

**PROGRAMMATIC AGREEMENT
AMONG THE US ARMY CORPS OF ENGINEERS, SAVANNAH DISTRICT,
THE GEORGIA STATE HISTORIC PRESERVATION OFFICER, AND
THE SOUTH CAROLINA STATE HISTORIC PRESERVATION OFFICER**

WHEREAS, the US Army Corps of Engineers, Savannah District (Savannah District), operates and maintains Hartwell Lake and J. Strom Thurmond Lake (the Projects); and,

WHEREAS, the Corps managed-lands associated with management of the Projects also include the banks of the Savannah River on the Georgia and South Carolina sides stretching from the headwaters of Hartwell Lake to below J. Strom Thurmond Dam; and,

WHEREAS, the Projects were constructed prior to the passage of the National Historic Preservation Act (P.L. 89-665, as amended) and the now inundated lands and associated banks of the Savannah River were not surveyed for historic properties prior to inundation; and,

WHEREAS, since their creation, the lake elevations have been managed using criteria developed to address the needs of hydropower, water supply, environmental resources, and recreation; and,

WHEREAS, the Savannah District proposes to alter the criteria for managing lake elevations and the effects of the existing criteria and the proposed criteria upon historic properties are unknown; and,

WHEREAS, the Projects lie within the States of South Carolina and Georgia; and,

WHEREAS, the Savannah District recognizes that the changing elevations of the lakes may have an effect upon historic properties included in or eligible for inclusion in the National Register of Historic Places and has consulted with the Advisory Council on Historic Preservation (Council), the Georgia State Historic Preservation Officer (Georgia SHPO), the South Carolina State Historic Preservation Officer (South Carolina SHPO), and Native American Tribes pursuant to regulation 36 CFR Part 800 implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470h-2(f)); Section 110(f) of the same Act (16 U.S.C. Section 470h-2[f]), and Section 111 of the same Act (16 U.S.C. Section 470h-3); and

WHEREAS, the Council was invited to consult on this undertaking and has chosen not to participate; and,

NOW THEREFORE, the Savannah District, the Consulting Parties composed of the Georgia SHPO and the South Carolina SHPO agree that the project shall be administered in accordance with the following stipulations to satisfy Savannah District's Section 106 responsibilities for all individual aspects of the project.

Stipulations

The Savannah District, subject to availability of funds, shall reinitiate consultation under Section 106 with the Consulting Parties and Native American Tribes and shall ensure that the following measures are carried out:

1. Savannah District and the Consulting Parties shall identify the need for and scope of, archeological surveys of areas that are affected by changes in lake elevations. The surveys shall be conducted in a manner consistent with the Secretary of Interior's Standards and Guidelines for Identification (48 F.R. 44720-23) and take into account any standards and guidelines developed by the Georgia SHPO and the South Carolina SHPO. The surveys shall be conducted in consultation with the Georgia SHPO and the South Carolina SHPO, and reports of the survey shall be submitted to the Georgia SHPO and the South Carolina SHPO for review and comment.
2. The Savannah District shall evaluate properties identified through the surveys in accordance with 36 CFR Part 800.4. If the survey results in the identification of properties that are eligible for, or included in, the National Register of Historic Places, Savannah District shall consult with the appropriate SHPO and interested Native American Tribes to determine the effect of the proposed project upon those resources in accordance with 36 CFR Part 800.5.
3. The Savannah District shall identify and evaluate alternatives to mitigate adverse effects to properties determined eligible for inclusion, or included in, the National Register of Historic Places in accordance with 36 CFR Part 800.6 in consultation with the Georgia and South Carolina SHPOs and interested Native American Tribes.
4. The Savannah District shall insure that all mitigation measures are developed in consultation with the Georgia SHPO or South Carolina SHPO as appropriate for the recovery of archaeological or historical data from properties determined eligible for inclusion in the National Register of Historic Places. Mitigation activities may consist of, but are not limited to, data recovery, Historic American Building Survey/Historic American Engineering Record recordation, other built environment documentation, archival research, and protection of historic structures and engineering elements. Research designs shall be consistent with the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (48 FR 44716) and take into account the Council's publication, *Treatment of Archeological Properties* (Advisory Council on Historic Preservation 1980), and any standards and guidelines set forth by the Georgia SHPO and South Carolina SHPO. The plans shall specify, at a minimum:
 - a. the property, properties, or portions of properties where mitigation is to be carried out;
 - b. any property, properties, or portions of properties that will be destroyed without mitigation;
 - c. the research questions to be addressed through the mitigation, with an explanation of their relevance and importance;
 - d. the methods to be used, with an explanation of their relevance to the research questions;

e. the methods to be used in analysis, data management, and dissemination of data, including a schedule;

f. the proposed disposition of recovered materials and records;

g. proposed methods for involving the interested public in the data recovery;

h. proposed methods for disseminating results of the work to the interested public;

i. proposed methods by which local historic sites and historic preservation agencies and individuals will be kept informed of the work and afforded the opportunity to participate; and,

j. a proposed schedule for the submission of progress reports to the Savannah District, the Georgia SHPO, and the South Carolina SHPO.

5. The data recovery or mitigation plans shall be submitted by the Savannah District to the Georgia SHPO and/or South Carolina SHPO (as appropriate) for 45 days review. Unless the Georgia SHPO or South Carolina SHPO objects within 45 days after receipt of a data recovery or mitigation plan, the Savannah District shall ensure that it is implemented.

6. The Savannah District shall ensure that all archeological survey, testing, and data recovery work carried out pursuant to this Programmatic Agreement is carried out by or under the direct supervision of a person or persons meeting at a minimum the standards for archeologist set forth in the Secretary of the Interior's Standards and Guidelines for Archeological Documentation (48 F.R. 44716-42).

7. The Savannah District shall ensure that all materials and records resulting from survey, testing, and data recovery are curated in accordance with 36 CFR Part 79.

8. The Savannah District shall ensure that all final archeological reports resulting from actions pursuant to this agreement will be provided to the Georgia SHPO and the South Carolina SHPO. The Savannah District shall ensure that all such reports are responsive to the contemporary professional standards, and to the Department of Interior's Format Standards for Final Reports of Data Recovery Programs (42 F.R. 5377-79).

9. Any party to this Programmatic Agreement may request that it be amended, whereupon the parties will consult in accordance with 36 CFR Part 800.6(c)(7) to consider amendment.

10. The Georgia SHPO and the South Carolina SHPO may monitor activities carried out pursuant to this Programmatic Agreement, and the Council will review such activities if so requested. The Savannah District will cooperate with the Georgia SHPO and the South Carolina SHPO in carrying out their monitoring and review responsibilities.

11. The parties to this agreement shall consult to review implementation of the terms of this agreement and determine whether revisions are needed. If revisions are needed, the parties to this agreement will consult in accordance with 36 CFR Part 800 to make such revisions.

12. Any party to this agreement may terminate it by providing 30 days notice to the other parties, provided that the parties will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, the Savannah District will comply with 36 CFR Parts 800.4 through 800.6 with regard to individual undertakings covered by this Programmatic Agreement.

13. Should the Georgia SHPO or South Carolina SHPO object within 45 days to any actions proposed pursuant to the agreement, the Savannah District shall consult with the objecting party to resolve the objection. If the Savannah District determines that the objection cannot be resolved, the Savannah District shall request further comments of the Council pursuant to 36 CFR Part 800.7. Any Council comment provided in response to such a request will be taken into account by the Savannah District in accordance with 36 CFR Part 800.7 with reference only to the subject of the dispute; the Savannah District's responsibility to carry out all actions under this agreement that are not the subjects of the dispute will remain unchanged.

14. If any unanticipated archaeological sites and/or human skeletal remains are discovered during archaeological surveys, Savannah District shall secure the area in the immediate vicinity of the discovery and shall notify the Georgia SHPO or the South Carolina SHPO, as applicable, and interested Native American Tribes, by telephone, followed by written communication, as soon as practicable. Savannah District, the Georgia SHPO or South Carolina SHPO, as applicable, and Native American Tribes shall assess the situation and recommend a course of action within two business days after such notification.

15. Until such time as all surveys have been completed in accordance with the terms of this agreement, Savannah District will provide an annual status report to the Council, Georgia and South Carolina SHPOs, and affiliated Federally-recognized Native American Tribes to review implementation of the terms of this agreement and to determine whether amendments are needed. If amendments are needed, the signatories to this agreement will consult, in accordance with Stipulation 9 of this agreement, to make such revisions. The first status report will be submitted to the consulting parties one year after the date this agreement is ratified. Alternatively, an annual meeting may occur to review implementation of the terms of this agreement and to determine whether amendments are needed, and will serve in lieu of an annual report.

16. At any time during implementation to the measures stipulated in this agreement, should an objection to any such measure be raised by a Native American Tribe or another member of the public, the Savannah District shall take the objection into account and consult as needed with the objecting party, the Georgia SHPO, and the South Carolina SHPO to resolve the objection.

17. In the event the Savannah District does not carry out the terms of the Programmatic Agreement, the Savannah District will comply with 36 CFR Parts 800.4 through 800.6 with regard to individual undertakings covered by this Programmatic Agreement.

18. This Agreement shall be effective when all Signatories have signed it and will automatically terminate on the tenth anniversary thereof, unless each of the Signatories agrees to extend the term hereof through an amendment per Stipulation 9. All Signatories will meet prior to the termination date to discuss extending the term.

19. Execution and implementation of this Programmatic Agreement evidences that the Savannah District has satisfied its Section 106 responsibilities for all individual undertakings of the program.

20. Nothing herein shall constitute, or be deemed to constitute, an obligation of future appropriations by the United States.

SIGNATORIES

U.S. ARMY CORPS OF ENGINEERS, SAVANNAH DISTRICT:

_____ DATE: _____
Thomas J. Tickner
Colonel, U.S. Army
Commanding

GEORGIA STATE HISTORIC PRESERVATION OFFICER:

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

SOUTH CAROLINA STATE HISTORIC PRESERVATION OFFICER:

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

CONCURRING PARTIES

CATAWBA INDIAN NATION:

_____ DATE: _____
William Harris, Chief

MUSCOGEE (CREEK) NATION OF OKLAHOMA:

_____ DATE: _____
George Tiger, Principal Chief