

MEMORANDUM OF AGREEMENT
AMONG THE U. S. ARMY CORPS OF ENGINEERS, SAVANNAH DISTRICT,
THE GEORGIA 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
ACHP Project Number: 014675)

WHEREAS, the U. S. Army Corps of Engineers (USACE), Savannah District (District), is undertaking a project to expand the Savannah Harbor Expansion (SHEP) 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

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 to treat the training wall as eligible for the National Register of Historic Places (NRHP) until it can be formally evaluated and the District agreed to mark the property 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 NRHP under Criterion A

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(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 SHEP (Undertaking) in 2012 which addresses compliance and mitigation strategies for historic properties such as archaeological sites but does not include other types of historic properties. The District intends to use the 2012 PA for investigations and mitigation for historic properties of an archaeological nature that are within the APE for this Undertaking; and

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

WHEREAS, signature and execution of this Memorandum of Agreement (MOA) by the GA 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 (ACHP) in a letter dated November 9, 2018, in accordance with 36 CFR 800.6(a)(1) 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 ACHP in the Section 106 process for the undertaking on November 1, 2019, and the ACHP accepted the invitation to participate by letter dated November 19, 2019; and

WHEREAS, the District consulted with nineteen federally recognized Indian Tribes in March 2006 and November 2010, informing them of the status of SHEP and inviting comments, and only the Catawba requested to be notified of any findings; and

WHEREAS, the District held public meetings regarding the undertaking in the Augusta, Georgia area in May 2017, June 2018, November 2018, and March 2019, and all issues or concerns regarding cultural resources were addressed during these meetings and in response to public comments; 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 the Savannah District received one comment that asked Savannah District to select an alternative that would retain and rehabilitate the NSBLD due to its historic significance, and the 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

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would not allow for threatened and endangered species to pass the location; and

WHEREAS, the District has consulted with Historic Augusta Inc., Save The Middle River, Earth and Water Law, The City of Augusta, and the Augusta Museum of History regarding the effects of the undertaking on historic properties; and

WHEREAS, the District issued a Section 106 Public Notice on February 15, 2019 and March 27, 2020, to solicit comments on the draft MOA (Appendix A) and the District posted responses at <https://www.sas.usace.army.mil/About/Divisions-and-Offices/Planning-Division/Plans-and-Reports/> on July 16, 2020; and

WHEREAS, the SC SHPO terminated consultation, by letter dated August 21, 2020 (Appendix B), citing that their continued participation in the consultation process would no longer be productive; and

WHEREAS, the ACHP, pursuant to 36 CFR 800.7(a)(2), has elected to execute this MOA with the District and GA SHPO without the SC SHPO's involvement; and

NOW, THEREFORE, the District, the ACHP, and the GA SHPO agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

STIPULATIONS

The District shall ensure that the following measures are carried out to resolve the adverse effects of this undertaking, and that all mitigation measures shall be completed by a professional meeting the applicable Secretary of the Interior's Professional Qualifications Standards:

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). Unless otherwise agreed to by the National Park Service (NPS) and the GA SHPO, the District will ensure that all documentation is completed and accepted in writing by the NPS and GA SHPO prior to demolition.
- B. The District will provide NPS, the GA SHPO, SC SHPO, Historic Augusta Inc., Save The Middle River, Earth and Water Law, The City of Augusta, and the Augusta Museum of History 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

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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/HAER/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, Historic Augusta Inc., Save The Middle River, Earth and Water Law, The City of Augusta, and the Augusta Museum of History, 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, SC SHPO, ACHP, Historic Augusta Inc., Save The Middle River, Earth and Water Law, The City of Augusta, and the Augusta Museum of History 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 and other local historical societies and preservation organizations who may request a link on their respective website.
 4. 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 restrictions for future use. (Deadline: within two years of the start of the project's final design, scheduled to start in October 2019).

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5. The District shall create a trifold 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.
6. The District shall provide the GA SHPO, SC SHPO, Historic Augusta Inc., Save The Middle River or Earth and Water Law, The City of Augusta, and the Augusta Museum of History a copy of the 65% and 95% complete design for review and comment.
7. The final brochure will be made available to all local history museums, historical societies, and preservation organizations, including but not limited to Augusta-Richmond County Historical Society, Augusta County Historical Society, and Augusta Historical Bulletin. 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 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 NAGPRA at 43 CFR §10.4(a) – (d).

C. MONITORING

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

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D. REPORTING

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

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 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 ACHP 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 the signatories is filed with the ACHP.

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 particular purpose. If compliance with the Anti-Deficiency Act alters or impairs the District's ability to implement the stipulations of this agreement, the District shall consult in accordance with the amendment and termination procedures found at Stipulations E & F of this agreement.

H. DISPUTE RESOLUTION

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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 ACHP. The ACHP 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 ACHP, 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 ACHP does not provide its advice regarding the dispute within thirty (30) calendar daytime period, the District may make a final 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 ACHP 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

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

Execution of this MOA by the Savannah District, GA SHPO, and the ACHP, its submission to the ACHP 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 ACHP an 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: September 24, 2020
David Crass, Ph.D.
Division Director and Deputy State Historic Preservation Officer

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SIGNATORY:

ADVISORY COUNCIL ON HISTORIC PRESERVATION



By: _____ DATE: October 7, 2020

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.

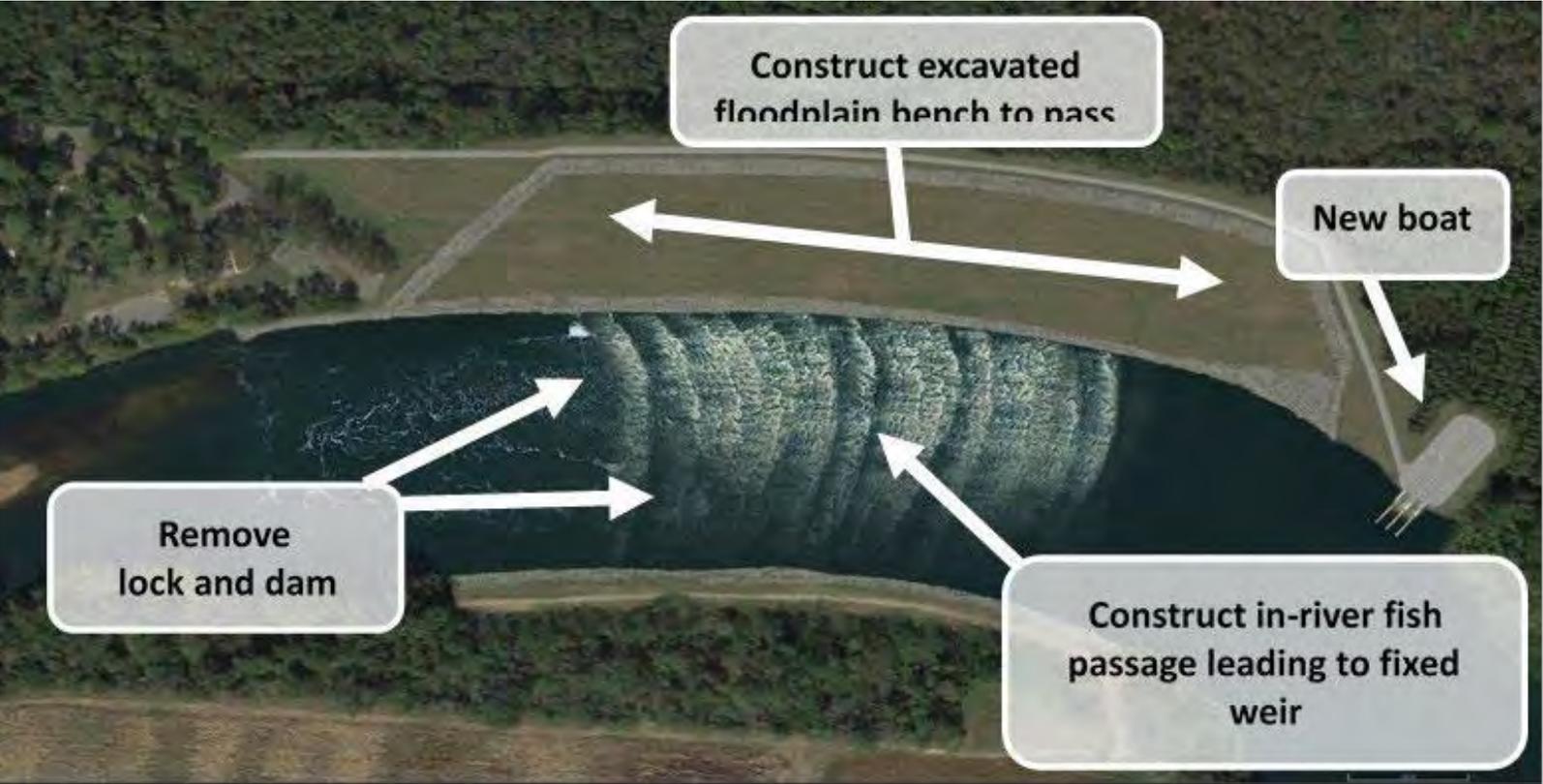


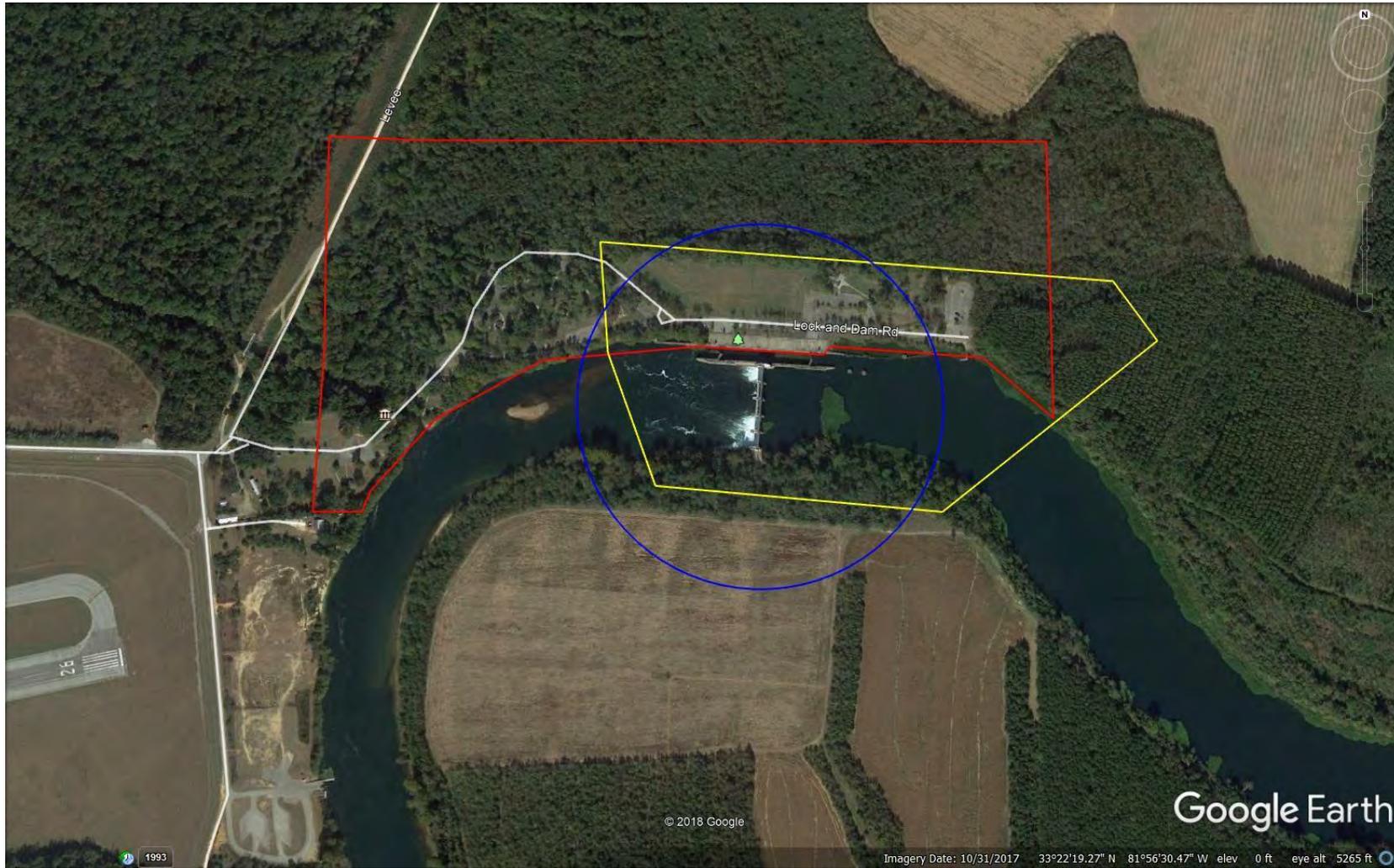
Figure 3. National Register Boundary for New Savannah Bluff Lock and Dam (in blue).



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



Appendix A: Area of Potential Effect Limits Construction (Yellow), Cultural Viewshed (Blue) and NSBLD Park Boundary (Red).



Appendix B. South Carolina SHPO Termination of Consultation Letter.



August 21, 2020

Kimberly L. Garvey
Chief, Planning Branch
Savannah District, Corps of Engineers
100 W. Oglethorpe Avenue
Savannah, GA 31401-3604

Re: Savannah Harbor Expansion Project (SHEP) New Savannah Bluff Lock and Dam (NSBLD)
Fish Passage Construction, Memorandum of Agreement (MOA)
Aiken County, South Carolina
SHPO Project No. 14-ED0108/03-VM0063

Dear Ms. Garvey:

Thank you for letter of August 7, 2020, which we received via email, requesting signature within fifteen days of receipt on an attached Memorandum of Agreement (MOA) for this undertaking. The South Carolina State Historic Preservation Office (SHPO) has previously provided comments on the undertaking to the Savannah District, Corps of Engineers (Corps) pursuant to Section 106 of the National Historic Preservation Act and its implementing regulations, 36 CFR 800. Consultation with the SHPO is not a substitution for consultation with Tribal Historic Preservation Offices, other Native American tribes, local governments, or the public.

As outlined in the MOA, the undertaking currently involves the demolition of the New Savannah Bluff Lock and Dam to construct a fish passage, an environmental feature required by the Savannah Harbor Expansion Project. The NSBLD is a structure that was determined to meet the criteria for listing in the National Register of Historic Places (NRHP) under Criteria A and C, and thus is a "historic property" pursuant to Section 106. Demolition of a historic property is an adverse effect under the Section 106 regulations 36 CFR 800.5(a).

We remain concerned that the Corps is proceeding with plans for demolition **despite significant support in the local community and beyond for retaining the historic property**. Despite receiving 461 public comments, nearly half of which stated support for retention and continued use of the NSBLD, the Corps has not fully considered how to achieve both the requirements of the SHEP project and retention of this historic property. We note that the undertaking as originally proposed in 2014 involved the rehabilitation of the NSBLD and construction of a fish passage around the structure, not its demolition.

Related to this outpouring of public support and interest, we also continue to be concerned about the **lack of involvement of consulting parties** in the Section 106 process, particularly from South Carolina. Input from local consulting parties and local governments could potentially have assisted in the evaluation of the boundaries of the historic property, definition of the Area of Potential Effects (APE), consideration of avoidance and minimization strategies, and development of mitigation stipulations. It is unfortunate that

concerted efforts to include the public and other consulting parties in the Section 106 process occurred more than a year after the Corps initiated consultation with the SHPOs.

Our office consistently reminded the Corps of its responsibilities to consult not only with the respective State Historic Preservation Offices in South Carolina and Georgia, but also the need to consult with other consulting parties as defined in the regulations, 36 CFR 800.2(c)3 and 36 CFR 800.2(d).

- Our March 6, 2018 letter recommended further consultation not only with our office but also with local governments and the public to resolve the adverse effect.
- Our July 3, 2019 letter requested additional information regarding the participation of Historic Augusta as a concurring party and also for information regarding other parties that were identified and notified of the undertaking. We note that while the revised MOA includes Historic Augusta as a concurring party, their letter to the Corps dated March 31, 2020 raised issues about their lack of involvement and input.
- Our August 23, 2019 letter noted the significant public interest and involvement in retaining the historic property and requested that the public be given the opportunity to express views on resolving the adverse effects of the undertaking. It is not clear that the public had any meaningful input into developing the stipulations in the MOA that address the adverse effect, as the mitigation stipulations remain unchanged from previous drafts. We continue to advocate for a more robust effort to gather and include public input into the proposed mitigation.
- Our April 16, 2020 letter raised questions about the public meeting held March 6, 2019 specifically related to participation of South Carolinians and South Carolina organizations.
- Our July 23, 2020 letter continued to raise this issue, as we were unable to discern from Corps responses, "whether South Carolina historic and preservation organizations, specifically from North Augusta and Aiken County, were contacted about this undertaking and invited to participate in the Section 106 consultation."

It is not clear to our office that the Corps incorporated the numerous comments from Save the Middle River, Historic Augusta, Incorporated, Rick W. Allen (12th District, Georgia), and Earth and Water Law (for Augusta, Georgia) provided in response to the March 2020 Public Notice. These comments raised important issues about the APE, NRHP boundary of the NSBLD, and mitigation options. The current MOA does not appear to reflect changes based on these comments. The APE has not been re-evaluated nor has the boundary of the NRHP eligible NSBLD been re-evaluated to consider the reservoir as contributing element.

Finally, we are concerned that this **project is moving forward despite ongoing litigation**, and the current stay in the legal proceedings until October 1, 2020. Thus it appears **premature to finalize a MOA** at this time for an undertaking with this ongoing degree of uncertainty. We have previously raised concerns about the uncertainty of the project, which we believe makes it premature to finalize the MOA.

- Our July 3, 2019 letter noted that the federal law authorizing the project, the Water Infrastructure Improvements for the Nation Act of 2016 (WIN Act) requires that the project maintain the pool for water supply and recreational activities, as in existence at the date of enactment of the WIN Act. However, it has not been demonstrated that this pool level can be maintained, and thus our office remains concerned that this additional exposed shoreline may necessitate project modifications. We are concerned that lower pool elevations may lead to the extension of docks

into the river, and thus create the potential for additional impacts to both known and unknown historic sites. The Corps has not adequately addressed the potential for project modifications to change the undertaking, and the potential for additional adverse effects has not been addressed in the MOA.

- We are concerned that the Corps has proceeded to carry out the mitigation described in the draft MOA and that this has potentially circumvented the ability of the public and other consulting parties to suggest additional forms of mitigation. As noted in our letter of July 23, 2020, Historic Augusta did not concur that the interpretive displays and programs were acceptable mitigation solutions for the demolition.

We appreciate attempts by the Corps to address concerns raised by our office during the Section 106 consultation process. However, as noted above, the Corps has only partially addressed our comments and concerns. Therefore, after considerable thought and discussion, the South Carolina SHPO has made the difficult decision to terminate consultation per 36 CFR 800.7. We are taking this action because it appears that our continued participation in the consultation process will no longer be productive. With this letter we are notifying the Corps and the other consulting parties of this decision and will not be signing the MOA for this undertaking.

Please refer to SHPO Project Number 4-ED0108/03-VM0063 in future correspondence regarding this project. If you have any questions or would like to discuss this decision, please contact me at emerson@scdah.sc.gov, 803-896-6185 or Elizabeth Johnson, Deputy State Historic Preservation Officer at ejohnson@scdah.sc.gov, 803-869-6168.

Sincerely,



W. Eric Emerson, Ph. D.
Director and
State Historic Preservation Officer

Cc: ACHP
GA SHPO
Historic Augusta