

PROGRAMMATIC AGREEMENT  
AMONG  
THE U.S. ARMY CORPS OF ENGINEERS,  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,  
AND THE SOUTH CAROLINA STATE HISTORIC PRESERVATION OFFICE  
REGARDING PLANNED DEVELOPMENT ACTIVITIES ON KIAWAH ISLAND

WHEREAS, the U.S. Army Corps of Engineers (Corps) has determined that the issuance of permits to Kiawah Resort Associates for activities such as the construction of roadways, the construction of piers and floating docks, the placement of fill in wetlands, and the creation of fingerling ponds, on Kiawah Island, Charleston County, South Carolina may have an effect on archaeological sites that meet the criteria for inclusion in the National Register of Historic Places; and

WHEREAS, the Corps has consulted with the South Carolina State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (Council) pursuant to the regulations (36 CFR Part 800) implementing Section 106 of the National Historic Preservation Act (16 U.S.C. Sec. 470f); and

WHEREAS, the Kiawah Resort Associates (KRA) has participated in the consultation and has been invited to join in the Programmatic Agreement as a concurring party;

NOW, THEREFORE, the Corps, the South Carolina SHPO, and the Council 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 Corps will ensure that the following measures are carried out:

1. Archaeological investigations will be conducted to determine if National Register eligible archaeological sites will be affected by this project. Site 38CH124 is currently on the National Register of Historic Places. Eligible sites that have been previously identified consist of the following: 38CH125/126, 38CH129, 38CH440, 38CH1106, and 38CH1107. The eligibility of previously identified sites in areas planned for future development (see attached maps) will be determined prior to future development. Presently undeveloped areas will be intensively surveyed prior to future development to locate and assess possible additional eligible archaeological sites based on the Federal guidelines as cited herein.

2. Until such time as the undeveloped areas are subjected to archaeological investigations for the definitive assessment of their Register eligibility (cf. "eligible" or "not eligible"), those

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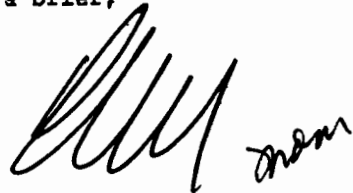
undeveloped areas and the sites previously identified as eligible should be avoided and preserved in place.

3. If archaeological investigations are conducted to assess the eligibility of previously recorded sites and any new sites discovered through intensive archaeological survey of undeveloped areas, a report of these investigations consisting of detailed methods, site descriptions, Register eligibility assessment and justification will be prepared. This report shall be submitted to the SHPO, the Corps, and the Council for their review and comment.

4. All archaeological investigations will be consistent with the Council's Handbook, Treatment of Archaeological Properties. All historic and archaeological work will be conducted in a manner consistent with the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation, under the direct supervision of persons who meet, at a minimum, the appropriate qualifications set forth in the Historic Preservation Standards and have relevant professional experience related to properties or remains of similar type and period.

5. For those National Register eligible sites which KRA determines can not be preserved in place a data recovery plan will be developed by the KRA archaeologist. The plan shall be consistent with the Secretary of the Interior's Standards and Guidelines for Archaeological Documentation (48 FR 44734-37). The plan(s) shall specify, at a minimum, the portions of properties where data recovery is carried out and any properties or portions thereof that will be destroyed or altered without data recovery. The data recovery plan(s) shall also specify the research questions to be addressed through the data recovery, with an explanation of their relevance and importance; the methods to be used, with an explanation of their relevance to the research questions; the methods to be used in analysis, data management, and dissemination of data, including a schedule; the proposed disposition of recovered materials and records; and the proposed methods for disseminating results of the work to the interested public. The plan(s) will be submitted by the Corps to the Council and the South Carolina SHPO for 30 days review. Unless the SHPO or the Council objects within 30 days after receipt of the plan, the Corps shall ensure that it is implemented. The data recovery plan will be conducted by a qualified professional archaeologists. For the National Register eligible sites which KRA determines can be preserved in place a preservation plan will be developed by KRA. The preservation plan will be submitted to the Corps for review and approval. The Corps shall submit the plan to the Council and the SC SHPO for their review. Unless the SHPO or the Council objects within 20 days of receipt of the preservation plan, the Corps will ensure that it is implemented.

6. A draft report of investigations must be submitted to the Corps, the Council, and the South Carolina SHPO for a review period of 30 days. The Corps will ensure that Council and SHPO review comments, if received within 30 days of report receipt, will be incorporated within the final report as approved by the Corps. Two copies of all final reports will be provided to the Corps, and at least one copy of each final report to the South Carolina SHPO, the Council, and the South Carolina Institute of Archaeology and Anthropology (SCIAA). In addition, a brief,

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public-oriented brochure describing archaeological fieldwork results will be produced by KRA, under the direction of a qualified archaeologist (see attached example). This will serve to educate the public about the cultural resources found on Kiawah Island by KRA. Such a brochure will be produced to describe each significant site excavated, and will be available for Corps, SHPO and Council comment within 30 days of Corps approval of the final report detailing work at those particular significant sites. No less than one hundred copies of each brochure will be made available to the public, and fifty of those one hundred copies shall be sent to the SHPO for dissemination.

7. All archaeological materials, along with field and laboratory records, maps, drawings, and photographic materials will be curated at a suitable repository agreed upon by the Council, the Corps, the South Carolina SHPO, and KRA. Documentation will be provided to the South Carolina SHPO that these materials have been accepted and curated. If KRA or its agents exhibit a sample of artifacts recovered, the museum quality display must be prepared by or under the supervision of a qualified professional archaeologist.

8. Any archaeological materials or sites discovered during construction, and not referenced above will be treated in accordance with the process outlined under 36 CFR Part 800.11, "Properties discovered during the implementation of an undertaking." These include both land and underwater sites.

9. In the event that the Corps is unable to carry out its responsibilities under the stipulations above, the Corps should consult the South Carolina SHPO and the Advisory Council so that a new agreement may be developed. Until such time as a new (or revised) agreement is signed, the Corps will ensure that no adverse impacts occur to the National Register-eligible and potentially eligible archaeological sites found in the project area.

10. The Council 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 Corps will cooperate with the Council and the South Carolina SHPO in carrying out their monitoring and review responsibilities.

11. Should the Council or the South Carolina SHPO object within 30 days to any plans provided for review pursuant to this agreement, the Corps shall consult with the objecting party to resolve the objection. If the Corps determines that the objection cannot be resolved, the Corps shall request the further comments of the Council pursuant to 36 CFR Part 800.6(b). Any Council comment provided in response to such a request will be taken into account by the Corps in accordance with 36 CFR 800.6(c)(2) with reference only to the subject of the dispute; the Corps' responsibility to carry out all actions under this agreement that are not the subjects of the dispute will remain unchanged.

12. This programmatic agreement will continue in full force and effect until June 1, 1994 unless terminated as herein provided. At any time in the six-month period prior to this date, the Corps may request the Council

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and the SHPO in writing to review the Corp's program and consider an extension or modification of this Programmatic Agreement. No extension or modification will be effective unless all parties to the Programmatic Agreement have agreed to it in writing.

13. Any party to this Programmatic Agreement may request that it be amended whereupon the parties will consult in accordance with 36 CFR Part 800.13 to consider such amendment.

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

Execution of this Programmatic Agreement and carrying out its terms evidences that the Corps has afforded the Council an opportunity to comment on this project and its effects on cultural resources, and that the Corps has taken into account the effects of the project on cultural resources.

Advisory Council on Historic Preservation:

John M. Foubler

Date: 9/6/90

U.S. Army Corps of Engineers:

Clarence Jones

Date: 8/1/90

South Carolina Historic Preservation Office:

Mary Watson Edwards

Date: 7/12/90

Concur:

[Signature]  
for Kiawah Resort Associates  
AS AGENT FOR KRA

7-17-90

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