

MEMORANDUM OF AGREEMENT

AMONG

THE U. S. ARMY CORPS OF ENGINEERS, SAVANNAH DISTRICT,
THE GEORGIA STATE HISTORIC PRESERVATION OFFICER,
THE SOUTH CAROLINA STATE HISTORIC PRESERVATION OFFICER, AND
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION

REGARDING

THE FISH PASSAGE FOR THE SAVANNAH HARBOR EXPANSION PROJECT,
NEW SAVANNAH BLUFF LOCK AND DAM, AIKEN COUNTY SOUTH CAROLINA
AND RICHMOND COUNTY, GEORGIA

(GA Project # HP-911120-001, SC Project No. 14-ED0108/03-VM0063, and
ACHPConnect Log Number: 014675)

WHEREAS, the U. S. Army Corps of Engineers (USACE), Savannah District (District), is undertaking a project to expand the Savannah Harbor Navigation Project by deepening the existing navigation channel between station 103+000 and -60+000 by up to 6 feet, extending the bar channel seaward, constructing bend wideners in selected areas along the existing channel, deepening the existing Kings Island Turning Basin, constructing passing lanes, disposing of dredged material in existing disposal areas and possible new sites, creating fish and wildlife mitigation lands, and constructing mitigation features to offset environmental impacts), and one environmental feature, a fish passage (Undertaking), is located at the New Savannah Bluff Lock and Dam (NSBLD), Richmond County, Georgia and Aiken County, South Carolina (Figure 1); and

WHEREAS, the District is proposing to construct an in-channel weir and fish ramp with a floodplain bench. The fixed weir will have a rock ramp at the existing NSBLD site (Figure 2). Construction of the weir and rock ramp will require the demolition of the NSBLD structure down to elevation 91.29 NAVD88; and

WHEREAS, the Area of Potential Effect (APE) for the Undertaking is defined as the NSBLD structure, the adjacent 50-acre park and recreation area owned by District, areas required for construction access and lay down outside of the 50-acre park, and shoreline and in-channel navigation features that may be exposed due to lower pool elevations. The viewshed of the proposed fish passage is also included as part of the APE; and

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WHEREAS, in 2018 the District identified a training wall within the APE and the District, the Georgia Historic Preservation Office (GA SHPO) and the South Carolina State Historic Preservation Office (SC SHPO) agreed the training wall has an unknown National Register of Historic Places (NRHP) eligibility status and will be marked with buoys to avoid adverse effects; and

WHEREAS, the District will conduct studies and evaluate the training wall for the NRHP as part of the Savannah River Below Augusta Training Wall Section 216 Disposition Study, a study that is not part of SHEP; and

WHEREAS, the NSBLD structure, located within the APE, consisting of a lock chamber, dam with gates and operation building, is eligible for the National Register of Historic Places (NRHP) under Criterion A (transportation history) and Criterion C (engineering) (Figures 3 and 4); and

WHEREAS, the District has determined that the demolition of the structure as part of the SHEP fish passage project is an adverse effect to the NSBLD structure; and

WHEREAS, the District executed a Programmatic Agreement (PA) for expanding the Savannah Harbor Navigation Project (Undertaking) in 2012 which addresses compliance and mitigation strategies for archaeological resources but does not include historic resources. The District intends to use the PA for investigations and mitigation for archaeological resources that are within the APE for this Undertaking; and

WHEREAS, the District has consulted with the Georgia Historic Preservation Office (GA SHPO), and the South Carolina State Historic Preservation Office (SC SHPO) pursuant to 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act (54 U.S.C. 306108); and

WHEREAS, signature of this PA by the GA SHPO and the SC SHPO does not constitute approval of the proposed undertaking, but is for agreement with the terms for resolution of adverse effects to historic properties in accordance with 36 CFR Part 800 only; and

WHEREAS, the District notified the Advisory Council on Historic Preservation (Council) in a letter dated November 9, 2018, in accordance with 36 CFR 800.10.c regarding the adverse effect on the NSBLD structure, at which time they elected not to participate in a letter dated November 27, 2018; and

WHEREAS, the District requested participation of the Council in the Section 106 process for the subject undertaking on November 1, 2019, and the Council accepted the invitation to participate by letter dated November 19, 2019 to the Assistant Secretary for the Army for Civil Work (ASA-CW); and

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WHEREAS, the District consulted with nineteen federally recognized Native American Tribes in March 2006 and November 2010, informing them of the status of SHEP and inviting comments; and

WHEREAS, the Catawba Indian Nation requested they be added to the PA for SHEP as a concurring party and asked to be notified if prehistoric artifacts were encountered; and

WHEREAS, public meetings regarding the undertaking were held in the Augusta, Georgia area in May 2017, June 2018, November 2018, and March 2019, and no issues or concerns regarding cultural resources were raised at these meetings; and

WHEREAS, during the public comment period for the draft Post Authorization Analysis Report and Supplemental Environmental Assessment from February 15, 2019 – April 16, 2019 Savannah District received one comment that asked Savannah District to select an alternative that would retain and rehabilitate the New Savannah Bluff Lock and Dam due to its historic significance, and Savannah District responded that rehabilitation would not meet the requirements of the Water Infrastructure Improvements for the Nation Act of 2016, was too costly, and would not allow for threatened and endangered species to pass the location; and

WHEREAS, the District issued a Section 106 Public Notice on XXX to solicit comments on the draft Memorandum of Agreement; and

NOW, THEREFORE, the Savannah District, the GA SHPO, and the SC SHPO agree that the undertaking shall be administered in accordance with the following stipulations to satisfy the District's Section 106 responsibility for this undertaking. The adverse effect caused as a result of this project will be mitigated through the following stipulations:

STIPULATIONS

The Savannah District shall ensure that the following measures are carried out by a professional meeting the applicable Secretary of the Interior's Professional Qualifications Standards to mitigate adverse effects to the NSBLD structure:

I. RECORDATION OF NSBLD

A. Prior to authorizing any demolition or other activity that could damage any building, structure or landscape, the District will ensure that the resources are documented in accordance with the standards and guidelines of the Historic American Engineer Record (HAER) (www.nps.gov/hdp/standards/index.htm).

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Unless otherwise agreed to by the National Park Service (NPS) and the GA and SC SHPOs, the District will ensure that all documentation is completed and accepted in writing by the NPS and SHPOs prior to demolition.

B. The District will provide NPS and the GA and SC SHPOs a copy of the Draft HAER documentation for review and comment. The District will submit Final HAER documentation to the NPS in accordance with requirements in the Secretary of the Interior's Guidelines for Architectural and Engineering Documentation (Federal Register, Vol. 68, No. 139, pp. 43159-43162, July 21, 2003). Once completed and accepted, the documentation will be placed in the Historic American Buildings Survey/Historic American Engineering Record/Historic American Landscapes Survey Collection at the Library of Congress where it will be available to the public.

C. The GA SHPO, SC SHPO, ACHP and the District will also receive a copy of the documentation for their files.

D. HAER documentation for the resources to be demolished or altered will include, but is not limited to:

1. The written historical and descriptive data prepared in accordance with outline format guidelines containing:

a) A general history of the transportation and trade along the Savannah River

b) A construction history of the dam and lock including the history of the engineering features

c) An architectural description of the resource including alterations

d) A description of the site and changes

e) Any historical photographs should be reproduced in the supplementary materials section

f) A site plan

2. Reproduction of as built drawings

3. Large-format (4" x 5" or larger negative size) photographs processed for archival permanence in accordance with HAER photographic specifications (www.nps.gov/hdp/standards/photoguidelines.pdf). Views will include but are not limited to:

- a) At least one view that shows the overall resource in context.
- b) One photograph of both faces.
- c) General and detailed photographs of the lock including at high and low water levels.
- d) Views of any detail unique to the resource including railings or date stamps/plaques.

4. At least one color digital photograph of each resource and its setting. The digital format should meet the NPS NRHP's 75-year permanence standard and higher resolution digital files (www.nps.gov/NR/PUBLICATIONS/bulletins/photopolicy/index.htm).

5. Photo locations keyed to the site plan and included with the "Index to Photographs."

II. INTERPRETIVE DISPLAYS AND PROGRAMS

A. Savannah District, in consultation with the GA SHPO and SC SHPO will develop and install a professionally-designed online exhibit that will communicate the structure's history and meaning to the general public. The exhibit shall utilize historic photographs that document the construction and use of the structure, period newspaper articles and renderings of the lock and dam, tied to a timeline of events for the structure. (Deadline: within two years of the start of the project's final design, which is scheduled to start in October 2019.)

1. Materials that will be used to develop the exhibit include, but are not limited to, black and white photographs from 1934-35 which illustrate the early stages of construction, newspaper articles and drawings of the structure from local newspapers, HAER photographs, and information from the HAER documentation regarding the historic significance and history of the structure.

2. District shall provide the GA SHPO and SC SHPO a copy of the 65% and 95% complete design for review and comment.

3. The online exhibit will be hosted on the District web site and other appropriate websites such as the USACE history website (<https://www.usace.army.mil/About/History/exhibits.aspx>). The District shall offer a link to the exhibit to local history museums such as, but not limited to, the Augusta History Museum and other local historical societies and preservation

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organizations who may request a link on their respective website.

B. The District shall provide archival quality copies of the black and white photographs and the HAER documentation to local history museums, historical societies and preservation organizations, for permanent curation without restrictions for future use. (Deadline: within two years of the start of the project's final design, scheduled to start in October 2019).

C. The District shall create a tri-fold or similar brochure that includes the history of the NSBLD, copies of drawing and plans, and photographs of the structure. Information from the HAER documentation will be used to create most of the text.

1. District shall provide the GA SHPO and SC SHPO a copy of the 65% and 95% complete design for review and comment.

2. This brochure will be made available to all local history museums, historical societies, and preservation organizations. The brochure will also be distributed at the J. Strom Thurmond Visitor Center. A PDF version of the brochure will be placed on the District's website. Both the GA SHPO and SC SHPO shall receive a copy of the final product.

III. ADMINISTRATIVE TERMS

A. DURATION

This MOA will continue in full force and effect for four years after signature or until the construction of the Project is complete and all terms of this Memorandum of Agreement (MOA) are met, whichever comes first, unless the Project is terminated or authorization is rescinded.

B. UNANTICIPATED DISCOVERY

During the construction of this project, the District will treat unanticipated discoveries in a manner that is in accordance with 36 CFR Part 800.13 "Post Review Discoveries" and in the case of the discovery of human remains, treatment shall follow protocols developed by the GA SHPO, unless remains are discovered on lands managed by District. If any human skeletal remains are discovered on District-managed lands Savannah District shall follow procedures for Inadvertent Discovery of Human Remains on Federal Lands in accordance with 43 CFR §10.4(a) – (d).

C. MONITORING

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The GA SHPO and the SC SHPO may monitor activities carried out pursuant to this Agreement, if so requested. The Savannah District will cooperate with the GA SHPO and the SC SHPO in carrying out their monitoring and review responsibilities.

D. REPORTING

Until such time as Stipulations I-II have been completed in accordance with the terms of this agreement, District will provide status reports to the GA SHPO and SC SHPO to review implementation of the terms of this agreement. The report shall summarize the work undertaken pursuant to this Agreement, any problems encountered and any disputes or objections received in Savannah District's efforts to carry out the terms of this Agreement. The status report shall be submitted annually on the anniversary of the execution of this Agreement.

E. TERMINATION

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

Once the MOA is terminated, and prior to work continuing on the undertaking, the Savannah District must either (a) execute an MOA pursuant to 36 CFR § 800.6 or (b) request, take into account, and respond to the comments of the Council under 36 CFR § 800.7. The District shall notify the signatories as to the course of action it will pursue.

F. AMENDMENT

This MOA may be amended upon agreement in writing by all signatories. The amendment will be effective on the date a copy signed by all of the signatories is filed with the Council.

G. ANTI-DEFICIENCY ACT

All requirements set forth in this MOA requiring expenditure of funds by the District are expressly subject to the availability of appropriations and the requirements of the Anti-Deficiency Act (31 U.S.C. 1341). No obligation undertaken by the District under the terms of this MOA shall require or be interpreted to require a commitment to extend funds not appropriated for a

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particular purpose. If the District cannot perform any obligation set forth in this MOA because of unavailability of funds, that obligation must be renegotiated among the District, the GA SHPO, SC SHPO, and the Council as necessary.

H. DISPUTE RESOLUTION

Should the signatories to this agreement object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, the District shall consult with the signatories to resolve the objection. If the District determines that such objection cannot be resolved, the District will:

1. Forward all documentation relevant to the dispute, including the District's proposed resolution, to the Council. The Council shall provide the District with its advice on the resolution of the objection within 30 calendar days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the District shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the Council, signatories and concurring parties, and provide them with a copy of this written response. The District will then proceed according to its final decision.
2. If the Council does not provide its advice regarding the dispute within the thirty (30) calendar day time period, the District may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the District shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories to the MOA, and provide them and the Council with a copy of such written response.
3. The District's responsibilities to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged.

I. EXECUTION OF THIS AGREEMENT

This Agreement may be executed in counterparts, with a separate signature page for each party. The Savannah District shall ensure that each party is provided with a copy of the fully executed Agreement.

Execution of this MOA by the Savannah District, GA SHPO, SC SHPO and the Council, its submission to the Council in accordance with 36 CFR 800.6(b)(1)(iv) and implementation of its terms evidence that the District has taken into account the effects of this undertaking on historic properties and afforded the Council an

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opportunity to comment.

SIGNATORY:

US ARMY CORPS OF ENGINEERS, SAVANNAH DISTRICT

By: _____ DATE: _____
Daniel H. Hibner
Colonel, US Army
Commanding

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SIGNATORY:

GEORGIA STATE HISTORIC PRESERVATION OFFICER

By: _____ DATE: _____
David Crass, Ph.D.
Division Director and Deputy State Historic Preservation Officer

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SIGNATORY:

SOUTH CAROLINA STATE HISTORIC PRESERVATION OFFICER

By: _____ DATE: _____
Elizabeth Johnson
Deputy State Historic Preservation Officer

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SIGNATORY:

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____ DATE: _____
John M. Fowler
Executive Director

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Figure 1. General Location Map, Savannah Harbor Expansion Project, Fish Passage at New Savannah Bluff Lock and Dam

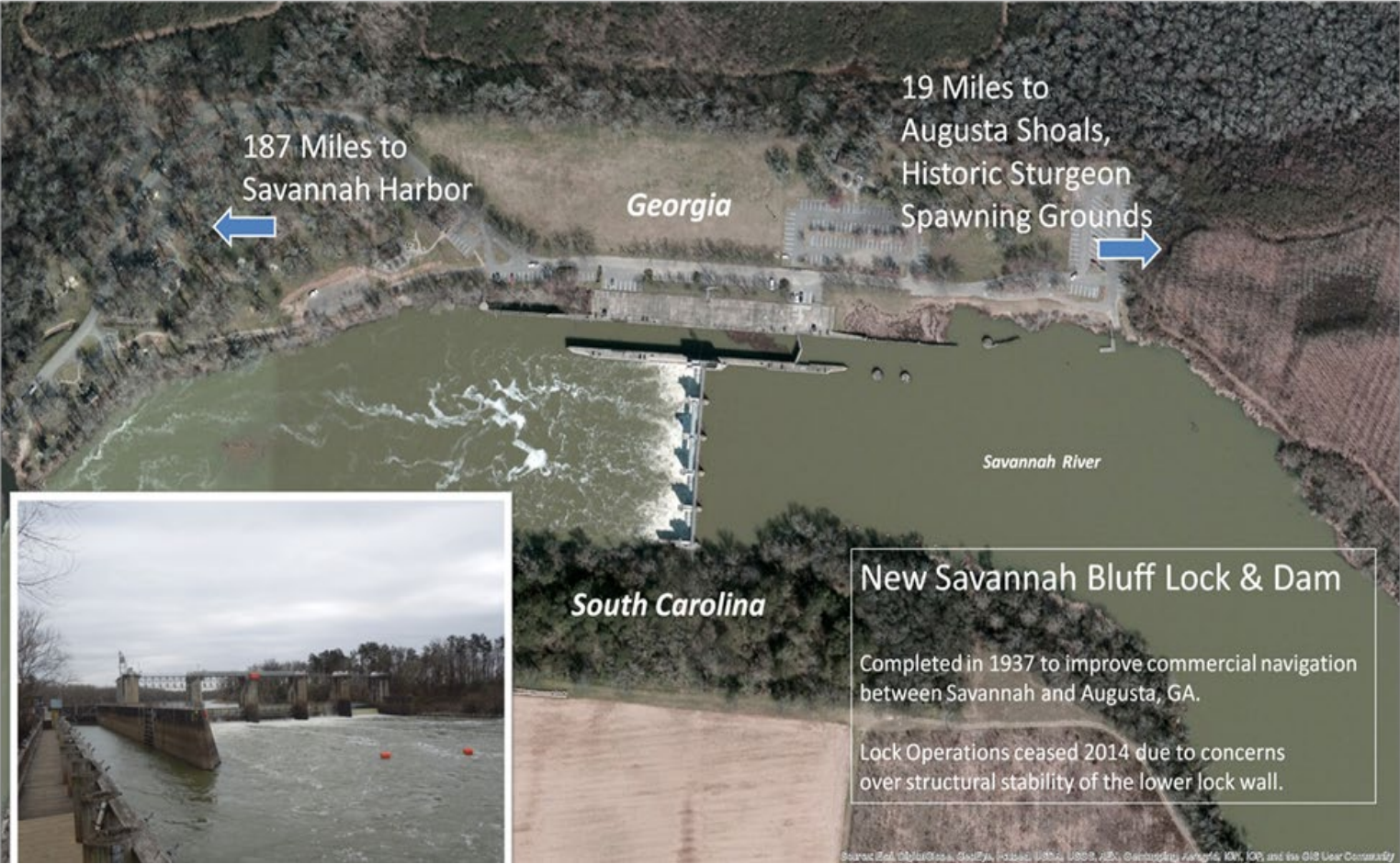


Figure 2. Artist Rendering of Fish Passage Design

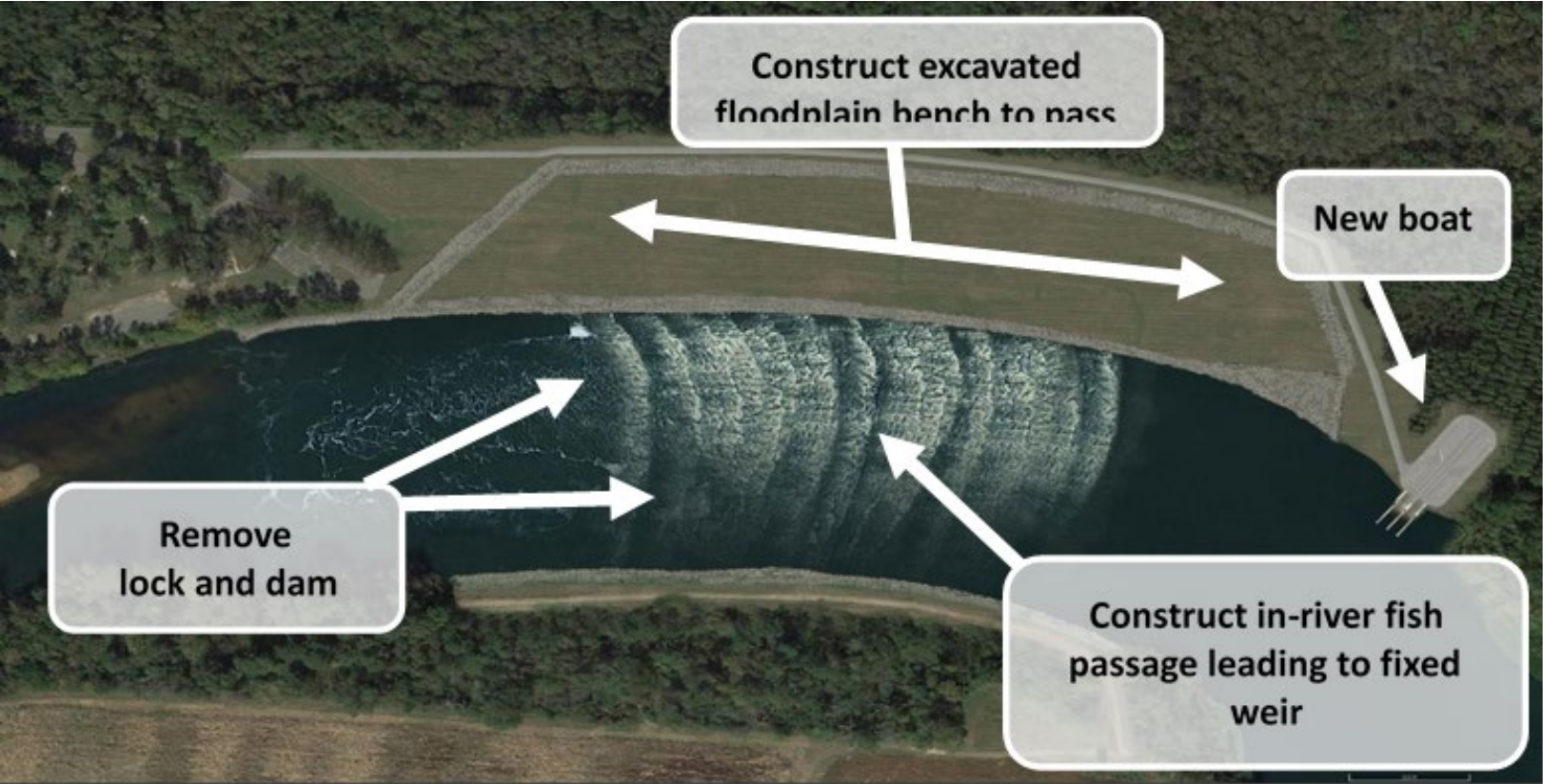


Figure 3. National Register Boundary for New Savannah Bluff Lock and Dam (in blue).

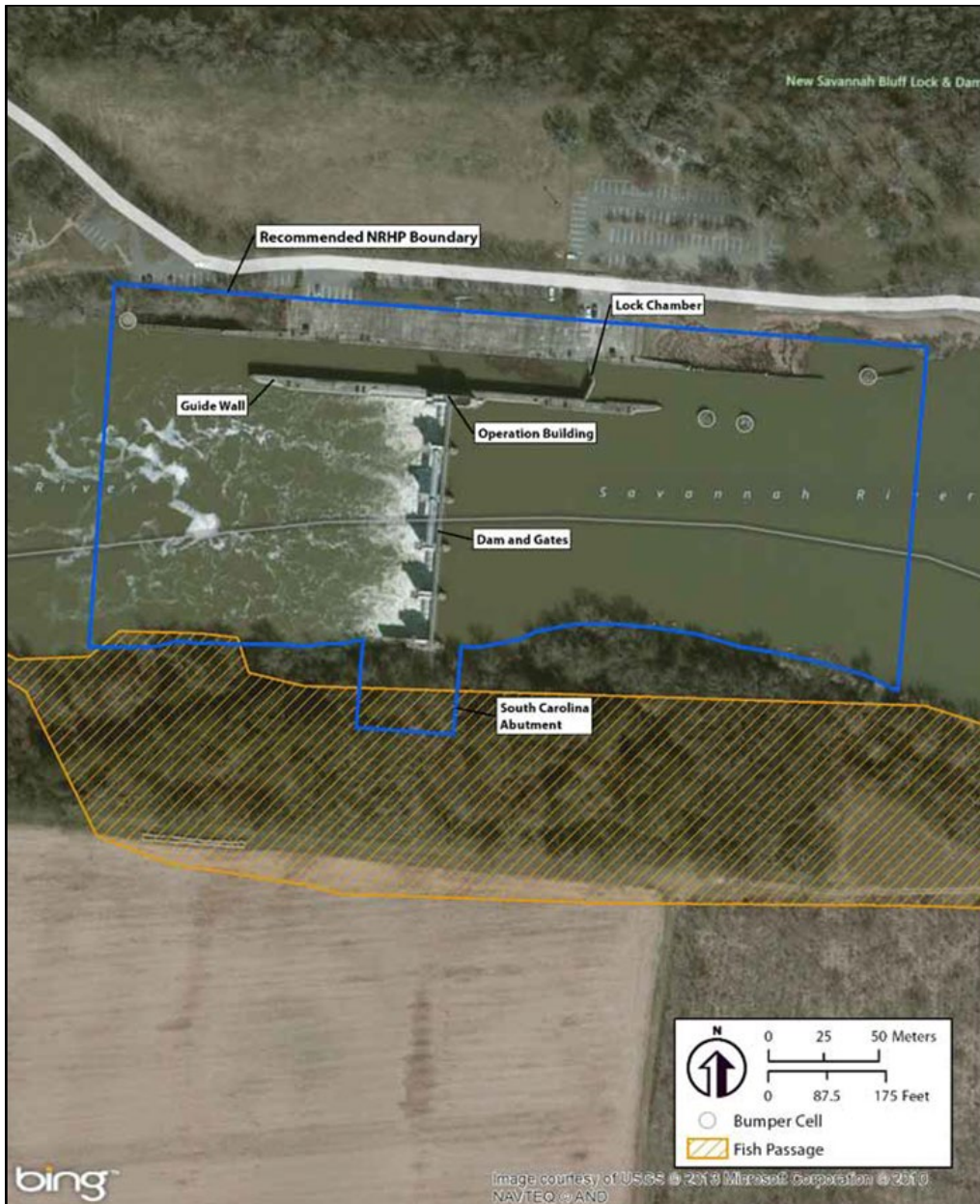


Figure 4. Photograph of downstream side of New Savannah Bluff Lock and Dam

