

PROGRAMMATIC AGREEMENT  
REGARDING COMPLIANCE WITH SECTION 106 OF THE NATIONAL HISTORIC  
PRESERVATION ACT  
FOR  
THE NASSAU COUNTY BACK BAYS, NASSAU COUNTY, NEW YORK, COASTAL  
STORM RISK MANAGEMENT FEASIBILITY STUDY  
AMONG  
THE U.S. ARMY CORPS OF ENGINEERS, NEW YORK DISTRICT  
AND  
THE NEW YORK STATE HISTORIC PRESERVATION OFFICE

WHEREAS, the U.S. Army Corps of Engineers (USACE), Philadelphia District, on behalf of the USACE New York District, has undertaken a study to identify measures to reduce coastal storm risk and minimize impact along the Atlantic Coast of Nassau County and the back bay areas; and

WHEREAS, the Nassau County Back Bays, Nassau County, New York, Coastal Storm Risk Management Project (Project) was authorized by the Water Pollution Control Act of 15 June 1955 (Chapter 140 of Public Law 71), and subsequently modified in accordance with the Bipartisan Budget Act of 2018 (Public Law 115-123); and

WHEREAS, the New York State Department of Environmental Conservation is the non-federal sponsor; and

WHEREAS, the Study involves managing flood risks to vulnerable coastal populations in the project area that were previously affected by Hurricane Sandy; promoting resiliency and sustainability while reducing potential damage from coastal storms; the development and analysis of alternatives including structural, nonstructural and natural and nature-based features (NNBF); and

WHEREAS, the Undertaking consists of the non-structural County-wide Plan, consisting of the elevation of 5,770 residential structures, and the dry flood proofing of 2,300 industrial and commercial structures within the Study area, and

WHEREAS, the Area of Potential Effect (APE) includes the mainland locations for non-structural measures for residential/non-residential structures; all of which is limited to the east-west extent of Nassau County, the tidally influenced bays and estuaries hydraulically connected to the south shore of Nassau County on the Atlantic Ocean, and the northern study area boundary established from water level calculations (see Appendix A); and

WHEREAS, the APE includes non-structural measures for residential and non-residential structures located near the Shinnecock Indian Nation (federally-recognized) tribal lands and

Unkechaug Indian Nation (state-recognized) properties, however, no actions identified in the Undertaking are proposed for these areas (see Appendix A); and

WHEREAS, the specific measures that will be taken, including the construction of nonstructural measures (elevation or floodproofing) within Nassau County will have an adverse effect on historic properties (Appendix B); and

WHEREAS, USACE has identified many historic properties within the Study Area (Appendix C), including the National Register of Historic Places (NRHP) listed Jones Beach State Park, Causeway and Parkway System Historic District (HD), as well as the following NRHP-eligible or potentially eligible historic districts: Bristol Homes HD, Causeway-Herrick HD, Cedarhurst Park Survey District, Estates of Long Beach HD, Flower Streets HD, Harbour Green HD, Hempstead Lake State Park HD, Isle of Wight HD, Jorgen Street HD, Lido Guest Houses HD, Malverne HD, Meadowbrook Park Gardens Study Area, Merrick Gables HD, Narwood Court Study Area, Ocean Parkway HD, Rockaway Hunt HD, Rosalind Place HD, Seaside Homes, Inc. on Lindell HD, Spanish Revival Homes of Biltmore Shores HD, Stevenson Estate Tract HD, Waverly Place HD, West Lawrence HD, and Weston Place HD ; and

WHEREAS approximately 3,800 of the structures in the Study Area are listed, determined eligible, or potentially eligible for the National Register and approximately 1,000 of those structures are proposed to be elevated or dry flood-proofed in accordance with the proposed Undertaking (see Appendix C); and

WHEREAS, pursuant to 36 CFR Part 800, the regulations implementing Section 106 of the National Historic Preservation Act (NHPA) (54 U.S.C § 306108), USACE has determined, in accordance with 36 CFR 800.6(c) that implementation of the TSP (the Undertaking) will have the potential to have adverse effects on properties listed on or eligible for listing on the National Register of Historic Places (NRHP) and within the APE for mainland locations; and

WHEREAS, in accordance with 36 CFR § 800.6(a)(1), USACE has notified the Advisory Council on Historic Preservation (ACHP) of the potential for the Undertaking to adversely affect historic properties and that a programmatic agreement will be prepared and the ACHP has chosen not to participate in a letter dated April 12, 2023; and

WHEREAS, USACE has consulted and will continue to consult with the NYSHPO, the Delaware Nation, the Delaware Tribe of Indians, the Eastern Shawnee Tribe of Oklahoma, the Oneida Nation, the Saint Regis Mohawk Tribe, the Seneca Nation of Indians, the Shinnecock Indian Nation, and the Stockbridge-Munsee Community; and

WHEREAS, USACE has identified other interested parties including the Unkechaug Nation, the Nassau County Historical Society, the Freeport Historical Society, the Historical Society of the Massapequas, the Long Beach Historical and Preservation Society, the Seaford Historical Society, and the Wantagh Preservation Society and invite them to participate in the process for taking into consideration the effects of the Project on historic properties; and

WHEREAS, USACE involved the general public through public scoping and review periods through the National Environmental Policy Act (NEPA), which affords all persons, organizations, and government agencies the right to review and comment on proposed major federal actions that are evaluated by a NEPA document and participate in public meetings during the review of the feasibility report; and

NOW, THEREFORE, USACE and the New York SHPO agree that the Undertakings shall be implemented in accordance with the following stipulations in order to take into account the effects of the Project on historic properties.

### **Stipulation I**

#### Identification, Evaluation, Effect Determination and Resolution

- A. *Scope of Undertaking.* This PA shall be applicable to all construction activities related to the proposed Undertaking. The Area of Potential Effects (APE) shall be established by the USACE in consultation with the NYSHPO and shall include all areas within which the Undertaking may directly or indirectly alter the character defining features of historic properties, if any such properties exist.
- B. *Qualifications and Standards.* The USACE shall ensure that all work conducted in conjunction with this PA is performed in a manner consistent with the Secretary of Interior's "Standards and Guidelines for Archeology and Historic Preservation (48 Federal Register 44716-44740; September 23, 1983), as amended, or the Secretary of the Interior's Standards for the Treatment of Historic Properties (36 CFR § 68), as appropriate. The USACE shall ensure that all cultural resource investigations and reviews carried out pursuant to this agreement are carried out by or under the direct supervision of a person or persons meeting at a minimum, the appropriate standards set forth in the Secretary of the Interior's Professional Qualifications Standards (48 FR 44738-44739).
- C. *Definitions.* The definitions set forth in § 800.16 are incorporated herein by reference and apply throughout this PA.
- D. *Identification of Historic Properties.* Prior to the initiation of any irretrievable commitment of construction funds, the USACE shall make a reasonable and good faith effort to identify historic properties located within the APE. These steps may include, but are not limited to, background research, consultation, oral history interviews, sample field investigation, field survey, phased archaeological survey, and intensive level architectural survey. The level of effort for these activities shall be determined in consultation with the NYSHPO and any Tribe that attaches religious and cultural significance to identified properties. If no historic properties are identified within the APE, the USACE shall document this finding pursuant to § 800.11(d) and retain this documentation in USACE files for at least seven (7) years.
- E. *Evaluation of National Register Eligibility.* If potential historic properties are identified within the APE, the USACE shall determine their eligibility for listing on the National Register of Historic Places in accordance with the process described in § 800.4(c) and criteria established in 36 CFR § 60. The determination of cultural significance shall be conducted in consultation with the NYSHPO and Tribes that attach religious and cultural significance to identified properties. Should the USACE and the NYSHPO agree that a property is or is not eligible; such consensus shall be deemed conclusive for the purpose of the PA. Should the USACE and NYSHPO not agree regarding the eligibility of a

property, the USACE shall obtain a determination of eligibility from the Keeper of the National Register pursuant to 36 CFR § 63.

- F. *No Historic Properties Affected.* The USACE shall make a reasonable and good faith effort to evaluate the effect of each Undertaking on historic properties within the APE. The USACE through consultation may conclude that no historic properties are affected by an Undertaking if no historic properties are present in the APE, or the Undertaking will have no effect as defined in §800.16(i). This finding shall be documented in compliance with § 800.11(d) and the documentation shall be retained by the USACE for at least seven (7) years and provided to the NYSHPO upon request. The USACE shall provide information on the finding to the public upon request, consistent with the confidentiality requirements of § 800.11(c).

G. *Assessment of Effects*

1. *Finding of No Adverse Effect.* The USACE, in consultation with the NYSHPO and Tribes that attach religious and cultural significance to identified historic properties, shall apply the criteria of adverse effect to historic properties within the APE in accordance with § 800.5. The USACE may propose a finding of no adverse effect if the Undertaking's effects do not meet the criteria of § 800.5(a)(1) or the Undertaking is modified to avoid adverse effects in accordance with 36 CFR § 68. The USACE shall provide to the NYSHPO documentation of this finding meeting the requirements of § 800.11(e). The NYSHPO shall have 30 calendar days in which to review the findings and provide a written response to the USACE. The USACE may proceed upon receipt of written concurrence from the NYSHPO. Failure of the NYSHPO to respond within 30 days of receipt of the finding shall be considered agreement with the finding. The USACE shall maintain a record of the finding and provide information on the finding to the public upon request, consistent with the confidentiality requirements of § 800.11(c).
2. *Resolution of Adverse Effect.* If the USACE determines that the Undertaking will have an adverse effect on historic properties as measured by criteria in § 800.5.(a)(1), the agency shall consult with the NYSHPO, the Tribes, and other consulting parties (CPs) to resolve adverse effects in accordance with § 800.6.
  - a. For historic properties that the USACE and NYSHPO agree will be adversely affected, the USACE shall:
    1. Consult with the NYSHPO to identify other individuals or organizations to be invited to become CPs. If additional CPs are identified, the USACE shall provide them copies of documentation specified in § 800.11(e) subject to confidentiality provisions of § 800.11(c).
    2. Afford the public and interested parties an opportunity to express their views on resolving adverse effects in a manner appropriate to the magnitude of the project and its likely effects on historic properties.

3. Consult with NYSHPO, the NYDEC, the Tribes, and other CPs which have indicated an interest in the Undertaking to seek ways to avoid, minimize, or mitigate adverse effects.
  4. The USACE, in consultation with NYSHPO, the Tribes, and other CPs as appropriate, shall prepare an historic property treatment plan which describes mitigation measures the USACE proposes to resolve the Undertaking's adverse effects and provide this plan for review and comment to the NYSHPO, the Tribes and other CPs that have indicated an interest in the Undertaking. All parties shall have 30 calendar days in which to provide a written response to the USACE.
- b. If the USACE and NYSHPO fail to agree on how adverse effects will be resolved, the USACE shall request that the Council join the consultation and provide the Council with documentation pursuant to § 800.11(g).
1. If the Council agrees to join the consultation, the USACE shall proceed in accordance with § 800.9.
  2. If, after consulting to resolve adverse effects pursuant to Stipulations I or II of this PA, the Council, USACE, NYSHPO or Tribes determines that further consultation will not be productive, then any party may terminate consultation in accordance with the notification requirement and process prescribed by § 800.7.

## **Stipulation II**

### **Post Review Changes and Discoveries**

- A. *Changes in the Undertaking.* If construction on the Undertaking has not commenced and the USACE determines that it will not conduct the Undertaking as originally coordinated, the USACE shall reopen consultation pursuant to Stipulation I D – G.
- B. *Unanticipated Discoveries or Effects.* Pursuant to § 800.13(a)(2), if historic properties are discovered or unanticipated effects on historic properties are found after construction on an Undertaking has commenced, the USACE shall ensure that all operations with the potential to affect an historic property are immediately ceased, develop a treatment plan to resolve adverse effects, and notify the NYSHPO and the Tribes within 48 hours of the discovery. The notification shall include the USACE assessment of National Register eligibility of affected properties and proposed actions to resolve the adverse effects. Comments received from the NYSHPO and Tribes which have expressed an interest in the Undertaking within 48 business hours of the notification shall be taken into account by the USACE in carrying out the proposed treatment plan. The USACE may assume NYSHPO concurrence in its eligibility assessment unless otherwise notified by the NYSHPO. The USACE shall provide the NYSHPO and the Tribes which have expressed an interest in the Undertaking a report of the USACE actions when they are completed.
- C. *Treatment of Human Remains.*

1. If any human remains and/or grave-associated artifacts are encountered, the USACE, the NYSHPO and the Tribes shall consult to develop a treatment plan that is responsive to the ACHP's "Policy Statement Regarding Treatment of Burial Sites, Human Remains and Funerary Objects" (23 February 2007), the Native American Grave Protection and Repatriation Act, as amended (PL 101-601, 25 U.S.C. 3001 et seq.), and the USACE Tribal Consultation Policy (4 October 2012).
2. Human remains must be treated with the utmost respect and dignity. All work must stop in the vicinity of the find and the site will be secured.
3. The medical examiner/coroner, local law enforcement, the NYSHPO and the Tribes will be notified immediately. The coroner and local law enforcement will determine if the remains are forensic or archaeological in nature.
4. If the remains are determined to be archaeological in nature, a forensic/physical anthropologist will be employed to determine whether the remains are Native American or of other origin.
5. If the human remains are determined to be Native American, they shall be left in place and protected from further disturbance until a treatment plan has been developed and approved by the USACE, the NYSHPO and the Tribes.
6. If human remains are determined to be non-Native American, the remains will be left in place and protected from further disturbance until a plan for avoidance or removal is developed and approved by the USACE, the NYSHPO, the Tribes and other parties, as appropriate.

### **Stipulation III**

#### **Coordination of Reviews for Study Activities**

- A. All plans, documents, reports, and materials shall be submitted by the USACE to the NYSHPO, the Tribes and other CPs by mail for a 30-day review period unless otherwise stipulated in this PA. If the NYSHPO and other parties fail to comment within the specified time the USACE shall assume the agencies concurrence.
- B. The USACE shall ensure that all submissions to the NYSHPO, the Tribes and other CPs include all the relevant information required to facilitate their review. The USACE shall provide all additional information requested within a timely manner unless the signatories to this PA agree otherwise.
- C. The USACE shall ensure that all draft and final reports resulting from actions pursuant to the Stipulations of this PA will be provided to the NYSHPO, the Tribes and other CPs and will identify the Principal Investigator responsible for the report. All reports will be responsible to contemporary standards and to NYSHPO report standards.

**Stipulation IV**  
Curation and Disposition of Artifacts and Records

The USACE shall ensure that all archeological materials and associated records owned by the State which are recovered and conserved as a result of the identification, evaluation, and treatment efforts conducted under this PA, shall be transported and accessioned into a suitable university, museum, or other scientific or educational institution that meets the standards of 36 CFR § 79. Copies of associated archaeological records and data shall be made available to the NYSHPO and the Tribes upon request. Archeological items and materials from privately-owned lands shall be returned to their owners upon completion of analyses required for Section 106 compliance under this PA.

**Stipulation V**  
PA Amendments, Disputes and Termination

A. *Amendments.* Any party to this PA may propose to the other parties that it be amended, whereupon the parties will consult in accordance with § 800.6(c)(7) to consider such an amendment.

B. *Disputes.* Disputes regarding the completion of the terms of this agreement shall be resolved by the signatories. If the signatories cannot agree regarding a dispute, any one of the signatories may request the participation of the ACHP in resolving the dispute in accordance with the procedures outlined in § 800.9.

C. *Termination of PA.* Any party to this PA 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 PA by the NYSHPO, the USACE shall comply with the provisions of § 800 Subpart B.

**Stipulation VI**  
Termination of Consultation

If, after consulting to resolve adverse effects pursuant to Stipulation I or II of this PA, the USACE or NYSHPO determines that further consultation will not be productive, then either party may terminate consultation in accordance with the notification requirements and process prescribed by § 800.7.

**Stipulation VII**  
Term of this Agreement

This PA remains in effect until the Undertaking is complete and all terms of this PA are met, unless the Undertaking is terminated or authorization is rescinded.

Execution and implementation of this PA evidences that the USACE has satisfied its Section 106 responsibilities for all individual Undertakings of the Project, and that the USACE has afforded the ACHP an opportunity to comment on the Undertaking and its effects on historic properties.



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STORM RISK MANAGEMENT FEASIBILITY STUDY  
AMONG  
THE U.S. ARMY CORPS OF ENGINEERS, NEW YORK DISTRICT  
AND  
THE NEW YORK STATE HISTORIC PRESERVATION OFFICE

Execution and implementation of this PA evidences that the USACE has satisfied its Section 106 responsibilities 36 CFR 800.6(b)(1)(iv) for all individual undertakings of the Project, and has afforded the New York SHPO and the ACHP an opportunity to comment on the undertaking and its effects on historic properties.

**U.S. ARMY CORPS OF ENGINEERS, NEW YORK DISTRICT**

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**Alexander Young, Colonel, District Commander**

**Date**

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AMONG  
THE U.S. ARMY CORPS OF ENGINEERS, PHILADELPHIA DISTRICT  
AND  
THE U.S. ARMY CORPS OF ENGINEERS, NEW YORK DISTRICT  
AND  
THE NEW YORK STATE HISTORIC PRESERVATION OFFICE

Execution and implementation of this PA evidences that USACE has satisfied its Section 106 responsibilities 36 CFR 800.6(b)(1)(iv) for all individual undertakings of the Project, and has afforded the New York SHPO and the ACHP an opportunity to comment on the undertaking and its effects on historic properties.

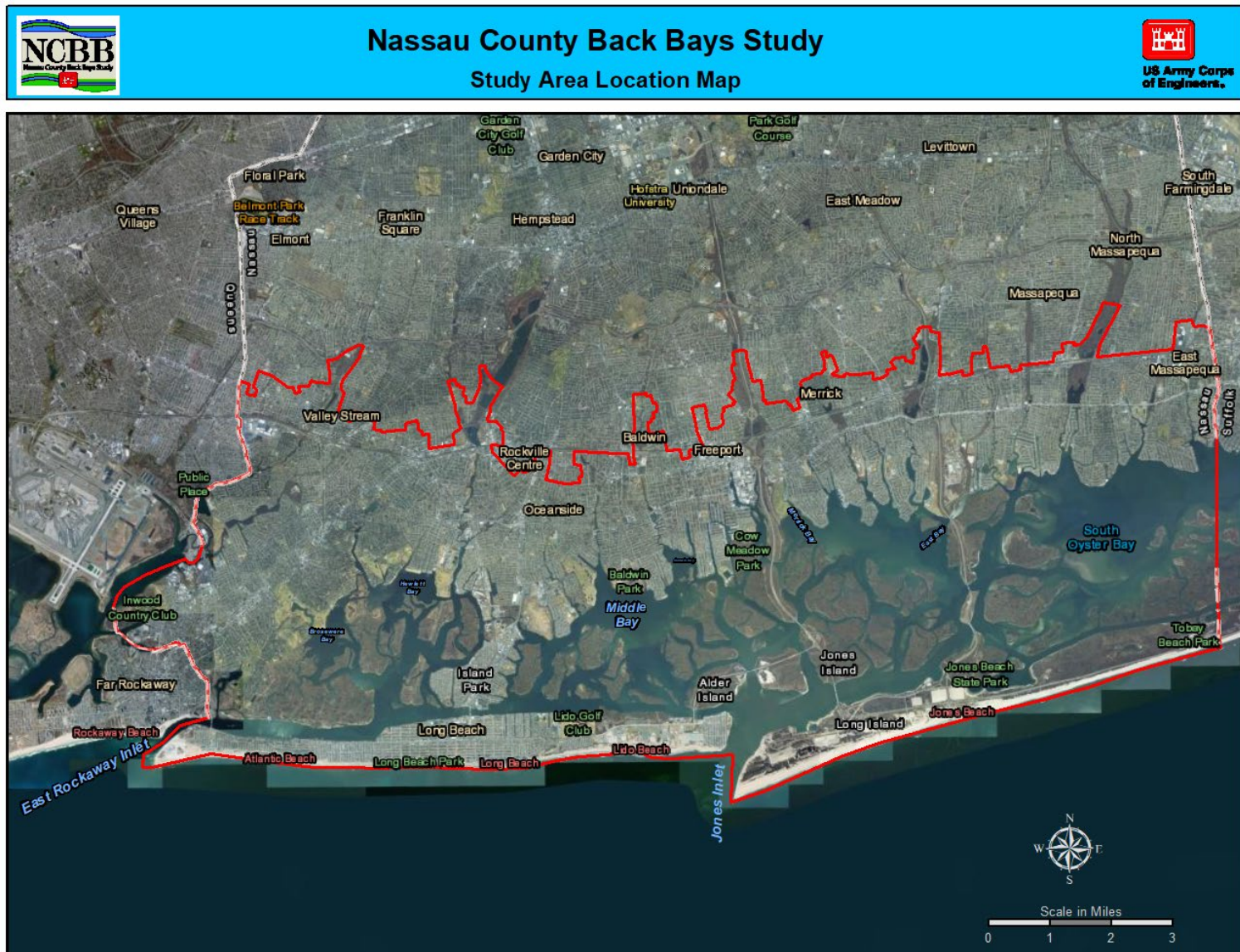
**NEW YORK STATE HISTORIC PRESERVATION OFFICER**

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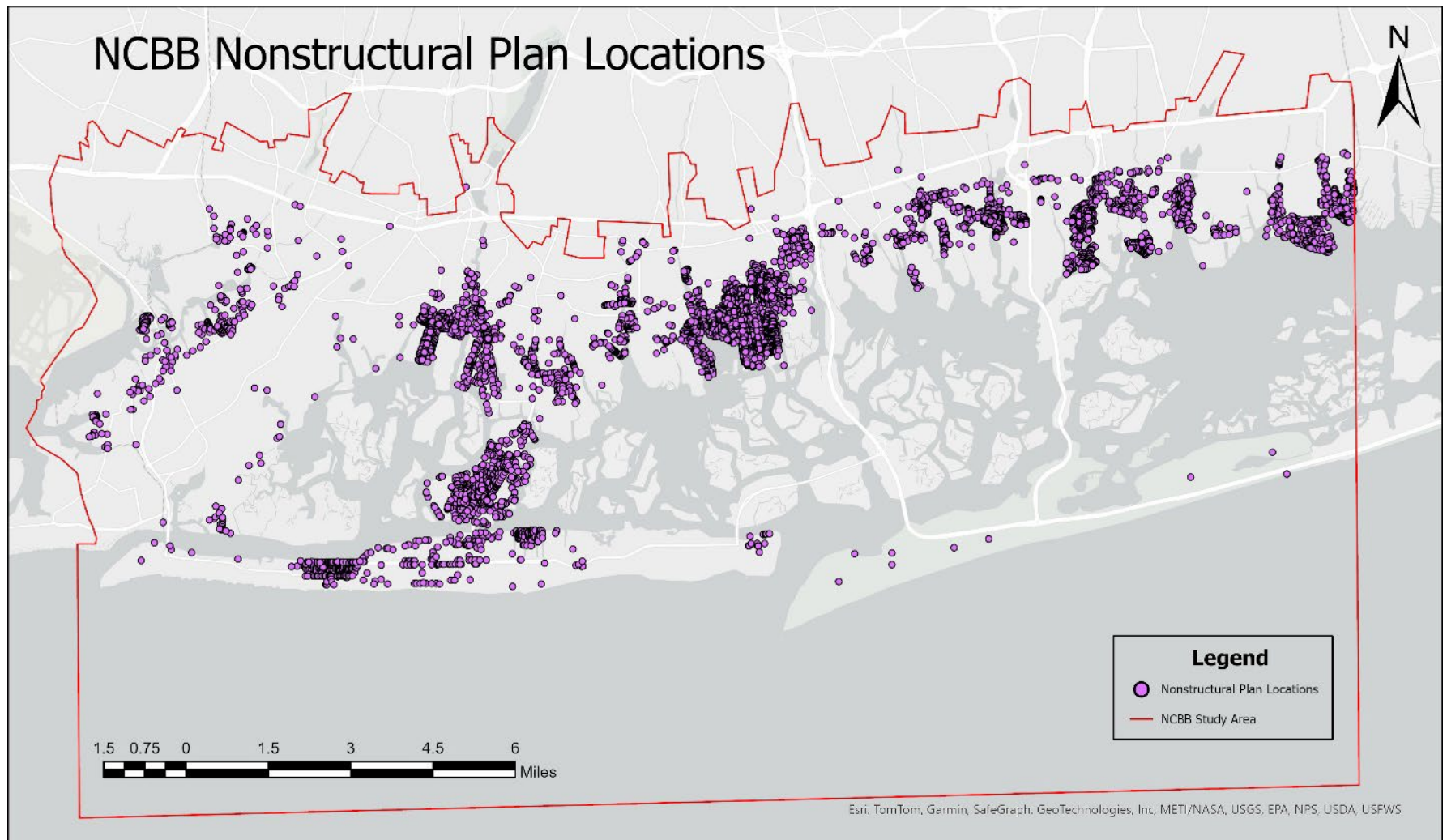
**R. Daniel Mackay, Deputy Commissioner, State Historic Preservation Officer**

**Date**

## Appendix A: Map of NCBB Study Area



Appendix B: NCBB Map of Nonstructural Plan Locations





## Appendix C: Historic Properties in the NCBB Study Area

