

## APPENDIX C CULTURAL RESOURCES

There have been few archeological investigations performed in the City of Wharton study area. Twelve recorded prehistoric archeological sites are in the vicinity of the study area. Seven sites are located north of Hwy 60, east of town along Caney Creek. One of these sites is the Crestmont Site (41WH39), an archaic burial site (Vernon 1987). Five sites are recorded along Peach Creek to the north of town; two sites (41WH4 and 41WH5) are located approximately 1.25 miles west of Hwy 59, and three sites (41WH40, 41WH74 and 41WH12) are found approximately 1.5 miles east of Hwy 59. None of these sites will be affected by the proposed flood damage reduction project. No prehistoric archeological sites have been recorded along the proposed levee alignments on the Colorado River and Baughman's Slough.

There is a potential for prehistoric archeological sites adjacent to both Baughman's Slough and the Colorado River, and many historic structures and districts within the project area that are listed on or potentially eligible for the National Register of Historic Places (NRHP).

In December 2005, The U.S. Army Corps of Engineers, Galveston District (USACE) Staff Archeologist conducted a cultural resources reconnaissance of the proposed levee alignment along the Colorado River. The purpose of the investigation was to identify and delineate any area with a high likelihood of cultural resources located within the vicinity of the proposed levee alignment. The intensive pedestrian walk-over of 100 percent of the proposed levee alignment was supplemented by the systematic excavation of 5 shovel tests. All of the tests proved negative for cultural resources. This portion of the proposed levee alignment is marked by heavy erosion and disturbance due to prior flood control measures, recently excavated sand borrow pits, and recent commercial and residential impacts.

A cultural resources reconnaissance of Baughman's Slough was conducted by the USACE Staff Archeologist in June of 2006. No previously recorded archeological sites exist within this portion of the proposed levee alignment. Approximately 80 percent of the project area was investigated by a combination of pedestrian survey and limited shovel testing. A total of three shovel tests were excavated. All shovel tests proved negative for cultural resources. The proposed levee alignment is mostly pasture and rice fields and the channel shows signs of erosion. An inspection of the cut bank was negative for deeply buried cultural resources.

In June of 2006, The USACE contracted Prewitt and Associates, Inc. to perform a preliminary historic resources investigation the project area, which included intensive archival and historic map research combined with a windshield survey of historic resources.

Archival and historic map research identified numerous NRHP listed individual properties and historic districts in the study area; most notably, the Wharton County Courthouse Historic Commercial District, the West Milan Street Mercantile Historic District and the Texas & New Orleans Railroad Bridge. The courthouse, constructed in 1889, is undergoing restoration with funding from the Texas Historic Courthouse Preservation Program.

Several NRHP eligible individual properties were identified in the study area including two long-established African American communities that retain many aspects of their early twentieth-century development.

The fieldwork by the contractor consisted of a windshield survey to document listed or potentially eligible NRHP historic districts and individual properties with overall representative photographs. The survey identified and documented 41 historic-age resources in the study area.

Determinations of eligibility to the NRHP are on-going in consultation with the Texas State Historic Preservation Office (SHPO).

At this time, no cultural resources sites have been identified along the proposed levee alignment; however, additional cultural resource work remains to be accomplished to insure that all project impact areas have been addressed. Additional work may include archeological testing or monitoring during construction for deeply buried floodplain sites along Boughman's Slough and the Colorado River, survey of portions of project area not previously covered after final design, and additional historic research or evaluation of structures that may be impacted by the project for historic or architectural significance.

In order to facilitate coordination and approval of the project, a Draft Programmatic Agreement (PA) between the Corps and the Texas SHPO, developed pursuant to 36 CFR 800, is currently being negotiated. A copy of the most recent draft is included in this appendix. The PA will establish guidelines for completing and coordinating the identification of historic properties with the SHPO. All cultural resource assessment and coordination required by 36CFR800 will be completed prior to project construction under the executed PA.

**- D R A F T -**

**PROGRAMMATIC AGREEMENT BETWEEN**  
**THE US ARMY CORPS OF ENGINEERS,**  
**AND**  
**STATE HISTORIC PRESERVATION OFFICER,**  
**REGARDING THE LOWER COLORADO RIVER BASIN INTERIM FEASIBILITY REPORT AND**  
**INTEGRATED ENVIRONMENTAL ASSESSMENT**

**September 25, 2006 DRAFT**

**WHEREAS**, the US Army Corps of Engineers (USACE), Fort Worth District, and the Lower Colorado River Authority (LCRA), have partnered together to reduce flood damage, provide ecosystem improvement, and recreation opportunities along Onion and Williamson Creeks in Austin, Texas in a project herein referred to as Austin and along the Colorado River, Baughman Slough, and Caney Creek in Wharton, Texas in a project known as Wharton; and

**WHEREAS**, the Austin and Wharton projects are separate project locations, they are part of the same basin-wide study of the Lower Colorado River basin and are being presented in conjunction to one another as linked projects; and

**WHEREAS**, the structural improvement, buy-out, restoration and recreation plans at both Austin and Wharton covered under this agreement are identified as the 'Recommended Plan' in the *Lower Colorado River Basin Interim Feasibility Report and Integrated Environmental Assessment, Volumes 1 and 2* (USACE, August, 2006); and

**WHEREAS**, the Austin project provides for flood damage reduction and ecosystem restoration features at four locations described as Yarrabee Bend, Timber Creek, Bear/Onion Confluence and Williamson Creek through a combination of buy-outs of residential structures within the flood plain and ecosystem restoration measures at Yarrabee Bend, Timber Creek and Bear/Onion Confluence, and through minor channel modification at Williamson Creek (maps of these areas are included as Attachment 1);

**WHEREAS**, the Wharton project addresses the flooding problems for the city of Wharton, Texas through structural features in the form of earthen levees and accompanying sumps, floodwalls, a channel enlargement, storm drain type drainage structures, and an open cut ditch (map of proposed project area included as Attachment 2); and

**WHEREAS**, all other construction activities not specifically listed in the referenced interim feasibility report as the "recommended plan" are separate undertakings and are therefore not part of this agreement; and

**WHEREAS**, the USACE, pursuant to 36 CFR Part 800.6(a)(1)(i)(c), have invited the Advisory Council on Historic Preservation to participate in this consultation and is awaiting Council response; and

**WHEREAS**, the USACE, pursuant to 36 CFR Part 800.3(f)(2), has initiated consultation with the appropriate Federally recognized Indian tribes who historically utilized the project areas, provided the Tribes with copies of all reports and findings to date, and invited Tribal comments, concerns and inputs on the proposed project (a list of Tribes thus far contacted is included at Attachment 3); and

**WHEREAS**, the SHPO and the USACE have participated in the consultation and have been invited to be signatories to this Programmatic Agreement.

**NOW, THEREFORE**; The USACE, and the SHPO agree that the consultation process for the Project shall be carried out under this Programmatic Agreement and in accordance with the following stipulations to satisfy the USACE's Section 106 responsibilities.

### Stipulations

The USACE will ensure the following stipulations are carried out concerning all cultural resources within the construction footprint and viewshed of the projects proposed at the Austin and Wharton project locations.

#### (A) Historic Structures

##### (1) Identification of Historic Properties

###### a. Recordation.

- i. Austin: A reconnaissance survey of buildings and structures was conducted at Yarrabee Bend, Timber Creek, Bear/Onion Confluence areas of the Austin project. No structures within the project construction footprint, nor any within the proposed project viewshed, meet the criteria as described 36CFR Part 60.4.a-d for inclusion in the NRHP and no further work will be conducted at these locations to identify historic structures.

Structures along the Williamson Creek project area will be assessed in conjunction with the archaeological survey which will be carried out in accordance with stipulation (B)(1)a.i below.

- ii. Wharton: An overview study covering approximately nine miles of proposed levee alignment within historic Wharton was conducted to identify, document, and evaluate historic-age standing structures that could be affected by the proposed Wharton levee alignment. For the purposes of this study, the APE was considered to extend 500 feet beyond the proposed alignment. Because this alignment is only approximate, additional survey will be necessary once a final alignment has been determined. A report of the findings of the survey conducted will be coordinated with the SHPO once the report has been completed (A map of the area surveyed is included as Attachment 4).

###### b. Determination of National Register Eligibility.

- i. Austin: No structures within the Austin project areas investigated are eligible for listing in the NHRP. Once investigations have taken place at the remaining, Williamson Creek area, determinations will be made in accordance with 36CFR Part 800.4 for any historic structures within the project area.

- ii. Wharton: Only a preliminary determination has been made for the Wharton project to date. The draft report will be sent to the SHPO for review and comment on these preliminary findings once the draft report has been prepared. When final levee alignments have been determined, and further survey completed, any determinations made concerning historic structures within the final alignment will be made in accordance with 36CFR Part 800.4.

**(2) Assessment of Adverse Effect**

- a. In consultation with the SHPO, The USACE shall apply Criteria of Adverse Effect to all historic properties identified within the construction APE in accordance with 36 CFR Part 800.5
- b. If the effect is determined to be adverse, as defined in 36 CFR Part 800.5, the USACE will develop a treatment plan in consultation with the SHPO.

**(B) Archeology**

The USACE will ensure the following stipulations are carried out concerning archaeological resources within the construction footprint of the USACE project at the Onion Creek and Williamson Creek projects Austin, TX and within the Wharton, TX project locations. The construction footprint at each location constitutes the APE for archaeological resources:

a. Identification of Historic Properties

a. Survey.

- i. Austin: For the Austin project. the USACE has conducted a cultural resources survey within the entire construction footprint of the Yarrabee Bend, Timber Creek, Bear/Onion Confluence areas. The survey was conducted by professional archaeologists meeting the Secretary of the Interior's professional qualification standards as defined in the Federal Register Volume 48 No. 190 page 44738. Results of this survey were submitted to the SHPO for review under separate cover.

The portion of the Austin project along Williamson Creek cannot be investigated for cultural resources until project lands have been acquired because deep trenching is required in occupied residential lots. Appropriate cultural resources investigations will be carried out prior to construction during the Preconstruction Engineering and Design phase of the project.

- ii. Wharton: Reconnaissance level surveys have been conducted throughout the Wharton project area. These investigations consisted of visual inspection of proposed project locations and background research for previously recorded sites for planning purposes only. All proposed construction areas within the Wharton project, (especially the levee alignments and sump areas that have yet to be defined by the project engineers) will be surveyed for cultural resources prior to project construction, during the Preconstruction Engineering and Design phase of the project.

b. Determination of National Register Eligibility.

- i. Austin: The USACE, in consultation with the SHPO, and in accordance with 36CFR Part 800.4. has determined that No Historic Properties are present at the Yarrabee Bend, Timber Creek, and Bear Onion Confluence areas within the Onion Creek project. No determinations have been made for the Williamson Creek area because investigations were not possible. Once the investigations are complete, these determinations will be made in accordance with 36CFR Part 800.4.

- ii. Wharton: No determinations have been made for the Wharton project area because investigations were not possible. Once the investigations are complete, these determinations will be made in accordance with 36CFR Part 800.4.

Any Historic Properties identified in any of the project areas will be evaluated and treated as described in the stipulations specified below.

- c. Test Excavations. In the event that additional information is required to assess the eligibility of any cultural resource located within the Austin or Wharton project areas for inclusion in the NRHP, the USACE and SHPO shall consult to prepare a test excavation plan.

**(2) Assessment of Adverse Effect**

- a. In consultation with the SHPO, The USACE shall apply Criteria of Adverse Effect to all historic properties identified within the construction APE in accordance with 36 CFR Part 800.5
- b. If the effect is determined to be adverse, as defined in 36 CFR Part 800.5, the USACE will develop a treatment plan in consultation with the SHPO.

**(C) Treatment Of Historic Properties**

**(1) Avoidance.** Whenever possible, historic properties will be avoided by project impacts and protected in place.

**(2) Data Recovery Plan.** A detailed data recovery plan shall be developed by the USACE in consultation with the SHPO for those historic properties for which adverse effect cannot be avoided. The SHPO will provide written comments to the USACE within 30 days of receipt of the plan. The plan shall specify, at a minimum:

- a. the historic property, properties, or portions of properties where data recovery is to be carried out;
- b. any historic property, properties, or portions of properties that will be destroyed/altered/transferred without data recovery;
- c. the research questions to be addressed through the data recovery
- d. the methods to be used, with explanation of their relevance to the research questions
- e. the methods to be used in analysis, data management, and dissemination of data, including a schedule;
- f. the proposed disposition of recovered materials and records;
- g. proposed methods for involving the interested public in the data recovery including, but no limited to methods by which Federally recognized Indian Tribes who historically used this region or continue to use the area, will be kept informed of the work and afforded the opportunity to participate;
- h. proposed methods for disseminating the results of the work to the interested public and to appropriate Federally recognized Indian Tribes who historically used this region or continue to use the area; and
- i. proposed schedule for the submission of progress reports to the SHPO.

If necessary, additional property-specific data recovery strategies will be developed within the overall framework of the data recovery plan for direction of work at individual

properties or groups of properties. The need for such additional strategies will be determined in consultation with the SHPO.

**(3) Treatment of Human Remains.** Treatment of human remains, including prehistoric and historic burials, will be carried out in accordance with a comprehensive plan detailed in the research design developed under stipulation (3)b.

**(4) Discovery**

- a. If previously unidentified cultural resources are identified during construction, construction shall stop in the vicinity of the resource, and the USACE cultural resources technical point of contract shall be notified within 24 hours of the discovery.
- b. The USACE shall immediately notify the SHPO. Within 48 hours of notification, field assessment will be undertaken. Assessment of the site by the USACE under 36 CFR Part 60 will be completed within 5 days or less of discovery.
- c. If the cultural resource is determined to be eligible for inclusion in the NRHP, a treatment plan will be specified by the USACE within 10 days of assessment in consultation with the SHPO.
- d. Any burials accidentally disinterred will be treated in compliance with NAGPRA, if applicable.

**(5) Reporting**

Upon completion of each major phase of work (survey, testing, or data recovery), the USACE shall submit draft reports to the SHPO. Comments shall be provided to the USACE within 30 calendar days from receipt. The final report will be distributed among consulting parties, including the appropriate federally recognized Indian Tribes according to a plan prepared by the USACE and consulting parties.

**(D) Document Review and Comment:**

The SHPO will be afforded thirty (30) days after receipt to comment on any documentation submitted by the USACE. Documents will then be revised according to agency comments until all agencies agree the documents are acceptable. No construction will begin until all parties have agreed that the final report on cultural resource mitigation is acceptable.

**(E) Dispute Resolution:**

Should any party to this agreement object at any time to any actions proposed or the manner in which the terms of this PA are implemented, the USACE shall consult with the objecting party(ies) to resolve the objection. If the USACE determines, within 30 days, that such objection(s) cannot be resolved, the USACE will:

- (1)** Forward all documentation relevant to the dispute to the Council in accordance with 36 CFR Section 800.2(b)(2). Upon receipt of adequate documentation, the Council shall review and advise the USACE on the resolution of the objection within 30 days. Any comment provided by the Council, and all comments from the parties to the PA, will be taken into account by the USACE in reaching a final decision regarding the dispute.
- (2)** If the Council does not provide comments regarding the dispute within 30 days after receipt of adequate documentation, the USACE may render a decision regarding the dispute. In reaching its decision, the USACE will take into account all comments regarding the dispute from the parties to the PA.

- (3) The USACE's responsibility to carry out all other actions subject to the terms of this PA that are not the subject of the dispute remain unchanged. The USACE will notify all parties of its decision in writing before implementing that portion of the Undertaking subject to dispute under this stipulation. The USACE's decision will be final.

**(F) Duration, Amendments and Termination:**

This agreement will be null and void if its terms are not carried out within fifteen (15) years from the date of its execution. Prior to such time, the USACE may consult with the other signatories to reconsider the terms of the agreement and amend in accordance with this stipulation.

Any party to this agreement may propose, in writing, to USACE that the terms and/or stipulations of this agreement be amended. USACE will consult with the other parties to this agreement to consider such an amendment.

Any party to this agreement may terminate it by providing thirty (30) days notice to the other parties, provided that the parties will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, USACE will comply with 36 CFR sections 800.4 through 800.6 with regard to the activities covered by this agreement.

Execution and implementation of this agreement is evidence that USACE has satisfied its Section 106 and 110 responsibilities for the Project.

**US ARMY CORPS OF ENGINEERS, FORT WORTH DISTRICT**

By: \_\_\_\_\_ Date \_\_\_\_\_  
CHRISTOPHER W. MARTIN, Colonel, EN, Commanding

**TEXAS HISTORICAL COMMISSION**

By: \_\_\_\_\_ Date \_\_\_\_\_  
MR. F. LAWRENCE OAKS, State Historic Preservation Officer