 800.6(a). SHPO and Tribes will have fourteen(14)-days to
942 provide their objections or concurrence on the proposed actions. These measures may
943 include:
944
- 945 1. Formal archaeological evaluation of the resource;
946
- 947 2. Visits to the site by SHPO and/or Consulting Tribes;
948
- 949 3. Exploration of potential alternatives to avoid the resource;
950
- 951 4. Preparation and implementation of a mitigation plan by USACE in consultation
952 and concurrence with the SHPO, Consulting Tribes, and other Consulting Parties,
953 as appropriate.
954
- 955 F. The notified Invited Signatories will have fourteen (14)-days following receipt of the
956 notification to provide comment regarding USACE's determination of the NRHP
957 eligibility of the discovery.
958
- 959 G. A report of findings describing the background history leading to and immediately
960 following the reporting and resolution of an inadvertent discovery will be prepared by
961 USACE within thirty (30)-days of the resolution of each inadvertent discovery.
962
- 963 H. USACE will communicate the procedures to be observed with its contractors and
964 personnel.
965
- 966 I. USACE will provide Notice to Proceed to the contractor to work in the area. Notices to
967 Proceed may be issued by USACE for individual construction segments, defined by
968 USACE in its construction specifications, after the identification and evaluation of
969 historic properties has been completed.
970

971 **XI. PUBLIC CONSULTATION AND PUBLIC NOTICE**

- 972
- 973 A. USACE recognizes that the views of the public are essential to informed decision
- 974 making throughout the Section 106 consultation process. USACE shall notify the
- 975 public of proposed Undertakings in a manner that reflects the nature, complexity,
- 976 significance of historic properties likely affected by the Undertaking, the likely public
- 977 interest given USACE’s specific involvement, and any private individuals and
- 978 organizations.
- 979
- 980 B. USACE may consult with the Tribes and SHPO and other Invited Signatories, to
- 981 determine if there are individuals or organizations with a demonstrated interest in
- 982 historic properties that should be included as a Consulting Party or Invited Signatory
- 983 for the Undertaking in accordance with 36 CFR § 800.2(c)(5). If such parties are
- 984 identified or identify themselves to USACE, USACE shall provide them with
- 985 information regarding the Undertaking and its effects on historic properties,
- 986 consistent with the confidentiality provisions of 36 CFR § 800.11(c).
- 987
- 988 C. In accordance with the public outreach strategy developed for an Undertaking,
- 989 USACE, in consultation with the Tribes and SHPO, shall identify the appropriate
- 990 stages for seeking public input during the Section 106 consultation process. USACE
- 991 shall consider all views provided by the public regarding an Undertaking.
- 992
- 993 D. USACE shall also provide public notices and the opportunity for public comment or
- 994 participation in an Undertaking through the public participation process of the
- 995 National Environmental Policy Act (NEPA) and its implementing regulations set out
- 996 at 40 CFR Parts 1500-1508, and/or Executive Orders 11988 and 11990 relating to
- 997 floodplains and wetlands, and if applicable, Executive Order 12898, Environmental
- 998 Justice, provided such notices specifically reference Section 106 as a basis for public
- 999 involvement and provide the notices on a webpage established to address these future
- 1000 projects.
- 1001

1002 **XII. CONFIDENTIALITY**

1003

1004 Confidentiality regarding the nature and location of the archaeological sites and any other

1005 cultural resources discussed in this PA shall be limited to appropriate USACE personnel,

1006 USACE contractors, Tribes, SHPO, and those parties involved in planning, reviewing,

1007 and implementing this PA in accordance with Section 304 of the NHPA (54 U.S.C. §

1008 307103) and any appropriate state laws.

1009

1010

1011 **XIII. DISPUTE RESOLUTION**

1012

- 1013 A. Should any Signatory, Invited Signatory, or Concurring Party to this PA object at any
- 1014 time to any actions proposed or the manner in which the terms of this PA are
- 1015 implemented, the USACE shall consult with such party to resolve the objection. If
- 1016 USACE determines that such objection cannot be resolved, the USACE will forward

1017 all documentation relevant to the dispute, including the USACE’s proposed
1018 resolution, to the ACHP. The ACHP shall provide USACE with its advice on the
1019 resolution of the objection within thirty (30) days of receiving adequate
1020 documentation. Prior to reaching a final decision on the dispute, the USACE shall
1021 prepare a written response that takes into account any timely advice or comments
1022 regarding the dispute from the ACHP, Signatories, and Invited Signatories, and
1023 provide them with a copy of this written response. The USACE will then proceed
1024 according to its final decision.
1025

1026 B. If the ACHP does not provide its advice regarding the dispute within the thirty (30)
1027 day time period, the USACE may make a final decision on the dispute and proceed
1028 accordingly. Prior to reaching such a final decision, USACE shall prepare a written
1029 response that takes into account any timely comments regarding the dispute from the
1030 Signatories and Invited Signatories to the PA, and provide them and the ACHP with a
1031 copy of such written response.
1032

1033 C. The USACE’s responsibility to carry out all other actions subject to the terms of this
1034 PA that are not the subject of the dispute remain unchanged.
1035

1036 **XIV. SEVERABILITY AND TERMINATION**

1037

1038 A. In the event any provision of this PA is deemed by a federal court to be contrary to, or
1039 in violation of, any applicable existing law or regulation of the United States of
1040 America, only the conflicting provision(s) shall be deemed null and void, and the
1041 remaining provisions of the PA shall remain in effect.
1042

1043 B. USACE may terminate this PA by providing thirty (30) days written notice to the
1044 other Signatories and Invited Signatories, provided that the Signatories consult during
1045 this period to seek amendments or other actions that would prevent termination. If
1046 this PA is terminated, USACE shall comply with Section 106 through other
1047 applicable means pursuant to 36 CFR Part 800. Upon such determination, USACE
1048 shall provide all other Signatories and Invited Signatories with written notice of the
1049 termination of this PA and the current status of any on-going projects.
1050

1051 C. A Tribe may notify the other Signatories and Invited Signatories that it is fully
1052 withdrawing from participation in the PA. Following such a withdrawal, USACE
1053 shall review Undertakings that may affect historic properties of religious and cultural
1054 significance to the Tribe , and Undertakings that occur on the Tribal Lands of the
1055 relevant Tribe, in accordance with 36 CFR §§ 800.3 through 800.7, 36 CFR §§
1056 800.8(c), or an applicable alternative under 36 CFR §§ 800.14. Withdrawal from this
1057 PA by a Consulting Tribe does not otherwise terminate the PA. At any time that this
1058 PA remains in effect, a Tribe that has withdrawn from the PA may notify USACE and
1059 SHPO in writing that it has elected to participate again rescinded its notice
1060 withdrawing from participation in the PA.
1061

1062 D. The Tribe or SHPO may withdraw from this PA after providing USACE written
1063 notice ninety (90) calendar days prior to its withdrawal. USACE shall consult with
1064 the withdrawing party to identify any mutually acceptable measures that would avoid
1065 the party's withdrawal. In the case of a Tribe or SHPO withdrawal, the PA would no
1066 longer apply and USACE would comply with 36 CFR Part 800 for all undertakings
1067 previously subject to this PA. In the case of a Tribe withdrawing from the PA,
1068 USACE would consult with that Tribe pursuant to 36 CFR Part 800 for all
1069 undertakings previously subject to this PA that would have the potential to affect
1070 historic properties of religious and cultural significance to the Tribe. This PA would
1071 remain in effect for all other parties.
1072

1073 **XV. AMENDMENTS**

1074
1075 A. Body of the Programmatic Agreement:

1076
1077 May be amended when such an amendment is agreed to in writing by all Signatories
1078 and Invited Signatories. The amendment will be effective on the date a copy signed
1079 by all of the Signatories and Invited Signatories is filed with the ACHP.
1080

1081 B. Appendices:

1082
1083 May be amended at the request of USACE or another Signatory or Invited Signatory
1084 in the following manner:

1085
1086 1. USACE, on its own behalf or on behalf of another Signatory or Invited Signatory,
1087 shall notify the Signatories of the intent to modify the current Appendix or
1088 Appendices and shall provide a draft of the updated Appendix or Appendices to
1089 all Signatory parties.
1090

1091 2. If no Signatory or Invited Signatory objects in writing within forty-five (45) days
1092 of receipt of USACE's proposed modification, USACE shall date and sign the
1093 amended Appendix and provide a copy of the amended Appendix to the other
1094 Signatories. Such an amendment shall go into effect on the date USACE transmits
1095 the amendment to the other Signatories.
1096

1097 3. Current List of Appendices:

- 1098
1099 a. Appendix A: Study APE Map
1100 b. Appendix B: Point of Contacts (POC)
1101 c. Appendix C: State Laws
1102 d. Appendix D: Acronyms
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1104 C. Any Amendments to the Body of the Agreement or the Appendices, shall be posted to
1105 the websites currently tracking the implementation of the Project.
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1107 **XVI. DURATION**

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- A. The Agreement shall expire ten (10) years from the date of the last signature. One (1) year prior to the expiration of the Agreement, the USACE shall review the Agreement in order to determine whether it should be reissued or allowed to expire. If the Agreement requires reissue, the USACE shall consult with the Invited Signatories, as well as amend the Agreement in order to ensure compliance with the most current version of the Federal regulations implementing the NHPA.
- B. The Signatories and Invited Signatories may collectively agree to extend this Agreement to cover additional calendar years, or portions thereof, through an amendment provided that the original Agreement has not expired.

XVII. ANTI-DEFICIENCY ACT

USACE’s obligations under this Agreement are subject to the availability of appropriated funds, and the stipulations of this Agreement are subject to the provisions of the Anti-Deficiency Act. USACE shall make reasonable and good faith efforts to secure the necessary funds to implement this Agreement in its entirety. If compliance with the Anti-Deficiency Act alters or impairs USACE’s ability to implement the stipulations of this Agreement, USACE shall consult in accordance with the amendment procedures found at Stipulation XIV and termination procedures found at Stipulation XIII.

XVIII. EXECUTION AND IMPLEMENTATION

- A. Nothing in this PA is intended to prevent the USACE from consulting more frequently with the Signatories, Invited Signatories, or Consulting Parties concerning any questions that may arise or on the progress of any actions falling under or executed by this PA.
- B. This PA shall be executed in counterparts, with a separate page for each Signatory, and shall become effective on the date the agreement is signed by or filed with the ACHP.
- C. USACE shall ensure that each Signatory, Invited Signatory, and Consulting Party is provided with an electronic (pdf) and physical copies of the PA including signatures. USACE shall provide electronic copies of additional executed signature pages to the Invited Signatories as they are received. USACE shall provide a complete copy of the PA with original signatures to any Signatory or Invited Signatory on request.
- D. Execution of this Signatories, Invited Signatories, and Consulting Parties and implementation of its terms evidence that USACE has taken into account the effects of this undertaking on historic properties and afforded ACHP a reasonable opportunity to comment.

SIGNATORY PAGE

PROGRAMMATIC AGREEMENT

AMONG

**THE U.S. ARMY CORPS OF ENGINEERS, MEMPHIS DISTRICT,
THE ARKANSAS STATE HISTORIC PRESERVATION OFFICER,
TENNESSEE STATE HISTORIC PRESERVATION OFFICER,
AND THE (TRIBES TO BE LISTED HERE)**

**REGARDING THE MANAGEMENT MEASURES TO BE IMPLEMENTED
AS A RESULT OF THE HATCHIE-LOOSAHATCHIE MISSISSIPPI
RIVER ECOSYSTEM RESTORATION STUDY: CRITTENDEN AND
MISSISSIPPI COUNTIES, ARKANSAS AND LAUDERDALE, TIPTON,
AND SHELBY COUNTIES, TENNESSEE**

UNITED STATES ARMY CORPS OF ENGINEERS, MEMPHIS DISTRICT (CEMVM)

Date: _____

Brian D. Sawser
Colonel, Corps of Engineers
District Commander

1197
1198 **SIGNATORY PAGE**
1199

1200 **PROGRAMMATIC AGREEMENT**
1201 **AMONG**

1202 **THE U.S. ARMY CORPS OF ENGINEERS, MEMPHIS DISTRICT,**
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1208 **RIVER ECOSYSTEM RESTORATION STUDY: CRITTENDEN AND**
1209 **MISSISSIPPI COUNTIES, ARKANSAS AND TIPTON SHELBY, AND**
1210 **LAUDERDALECOUNTIES, TENNESSEE**
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1214 **The Arkansas State Historic Preservation Officer**
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1224 Scott Kaufman
1225 Arkansas State Historic Preservation Officer
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1254 **LAUDERDALE COUNTIES, TENNESSEE**

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1258 The Tennessee State Historic Preservation Officer

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1266 Date: _____

1267 E. Patrick McIntyre, Jr.
1268 Tennessee State Historic Preservation Officer

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1287 **SIGNATORY PAGE**
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1289 **PROGRAMMATIC AGREEMENT**
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1310 Phillip R. Hodge
1311 State Archaeologist and Director
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INVITED SIGNATORY PAGE

**PROGRAMMATIC AGREEMENT
AMONG**

**THE U.S. ARMY CORPS OF ENGINEERS, MEMPHIS DISTRICT,
THE ARKANSAS STATE HISTORIC PRESERVATION OFFICER,
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CONCURRING PARTY SIGNATORY PAGE

**PROGRAMMATIC AGREEMENT
AMONG**

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Appendix A: Study APE Maps

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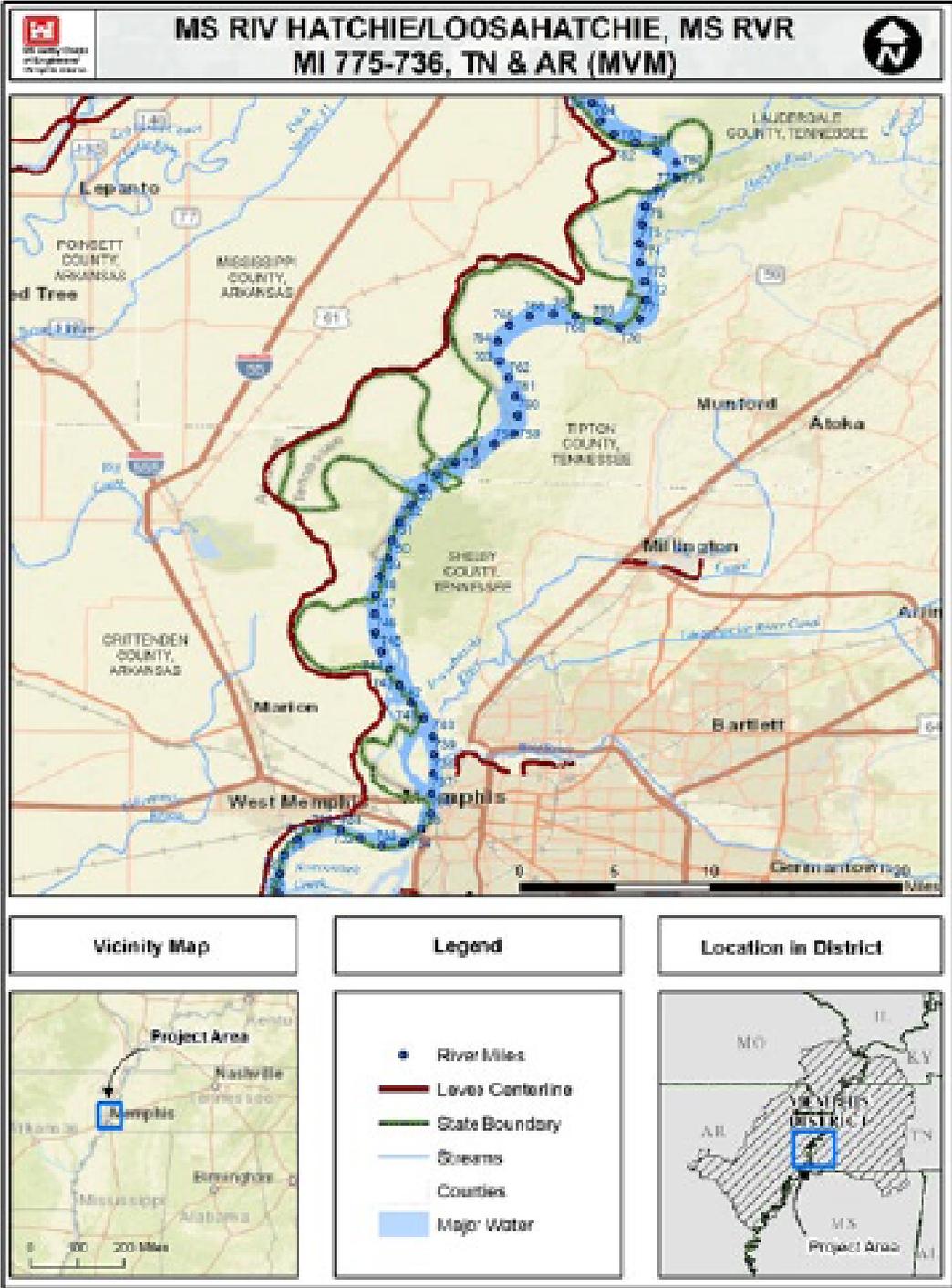


Figure 1. Overview of Proposed Ecosystem Restoration Study Area.

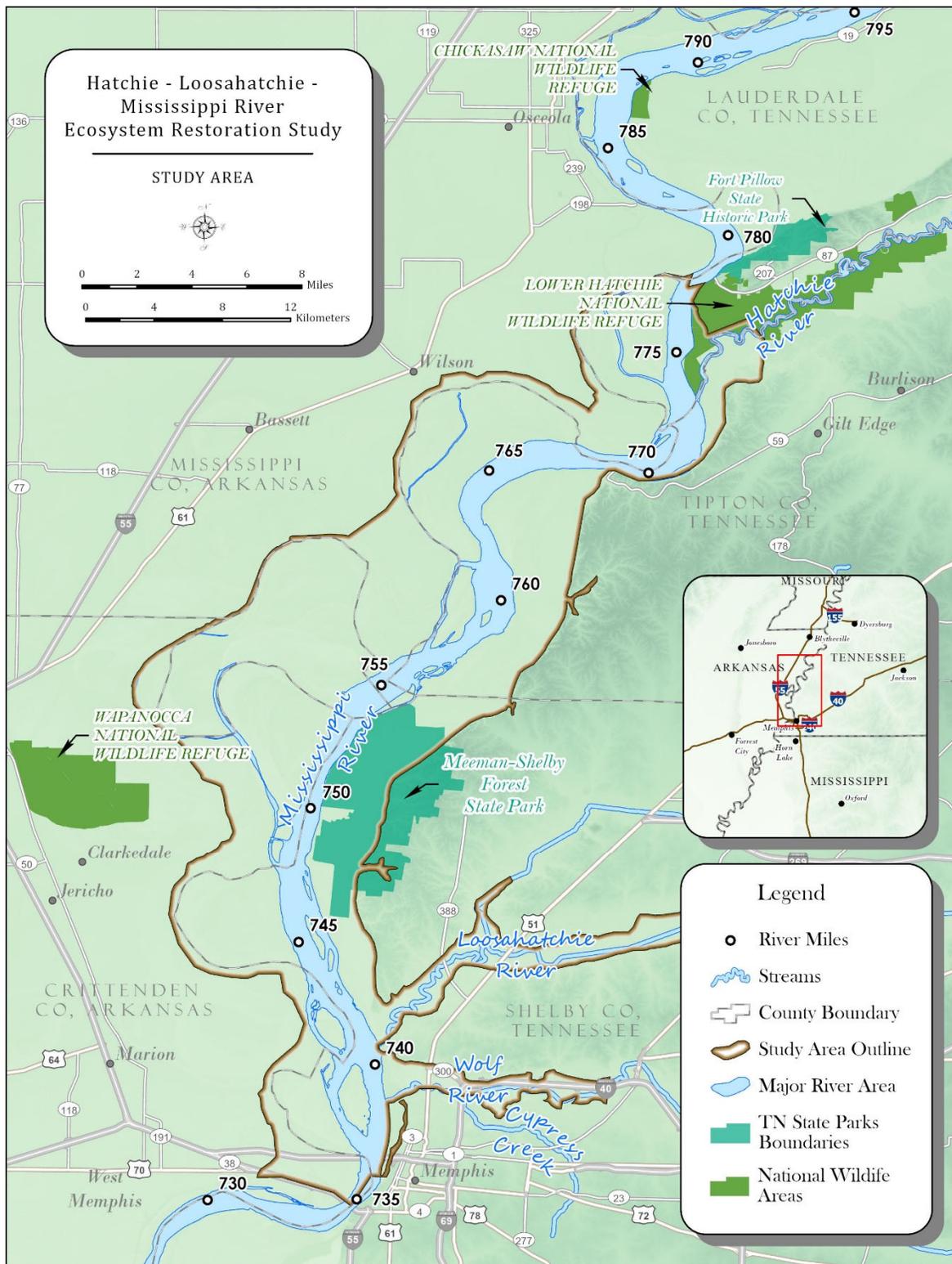


Figure 2. Proposed Ecosystem Restoration Study Area.

Appendix B: Points of Contacts (POC)

CONTACT INFORMATION FOR SIGNATORIES AND FEDERALLY RECOGNIZED TRIBES

Signatories shall provide USACE with updated contact information as it becomes available, and revisions to this Appendix B will be made without an amendment to this Agreement. This Appendix B will be updated annually by USACE and included in the Annual Report.

The Appendix captures that some consultations will be all email (except reports), while others will be all paper. This is captured so that the district archaeologist/Tribal Liaison has the right tool to communicate.

Federally Recognized Tribes

<p align="center">Cherokee Nation</p> <p><u>Primary Contact:</u> Elizabeth Toombs, THPO P.O. Box 948 Tahlequah, OK 74465-0948 elizabeth-toombs@cherokee.org</p> <p>Method of contact for project notification and documentation: email to primary contact email.</p> <p>Method of contact for other communication: email, phone call.</p>	<p align="center">Cherokee Nation</p> <p><u>Secondary Contact:</u> Chuck Hoskin Jr. Principal Chief P.O. Box 948 Tahlequah, OK 74465-0948 Chuck-hoskin@cherokee.org</p>
<p align="center">Chickasaw Nation</p> <p><u>Primary Contact:</u> Karen Brunso, THPO Division of Historic Preservation P.O. Box 1548 Ada, Oklahoma 74821 (580) 272-1106 Karen.Brunso@chickasaw.net</p> <p>HPO@chickasaw.net</p> <p>Method of contact for project notification and documentation: email to HPO@chickasaw.net</p> <p>Method of contact for other communication: email, phone call.</p>	<p align="center">Chickasaw Nation</p> <p><u>Secondary Contact:</u> Bill Anoatubby, Governor P.O. Box 1548 Ada, Oklahoma 74821 (580) 436-2603</p>

<p style="text-align: center;">Osage Nation</p> <p><u>Primary:</u> Dr. Andrea Hunter Tribal Historic Preservation Officer/Director Osage Nation 627 Grandview Avenue Pawhuska, OK 74056 (918) 287-5671 ahunter@osagenation-nsn.gov</p> <p>Method of contact for project notification and documentation: Email to s106@osagenation-nsn.gov.</p> <p>Method of contact for other communication: Email, phone call.</p>	<p style="text-align: center;">Osage Nation</p> <p><u>Secondary:</u> Caitlin Nichols Archaeologist Osage Nation 627 Grandview Avenue Pawhuska, OK 74056 (918) 287-5427 caitlin.nichols@osagenation-nsn.gov</p> <p><u>Secondary:</u> Sarah O'Donnell NAGPRA Coordinator Osage Nation 627 Grandview Avenue Pawhuska, OK 74056 (918) 287-5522 sodonnell@osagenation-nsn.gov</p> <p>Method of contact for project notification and documentation: Email to s106@osagenation-nsn.gov.</p> <p>Method of contact for other communication: Email, phone call.</p>
<p style="text-align: center;">Quapaw Nation</p> <p><u>Primary Contact:</u> Everett Bandy, Historic Preservation Officer Quapaw Nation Historic Preservation Program P.O. Box 765 Quapaw, OK 74363-0765 (918) 238-3100 ebandy@quapawnation.com</p> <p>Routine: Section email. Section106@quapawnation.com specific responses directed to THPO.</p> <p>Method of contact for project notification and documentation: hardy copy letter directly to</p>	<p style="text-align: center;">Quapaw Nation</p> <p><u>Secondary Contact:</u> Joseph Byrd Quapaw Nation Chairman P.O. Box 765 Quapaw, OK 74363-0765 joseph.byrd@quapawnation.com</p> <p>Follow guidance in letter. CC to Chairman.</p>

<p>THPO (post-pandemic) and email to Primary contact. In the meantime, continue email.</p>	
<p>Method of contact for other communication: email or phone call.</p>	

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SHPOs

<p align="center">Arkansas Historic Preservation Program</p> <p><u>Primary Contact:</u> Jessica Cogburn 1100 North Street Little Rock, AR 72201 (501) 324-9784</p> <p>Method of contact for project notification and documentation: email at: section106@arkansas.gov</p> <p>Archaeological Site Forms: Submit to Registrar’s Office Arkansas Archaeological Survey 2475 N Hatch Ave. Fayetteville, AR 72704 (479) 575-6552</p> <p>Method of contact for other communication: email and phone call.</p>	<p align="center">Arkansas Historic Preservation Program</p> <p><u>Secondary Contact:</u> Scott Kaufman State Historic Preservation Officer 1100 North Street Little Rock, AR 72201 (501) 324-9785 scott.kaufman@arkansas.gov</p>
<p align="center">Tennessee SHPO</p> <p><u>Primary:</u> Casey Lee Historic Preservation Specialist, Section 106 Tennessee Historical Commission State Historic Preservation Office 2941 Lebanon Pike Nashville, TN 37214 (615) 253-3163 Email: Casey.Lee@tn.gov</p> <p>Method of contact for project notification and documentation: email and hard copy.</p> <p>Archaeological Site Forms: Submit to TN Division of Archaeology via email.</p> <p>Reports: Hard Copy and PDF Shapefile of the Area of Investigation</p> <p>Method of contact for other communication: Email, phone call.</p>	<p align="center">Tennessee SHPO</p> <p><u>Secondary:</u> Jennifer Barnett Archaeologist Manager Tennessee Division of Archaeology 1216 Foster Avenue Cole Building #3 Nashville, TN 37243 (615) 687-4780 Email: Jennifer.Barnett@tn.gov</p> <p>Method of contact for project notification and documentation: email and hard copy.</p> <p>Archaeological Site Forms: Submit to TN Division of Archaeology via email.</p> <p>Reports: Hard copy and PDF on CD, Shapefile of the Area of Investigation</p> <p>Method of contact for other communication: Email, phone call.</p>

Tennessee Division of Archaeology

<p><u>Primary Contact:</u> Daniel Brock State Programs Archaeologist Tennessee Division of Archaeology Cole Building #3 1216 Foster Avenue Nashville, TN 37243 (615) 687-4778 Danel.brock@tn.gov</p> <p>Method of contact for all communication: email and phone call.</p>	<p><u>Secondary Contact:</u> Phillip Hodge State Archaeologist</p> <p>Tennessee Division of Archaeology Cole Building #3 1216 Foster Avenue Nashville, TN 37243 (615) 626-2025 phil.hodge@tn.gov</p> <p>Method of contact for all communication: email and phone call.</p>
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Appendix C: State Laws

TN Code § 11-6-107 Discovery of Sites, Artifacts or Human Remains – Notice to Division, Contractors, and Authorities

- a. All state agencies, departments, institutions and commissions, as well as all counties and municipalities, shall cooperate fully with the division of archaeology.
- b. Where any sites or artifacts may be found or discovered on property owned or controlled by the state or by any county or municipality, the agency, bureau, commission, governmental subdivision, or county or municipality having control over or owning such property and which is preparing to initiate construction or other earth-moving activities upon such property, or is currently performing work of this type upon such property, the public body having custody of the land shall comply with subsection (d) and is directed to urge supervisors of such works to notify the division of the discovery and location of such sites or artifacts immediately, and to cooperate to the fullest extent practicable with the division, either to prevent the destruction of such sites and artifacts or to allow the division to obtain maximum information and artifacts before these locations are disturbed or destroyed.
- c. It is the responsibility of the state agencies to have this chapter made known to contractors who are to perform work upon any such public lands, and contractors shall be required to comply with this chapter.
- d.
 1. Any person who encounters or accidentally disturbs or disinters human remains on either publicly or privately owned land, except during excavations authorized under this chapter, shall:
 - A. Immediately cease disturbing the ground in the area of the human remains;
and
 - B. Notify either the coroner or the medical examiner, and a local law enforcement agency.
 2. Either the coroner or the medical examiner shall, within five (5) working days, determine whether the site merits further investigation within the scope of such official's duties.
 3. If the coroner or the medical examiner, and law enforcement personnel, have no forensic or criminal concerns with regard to the site, then the coroner or the medical examiner shall notify the department.

4. Human remains and burial objects reported to the division shall be treated as provided in §§ 11-6-104 and 11-6-119, and/or title 46, chapter 4, if applicable.
 5. A person who violates subdivision (d)(1)(A) or (d)(1)(B) commits a Class A misdemeanor;
 6. This section does not apply to:
 - A. Normal farming activity, including, but not limited to, plowing, disking, harvesting and grazing; provided, that if human remains are discovered or disturbed, a report should be made to the officials specified in subdivision (d)(1)(B); or
 - B. Surface collecting.
 7. Nothing in this chapter shall be construed to grant a right of access or occupation to the public without the landowner's permission.
- d. All archaeological site clearance work carried out pursuant to this section shall, in as far as practicable, be scheduled so as not to interfere with construction activities, and such clearance work shall only be conducted at sites which have the potential to yield information significant to the scientific study of Tennessee's aboriginal and historic past.

TN Code § 11-6-116 Excavation of Areas Containing Native American Indian Human Remains – On Site Representatives – Notice of Intent to Remove Remains

(a) When a burial ground or other area containing human remains of Native American Indians is excavated, representatives of Native American Indians shall have a right to be present on the site at all times excavation or treatment of such remains is taking place.

(b) The department shall promulgate regulations governing application procedures for and the number of representatives to be present on sites.

(c) Any person engaged in work involving the removal of Native American Indian human remains must notify the state archaeologist in writing at least ten (10) days prior to the time a petition is filed under title 46, chapter 4. Within two (2) business days of receiving such notice, the state archaeologist shall forward such notice to the Native American members of the archaeological advisory council and the chair of the Tennessee commission of Indian affairs.

TN Code § 46-4 Termination of Use of Land as Cemetery

46-4-101. Grounds affected — Facts that justify termination of use.

This chapter, which is enacted for the public welfare in the exercise of the police powers of the state of Tennessee, applies to any burial ground in this state, including any land owned or controlled by cemetery companies, that the court to which jurisdiction is given by this chapter finds, for any of the reasons stated in this chapter, is unsuitable for its use as such and as a resting place for the dead whose remains are buried in the burial ground, or the further use of which for those purposes the court finds, for any of such reasons, is inconsistent with due and proper reverence or respect for the memory of the dead or otherwise unsuitable for those purposes, the reasons being:

- (1) The burial ground is abandoned; or
- (2) The burial ground is in a neglected or abandoned condition; or
- (3) The existence of any conditions or activities about or near the burial ground that the court finds render the further use of the burial ground for the purposes mentioned in this section that are inconsistent with due and proper reverence or respect for the memory of the dead, or for any other reason unsuitable for those purposes.

46-4-102. “Interested persons” defined.

As used in this chapter, unless the context otherwise requires, “interested persons” means any and all persons who have any right or easement or other right in, or incident or appurtenant to, a burial ground as such, including the surviving spouse and children, or if no surviving spouse or children, the nearest relative or relatives by consanguinity of any one (1) or more deceased persons whose remains are buried in any burial ground.

46-4-103. Suits for termination of use of land, removal and reinterment and for disposal of land — Municipal authority extended.

(a) Any interested person or persons, and/or any county in this state in which a burial ground is situated, and/or any municipality in this state if the burial ground is situated in the municipality or within one (1) mile of the lawful corporate limits of the municipality and not beyond the limits of the county in which any part of the municipality is situated and not within the lawful corporate limits of any other municipality in Tennessee, may bring or join in a suit in the chancery court of the county in which the burial ground is situated, for the following purpose or purposes:

- (1) To have the remains of all deceased persons buried in the burial ground removed from the burial ground and reburied in a suitable repository to be obtained for that purpose before their removal from the burial ground;
- (2) To terminate the use of, and all rights and easements to use, the ground as a burial ground, and all rights and easements incident or appurtenant to the ground as a burial ground; and

- (3) Thereupon, to partition or sell for partition the ground if the court finds that it belongs to two (2) or more persons and if any one (1) or more of the owners applies for partition. The authority of all municipalities in this state is extended, for the sole purpose of bringing or joining in the suit by the municipality, but for no other purpose, to a distance of one (1) mile from the lawful corporate limits of the municipality but not beyond the limits of the county in which any part of the municipality is situated and not so as to come within the lawful corporate limits of any other municipality of this state.

(b) In the suit, all interested persons who are not complainants shall be made defendants, and the owner or owners of the land or of any right of reversion or other right or interest in the land, if the owner or owners shall be or include other than the interested persons, shall also be made defendants. Interested persons who are minors or otherwise incompetent or under disability may become complainants by guardian or next friend. All known defendants who are minors or otherwise incompetent or under disability shall be represented by guardian ad litem. Nonresident and unknown defendants may be proceeded against by order of publication, and publication, in the manner provided by law.

(c)

- (1) At least thirty (30) days prior to any hearing on a suit initiated pursuant to this section, the complainant shall file notice with the Tennessee historical commission. The notice shall include the approximate age of the burial ground and either:
 - (A) The name of the complainant, the location of the burial ground, and, if discernable, the name of any person interred at the burial ground; or
 - (B) An exact copy of the complaint filed in the chancery court.
- (2) The Tennessee historical commission shall post filed notices on its website. Notices shall be posted in chronological order by county and updated at least monthly. The Tennessee historical commission may archive notices annually.
- (3) Notwithstanding subdivisions (c)(1) and (2), any notice concerning the removal of Native American Indian human remains shall be filed according to title 11, chapter 6, and must not be posted on the website of the commission.

46-4-104. Granting of relief — Provisions for reinterment.

Such removal and reinterment, and other relief described in § 46-4-103, including partition or sale for partition if prayed for and if the court finds the conditions for partition exist as provided in § 46-4-103, shall be granted, authorized, decreed and ordered by the court upon the court finding, upon the hearing of the cause upon the entire record, including the pleadings and proof, that any one (1) or more of the reasons specified in § 46-4-101 exist, and that, due to the same, the burial ground is unsuitable for use as a burial ground and as a resting place for the dead whose remains are buried therein, or that the further use thereof for those purposes is inconsistent with due and proper reverence or respect for the memory of the dead, or for any other reason unsuitable for those purposes; but the removal and reinterment and such other relief shall be

granted, authorized, ordered and decreed only upon it being shown to the satisfaction of the court that definite arrangements have been made, or before the removal will be made, for reinterment of all of the remains in a place found by the court to be suitable for reinterment; that for that purpose there have been obtained, or before the removal there will be obtained, either the fee simple title to the place of reinterment or adequate permanent right and easement to use the place of reinterment for reinterment, and adequate permanent right and easement of access to the place of reinterment for visitation; that the removal and reinterment of all the remains will be done with due care and decency, and that suitable memorial or memorials will be erected at the place of reinterment.

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Appendix D: Acronyms

ACHP	Advisory Council on Historic Preservation
APE	Area of Potential Effects
ARPA	Archaeological Resources Protection Act
AR SHPO	Arkansas State Historic Preservation Officer
BCOES	Buildability, Constructability, Operability, Environmental, and Sustainability Process
HPTP	Historic Properties Treatment Plan
LMR	Lower Mississippi River
LMRRA	Lower Mississippi River Resource Assessment
LMRCC	Lower Mississippi River Conservation Committee
MOA TM	Memorandum of Agreement Treatment Measure
NEPA	National Environmental Policy Act of 1969
NER	National Ecosystem Restoration
NHPA	National Historic Preservation Act
PA	Programmatic Agreement
POC	Point of Contact
SHPO	State Historic Preservation Officer
SOW	Scope of Work
STM	Standard Treatment Measure
TDOA	Tennessee Division of Archaeology
THPO	Tribal Historic Preservation Officer
TN SHPO	Tennessee State Historic Preservation Officer
USACE	United States of America Corps of Engineers