

**PROGRAMMATIC AGREEMENT  
AMONG  
THE U.S. ARMY CORPS OF ENGINEERS, CHARLESTON DISTRICT,  
THE BUREAU OF OCEAN ENERGY MANAGEMENT,  
THE CITY OF FOLLY BEACH, AND  
THE SOUTH CAROLINA STATE HISTORIC PRESERVATION OFFICE  
REGARDING  
THE FOLLY BEACH COASTAL STORM RISK MANAGEMENT PROJECT**

**WHEREAS**, the U.S. Army Corps of Engineers, Charleston District (USACE) proposes to evaluate alternatives for long-term coastal storm risk management on Folly Beach, an undertaking known as the Folly Beach Coastal Storm Risk Management (CSRSM) Project (Project); and

**WHEREAS**, the Project is a reevaluation of the existing 50-year Folly Beach CSRSM and consists of an evaluation of structural and non-structural in the development of alternative solutions to the ongoing Coastal Storm Risk Management; and

**WHEREAS**, the Project involves dredging sandy material from several offshore or riverine borrow areas onto an approximately 5.85-mile long area consisting of various widths of berms and dunes on Folly Beach, on Folly Island, Charleston County, South Carolina; and

**WHEREAS**, the Project is a federally funded undertaking, and therefore subject to the requirements of Section 106 of the National Historic Preservation Act (54 U.S.C. § 306108; Section 106); and

**WHEREAS**, the USACE has consulted about the Project with the South Carolina Department of Archives and History, which serves as the South Carolina State Historic Preservation Office (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**, the USACE, in consultation with the SHPO, has established the Project's direct Area of Potential Effects (APE) as the 5.85-mile long study area along the Folly Beach shoreline and several sand borrow areas proposed in the Atlantic Ocean and Folly River (see Appendix A); and

**WHEREAS**, the APE includes archaeological site 38CH1213 (the Folly North Site) which was listed in National Register of Historic Place (NRHP) in 2003 and the Neck Redoubts & Lines Federal Earthwork Fortifications which require additional research and testing to determine their eligibility for listing in the NRHP; and

**WHEREAS**, the USACE, in consultation with the SHPO and other consulting parties, has determined that the Project has the potential to cause adverse effects to unrecorded submerged archaeological sites which may be eligible for listing in the NRHP; and

**WHEREAS**, the USACE, in consultation with the SHPO and other consulting parties, has determined that the Project has the potential to cause adverse effects to recorded and unrecorded archaeological sites which may be eligible for listing in the NRHP; and

**WHEREAS**, the USACE anticipates that any visual, auditory, or other indirect effects for the undertaking will be temporary and not adverse; and

**WHEREAS**, the parties have executed this Programmatic Agreement (“Agreement”) in accordance with 36 CFR § 800.14(b)(1)(ii), which allows federal agencies to fulfill their Section 106 obligations through the development and implementation of programmatic agreements when effects on historic properties cannot be fully determined prior to approval of an undertaking; and

**WHEREAS**, in accordance with 36 CFR § 800.2(c)(4) the USACE has invited the City of Folly Beach to consult on and sign this Agreement as an invited signatory; and

**WHEREAS**, in accordance with 36 CFR § 800.2(c)(4) the USACE has invited the Bureau of Ocean Energy Management to consult on and sign this Agreement as an invited signatory; and

**WHEREAS**, in accordance with 36 CFR § 800.14(b), the USACE has notified the Advisory Council on Historic Preservation (ACHP) of its intention to develop this Agreement pursuant to 36 CFR § 800.14(b)(1)(ii) (letter dated March 15, 2021), and the ACHP has chosen not to participate in the consultation (letter dated March 29, 2021); and

**WHEREAS**, in accordance with 36 CFR § 800.14(b)(2)(i), the USACE has invited Federally recognized Indian tribes to consult on and sign this Agreement as concurring parties and no responses were received from the Absentee-Shawnee Tribe of Oklahoma, Alabama-Quassarte Tribal Town, Chickasaw Nation, Delaware Tribe of Indians, Eastern Band of the Cherokee Indians, Eastern Shawnee Tribe of Oklahoma, Kialegee Tribal Town, Muscogee (Creek) Nation, Poarch Band of Creek Indians, Shawnee Tribe and Thlopthlocco Tribal Town; and

**WHEREAS**, the USACE has received a response from the Catawba Indian Nation but the Catawba Indian Nation did not request to consult on and sign this Agreement as a concurring party; and

**WHEREAS**, the Corps has notified the Maritime Research Division at the South Carolina Institute of Archaeology and Anthropology of the undertaking and invited them to consult on and sign this Agreement as a concurring party; and

**WHEREAS**, in accordance with 36 CFR § 800.2(d), the USACE has solicited public comments on the Project release of the draft Feasibility Study and Environmental Assessment from November 10, 2020 – December 10, 2020 and through issuance of a public notice for review of this Agreement with a 30-day review period; and

**WHEREAS**, signatories, invited signatories and any concurring parties are collectively referred to as "Consulting Parties" under this agreement; and

**NOW, THEREFORE**, the USACE, the SHPO, the City of Folly Beach, and the Bureau of Ocean Energy Management (Signatories) agree that the Project shall be implemented in accordance with the following stipulations in order to take into account the effects of the Project on historic properties:

### **STIPULATIONS**

The USACE shall ensure that the following measures are carried out:

#### **I. ARCHAEOLOGICAL HISTORIC PROPERTIES**

##### **A. Identification**

1. Prepare a Scope of Work (SOW) to submit to the SHPO and BOEM for review and concurrence. The SOW shall outline and describe underwater archaeological identification efforts to be conducted of the borrow sites and the attendant dredging infrastructure areas and archaeological evaluation efforts for the beach front in the vicinity of 38CH1213, the Folly North site, and the Neck Redoubts & Lines Federal Earthwork Fortifications. The SOW shall also describe reporting protocols in accordance with the guidelines set forth in Stipulation II.A of this Agreement. Pursuant to Stipulation II.B, the USACE shall provide the other Consulting Parties an opportunity to review and comment on the SOW.
2. Conduct underwater archaeological surveys of the borrow sites and attendant dredging infrastructure areas and archaeological evaluations for the beach front in the vicinity of 38CH1213, the Folly North site and the Neck Redoubts & Lines Federal Earthwork Fortifications as outlined in the SOW discussed in Stipulation I.A.1. The evaluations shall be conducted by a qualified archaeologist meeting the standards set forth in Stipulation V.B, and shall be conducted in accordance with the guidelines set forth in Stipulations II.A and V. If any affected archaeological site is associated with the Naval History and Heritage Command (NHHC), the *NHHC Methods and Guidelines for Conducting Underwater Archaeological Fieldwork* will be utilized. The evaluations shall be conducted to determine the NRHP eligibility of any affected archaeological site.
3. Prepare a report that describes the findings and recommendations of the archaeological surveys and evaluations. The report shall be prepared in accordance

with Stipulation II.A. Pursuant to Stipulation II. B, the USACE shall provide the SHPO and BOEM the opportunity to review and comment on the results.

B. Assessment of Effects

If archaeological sites meeting the criteria for listing on the NRHP are identified as a result of the activities described in Stipulation I.A.2), the USACE shall assess the effects of the Project on these sites in a manner consistent with 36 CFR §800.5, and submit its findings to the SHPO and BOEM for review and concurrence and the other Consulting Parties for review and comment pursuant to Stipulation II.B.

C. Treatment of Archaeological Sites Determined Eligible for Listing on the NRHP

1. If the USACE, in consultation with the SHPO and other Consulting Parties, determines that an archaeological site eligible for listing on the NRHP will be adversely affected by the Project, the USACE, in consultation with the SHPO and other Consulting Parties, shall determine whether avoidance or minimization of the adverse effects is practicable. If the adverse effects cannot be practicably avoided, the USACE, in consultation with the SHPO and other Consulting Parties, shall develop a treatment plan for mitigation for the archaeological site. In a manner consistent with Stipulation II.B of this Agreement, the USACE shall provide the SHPO and BOEM the opportunity to review and concur with the treatment plan and the other Consulting Parties to review and comment.
2. Any treatment plan the USACE develops for an archaeological site under the terms of this Stipulation shall be consistent with the requirements of Stipulation V.A and shall include, at a minimum:
  - a. Information on the portion of the site where data recovery or controlled site burial, as appropriate, is to be carried out, and the context in which the site is eligible for the NRHP;
  - b. The results of previous research relevant to the Project;
  - c. Research problems or questions to be addressed, with an explanation of their relevance and importance;
  - d. The field and laboratory analysis methods to be used, with a justification of their cost-effectiveness and how they apply to this particular site and the research needs;
  - e. The methods to be used in artifact, data, and other records management;

- f. Arrangements for presenting to the public the research findings, focusing particularly on the community or communities that may have interests in the results;
  - g. The curation of recovered materials and records resulting from the data recovery in accordance with 36 CFR Part 79;
  - h. The conservation of recovered materials, as applicable; and
  - i. Procedures for evaluating and treating discoveries of unexpected human remains during the course of the Project, including necessary consultation with other parties.
3. The USACE shall ensure the treatment plan is implemented and that any agreed-upon data recovery field operations have been completed before dredging occurs or dredged material placement activities associated with the Project are initiated at or near the affected site. The USACE shall notify the SHPO and other Consulting Parties once data recovery field operations have been completed so that a site visit may be scheduled, if the SHPO and other Consulting Parties find a visit appropriate. The USACE shall ensure that the archaeological site form on file in the SHPO's Virginia Cultural Resources Information System (V-CRIS) is updated to reflect the implementation of the treatment plan for each affected site.
  4. Pursuant to Stipulation II.B, the USACE shall provide the SHPO and BOEM and the opportunity to review and concur and other Consulting Parties the opportunity to review and comment on the results of the implementation of any treatment plan prepared under this Agreement via a technical report prepared in accordance with Stipulation II.A.

## II. PREPARATION AND REVIEW OF DOCUMENTS

### A. Technical Preparation

All archaeological studies, technical reports, and treatment plans prepared pursuant to this Agreement shall incorporate guidance provided by the Secretary of Interior's "*Standards and Guidelines for Archaeological Documentation*" (48 FR 44734-37) and the ACHP's *Treatment of Archaeological Properties* (ACHP 1980) and *Section 106 Archaeology Guidance* (ACHP 2009). In addition, these materials will be consistent with the *South Carolina Standards and Guidelines for Archaeological Investigations* (Council of South Carolina Professional Archaeologists et al. 2005).

### B. Review

The Signatories agree to provide comments to the USACE on all technical materials, findings, and other documentation arising from this Agreement within thirty (30)

calendar days of receipt unless otherwise specified. If no comments are received from the SHPO, other Signatories within the thirty (30) calendar- days review period, the USACE may assume that the non-responsive party has no comment. The USACE shall take into consideration all comments received in writing from the SHPO and other Concurring Parties within the thirty (30) calendar- day review period, as specified in this Agreement.

#### C. Physical Documents

A minimum of two copies of the draft technical report will be submitted for review and approval to the SHPO and BOEM no later than six (6) months from the completion of fieldwork. SHPO may submit the report to outside reviewers for peer review. If the SHPO elects to utilize this option, additional report copies may be requested. If revisions of the draft report are recommended, the USACE will ensure that these are addressed in the final report. The final report will be submitted within three (3) months of receipt of all agency and peer review comments.

The USACE shall also provide the City or any Concurring Party a copy of any final report (in hard copy or .pdf format, as requested) if so requested by that party. Such requests must be received by the USACE in writing prior to the completion of construction of the Project.

### III. CURATION STANDARDS

The USACE shall ensure that all original archaeological records (research notes, field records, maps, drawings, and photographic records) and all archaeological collections recovered from the USACE Project or produced as a result of implementing the Stipulations of this Agreement are provided for permanent curation. USACE shall ensure that the records, and collections and curation facility comply with standards set forth in 36 CFR 79, Curation of Federally Owned and Administered Archaeological Collections.

### IV. CHANGES IN PROJECT SCOPE

In the event of any changes to the Project scope that may alter the APE, the USACE shall consult with the SHPO and other Consulting Parties pursuant to 36 CFR § 800.2 through § 800.5.

### V. STANDARDS

#### A. Research Standards

All work carried out pursuant to this Agreement shall meet the *Secretary of the Interior's Standards for Archaeology and Historic Preservation* set forth at 36 C.F.R. § 68.3 and, if applicable, the *NHHC Methods and Guidelines for Conducting Underwater Archaeological Fieldwork*.

## B. Professional Standards

The USACE shall ensure that all work carried out pursuant to this Agreement shall be done by or under the direct supervision of archaeology professionals who meet the Secretary of the Interior's Professional Qualifications Standards for Archaeology. The USACE shall ensure that consultants retained for services pursuant to this Agreement meet these standards.

## VI. TREATMENT OF HUMAN REMAINS

### A. Coordination

In the event human skeletal remains or burials are encountered during implementation of the Project, the USACE shall coordinate its compliance with Section 106 with other applicable federal, state, and local laws and reviews as appropriate.

### B. Permits

Historic and prehistoric human remains from non-federal, non-tribal lands are subject to protection under South Carolina's burial/unmarked grave/cemetery law(s). As such, if human remains are discovered during construction, work in that portion of the project shall stop immediately. The remains shall be covered and/or protected in place in such a way that minimizes further exposure of and damage to the remains, and the USACE shall immediately consult with the SHPO. If the remains are found to be Native American, in accordance with applicable law, a treatment plan shall be developed by USACE and SHPO in consultation with appropriate federally recognized Indian tribes.

USACE shall ensure that any treatment and reburial plan is fully implemented. If the remains are not Native American, the appropriate local authority shall be consulted to determine final disposition of the remains. Avoidance and preservation in place is the preferred option for treating human remains.

### C. Additional Procedures

Additional procedures regarding the treatment of human remains are detailed in Appendix B of this Agreement.

## VII. SUNKEN MILITARY CRAFT

If at any point in the Project, the USACE discovers or reasonably believes that a Department of the Navy sunken military craft or part thereof will be disturbed or otherwise affected in the course of the Project, the USACE shall immediately notify the NHHHC. The USACE shall provide the NHHHC with a reasonable opportunity to accomplish the following:

- A. In relation to Stipulation I.A, review and provide concurrence on the USACE identification of archaeological sites eligible for listing on the NRHP within the APE of the Project.
- B. In relation to Stipulation I.A.2, review and provide concurrence on the evaluation of any such historic property, as opposed to review and comment on a report of the USACE findings.
- C. In relation to Stipulation I.B, review and provide concurrence on the USACE assessment of effects of the Project, as opposed to review and comment on the USACE assessment.
- D. In relation to Stipulation I.C.1, in consultation with the USACE, the SHPO, the City of Folly Beach, and the Bureau of Ocean Energy Management, determine whether avoidance or minimization of the adverse effects on an archaeological site eligible for listing on the NRHP that will be adversely affected by the Project is practicable.
- E. In relation to Stipulation I.C.1, review and provide concurrence on the treatment plan for archaeological sites that will be impacted by practicably unavoidable adverse effects, as opposed to review and comment on the treatment plan.
- F. The USACE further agrees to the following upon discovery or disturbance of Department of the Navy sunken military craft:
  - 1. Any treatment plan developed pursuant to Stipulation I.C.2 for an archaeological property that is also a Department of the Navy sunken military craft will have to take into account the requirements otherwise imposed on permit applicants under 32 CFR § 767.6 (d).
  - 2. Conditions set forth in 32 CFR § 767.6 (g) apply and that a permit from NHHHC is not required to carry out the terms of the treatment plan developed pursuant to Stipulation I.C.2 for an archaeological property that is also a Department of the Navy sunken military craft.
  - 3. In relation to Stipulation I.C.3, the USACE will notify the NHHHC once recovery field operations have been completed so that a site visit may be completed. One or more site visits may also be completed by the NHHHC during recovery field operations.
  - 4. In relation to Stipulation II.C, the USACE shall provide the NHHHC two (2) copies on acid-free paper and one (1) copy in pdf format on archival compact disc of all final reports prepared pursuant to this Agreement pertaining to Department of the Navy sunken military craft.
  - 5. In relation to Stipulation III, the USACE will transfer all original archaeological records (research notes, field records, maps, drawings, and photographic records) and

all archaeological collections recovered and retained from Department of the Navy sunken military craft to the NHHHC at the completion of the Project for curation.

6. The USACE will fund the professional recovery, documentation, conservation, packaging, and transportation of the associated retained archaeological collections, as well as costs for certifying inert any associated ordnance in consultation with appropriate Department of Navy personnel. The NHHHC will be afforded a determinative role should the USACE desire not to retain any part of an associated archaeological collection post-recovery and documentation, and agrees to maintain such records and collections in accordance with 36 CFR § 79, *Curation of Federally Owned and Administered Archaeological Collections*.
7. In relation to Stipulation VII.B, the USACE will address the treatment of any human remains associated with Department of the Navy sunken military craft in consultation with the NHHHC.
8. The aforementioned clauses supersede Appendix B with respect to Department of the Navy sunken military craft
9. The stipulations of not publicly disclosing site locations to the public of the Archaeological Resources Protection Act, Section 9, shall be followed.

#### **VIII. POST-REVIEW DISCOVERIES**

If properties are discovered that may be eligible for listing in the NRHP or unanticipated effects on historic properties are found subsequent to the completion of surveys under Stipulation I, the USACE shall implement the Procedures for Post-Review Discoveries included as Attachment B of this Agreement.

#### **IX. COMMUNICATIONS**

Electronic mail (email) may serve as the official correspondence method for all communications regarding this Agreement and its provisions. See Appendix C for a list of contacts and email addresses. Contact information in Appendix C may be updated as needed without an amendment to this Agreement. It is the responsibility of each party to the Agreement to immediately inform the USACE of any change in name, address, email address, or phone number of any point-of-contact. The USACE shall forward this information to all Signatories by email.

#### **X. MONITORING AND REPORTING**

Each year on the anniversary of the execution of this Agreement until it expires or is terminated, the USACE shall provide all parties to this Agreement a summary report detailing work undertaken pursuant to its terms. Such report shall include any scheduling changes proposed, any

problems encountered, and any disputes and objections received in the USACE's efforts to carry out the terms of this Agreement. The reporting period shall be the fiscal year from October 1 to September 30.

## **XI. DISPUTE RESOLUTION**

Should any party to this Agreement object in writing to the USACE regarding any actions proposed under this Agreement, or the manner in which the terms of this Agreement are implemented, the USACE shall consult with the objecting party to resolve the objection. If the USACE determines that such objection cannot be resolved, the USACE shall:

### **A. Documentation**

Forward all documentation relevant to the dispute, including the USACE's proposed resolution, to the ACHP. The ACHP shall provide the USACE with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the USACE shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories and consulting parties, and provide them with a copy of this written response. The USACE shall then proceed according to its final decision.

### **B. Resolution**

If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, the USACE may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the USACE shall prepare a written response that takes into account any timely comments regarding the dispute from the Signatories and Consulting Parties to the Agreement, and provide them and the ACHP with a copy of such a written response.

### **C. Continuity**

The USACE's responsibility to carry out all other actions subject to the terms of this Agreement that are not the subject of the dispute remain unchanged.

## **XII. ANTI-DEFICIENCY ACT**

The Anti-Deficiency Act, 31 U.S.C. §1341, prohibits federal agencies from incurring an obligation of funds in advance of or in excess of available appropriations. Accordingly, the parties agree that any requirement for obligation of funds arising from the terms of this agreement shall be subject to the availability of appropriated funds for that purpose, and that this agreement shall not be interpreted to require the obligation or expenditure of funds in violation of the Anti-Deficiency Act. The USACE shall make reasonable and good faith efforts to secure the necessary funds to implement this Agreement in its entirety. If compliance with the Anti-

Deficiency Act alters or impairs the USACE's ability to implement the stipulations of this agreement, the USACE shall consult in accordance with the amendment and termination procedures found at Stipulations XIII and XIV of this Agreement.

### **XIII. AMENDMENTS**

This Agreement may be amended when an amendment is agreed to in writing by both Signatories. The amendment shall be effective on the date a copy signed by both of the Signatories is filed with ACHP.

### **XIV. TERMINATION**

If any Signatory to this Agreement determines that its terms are not or cannot be carried out, that party shall immediately consult with the other Signatories to attempt to develop an amendment per Stipulation XIII, above. If within thirty (30) days (or another time period agreed to by all Signatories) an amendment cannot be reached, any Signatory may terminate the Agreement upon written notification to the other Signatories.

Once the Agreement is terminated, and prior to work continuing on the Project, the USACE must either (a) execute another Agreement pursuant to 36 CFR § 800.14, or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. The USACE shall notify the Signatories as to the course of action it will pursue.

### **XV. DURATION**

This Agreement shall remain in effect until such time as the legal requirements for Section 106 are completed or until the end of the ten (10) year period beginning on the date the Agreement is signed by all Signatories, whichever is earlier. Six (6) months prior to the end of such ten (10) year period, the USACE shall consult with the other Signatories and Concurring Parties to reconsider the terms of the Agreement and amend it in accordance with Stipulation XIII above, if necessary.

### **XVI. EXECUTION OF THIS AGREEMENT**

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

Execution of this Agreement and its submission to the ACHP, and implementation of its terms, evidence that the USACE has afforded the ACHP an opportunity to comment on the Project and its effect on historic properties, and that the USACE has satisfied its Section 106 obligations regarding the effect of the Project on historic properties.

Appendix A – Area of Potential Effects  
Appendix B – Procedures for Post-Review Discoveries  
Appendix C – Contact Information

**Signatures Follow on Separate Pages**

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STATE HISTORIC PRESERVATION OFFICE

\_\_\_\_\_  
By: Elizabeth Johnson, State Historic Preservation Office

\_\_\_\_\_  
Date

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**INVITED SIGNATORIES:**

CITY OF FOLLY BEACH

By: \_\_\_\_\_  
Aaron Pope, City Administrator

\_\_\_\_\_  
Date

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BUREAU OF OCEAN ENERGY MANAGEMENT

\_\_\_\_\_  
By: Megan Carr, Chief Office of Strategic Resources

\_\_\_\_\_  
Date

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**CONCURRING PARTIES:**

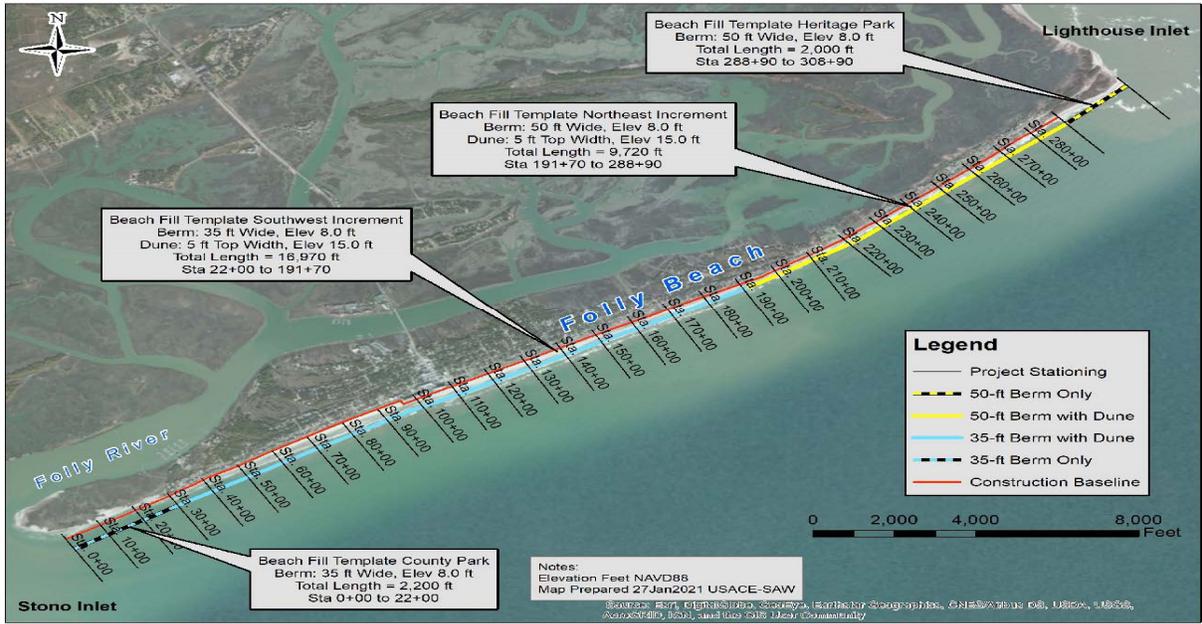
SOUTH CAROLINA INSTITUTE OF ARCHAEOLOGY AND ANTHROPOLOGY,  
MARITIME RESEARCH DIVISION

\_\_\_\_\_  
By: James Spirek, State Underwater Archaeologist

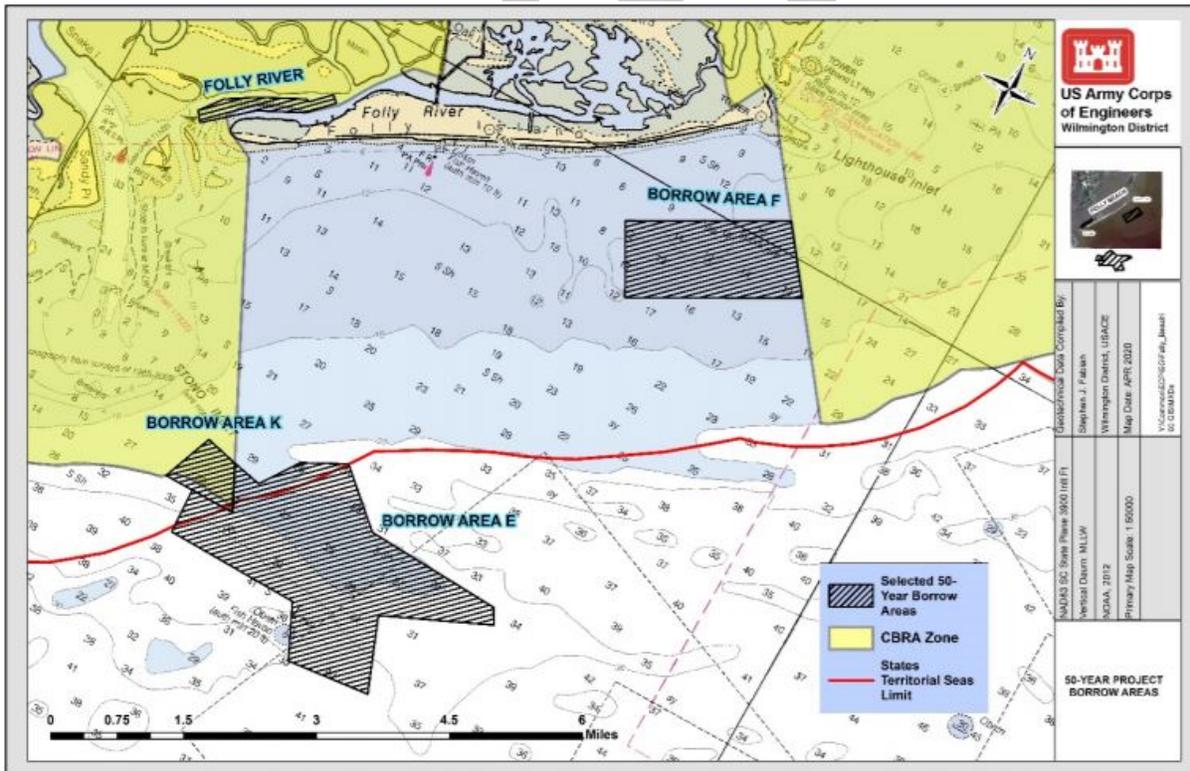
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**APPENDIX A**  
**Area of Potential Effects**



APE – Front Beach



APE – Borrow Areas

## **APPENDIX B**

### **Procedures for Post-Review Discoveries**

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## PROCEDURES FOR POST-REVIEW DISCOVERIES

### **Post-Review Discoveries**

The USACE will ensure that construction documents contain the following provisions for the treatment of unanticipated archaeological discoveries:

“If previously unidentified historic properties or unanticipated effects to historic properties are discovered during contract activities, the contractor shall immediately halt all activity within a one hundred (100) foot radius of the discovery, notify the USACE Project Manager and the USACE Archaeologist of the discovery and implement interim measures to protect the discovery from looting and vandalism. Work in all other areas not the subject of the discovery may continue without interruption.” If previously unidentified historic properties or unanticipated effects to historic properties are discovered during contract activities, the contractor shall immediately halt all activity within a minimum fifty (50) meter (one hundred sixty-four [164] feet) radius of the discovery, notify the USACE Project Manager and the USACE Archaeologist of the discovery and implement interim measures to protect the discovery from looting and vandalism. Work in all other areas not the subject of discovery may continue without interruption.

Immediately upon receipt of the notification from the contractor (see subparagraph immediately above), the USACE Archaeologist shall:

1. Inspect the site to determine the extent of the discovery and ensure that the Undertaking in that area is halted;
2. Clearly mark the area of the discovery;
3. Implement additional measures, as appropriate, to protect the discovery from looting and vandalism;
4. Determine the extent of the discovery and provide recommendations regarding its National Register of Historic Places (NRHP) eligibility and treatment;
5. Notify the USACE Project Manager, the SHPO, and other Consulting Parties of the discovery describing the measures that have been implemented to comply with this Stipulation.
6. In the case of human remains or Native American artifacts, notify the Catawba Nation within 48 hours of the discovery

Upon receipt of the information required in subparagraphs 1-5 above, the USACE shall provide the SHPO and other Consulting Parties with an assessment of the NRHP eligibility of the

discovery and the measures proposed to resolve adverse effects. In making the evaluation, the USACE in consultation with the SHPO, may assume the discovery to be eligible for the NRHP for the purposes of Section 106 pursuant to 36 CFR Part 800.13(c). The SHPO and other Consulting Parties shall respond to the USACE's assessment within forty-eight (48) hours of receipt.

The USACE shall take into account the SHPO and other Consulting Parties' recommendations on eligibility and treatment of the discovery and shall provide the SHPO and other Consulting Parties with a report on the actions when implemented. The Undertaking may proceed in the area of the discovery, once the USACE has determined that the actions undertaken to address the discovery pursuant to this Stipulation are complete.

### **Treatment of Human Remains**

The USACE shall make all reasonable efforts to avoid disturbing gravesites, including those containing Native American human remains and associated funerary objects. If human remains and/or associated funerary objects are encountered during the course of the Undertaking, the USACE shall immediately halt the Undertaking in the area and contact the USACE Archaeologist and the appropriate city Coroner.

The USACE shall treat all human remains in a manner consistent with the ACHP's Policy Statement Regarding Treatment of Burial Sites, Human Remains and Funerary Objects (February 23, 2007; <http://www.achp.gov/docs/hrpolicy0207.pdf>).

The USACE shall make a good faith effort to ensure that the general public is excluded from viewing any Native American burial site or associated funerary objects. The Consulting Parties to this PA agree to release no photographs of any Native American burial site or associated funerary objects to the press or general public. The USACE shall notify Catawba Indian Nation and other appropriate federally recognized Tribe(s) if their interest(s) have been established, when Native American burials, human skeletal remains, or funerary objects are encountered during the Undertaking. Following consultation by the USACE, the SHPO, and identified Tribes with cultural affiliation, the USACE shall ensure that proper steps are taken regarding the remains. This could include the delivery of any Native American human skeletal remains and associated funerary objects recovered pursuant to this PA to the appropriate Tribe.

If the remains are determined to be historic and not Native American, USACE shall consult with the SHPO and other appropriate Consulting Parties prior to any excavation by providing a treatment plan including the following information:

- The name of the property or archaeological site and specific location from which the recovery is proposed. If the recovery is from a known archaeological site, a state-issued site number must be included.
- Indication of whether a waiver of public notice is requested and why. If a waiver is not requested, a copy of the public notice to be published in a newspaper having general

circulation in Charleston area for a minimum of four weeks prior to recovery.

- A copy of the curriculum vitae of the skeletal biologist who will perform the analysis of the remains.
- A statement that the treatment of human skeletal remains and associated artifacts will be respectful.
- An expected timetable for excavation, osteological analysis, preparation of a final report, and final disposition of remains.
- A statement of the goals and objectives of the removal of human remains (to include both excavation and osteological analysis).
- If a disposition other than reburial is proposed, a statement of justification for that decision.

The USACE Archaeologist shall submit the draft treatment plan to the USACE, the SHPO and appropriate Consulting Parties for review and comment. All comments received within thirty (30) calendar days shall be addressed in the final treatment plan. Upon receipt of final approval in writing from the USACE Archaeologist, the treatment plan shall be implemented prior to those Undertaking activities that could affect the burial(s).

The USACE Archaeologist shall notify the USACE Project Manager, the SHPO, and the other Consulting Parties in writing once the fieldwork portion of the removal of human remains is complete. The Undertaking in the area may proceed following this notification while the technical report is in preparation. The USACE Archaeologist may approve implementation of undertaking-related ground disturbing activities in the area of the discovery while the technical report is in preparation.

The USACE Archaeologist shall ensure that a draft report of the results of the recovery is prepared within one (1) year of the notification that archaeological fieldwork has been completed and submitted to the USACE, the SHPO and the other Consulting Parties for review and comment. All comments received within thirty (30) calendar days of receipt shall be addressed in the final treatment plan. When the final report has been approved by the USACE Archaeologist, two (2) copies of the document, bound and on acid-free paper and one (1) electronic copy in Adobe® Portable Document Format (.pdf) shall be provided to the SHPO; and one (1) copy in an agreed upon format to each of the other Consulting Parties.

The USACE Archaeologist shall notify the USACE Project Manager, the SHPO, and other appropriate Consulting Parties within fifteen (15) calendar days of final disposition of the human remains.

**APPENDIX C**

**Contact Information**

U.S. Army Corps of Engineers, Charleston District

Alan Shirey  
Environmental Engineer  
U.S. Army Corps of Engineers 69A Hagood Avenue  
Charleston, SC 29403  
(843) 329-8166  
*Alan.D.Shirey@usace.army.mil*

South Carolina Department of Archives and History

Elizabeth Johnson  
South Carolina Department of Archives and History  
State Historic Preservation Office  
8301 Parklane Road  
Columbia, South Carolina 29223-4905  
(803) 896-6168  
*EJohnson@scdah.sc.gov*

City of Folly Beach

Aaron Pope  
City Administrator  
City of Folly Beach  
P.O. Box 48  
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