

MEMORANDUM OF AGREEMENT  
BETWEEN  
THE U.S. ARMY CORPS OF ENGINEERS,  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION  
AND THE FLORIDA STATE HISTORIC PRESERVATION OFFICE  
FOR THE MITIGATION OF CERTAIN ADVERSE EFFECTS OF THE  
UPPER ST. JOHNS RIVER BASIN PROJECT,  
THREE FORKS MARSH CONSERVATION AREA,  
BREVARD COUNTY, FLORIDA

WHEREAS, Section 106 of the National Historic Preservation Act (NHPA) (54 U.S.C. § 306108) and the Advisory Council on Historic Preservation's (ACHP) regulations implementing Section 106 (36 CFR, Part 800) require Federal agencies to "take into account" the effects of their undertakings on historic properties;

WHEREAS, the U.S. Army Corps of Engineers, Jacksonville District (hereinafter "the Corps"), proposes to construct the Upper St. Johns River Basin (USJRB), Three Forks Marsh Conservation Area (TFMCA) Project (hereinafter the "Project"), and has determined that construction and operation of the Project constitutes an "undertaking" pursuant to Section 106 of the NHPA;

WHEREAS, the Corps, in consultation with the Florida State Historic Preservation Officer (SHPO), has conducted archeological surveys of the Area of Potential Effect (APE) of the Project;

WHEREAS, the Corps has identified eight significant archeological resources (Sites 8BR244, 8BR245, 8BR2563, 8BR2564, 8BR2565, 8BR2566, 8BR2602, and 8BR2603) in the TFMCA APE (see Attachment A for site locations);

WHEREAS, the Corps has determined that construction and operation of the Project will adversely affect these eight sites and that these adverse effects cannot be avoided;

WHEREAS, the Corps notified the Advisory Council on Historic Preservation (ACHP) of the potential for this undertaking to adversely affect historic properties pursuant to the ACHP's regulations implementing Section 106 of the NHPA; and

WHEREAS, the ACHP accepted the invitation to participate in consultation to develop this agreement and to seek ways to avoid, minimize, or mitigate adverse effects; and

WHEREAS, the Corps has conducted Phase II archeological testing on sites 8BR244 and 8BR245, has recovered more than 44 cubic feet of material from the sites (the collection),

has analyzed only a small sample of the collection, and has curated the remainder of the collection;

WHEREAS, the Corps has conducted testing on sites 8BR2563, 8BR2564, 8BR2565, 8BR2566, 8BR2602, and 8BR2603; and

WHEREAS, the Corps has consulted with the Seminole Tribe of Florida and the Miccosukee Tribe of Indians throughout the project's development and during the development of this agreement; and

WHEREAS, the Corps, the SHPO, and the ACHP desire to enter into this Memorandum of Agreement (MOA) in order to document the terms pursuant to which the Corps will mitigate the adverse effects to these eight sites.

NOW, THEREFORE, the Corps, the FL SHPO, and ACHP agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account its effects on Sites 8BR244, 8BR245, 8BR2563, 8BR2564, 8BR2565, 8BR2566, 8BR2602, and 8BR2603.

#### STIPULATIONS

The Corps of Engineers will ensure the following measures are carried out:

1. The Corps shall conduct horizontal block excavations at Platt Mound (8BR244) that focuses on the identification and interpretation of features recorded during Phase II archaeological testing in 2005 (DHR Manuscript Number: 11626). The Corps shall ensure that all data recovery is carried out in accordance with a plan developed in consultation with the Florida State Archaeologist per the state's permit application process established by Rule 1A-32, Florida Administrative Code. The plan shall be consistent with the Secretary of the Interior's Standards and Guidelines for Archaeological Documentation. The plan shall specify, at a minimum:
  - a. The research questions to be addressed and their relationship to priorities in the SHPO's preservation plans;
  - b. Professional qualifications of those supervising or carrying out the work;
  - c. The methods to be used in fieldwork and analysis;
  - d. The proposed disposition of recovered materials and records;
  - e. Proposed methods for disseminating results of the work to the professional community and the public;

f. Proposed methods by which the Florida SHPO, Seminole and Miccosukee tribes will be kept informed of the work and afforded the opportunity to participate.

2. The following special provisions will also be utilized in the Platt Mound excavations:

a. No human remains are to be removed from the site. All bone materials identified during excavation will be examined prior to removal by a specialist for the presence of human remains. The specialist will meet standards set forth in Chapter 872, Florida Statutes. Any inadvertent discovery of human remains shall be noticed and reported to the FL State Archaeologist and tribes, pursuant to Chapter 872, Florida Statutes. If the remains are located in only a portion of the unit, the excavation may proceed in the rest of the unit upon authorization of the Florida State Archaeologist. If materials are, through the process of analysis, found to be human remains, the remains will be returned to the precise location of excavation and re-interred within two weeks of their identification.

b. All identifiable or potential human remains or unidentified bone material should be returned, in order of its removal, to its original provenience in the excavation units.

c. In accordance with Rule 1A-32, Florida Administrative Code, the Corps' contractor will obtain a permit for all work conducted at the site.

d. The excavations will analyze all materials collected utilizing ¼ inch mesh screen. If possible, a column sample will be taken on living floors that can be determined during the excavation process. In addition, up to a one (1) liter sample maybe taken from any identified feature for analysis.

e. The excavation will at a minimum investigate a total of ten (10) square meters down to sterile soils. If units are closed due to encountering human remains or other significant archaeological features, then additional units may be needed to make up the additional volume of area to be investigated.

f. Data collected from the additional testing specified in Stipulation 2.a. shall be incorporated into the final report described in Stipulation 3.

3. The Corps shall ensure that the following measures are implemented in regards to previously excavated materials:

a. A column sample from the Elder Mound (BR245) (collections) will be subjected to comprehensive, scientific analysis to better illuminate vertical and horizontal taxonomic distribution.

b. Upon acceptance of the final report described in Stipulation 3, the analyzed collection from previous excavations within TFMCA will be submitted to the Florida Bureau of Archaeological Research, or their designee, for curation and/or disposal. During previous excavations three (3) column samples were taken from three (3) units.

The samples were collected in 10 cm levels so that they corresponded with each ten (10) centimeter excavation level of the three (3) 1 x 1 meter units.

4. Following the completion of the archaeological excavations, a full report consistent with Rule 1A-46, Florida Administrative Code, reporting standards, shall be produced and submitted to the Florida State Historic Preservation Officer for 60 days for review and comment. The report will compile the data obtained in Stipulations 1 and 2 of this agreement. Within 6 months the final report, taking into account the comments of the SHPO, shall be completed.

5. In consultation with the SHPO and tribes, an educational video will be created by the Corps based on the findings detailed in the report described in Stipulation 4. The goal of the video will be to discuss the archaeological work being conducted at the Platt Mound (8BR244) and highlight the excavations significant findings as well as provide educational information on the field of archaeology. The video will also seek out the assistance of Native American tribes to ascertain the importance of the region to tribal histories and context and show the direct relationship between the past and present. The Corps shall freely distribute copies of the video to all professional archaeologists listed under the Register of Professional Archaeologists who are registered as working in the State of Florida as well as parties consulted with during the development of this MOA and project. The video will be completed within 6 months of the issuance of the final report specified under Stipulation 4.

6. This MOA shall become effective on the date that it has been signed by the Corps, the FL SHPO, and ACHP.

7. Amendments. Any signatory to this Agreement may propose to the other signatories that it be amended, whereupon the signatories will consult in accordance with 36 CFR § 800.6(c)(7) to consider such an amendment.

8. Dispute resolution. Should any signatory to this Agreement object to any action carried out or proposed by the Corps with respect to the implementation of this Agreement, the Corps shall consult with that signatory party to resolve the objection. If the Corps after initiating such consultation determines that the objection cannot be resolved the Corps shall forward documentation relevant to the objection to the ACHP, including the Corps' proposed response to the objection. Within forty-five (45) days after receipt of all pertinent documentation, the ACHP shall exercise one of the following options:

- a. Advise the Corps that the ACHP concurs in the Corps' proposed final decision, whereupon the Corps shall respond accordingly; or
- b. Provide the Corps with recommendations, which the Corps shall take into account in reaching a final decision regarding its response to the objection; or

c. Notify the Corps that the objection will be referred to the ACHP membership for formal comment and proceed to refer the objection and comment within forty-five (45) days. The resulting comment shall be taken into account by the Corps in accordance with 36 CFR § 800.7(c)(4).

Should the ACHP not exercise one of the above options within forty-five (45) days after receipt of all pertinent documentation, the Corps may assume the ACHP's concurrence in its proposed response to its objections. The Corps shall take into account any ACHP recommendation or comment provided in accordance with this stipulation with reference only to the subject of the objection. The Corps' responsibility to carry out all actions under this Agreement that are not the subjects of the objection shall remain unchanged.

9. Termination of MOA. Any signatory to this Agreement may terminate it by providing sixty (60) days' notice to the other parties, provided that the parties will consult during the period prior to the termination to seek agreement on amendments or other actions that will avoid termination. In the event of termination of this Agreement by the SHPO, the Corps shall comply with the provisions of 36 CFR § 800.6(c)(8).

10. Duration of MOA. This Agreement will terminate if its terms are not carried out within two (2) years from the date of the last signature on this Agreement. Prior to such time, the Corps may consult with the other signatories to reconsider the terms of the Agreement and amend it in accordance with Stipulation 6.

11. Anti-Deficiency Act. The Corps' 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. The Corps will make a 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 the Corps' ability to implement the stipulations of this agreement, the Corps will consult in accordance with the amendment and termination procedures found in this Agreement.

Execution of this Memorandum of Agreement by the Corps, SHPO, and the ACHP and the implementation of its terms evidence that the effects of the undertaking on historic properties have been taken into account and mitigated so that the undertaking associated with the TFMCA may proceed.

U.S. ARMY CORPS OF ENGINEERS, JACKSONVILLE DISTRICT

Signature: Alan M. Dodd Date: 20 JAN 15  
Alan M. Dodd  
Colonel, U.S. Army  
District Commander

FLORIDA STATE HISTORIC PRESERVATION OFFICER

Signature: Robert F. Bendus Date: 1/29/15  
Robert F. Bendus  
State Historic Preservation Officer

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Signature: John M. Fowler Date: 2/10/15  
*for* John M. Fowler  
Executive Director