

**PROGRAMMATIC AGREEMENT  
AMONG  
U. S. ARMY CORPS OF ENGINEERS,  
U.S. COAST GUARD, U.S. FOREST SERVICE,  
SURFACE TRANSPORTATION BOARD,  
ADVISORY COUNCIL ON HISTORIC PRESERVATION,  
AND SOUTH CAROLINA STATE HISTORIC PRESERVATION OFFICER  
FOR THE  
PROPOSED DANIEL ISLAND MARINE TERMINAL PROJECT,  
CITY OF CHARLESTON, CHARLESTON AND BERKELEY COUNTIES,  
SOUTH CAROLINA**

*WHEREAS*, the South Carolina State Ports Authority (SCSPA) is proposing to develop a marine cargo terminal (the Project) on Daniel Island, Charleston, South Carolina, and the Project may include 1) construction of intermodal rail and roadway facilities, 2) construction of terminal facilities, 3) dredging of berthing areas, 4) associated improvements to the Wando River and Hog Island Channels, and 5) other development and maintenance actions that cannot be foreseen at this time; and

*WHEREAS*, the U. S. Army Corps of Engineers (USACE) may issue permits pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403), Section 404 of the Clean Water Act (as amended by P.L. 91-604), and Section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 to the SCSPA for the Project, and the issuance of these permits constitutes a federal undertaking; and

*WHEREAS*, the USACE has determined that the Project may have an adverse effect on properties included in or eligible for inclusion in the National Register of Historic Places, including, but not limited to the properties listed in Attachment A of this Programmatic Agreement; and

*WHEREAS*, the USACE and the SHPO previously entered into a Memorandum of Agreement (March 1994) for the treatment of historic properties located on those portions of Daniel Island owned by the Harry Frank Guggenheim Foundation, and some of these historic properties are within the Area of Potential Effect (APE) of the Project; and

*WHEREAS*, the South Carolina State Historic Preservation Officer (SHPO), the Advisory Council on Historic Preservation (Council), and the U.S. Department of the Navy previously entered into a Programmatic Agreement (May 1995) regarding the base closure and disposal of the Charleston Naval Base, and portions of the Charleston Naval Base are within the APE of the Project; and

*WHEREAS*, the USACE's Environmental Impact Statement (EIS) documenting the potential environmental consequences of the proposed alternatives for the Project has yet to be completed, and therefore the exact nature of the potential adverse effects on historic properties is not yet known; and

*WHEREAS*, as part of the National Environmental Policy Act (NEPA) process, the USACE has informed the public through various public meetings of the SCSPA's proposed Project and the potential effects the Project may have on historic properties. As a result of these efforts, the USACE, in consultation with the SCSPA identified various parties that were invited to participate in the development of this Programmatic Agreement; and

*WHEREAS*, the USACE has consulted with the SHPO and the Council pursuant to 36 CFR 800 (1986), regulations implementing Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470f); and

*WHEREAS*, the U. S. Coast Guard (USCG), the U. S. Forest Service (USFS), and the Surface Transportation Board (STB) may also issue permits and/or approvals for aspects of the Project, and these agencies are participating in the consultation, and may elect to use this Programmatic Agreement to satisfy their Section 106 responsibilities for the Project, and will be concurring federal agencies to the Programmatic Agreement; and

*WHEREAS*, the South Carolina Department of Health and Environmental Control/Office of Ocean and Coastal Resource Management (DHEC/OCRM) may issue state permits and a Coastal Zone Consistency Certification to the SCSPA, has participated in the consultation, and has been invited to concur in the Programmatic Agreement; and

*WHEREAS*, the SCSPA has participated in the consultation and has been invited to concur in this Programmatic Agreement; and

*WHEREAS*, the City of Charleston, the Town of Mount Pleasant, the Historic Charleston Foundation, and the Preservation Society of Charleston have participated in the consultation and have been invited to concur in the Programmatic Agreement;

*NOW, THEREFORE*, the USACE, SHPO, and the Council agree that the Project will be implemented in accordance with the following stipulations to satisfy the USACE's Section 106 responsibilities for the Project.

## STIPULATIONS

The USACE will ensure that the following measures are carried out, subject to Stipulation I:

### I. APPLICABILITY

- A. The USACE will serve as the lead federal agency for the Project. The USACE's action for the Project may include, but is not limited to, the issuing of permits for the following broad categories of activities:

1. Development of terminal facilities in the navigable water of the United States;
2. Dredging of berths in the navigable waters of the United States;
3. Placement of fill in the waters of the United States, and
4. Transportation of dredge material to the Charleston Ocean Dredged Material Disposal Site (ODMDS) for the purpose of disposal.

B. The USCG, USFS, and STB may use this Programmatic Agreement to satisfy their Section 106 responsibilities for their separate actions associated with the Project. The actions of each of these federal agencies may be as follows:

1. The USCG may issue a permit pursuant to Section 9 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) for road bridge and rail bridge construction over navigable waters of the United States,
2. The USFS may approve construction of a rail line over property in the Francis Marion National Forest pursuant to Title V, Federal Land Policy and Management Act of 1976 (U.S.C. 1761-1771), and
3. The STB may approve construction and operation of a new rail line pursuant to 49 CFR 1150 and 49 CFR 1105.

C. The DHEC/OCRM's action for the Project may include but not be limited to the issuing of state permits for:

1. Development of terminal facilities in critical areas of the coastal zone,
2. Dredging of berths in critical areas of the coastal zone,
3. Placement of fill in critical areas of the coastal zone, and
4. Stormwater management and erosion control.

The DHEC/OCRM's action for the Project may also include issuing a Coastal Zone Consistency Certification for federal activities and federal licenses and permits.

**II. IDENTIFICATION AND EVALUATION OF TERRESTRIAL AND UNDERWATER ARCHAEOLOGICAL RESOURCES**

- A. The EIS alternatives evaluation process has yet to be completed. Rather than conduct a terrestrial archaeological identification survey of the alternatives to be carried through the EIS, existing archaeological predictive models developed for the Charleston Harbor Project and for lands under the jurisdiction of the USFS will be tested with newly collected data from archaeological sites within the Project's APE, in order to develop a predictive model (the Model) for the Project. Once the Model is tested and confirmed or modified, it will be used to evaluate the extent to which each of the proposed Project alternatives will effect National Register-eligible archaeological resources.
1. The parameters of the existing predictive models, and critical data on the physical and environmental characteristics of the APE will be used to generate zones of archaeological sensitivity within the APE. In consultation with the SHPO, the relationship between the zones of archaeological sensitivity and the parameters of the Model will then be statistically tested using independent archaeological site survey data from the APE.
  2. The USACE, within 30 days of the execution of this Programmatic Agreement, will submit a draft scope of work outlining the methods, procedures, and goals of this predictive model analysis to the SHPO. Should the SHPO object to the contents of the scope of work within 30 days of receipt of the scope of work, the USACE will consult with the SHPO to resolve the objection. Unless the SHPO objects within 30 days of receipt of the scope of work, the USACE will assume concurrence and ensure that it is implemented as submitted.
- B. Making maximum use of pre-existing archival information and survey data, the USACE will evaluate the potential of the proposed alternatives to affect recorded and unrecorded underwater archaeological resources eligible for the National Register of Historic Places.
- C. The permit(s) issued by the USACE will require that an archaeological identification survey of the approved alternative be performed.
1. The terrestrial archaeological survey and subsequent National Register evaluation will be accomplished in a manner that is consistent with the *Secretary of the Interior's Standards and Guidelines for the Identification and Evaluation of Archaeological Resources* (48 FR 44720-26), *National Register Bulletin 36: Guidelines for Evaluating and Registering Historical Archaeological Sites and Districts*, and all appropriate state guidelines, and in consultation with the SHPO and interested parties. An archaeologist who meets, at a minimum, the *Secretary of the Interior's Professional Qualifications Standards* (48 FR 44738-9) will either conduct or directly supervise the survey and will be responsible for the results. All archaeological

inventories and evaluations conducted on national forest lands will require an Archaeological Resources Protection Act permit issued by the USFS.

2. Any underwater archaeological surveys that are required will be conducted by qualified archaeologists experienced in underwater archaeological investigations. The underwater archaeological surveys and subsequent National Register evaluations of identified targets will be conducted in consultation with the SHPO and the South Carolina Office of the State Archaeologist (OSA). This task will be accomplished in a manner consistent with the pertinent Federal and State standards and guidelines listed in Stipulation II, C, 1.
- D. In consultation with the SHPO, the USACE will evaluate properties identified through the surveys, in terms of the National Register criteria (36 CFR Part 60.4). The USACE will submit documentation on the National Register evaluations to the SHPO. Should the SHPO object to a National Register evaluation within 30 days of receipt of the evaluation, the USACE will consult with the SHPO to resolve the objection. If such objection cannot be resolved, the USACE will refer the matter to the Keeper of the National Register whose decisions will be final. Unless the SHPO objects within 30 days of receipt of a National Register evaluation, the USACE will assume concurrence with the evaluation. If the National Register evaluation involves properties on national forest lands, the determinations of eligibility will be made by the USFS in consultation with the SHPO.
  - E. For those properties which the USACE and the SHPO agree are not eligible for inclusion in the National Register, no further archaeological investigations will be required, and the Project may proceed in those areas. The USACE will ensure that such authorized construction does not impinge on areas where the identification and evaluation process has not yet been completed. For those properties on national forest lands which the USFS and the SHPO agree are not eligible for inclusion in the National Register, no further archaeological investigations will be required, and the Project may proceed in those areas.
  - F. Preservation-in-place is the preferred mitigation measure of historic properties. The USACE will have the SCSPA prepare a preservation management plan, in consultation with the SHPO, that ensures the long-term protection of archaeological resources which the USACE and the SHPO agree are eligible for inclusion in the National Register of Historic Places and that can be preserved in place. Should National Register-eligible underwater archaeological resources require preservation, the OSA may be asked to participate in the development of the preservation management plans. Should National Register-eligible archaeological resources on national forest lands require preservation in-place, the USFS will review and approve any preservation management plans. The preservation plans may address the following issues:
    1. long-term site security plans including signage, fencing, electronic monitoring, and security patrols;

2. preservation from both natural and man-made impacts including erosion, agricultural use, construction, site maintenance, and vegetation control;
  3. monitoring and reporting procedures to ensure continued site preservation; and
  4. legal methods, such as restrictive covenants and easements, for long-term protection.
- G. The SCSPA will submit the draft management preservation plan to the SHPO. Should the SHPO object to the contents of the management plan within 30 days of receipt of the management plan, the SCSPA will consult with the SHPO to resolve the objection. Unless the SHPO objects within 30 days of receipt of the scope of work, the SCSPA and USACE, or the USFS if the properties are on national forest lands, will assume concurrence with the management plan. Any objection will be resolved as per Stipulation XII below.
- H. Those sites which the USACE and the SHPO agree are considered eligible for listing on the National Register of Historic Places and that cannot be preserved in place will be treated in accordance with Stipulation III of this Agreement. Those sites on national forest lands which the USFS and the SHPO agree are considered eligible for listing on the National Register of Historic Places and that cannot be preserved in place will also be treated in accordance with Stipulation III of this Agreement.

### III. ARCHAEOLOGICAL DATA RECOVERY

- A. The USACE, or the USFS if the properties are on national forest lands, will ensure that the data recovery plan is consistent with the *Secretary of the Interior's Standards and Guidelines for Archaeological Documentation* (48 FR 44734-37) and takes into account the Council's publication, *Treatment of Archaeological Properties*, and other relevant guidelines. At a minimum, the data recovery plans will address:
1. the property, properties, or portions of properties where data recovery is to be carried out;
  2. any property, properties, or portions of properties that will be destroyed without data recovery;
  3. the research questions to be addressed through the data recovery, with an explanation of their relevance and importance;
  4. the methods to be used, with an explanation of their relevance to the research questions;

5. the methods to be used in analysis, data management, and dissemination of data, including a schedule;
  6. the proposed disposition of recovered materials and records;
  7. proposed methods for involving the interested public in the data recovery;
  8. proposed methods for disseminating results of the work to the interested public;
  9. proposed methods by which the SHPO will be kept informed of the work; and
  10. a proposed schedule for the submission of progress reports to the SHPO.
- B. The SCSPA will submit the draft data recovery plan to the SHPO. Should the SHPO object to the contents of the data recovery plan within 30 days of receipt of the data recovery plan, the SCSPA will consult with the SHPO to resolve the objection. Any objection will be resolved as per Stipulation XII below. Unless the SHPO objects within 30 days of receipt of the data recovery plan, the SCSPA will assume concurrence with the data recovery plan. The SCSPA will consult with the OSA concerning data recovery for any National Register-eligible or -listed underwater resource.
- C. The USACE, or the USFS if the properties are on national forest lands, shall ensure that any Native American human remains and associated funerary objects encountered during a data recovery on federal property are treated in accordance with the provisions of the Native American Graves Protection and Repatriation Act and its implementing regulations, 43 CFR 10. This includes consultation with appropriate tribal authorities on issues including but not limited to the excavation, analysis, curation, repatriation, and reburial of human remains and associated funerary objects. Human remains and associated funerary objects encountered on non-federal property will be treated in accordance with the *Guidelines and Standards for Archaeological Investigations* of the SHPO, and the South Carolina Codes referenced in these guidelines.
- D. The archaeological specimens recovered as a result of the data recovery will be curated in accordance with the provisions of 36 CFR 79. The USFS will approve the selection of the final curatorial facility for archaeological materials recovered from properties on national forest lands.

#### IV. PROVISION FOR DISCOVERY OF ARCHAEOLOGICAL RESOURCES

If previously undetected archaeological resources are discovered during the construction of the Project, the USACE will stop any activity having an effect on these resources, and consult with the SHPO, and the USFS if the resources are on national forest land, to determine if

additional investigations are required. If further archaeological investigations are deemed necessary, any evaluation or data recovery will be performed in an expeditious manner in accordance to Stipulation II of this Programmatic Agreement. If the USACE, or the USFS if the resources are on national forest land, and the SHPO determine that further investigation is not necessary, activities may proceed with no further action required. Any disagreement between the USACE, or USFS, and the SHPO concerning the need for additional investigations will be handled pursuant to Stipulation XII of this Programmatic Agreement.

**V. IDENTIFICATION AND EVALUATION OF HISTORIC ARCHITECTURAL RESOURCES AND HISTORIC LANDSCAPES**

- A. The USACE will request the views of the SHPO concerning further action which may be necessary to identify historic architectural resources which may be affected by the proposed Project alternatives. Preliminary discussions with the SHPO indicate that relatively comprehensive identification of historic architectural properties has been completed within the APE.
- B. Based on information received, the USACE in consultation with the SHPO will determine what further identification actions will be conducted regarding historic architectural resources. Such identification and evaluation activities will be consistent with the Council's regulations and the standards and guidelines of the National Park Service and the SHPO.

**VI. DETERMINATION OF ADVERSE EFFECTS AND TREATMENT MEASURES FOR HISTORIC ARCHITECTURAL RESOURCES AND HISTORIC LANDSCAPES**

- A. The USACE, in consultation with the SHPO and interested parties, will apply the Criteria of Effect and Adverse Effect to historic architectural properties within the APE, and the USACE will make determinations of and document cases of effect and adverse effect, pursuant to 36 CFR 800.9.
- B. The USACE, in consultation with the SHPO and interested parties, will develop and implement creative, public-oriented treatment measures designed to avoid or lessen any adverse effects on historic architectural properties and significant historic landscapes.

**VII. COORDINATION BETWEEN COMPLIANCE WITH PROGRAMMATIC AGREEMENT AND DESIGN ACTIVITIES**

The SCSPA and the USACE will ensure that the stipulations of this Programmatic Agreement will be met during the design phases of the Project. The SCSPA will provide the maps generated by the archaeological predictive model described in Stipulation II, maps and other

documents on the locations of historic properties, and measures for treating such properties, to the design consultants prior to the initiation of their design activities. Such maps will include project area maps, 1:24,000-scale USGS quadrangle maps, and maps of individual historic properties.

#### **VIII. APPLICABLE STANDARDS AND GUIDELINES**

- A. All activities under this Programmatic Agreement will be carried out in accordance with the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation (FR 48 44716 -44739, 1983).
- B. All historic preservation activities will be conducted under the direct supervision of a qualified individual who meets, at a minimum, relevant qualifications set forth in the Secretary of the Interior's Professional Qualifications Standards (1983, 48 FR 44738-9).
- C. Should the USACE determine that it is unable to adhere to the Secretary's Standards or Guidelines for any part of an activity under this Programmatic Agreement, the USACE will consult with the SHPO to develop an alternative treatment or mitigation plans.
  - 1. The USACE must concur in writing to the SHPO that it will implement the agreed-upon treatment/mitigation plan prior to proceeding with the activity.
  - 2. If the USACE and the SHPO cannot agree on the treatment/mitigation plan, the USACE and SHPO will request the recommendations of the Council in accordance with Stipulation XII below.

#### **IX. PUBLIC COMMENT AND OBJECTIONS**

- A. The USACE will use the NEPA process to keep the public informed about the progress of activities under this Programmatic Agreement and to provide the public an opportunity to express their views on the Project. The USACE will consider the views of the public in its decisions about the activities under this Programmatic Agreement. Copies of all public comments received will be provided to the SHPO.
- B. The USACE, using the NEPA process, will fully consider all written substantive and timely public comments that are legitimately related to the implementation of the terms of this Programmatic Agreement. The USACE will provide the SHPO with copies of such comments and will fully consider the comments in its decisions. The USACE will consult with the SHPO and the Council, if the USACE deems it appropriate, in resolving or dealing with the expressed concern. The USACE will advise the Council of its decision in this regard.

**X. REPORTING REQUIREMENTS**

The SCSPA will be responsible for submitting all reports and other documents produced as a result of this Programmatic Agreement directly to the USACE, SHPO, DHEC/OCRM, and other appropriate agencies.

**XI. OBJECTIONS, AMENDMENTS, AND DISPUTE RESOLUTIONS**

- A. Should the SHPO or the Council object within 30 days to any actions proposed pursuant to this Agreement, the USACE will consult with the objecting party to resolve the objection. If the USACE determines that the objection cannot be resolved, the USACE will request the further comments of the Council pursuant to 36 CFR 800.6(b). Any Council comment provided in response to such a request will be taken into account by the USACE in accordance with 36 CFR 800.6(c)(2) with reference only to the subject of the dispute; the USACE's responsibility to carry out all actions under this Programmatic Agreement that are not the subjects of the dispute will remain unchanged.
- B. Any party to this Programmatic Agreement may propose to the other parties that it be amended, whereupon the parties will consult in accordance to 36 CFR 800.5(e) to consider such an amendment.

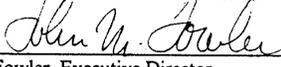
**XII. AGREEMENT TERMINATION**

The USACE, SHPO, or the Council may terminate this Programmatic Agreement by providing 30 days written notice to the other signatories to this Programmatic Agreement, provided that the parties use their best efforts to consult in an effort to resolve the dispute during the period prior to the termination to seek agreement on amendments or other actions that avoids termination of the Programmatic Agreement. The party desiring to terminate this Programmatic Agreement shall provide evidence to the other parties of this Programmatic Agreement that the reason for termination is reasonable and justified pertaining to the specific stipulations of this Programmatic Agreement. In the event that the Programmatic Agreement is terminated, the USACE will comply with the requirements of 36 CFR 800.4 through 800.6.

Execution of this Programmatic Agreement and implementation of its terms evidence that the USACE has afforded the Council an opportunity to comment on the proposed Daniel Island Marine Cargo Terminal Project and its affect on historic properties, and that the USACE has taken into account the effects of the proposed Project on historic properties.

**SIGNATORY:**

**Advisory Council on Historic Preservation**

By:   
John M. Fowler, Executive Director

Date: 4/7/99

**SIGNATORY:**

**United States Army Corps of Engineers**

By: *Robert A. Rowlette* Date: 1 Dec 98  
Robert A. Rowlette, Lieutenant Colonel, United States Army District Engineer

**SIGNATORY:**

**South Carolina State Historic Preservation Officer**

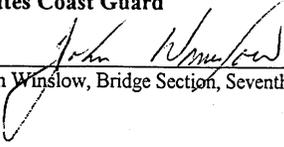
By: Mary W. Edmonds  
Mary W. Edmonds, Deputy State Historic Preservation Officer

Date: 12/10/98

**FEDERAL AGENCY CONCURRING IN THIS AGREEMENT:**

**United States Coast Guard**

By:

  
\_\_\_\_\_  
John Winslow, Bridge Section, Seventh Coast Guard District

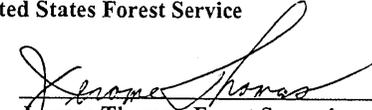
Date:

12/14/98

**FEDERAL AGENCY CONCURRING IN THIS AGREEMENT:**

**United States Forest Service**

**By:**

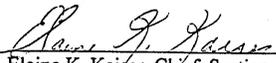
  
\_\_\_\_\_  
Jerome Thomas, Forest Supervisor  
Francis Marion and Sumter National Forests

**Date:**

12/22/98

**FEDERAL AGENCY CONCURRING IN THIS AGREEMENT:**

**Surface Transportation Board**

By:   
Elaine K. Kaiser, Chief, Section of Environmental Analysis

Date: 12/4/98

**STATE AGENCY CONCURRING IN THIS AGREEMENT:**

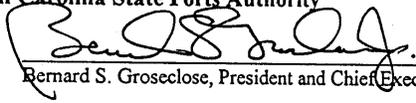
**South Carolina Department of Health and Environmental Control/Office of Ocean and Coastal Management**

By: H. Stephen Snyder Date: 1/13/98  
H. Stephen Snyder, Director, Coastal Zone Management Division

**STATE AGENCY CONCURRING IN THIS AGREEMENT:**

**South Carolina State Ports Authority**

By:

  
Bernard S. Groseclose, President and Chief Executive Officer

Date: 12/4/98

**INTERESTED PARTY CONCURRING IN THIS AGREEMENT:**

**City of Charleston**

By: \_\_\_\_\_

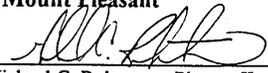
Joseph P. Riley, Jr., Mayor

Date: \_\_\_\_\_

12/7/98

**INTERESTED PARTY CONCURRING IN THIS AGREEMENT:**

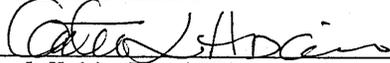
**Town of Mount Pleasant**

By:   
Michael C. Robertson, Planner II

Date: 1/20/99

**INTERESTED PARTY CONCURRING IN THIS AGREEMENT:**

**Historic Charleston Foundation**

By:   
Carter L. Hudgins, Executive Director

Date: 12.15.98

**INTERESTED PARTY CONCURRING IN THIS AGREEMENT:**

**The Preservation Society of Charleston**

By: *Cynthia Cole Jenkins*  
Cynthia Cole Jenkins, Executive Director

Date: 1-27-99

## ATTACHMENT A

### PREVIOUSLY IDENTIFIED HISTORIC PROPERTIES AND RESOURCES CURRENTLY UNDER STUDY REQUIRING EVALUATION IN TERMS OF NATIONAL REGISTER ELIGIBILITY

#### Properties in the Area of Potential Effect Listed in the National Register of Historic Places (not including the names of individually listed properties also located within historic districts):

Castle Pinckney  
Charleston Old and Historic District, as amended  
Five Mile Viaduct  
Fort Moultrie  
Fort Sumter  
Magnolia Cemetery  
Mount Pleasant Historic District  
St. Thomas Episcopal Church  
U.S.S. Clamagore  
U.S.C.G.C. Ingham  
U.S.S. Laffey  
U.S.S. Yorktown

#### Properties in the Area of Potential Effect Determined Eligible for Listing in the National Register of Historic Places:

Charleston Naval Base:  
    Coast Guard Air Station Bachelor Officers' Quarters  
    Dead House  
    Marine Corps Barracks  
    Naval Hospital Historic District  
    Naval Shipyard Historic District  
    Officer Housing Historic District  
    WWII Chapel  
Charleston Old and Historic District (boundary increase)  
Cooper River Historic District  
Pritchard Cemetery