OPERATING AGREEMENT BETWEEN THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION AND THE FLORIDA DIVISION OF HISTORICAL RESOURCES - STATE HISTORIC PRESERVATION OFFICER REGARDING THE STATE 404 PROGRAM

I. INTRODUCTION

The Florida Department of Environmental Protection (hereinafter "Department") has the authority to assume the Clean Water Act Section 404 dredge and fill permitting program. In its administration of the program, the State must consider the effects, if any, that a State 404 Program permit could have on historic properties. Pursuant to section 267.061(2)(a), Florida Statutes (F.S.), these historic properties are those included in, or eligible for inclusion in, the National Register of Historic Places. To affect a proper and comprehensive review of permit actions on these sites, the Department has entered into this operating agreement (hereinafter "Agreement") with the Florida Division of Historical Resources, State Historic Preservation Officer (SHPO). SHPO has the expertise necessary to ensure the thorough preservation of these historic properties, as well as proficiency in determining those areas within the state that may be eligible for inclusion in the National Register. This Agreement will provide for the protection of these rich historic resources when the Department administers the State 404 permitting program, which constitutes a State undertaking. The process outlined in this Agreement is referred to as the historic properties review and is designed to work within the already established timeframes for the processing of State 404 Program permit applications set forth in Chapter 62-331, F.A.C.

A. Parties. The following parties may have an interest and/or consultative role in the historic properties review of State undertakings related to the administration of the State 404 permitting program:

1. **Action Agency:**

   Florida Department of Environmental Protection. The Department is the state agency responsible for administering the State 404 Program in state-assumed waters, which includes the authority to issue general permits and to grant or deny applications for State 404 Program permits. (§ 373.4146(5)(a), F.S.).

2. **Consulting Parties:**

   a. **State Historic Preservation Officer.** SHPO reflects the interests of Florida and its citizens in the preservation of the state's cultural heritage. SHPO will advise and assist the Department with carrying out its historic preservation responsibilities (§267.038(5)(e), F.S. (Section 5.2.2. State 404 Program Handbook ("Handbook")). SHPO shall be a consulting party.

   b. **Indian tribes.** Indian tribes include any Indian Tribe, band, group, or community which are recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians. Indian tribes frequently have an interest in State undertakings which may affect cultural resources or historic properties of religious and cultural significance on ancestral, aboriginal, or ceded lands.

i. The Department shall consult with any Indian tribe that attaches religious and cultural significance to historic properties that may be affected by an application. This consultation applies regardless of the location of the historic property. The passage of time, changing perceptions of significance, or incomplete prior evaluations may require the Department to reevaluate properties previously determined eligible or ineligible. The Department shall acknowledge that Indian tribes possess special expertise in assessing the eligibility of cultural resources or historic properties that may possess religious and cultural significance to the Indian Tribe. Such Indian tribe may choose to participate as a consulting party in the Department's historic properties review and may participate in the determination of the Area of Potential Effects.

ii. Where an Indian tribe has assumed the responsibilities of Tribal Historic Preservation Office (THPO) for section 106 under section 101(d)(2) of the National Historic Preservation Act (NHPA), the Department shall coordinate consultation with the THPO for purposes of historic properties review. Where an Indian tribe has not assumed the responsibilities of the THPO for section 106 under section 101(d)(2) of the NHPA, the Indian Tribe may notify the Department in writing that it is waiving its rights to provide comments on State 404 program permit applications.

3. **Other Interested Parties:**

a. **Applicants.** Applicants may participate in the historic properties review.

b. **Public.** The views of the public are essential to informed decision making in the historic properties review. The Department shall seek and consider the views of the public in a manner that reflects the nature and complexity of the application and its effects on historic properties, the likely interest of the public in the effects on historic properties, and confidentiality concerns of private individuals and businesses.

c. **Local Government.** A representative of a local government with jurisdiction over the area in which the effects of an application may occur may participate as a consulting party during the procedures set forth in Sections II.B. or III.B.

B. Duties and Responsibilities:

1. **The Department.** The Department shall be responsible for leading the historic properties review of State undertakings associated with the State 404 Program. The Department shall, in accordance with the provisions of Sections II and III below, perform the following duties in support of this Agreement:

a. To SHPO:

i. Notify SHPO of an application for a State 404 Program permit in accordance with the procedures provided in Section II.A. or an

intended compliance action in accordance with the procedures provided in Section II.B.

ii. Provide SHPO sufficient information to conduct an assessment of the potential effects the application or compliance action may have on historic properties.

iii. Request, on behalf of SHPO, any additional information required to support their findings, recommendations, or determinations. The Department will notify the SHPO when the response to the request is received.

iv. Will address any adverse effects on historic properties in accordance with Section III.B.

b. To THPO or Indian Tribe when the interested Indian Tribe does not have a THPO:

i. Notify THPO/Indian Tribes of an application for a State 404 Program permit in accordance with the procedures provided in Section II.A. or an intended compliance action in accordance with the procedures provided in Section II.B.

ii. Provide THPO/Indian Tribes sufficient information to conduct an assessment of the potential effects the application or compliance action may have on cultural resources or historic properties of religious and cultural significance.

iii. Request, on behalf of THPO/Indian Tribes, any additional information required to support their findings, recommendations, or determinations. The Department will notify the THPO/Indian Tribes when the response to the request is received.

iv. Will address any adverse effects on historic properties or cultural resources of religious and cultural significance in accordance with Section III.B.

v. Will seek verification from the THPO/Indian Tribes that any submission pursuant to Section I.B.c.iv may be relied upon in processing the application or notice.

c. To the applicant:

i. May request additional information, on behalf of a consulting party, to support the findings, recommendations, or determinations.

ii. Coordinate the review of historic properties potentially affected by the individual and general permit application.

iii. Provide a final decision to grant or deny an application.

iv. If an agency, such as FDOT, is the applicant and has previously coordinated with SHPO and THPO/Indian Tribes on the project, and there have been no changes to the project following coordination, the agency may submit proof of concurrence or a determination by SHPO and THPO/Indian Tribes for the proposed project with the application for a State 404 permit.

d. To the public and local governments:

i. Notify the public and local governments of an application for a State 404 Program permit or compliance action in accordance with Section II.B.

ii. Receive comments from the public or local governments during the comment period.

iii. Request, on behalf of the public or local government, any additional information required to clarify the concerns expressed by the public or local government regarding potential effects to historic properties made during the comment period.

e. Future coordination:

In the event the Department employs a historic resource coordinator, the Department will coordinate with SHPO and the THPO/Indian Tribes to establish procedures to streamline certain categories of projects.

2. SHPO. SHPO will, in accordance with the provisions of Sections II and III, perform the following duties in support of this Agreement:

a. To the Department:

i. Review general permit and expedited applications against the Florida Master Site File to determine the presence or absence of historic properties or request that the project be evaluated as an individual permit because of potential historical resources concerns.

ii. Notify the Department of any request for additional information to the applicant to complete the historic properties review of the application.

iii. Evaluate the area of potential effects for potential historic properties and provide recommendations for National Register eligibility.

iv. Review individual permit applications for potential effects to historic properties listed or eligible for listing on the National Register.

v. Provide a determination of the effect an application may have on historic properties.

vi. Provide recommendations for alternatives or modifications to the application that could avoid, minimize, or mitigate adverse effects on historic properties.

b. To applicant:

i. Conduct a historic properties search against the Florida Master File when an applicant provides information required for review of no-notice general permits to determine if the application has the potential to affect any known historic properties.

ii. Inform the applicant if SHPO or THPO/Indian Tribes determine area includes a historic property listed or eligible for listing on the National Register.

iii. Assist with any pre-coordination, initiated by an applicant, to facilitate the historic properties review for an application.

c. To THPO/Indian Tribes:

i. On the same day received, provide information by an applicant for review of no-notice general permits.

ii. On the same day received, provide information related to an unanticipated discovery, effects to historic resources, or the identification of unmarked human remains on issued no-notice general permits, general permits, and individual permits.

3. THPO/Indian Tribes. THPO/Indian Tribes may, in accordance with the provisions of Sections II and III, provide the following in support of this Agreement:

a. To the Department

i. Review general permit and expedited applications to determine the presence or absence of cultural resources or historic properties of religious and cultural significance or request that the project be evaluated as an individual permit because of potential historical resources concerns.

ii. Notify the Department of any request for additional information to the applicant to complete the historic properties of religious and cultural significance or cultural resource review of the application.

iii. Evaluate the area of potential effects for potential historic properties and provide recommendations for National Register eligibility.

iv. Review individual permit applications for potential effects to cultural resources or historic properties of religious and cultural significance listed or eligible for listing on the National Register.

v. Review and comment on the effect an application may have on cultural resources or historic properties of religious and cultural significance.

vi. Provide recommendations for alternatives or modifications to the application, or for special conditions to add to the permit that could avoid, minimize, or mitigate adverse effects on cultural resources or historic properties of religious and cultural significance.

vii. Provide determination if no-notice general permit area includes a cultural resource or historic property of religious and cultural significance listed or eligible for listing on the National Register.

b. To SHPO:

i. Conduct a historic properties search of no-notice general permits to determine if the application has the potential to affect any known cultural resources or historic properties of religious and cultural significance.

ii. Provide determination if no-notice general permit area includes a cultural resource or historic property of religious and cultural significance listed or eligible for listing on the National Register.

4. The Applicant. In accordance with the following regulatory requirements, the Applicant will provide the following duties in support of this Agreement.

a. Certify that all information contained in the application is true and accurate. (Forms 62-330.060, section A, part 4, and 62-330.402(1), Part 2)

b. Respond to the Department's request for additional information within the timeframes set forth in Applicant's Handbook, Volume I, sections 5.3.3. and 5.5.3.

c. Provide a Cultural Resource Assessment Survey when requested by the Department pursuant to the State 404 Program Applicant's Handbook, Section 5.2.2.

d. Coordinate the historic properties review for general permit (no notice) applications. See Section 62-331.200(3)(i), F.A.C.

e. Pre-coordinate with consulting parties, when desired, to expedite the historic properties review of an application and provide any documentation resulting from such pre-coordination to the Department in support of the application.

5. **The Public/Local Government.** The public and local governments may provide the following duties in support of this Agreement.

   a. Review the Public Notice for information on the application.

   b. Address any questions or concerns to the Department during the comment period.

   c. Attend any public hearings, which may be sponsored by the Department to solicit comments on an application.

II. PROCEDURES

A. Consultation during the Department's initial review of a State 404 Program permit.

1. Within five days of receipt of an application for a State 404 Program Permit, the Department shall email a notification to SHPO and THPO/Indian Tribes. The email subject line shall state "State 404 Program [& ERP] [select: Individual Permit or General Permit No.] Application, Application/permit number, county." The body of the email/notification shall include:

   a. Application number;

   b. Permit number (if applicable);

   c. Corresponding Environmental Resource Permit (ERP) number;

   d. Applicant name;

   e. City, County;

   f. Location (GPS coordinates, TRS, street address, or parcel ID);

   g. Brief description of the activity;

   h. A location map showing the project boundaries;

   i. Link to the Permit Application for additional information; and

   j. End date for the Department's initial 30-day review (comment due date).

2. SHPO shall review the application for potential effects to historic properties. The THPO/Indian Tribes may choose to review the application for potential effects to cultural resources or historic properties of religious and cultural significance.

   a. If the application provides sufficient information required to make an effects determination, the consulting party shall strive to provide an effects

determination pursuant to Section III.A. and provide initial recommendations for resolution of any adverse effects within the initial review period.

b. If the application does not provide sufficient information required to make an effects determination, the consulting party shall, prior to the expiration of the Department's 30-day review period, ask the Department to request additional information from the applicant.

   i. The request from the consulting party shall clearly identify the additional information required.

   ii. The Department shall include the consulting party's questions in a Request for Additional Information. Once the Department receives a response, it will provide the requested information to the consulting party and inform the consulting party of the deadline by which the Department must provide public notice of the application.

   iii. The consulting party shall review the new information and provide an effects determination pursuant to Section III.A. and provide initial recommendations for resolution of any adverse effects within the time period prescribed by the Department in its notification.

c. If the Department does not receive a response from SHPO or THPO/Indian Tribes within the initial review period, the Department may consider the application administratively complete without said response and put the application out on public notice in accordance with Rule 62-331.060, F.A.C., and Section II.B., below. The consulting parties may have initial or additional comments pertaining to the application during the public notice comment period.

3. Within 15 days of receipt of notice of intent to use a State 404 general permit, SHPO shall provide to the Department the presence or absence of historic properties from review of the Florida State Master File and/or request the Department process the application as an individual permit.

4. If the THPO/Indian Tribes choose to review a notice of intent to use a State 404 general permit, within 15 days of receipt the THPO/Indian Tribes will provide to the Department information on the presence or absence of cultural resources or historic properties of religious and cultural significance. Within this 15 days, THPO/Indian Tribes may also request the Department process the application as an individual permit.

B. Consultation during the public notice process.

1. Types of Action

   a. The Department will provide a public notice of all administratively complete State 404 Program individual permit applications pursuant to the provisions of Rule 62-331.060, F.A.C. SHPO, THPO/Indian Tribes shall receive an email notification of the public notice in accordance with paragraph 62-331.060(2)(a), F.A.C.

   b. The Department will publish notice on its website and provide for public comment on any proposed settlement of a State enforcement action.

2. The public notice shall specifically mention and solicit comment on the historic properties review process, including any initial effects determinations and recommendations received by SHPO/THPO/Indian Tribes during the Department's initial review of the application. If the initial determination is that the activity will have no effect on historic properties, a "no potential to cause effect" or "no effect" statement shall be included in the public notice.

3. If the undertaking may affect a historic property, the public notice will also be sent to EPA for review and comment in accordance with subsection 62-331.052(3), F.A.C.

4. The consulting parties may, within the timeframes established in subsection 62-331.060(3), F.A.C., provide written comments and suggest permit conditions for the Department's consideration.

5. Pursuant to paragraph 62-331.052(1)(c), F.A.C., the Department may request additional information, from the applicant, to address any concerns it receives during the comment period.

6. SHPO shall develop and evaluate alternatives or modifications to the application that could avoid, minimize, or mitigate adverse effects on historic properties identified through public comment and notify the Department of the recommendations.

7. The THPO/Indian Tribes may choose to develop and evaluate alternatives or modifications to the application that could avoid, minimize, or mitigate adverse effects on historic properties identified through public comment and notify the Department of the recommendations.

8. The Department shall resolve adverse effects in accordance with sections III.A.3. or III.B., below.

C. Department decision on a State 404 Permit Application

1. In making the decision on an individual or general State 404 Permit Application, the Department shall consider all criteria set forth in the State 404

Program, including the effects of the permitted activity on historic properties, any comments of the consulting parties, and any views of other interested parties.

2. The Department shall first attempt to resolve adverse effects through permit conditions in accordance with Section III.A.3, below. If the adverse effect can be resolved through conditions, the effect determination shall be "Conditional no adverse effect to historic properties".

3. The Department shall not provide authorization for an application that has an unresolved adverse effect on historic properties. The Department shall resolve any adverse effect on historic properties not resolved in accordance with II.C.2. in accordance with Section III.B.

4. Unanticipated Discoveries

   a. All State 404 individual permits and general permits include a condition requiring permittees to cease work immediately and contact SHPO and/or the Department in the event of an unanticipated discovery of historic resources, effects to historic resources, or the identification of unmarked human remains. *See* §§ 62-330.350(1)(n), 62-331.201(t) – (v), F.A.C.

   b. In the event of an unanticipated discovery, effects to historic resources, or the identification of unmarked human remains, the Department shall notify the SHPO and THPO/Indian Tribes on the same day the Department is notified by the permittee. Activity authorized under the permit shall not resume without written authorization from the Department, SHPO and THPO/Indian Tribes.

D. Provisions for State 404 Program General Permits (no notice)

1. Applicants for no-notice general permits are instructed in paragraph 62-331.200(3)(j), F.A.C. to pre-coordinate with SHPO to determine if there are any properties determined to be eligible or potentially eligible for listing on the National Register of Historic Places.

2. When an applicant submits a sufficient request for pre-review, SHPO shall respond to the request within 15 days of receipt and shall include any responses received from the THPO/Indian Tribes. The applicant shall then follow the procedures in subparagraph 62-331.200(3)(j)1. or 2., F.A.C., as appropriate.

3. If both SHPO and THPO/Indian Tribes do not respond within 15 days of receipt of the request, and the project does not otherwise require notice to the Department to proceed under the 404 general permit, the permittee may proceed with the work, provided all other required authorizations have been obtained. However, if the Department receives information from SHPO/THPO/Indian Tribes that the activity may have the potential to cause effects to historic properties, the project shall no longer qualify for a no-notice general permit

pursuant to paragraph 62-331.201(3)(m), F.A.C., and the Department will inform the applicant whether the project requires a notice to the Department or will require the submission of an individual permit application pursuant to subsection 62-331.200(6), F.A.C.

4. Unanticipated Discoveries

   a. All State 404 general permits are subject to consultation and additional Cultural Resource Assessment Surveys in the event of unanticipated discovery of historic resources, effects to historic resources, or the identification of unmarked human remains during construction. *See* 62-331.201(t) – (v), F.A.C.

   b. In the event of an unanticipated discovery, effects to historic resources, or the identification of unmarked human remains, the Department shall notify the SHPO and THPO/Indian Tribes on the same day the Department is notified by the permittee. Activity authorized under the permit shall not resume without written authorization from the Department, SHPO and THPO/Indian Tribes.

III. EFFECTS DETERMINATIONS AND RESOLUTION OF ADVERSE EFFECTS

A. Effects Determinations

1. **No effect to historic properties.** If the consulting party finds that either there are no historic properties present, or there are historic properties present but the permit application will have no effect upon them, the consulting party will notify the Department the application will have no effect on historic properties.

2. **No adverse effect to historic properties.**

   a. If the consulting party finds historic properties are present and may be affected by the application, the consulting party will assess adverse effects, if any. An adverse effect is found when an application may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Consideration shall be given to all qualifying characteristics of a historic property, including those that may have been identified subsequent to the original evaluation of the property's eligibility for the National Register. Adverse effects may include reasonably foreseeable effects caused by the application that may occur later in time, be farther removed in distance or be cumulative.

   b. Examples of adverse effects on historic properties include, but are not limited to:

i. Physical destruction of or damage to all or part of the property, including inundation;

ii. Alteration of a property, including restoration, rehabilitation, repair, maintenance, stabilization, hazardous material remediation, and provision of handicapped access, that is not consistent with the Secretary of the Interior's standards for the treatment of historic properties (incorporated by reference in Rule 1A-46, F.A.C.) and applicable guidelines;

iii. Removal of the property from its historic location;

iv. Change of the character of the property's use or of physical features within the property's setting, or impacts to the landscape that contribute to its historic significance;

v. Introduction of visual, atmospheric or audible elements that diminish the integrity of the property's significant historic features; and

vi. Neglect of a property which causes its deterioration, except where such neglect and deterioration are recognized qualities of a property of religious and cultural significance to an Indian Tribe.

c. The consulting party will notify the Department the application will have no adverse effect on historic properties when it is determined the application may have an effect on historic properties but will not adversely affect the historic property.

3. **Conditional no adverse effect to historic properties**.

a. The consulting parties will develop and evaluate alternatives or modifications to the application that could avoid, minimize, or mitigate adverse effects on historic properties, and notify the Department of their recommendations.

b. To resolve the application's adverse effects, the Department will require, as specific condition(s) of the authorization, the consulting party's recommendations to avoid, minimize, or mitigate adverse effects on historic properties. With such conditions requiring avoidance, minimization or mitigation of adverse effects on historic properties, the effect determination will be "Conditional no adverse effect to historic properties".

4. **Adverse effect to historic properties**.

If the consulting party cannot recommend, or cannot agree on, alternatives or modifications to the application or permit conditions that could avoid, minimize, or mitigate adverse effects on historic properties, the consulting party(s) shall notify the Department the application has an adverse effect on historic properties. The Department shall then either deny the permit or

continue working toward resolution of adverse effects in accordance with III.B, below.

5. **For General Permits:** A consulting party may request the Department evaluate a general permit application as an individual permit due to concerns about potential adverse effects on historic properties.

6. **For Disagreements, Conflicts, or Disputes:** If there is a disagreement, conflict, or dispute between consulting parties regarding the effects determinations or recommendations for resolving adverse effects that the Department cannot reconcile, the parties shall continue working toward resolution in accordance with III.B., below.

B. Resolution of Adverse Effects

1. Continued Consultation.

   a. Following a determination of adverse effect by a consulting party pursuant to Section III.A.4, or if there is a conflict that the Department cannot reconcile in accordance with Section III.A.6., the Department shall consult with the SHPO, THPO/Indian Tribes, and other interested parties to develop and evaluate alternatives or modifications to project that could avoid, minimize, or mitigate adverse effects on historic properties.

   b. The Department, the SHPO, and THPO/Indian Tribes, if participating, may agree to invite other individuals or organizations to become consulting parties. The Department shall invite, where appropriate, any individual or organization that will assume a specific role or responsibility in a memorandum of agreement to participate as a consulting party.

   c. The Department shall make information available to the public, subject to any confidentiality requirements. The Department shall provide an opportunity for members of the public to express their views on resolving adverse effects of the undertaking. The Department should use appropriate mechanisms, taking into account the magnitude of the undertaking and the nature of its effects upon historic properties, the likely effects on historic properties, and the relationship of the State involvement to the undertaking to ensure that the public's views are considered in the consultation. The Department should also consider the extent of notice and information concerning historic preservation issues afforded the public at earlier steps in the process to determine the appropriate level of public involvement when resolving adverse effects.

2. Resolve Adverse Effects.

   a. Following public outreach and invitation of any additional consulting parties, the Department shall continue to consult with the SHPO,

THPO/Indian Tribes, and other consulting parties to seek ways to avoid, minimize, or mitigate the adverse effect.

b. If through further consultation the adverse effect can be avoided, the Department shall complete the review process as may be appropriate in accordance with Section III.A.1., III.A.2., or III.A.3.

c. If the adverse effect cannot be avoided, the Department shall consult with the SHPO, THPO/Indian Tribes, and other consulting parties regarding appropriate minimization and/or mitigation measures.

   i. Minimization and/or mitigation measures shall be commensurate with the extent of the adverse effect to historic properties.

   ii. Minimization and/or mitigation measures may include, but are not limited to: archaeological data recovery, archaeological/historical contextual reports, archeological monitoring, preservation easements, detailed historic structure documentation, architectural salvage, interpretive and educational material, or signage. Other creative and meaningful minimization and/or mitigation alternatives as agreed upon by the Department, the SHPO, THPO/Indian Tribes, and other consulting parties.

d. If the Department, the SHPO, THPO/Indian Tribes, and other participating interested parties, agree on how the adverse effects will be resolved, the Department and the SHPO shall execute a memorandum of agreement (MOA). The THPO/Indian Tribes shall be invited to concur in the MOA.

   i. The Department shall include the MOA as part of the issued permit and shall include specific permit conditions as necessary.

   ii. The Department shall ensure that the permittee carries out the permitted activity in accordance with the MOA and any specific permit conditions.

e. If agreement cannot be reached, the Department shall attempt to continue consultation to reach an acceptable agreement. However, if agreement is not possible, the Department shall proceed according to Section III.C.

C. Federal Review

An application will be elevated for EPA review in the following circumstances:

1. The Department shall send a copy of the public notice described in Section II.B., to EPA in accordance with subsection 62-331.052(2), F.A.C, for those projects that are subject to federal review. Included in list are projects within critical areas established under state or federal law, including sites identified or proposed under the National Historic Preservation Act;

2. The Department agrees to request, in accordance with section 5.2.5 of the State 404 Applicant's Handbook, EPA review of an application where the consulting parties cannot agree on the effect determination of a proposed activity or where the Department does not accept the recommendations of one of the consulting parties for the resolution of adverse effects; and

3. The Department shall, in accordance with paragraph 62-331.052(3)(b), F.A.C., notify the EPA if the Department does not accept the effect determination of a proposed activity or recommendations for the resolution of adverse effects of the THPO/Indian Tribes, together with the Department's reason for doing so, in which case the EPA can comment upon, object to, or make recommendations.

IV. TERMS & DEFINITIONS

A. "Area of Potential Effects" means the geographic area or areas within which a state undertaking may directly or indirectly effect historic properties or historic resources, if any such properties exist. The area of potential effects is influenced by the scale and nature of a state undertaking and may be different for different kinds of effects caused by a state undertaking

B. "Consultation" means the process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the historic properties review.

C. "Cultural resource" means physical evidence or place of past human activity: site, object, landscape, structure; or a site, structure, landscape, object or natural feature of significance to a group of people traditionally associated with it.

D. "Effect" means alteration to the characteristics of a historic property or historic resource qualifying it for inclusion in or eligibility for the National Register of Historic Places.

E. "Eligible for Inclusion in the National Register" includes both properties formally determined as such in accordance with the regulations of the Secretary of the U.S. Department of the Interior and all other properties that meet the National Register criteria published at 36 C.F.R. § 60.4.

F. "Historic property" or "historic resource" means any prehistoric or historic district, site, building, object, or other real or personal property of historical, architectural, or archaeological value, and folklife resources, in, or eligible for inclusion in, the National Register of Historic Places. These properties or resources may include, but are not limited to, monuments, memorials, Indian habitations, ceremonial sites, abandoned settlements, sunken or abandoned ships, engineering works, treasure trove, artifacts, or other objects with intrinsic historical or archaeological value, or any part thereof, relating to the history, government, and culture of the state.

G. "Historical Resources Assessment Survey" or "Cultural Resources Assessment Survey" means a survey of the project site which meets the requirements set forth

in Chapter 1A-46, F.A.C., Archaeological and Historical Report Standards and Guidelines.

H. "National Register of Historic Places" means the list of historic properties significant in American history, architecture, archaeology, engineering, and culture, maintained by the Secretary of the Interior, as established by the National Historic Preservation Act of 1966, as amended.

I. "State undertaking" means a project, activity or program in which a state agency of the executive branch has direct or indirect jurisdiction; those in which a state agency provides financial assistance to a project or entity; and those in which a state agency is involved through the issuance of state permits or licenses.

J. "Unmarked human remains" means any human skeletal remains or associated burial artifacts or any location, including any burial mound or earthen or shell monument, where human skeletal remains or associated burial artifacts are discovered or believed to exist on the basis of archaeological or historical evidence, excluding any burial marked or previously marked by a tomb, monument, gravestone, or other structure or thing placed or designed as a memorial of the dead.

V. CONFIDENTIALITY

Confidentiality: The Department shall withhold from public disclosure information about the location, character, or ownership of a historic property when disclosure may cause a significant invasion of privacy; risk harm to the historic property; or impede the use of a traditional religious site by practitioners. Neither the Department, nor SHPO are authorized to disclose any information about the location, character, or ownership of a cultural resource or historic property of religious and cultural significance provided by the THPO/Indian Tribes pursuant to this Agreement without written authorization from the THPO/Indian Tribes.

VI. TRAINING REQUIREMENTS

A. DEP shall provide occasional training for SHPO and other consulting parties regarding the State 404 Program and ERP Program.

B. SHPO shall provide occasional training for DEP and other consulting parties regarding the historic property review process.

C. THPO/Indian Tribe may provide occasional training for DEP and other consulting parties regarding cultural resources or historic properties of religious and cultural significance on ancestral, aboriginal, or ceded lands.

VII. AMENDMENTS

This agreement may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date the amendment is signed by all of the signatories.

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VIII. TERMINATION

If any signatory to this agreement determines that its terms will not or cannot be carried out, that party shall immediately consult with the other signatories to attempt to develop an amendment per Stipulation VII, above. If within thirty (30) days (or another time period agreed to by all signatories) an amendment cannot be reached, any signatory may terminate the agreement upon written notification to the other signatories.

IX. SIGNATURES

Florida Department of Environmental Protection

_____

Noah Valenstein (Date)
Secretary

Florida Department of State, Division of Historical Resources

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Dr. Timothy Parsons (Date)
Director and State Historic Preservation Officer

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