

**DRAFT**

**MEMORANDUM OF AGREEMENT  
AMONG  
DOMINION VIRGINIA POWER,  
THE VIRGINIA STATE HISTORIC PRESERVATION OFFICE,  
U.S. ARMY CORP OF ENGINEERS NORFOLK DISTRICT, AND  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION**

**SUBJECT: ISSUANCE OF U.S. ARMY CORPS OF ENGINEERS' PERMITS  
FOR THE PROPOSED SURRY-SKIFFES CREEK-WHEALTON  
TRANSMISSION LINE PROJECT, SURRY COUNTY, JAMES CITY COUNTY,  
YORK COUNTY, CITIES OF NEWPORT NEWS AND HAMPTON, VIRGINIA**

MONTH, YEAR

**WHEREAS**, pursuant to 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act of 1966 (NHPA), as amended, 54 U.S.C. § 306108, and 33 CFR Part 325, Appendix C, Processing of Department of the Army Permits: Procedures for Protection of Historic Places, the US Army Corps of Engineers Norfolk District (Corps) is required to take into account the effects of federally permitted undertakings on properties included in or eligible for inclusion in the National Register of Historic Places (NRHP) prior to the issuance of permits for the undertaking and to consult with the Virginia State Historic Preservation Office (SHPO); and with the Advisory Council on Historic Preservation (ACHP) where historic properties are adversely affected; and

**WHEREAS**, Virginia Electric and Power Company, d/b/a Dominion Virginia Power (Dominion), proposes to construct new electrical transmission line infrastructure in the Hampton Roads area of Virginia, to resolve projected violations of the North American Electric Reliability Corporation (NERC) Reliability Standards, resulting from the closure of two coal-fired power generating units at the Yorktown Power Station which will be deactivated no later than in 2017 and projected growth in regional demand. The Project is designed to provide sufficient and reliable electricity to residents, businesses, and government agencies located on the Virginia Peninsula for public health and human safety, and national security interests. The Project is collectively known as the Surry – Skiffes Creek – Whealton project, located in Surry, James City, and York Counties and the Cities of Newport News and Hampton, Virginia (the Project); and

**WHEREAS**, the Project involves construction of a new high voltage aerial electrical transmission line that consists of three components; (1) Surry – Skiffes Creek 500 kilovolt (kV) aerial transmission line, (2) Skiffes Creek 500 kV – 230 kV – 115 kV Switching Station, and (3) Skiffes Creek – Whealton 230 kV aerial transmission line. The proposed project will permanently impact 2,712 square feet (0.06 acres) of subaqueous river bottom and 281 square feet (0.01 acres) of

non-tidal wetlands, and convert 0.56 acres of palustrine forested wetlands to scrub shrub non-tidal wetlands. The transmission lines will cross portions of the James River, Woods Creek, and Skiffes Creek. In addition to structures being built within the James River, structural discharges are proposed in non-tidal wetlands. The proposed activities will require a Corps permit pursuant to Section 10 of the Rivers and Harbor Act and Section 404 of the Clean Water Act; and

**WHEREAS**, the Corps, in consultation with the Department of Historic Resources (DHR), which serves as the SHPO in Virginia, has determined that for this Project the Area of Potential Effects (APE) shall consist of the Direct APE and an Indirect APE. The Direct APE consists of areas where land disturbing activities may occur. The limits of the Direct APE consist of the limits of the Project right of way (ROW) and identified construction access areas. For construction access areas, a 25-foot width was used along the centerline of field located paths and roads outside of the Project ROW. The Indirect APE extends approximately 10 miles upstream and 13 miles downstream from the proposed river crossing and includes a buffer of approximately 0.5-miles inland from the shoreline within this area. The Indirect APE for areas where the proposed work will not result in a change in structure height greater than 10% or 20 feet is defined by the adjacent parcel boundaries or a 0.5 mile buffer, whichever is less. The limits of the Direct and Indirect APEs are shown on Attachment A; and

**WHEREAS**, Dominion has completed the identification of historic properties; and the Corps, in consultation with the SHPO, finds that the following documents listed in Attachment B meet the Secretary of the Interior's *Standards and Guidelines for Archaeological Documentation* (48 FR 44734-37, September 29, 1983) and the SHPO's *Guidelines for Conducting Historic Resources Survey in Virginia (2011)* and the SHPO's "Assessing Visual Effects on Historical Properties;" and

**WHEREAS**, the Corps, in consultation with the SHPO, has determined that 57 resources as described in the attached table (Attachment C) and as depicted on the attached map (Attachment C) are listed, eligible for listing, or treated as eligible for listing in the NRHP and are considered Historic Properties for purposes of the Project. One additional resource, the Jamestown Island-Hog Island Cultural Landscape Historic District, was considered potentially eligible and also was included for consideration, and it also is listed on Attachment C; and

**WHEREAS**, the Corps requested a formal determination of eligibility (DOE) for the Captain John Smith Chesapeake National Historic Trail (Captain John Smith Chesapeake NHT) from the Keeper of the National Register (Keeper) on July 2, 2015; and, the Keeper issued a formal DOE to the Corps on August 14, 2015 (Attachment D) and concluded that the entire Indirect APE, excluding the inland portions, is eligible for the NRHP as a historic district under Criteria A, B, C, and D, because it contains a significant cultural landscape and that the Captain John Smith Chesapeake NHT within the APE is a contributing element of that district; and

**WHEREAS**, the Corps refers to the eligible historic district identified by the Keeper as the Historic District in its August 14, 2015 letter (formally Jamestown Island-Hog Island Cultural Landscape) including CAJO (No VDHR#) and for the purposes of this Memorandum of Agreement (MOA) shall refer to this property as the Jamestown Island-Hog Island-Captain John Smith Trail Historic District (No VDHR#); and

**WHEREAS**, the Corps, in consultation with the SHPO, Advisory Council on Historic Preservation (ACHP), and consulting parties, has determined that the undertaking will have an adverse effect on archaeological site 44JC0662, the Jamestown Island-Hog Island-Captain John Smith Trail Historic District<sup>1</sup>, which includes the contributing section of the Captain John Smith Chesapeake NHT within the APE, Carter's Grove National Historic Landmark (VDHR #047-0001), Colonial National Historical Park/Colonial Parkway Historic District (VDHR #047-0002), Hog Island Wildlife Management Area (VDHR #090-0121), Jamestown National Historic Site/Jamestown Island/Jamestown Island Historic District (VDHR #047-0009), the Battle of Yorktown (VDHR #099-5283), and Fort Crafford (VDHR #121-0027) (Attachment C); and

**WHEREAS**, the Corps has invited the participation of the Advisory Council on Historic Preservation (ACHP) in this consultation as a signatory party, and ACHP has elected to participate; and

**WHEREAS**, the Corps has invited the Catawba Indian Nation, the Delaware Tribe of Indians and the Delaware Nation to participate in this consultation as concurring parties and the Delaware Tribe of Indians has accepted, and the Catawba Indian National and the Delaware Nation have declined to participate; and

**WHEREAS**, the Corps has invited Dominion to participate in this consultation and to sign this MOA as a signatory party and Dominion has elected to participate; and

**WHEREAS**, the Corps has invited the following Virginia State Recognized Tribes: Cheroenhaka (Nottoway), the Chickahominy, the Eastern Chickahominy, the Mattaponi, the Upper Mattaponi, the Nansemond Tribal Association, the Nottoway Tribe of Virginia, the Pamunkey, and the Rappahannock to participate in this consultation as concurring parties and the Chickahominy have elected to participate; and

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<sup>1</sup> In its determination of eligibility the Keeper of the National Register did not establish a formal name for this historic property, which has been referred to by the Corps as Historic District (formally Jamestown Island-Hog Island Cultural Landscape) including CAJO (No VDHR#). The SHPO has referred to this property as the Captain John Smith Trail Historic District. The Corps' name for the historic property is used here and later simplified to Jamestown Island-Hog Island-Captain John Smith Trail Historic District for reference purposes in this Agreement only.

**WHEREAS**, the Corps has invited James City County, Surry County, the City of Newport News, York County, the City of Williamsburg, and the City of Hampton to participate in this consultation as concurring parties, and James City County has elected to participate; and

**WHEREAS**, the Corps has invited the following consulting parties: The National Parks and Conservation Association, the Save the James Alliance, the Chesapeake Conservancy, United States Department of the Interior (National Park Service, Colonial National Historical Park), United States Department of the Interior (National Park Service, Northeast Region), the Colonial Williamsburg Foundation, Preservation Virginia, Scenic Virginia, The National Trust for Historic Preservation, BASF, the James River Association, the National Park Service American Battlefield Protection Program, First California Company Jamestowne Society, Margaret Fowler, citizen, and the Council of Virginia Archaeologists, to participate in this consultation as concurring parties and they have all elected to participate; and

**WHEREAS**, the Corps has invited the Kingsmill Community Services Association, the Southern Environmental Law Center and the steward of Carter's Grove National Historic Landmark, to participate in this consultation as concurring parties and they have declined to participate; and

**WHEREAS**, The Conservation Fund, the Virginia Environmental Endowment and the Virginia Land Conservation Foundation will be engaged for the purposes of serving as the fiduciary agents to execute projects to mitigate for the impacts to Historic properties identified in the MOA; and

**WHEREAS**, the signatures of The Conservation Fund, the Virginia Environmental Endowment and the Virginia Land Conservation Foundation on this MOA as concurring parties recognize their willingness to provide the services for which they are responsible under the terms of this MOA and for no other purpose; and

**WHEREAS**, the Corps has posted notice for public comment on the following: initiation of consultation under Section 106 (August 28, 2013), identification of historic properties (November 13, 2014), and assessment and resolution of adverse effects (May 21, 2015); and public hearing (October 30, 2015); and

**WHEREAS**, the Corps notified the consulting parties by email on October 13, 2015, that it had determined that identification and evaluation of historic properties was complete, that the Corps had applied the criteria of adverse effects according to 36 CFR 800.5 and reached a finding of adverse effect for the Project, that the Corps was accepting public comment until November 13, 2015 and that the Corps was now consulting to resolve adverse effects in accordance with 36 CFR 800.6 (Attachment E); and

**WHEREAS**, the Corps conducted a Public Hearing for the Project on October 30, 2015, to solicit public comments and advertised the hearing electronically as well

as in the *Virginian Pilot* and *Daily Press* newspapers, and that the Corps held the Public Comment Period open until November 13, 2015; and

**WHEREAS**, Historic Jamestowne, within the Jamestown Island-Hog Island-Captain John Smith Trail Historic District, laid down the beginnings of our shared heritage where the legacies of democracy, free enterprise, the convergence of three cultures of Europeans, Native Indians and Africans, and the spirit of exploration took hold; and

**WHEREAS**, the Project's adverse effects to Historic Properties, direct, indirect, and cumulative, have been minimized and avoided to the greatest extent possible, and that through this MOA the parties seek to mitigate the remaining direct, indirect, and cumulative adverse effects to the greatest extent practicable; and

**WHEREAS**, the Corps and Dominion have fully identified cumulative effects, i.e. *"reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative"* in accordance with 36 CFR § 800.5(a)(1); and

**WHEREAS**, the Corps and Dominion recognize that conservation efforts have been and can be effective at doing what they were created to do—limit future development and/or impacts related thereto in the APE and the proposed mitigation will further this goal; and

**NOW THEREFORE**, in order to satisfy the Corp's Section 106 responsibilities to take into account the effects of the undertaking requiring Corps permits on historic properties, the Corps and the SHPO agree that the Corps may issue a permit to Dominion for the Project and such permit will require compliance with this MOA as a permit condition; thereby effectively incorporating all terms, provisions and stipulations of this MOA as conditions to the permit such that if any provision or stipulation herein is not fulfilled, such failure will constitute noncompliance with the permit, and the Corps may pursue enforcement and may seek all available remedies.

## **STIPULATIONS**

### **I. MITIGATION COMPENSATION FOR ADVERSE EFFECTS ON HISTORIC PROPERTIES WITHIN THE APE**

The Corps, in consultation with the SHPO, has determined that the Project will have an adverse effect on the Jamestown Island-Hog Island-Captain John Smith Trail Historic District. Along with specific identified historic properties, the cultural and natural landscapes that contribute to the district (See Attachments C and D), will be visually affected. Dominion shall fund the following actions as mitigation for

the Project's direct, indirect, and cumulative adverse effects to Historic Properties and cultural and natural landscapes contributing to their significance.

**a. The Jamestown Island-Hog Island-Captain John Smith Trail Historic District Mitigation**

Within 90 days of the effective date of this MOA, Dominion shall establish a legally separate mitigation compensation fund to be administered by The Conservation Fund (TCF). Dominion shall make a onetime contribution to the fund within 30 days of its legal establishment.

The funds shall be disbursed by the administrator, in coordination with the National Park Service and the Commonwealth of Virginia, over a period not to exceed ten (10) years, to support projects on federal, Commonwealth, municipal, county, and private lands located within the Jamestown Island-Hog Island-Captain John Smith Trail Historic District and thematically related areas that contribute to the preservation of sites associated with early American and Native Indian cultures, and shall be distributed according to the following guidelines:

1. The funds shall be used for:
  - i. Landscape enhancement and shoreline protection projects to include:
    - a. Landscape enhancement and shoreline protection at Carter's Grove not to exceed \$1,000,000
    - b. Landscape enhancement and shoreline protection to preserve the setting and feeling of the Colonial Parkway unit at the Colonial National Historical Park consistent with the National Park Service's Cultural Landscape Inventory (2008).
    - c. Seawall rehabilitation or replacement at Historic Jamestowne to provide protection from erosion and sea level rise and to execute a project that provides further protections through a series of breakwaters, sills and revetments greater than those provided in 2004; and, the restoration of Back Creek at Historic Jamestowne
    - d. Captain John Smith Chesapeake NHT experiences dedicated for land acquisition, visitor interpretation and facilities, archeological investigation and preservation of Werowocomoco, Gloucester County, Virginia (principal residence of Powhatan, paramount chief of Indian Tribes in Virginia's coastal region at the time English colonists arrived in 1607, and located along the Captain John Smith Chesapeake NHT on the York

River) and natural and cultural values on the James River and on the north and south sides of the York River in the area of Werowocomoco that will preserve and provide the visitor with an undisturbed landscape and vista that evokes the setting and feeling of the rivers during the period of Captain John Smith's exploration.

- ii. Historic property documentation projects to include:
    - a. Archaeological investigation and identification at Historic Jamestowne to support ongoing investigations including excavations around Memorial Church with a focus on discovering the early churches that stood on the site of the 1617 church, the site of the nation's first representative government.
    - b. Historic resource identification and documentation for the Jamestown Island-Hog Island-Captain John Smith Trail Historic District, including the contributing section of the Captain John Smith Chesapeake NHT within the APE to support listing on the National Register of Historic Places.
  - iii. Heritage tourism enhancement projects to include:
    - a. Visitor interpretation and visitor experience enhancement at Colonial National Historical Park
    - b. Visitor interpretation and visitor experience enhancement at Historic Jamestowne
    - c. Captain John Smith NHT visitor experience and visitor interpretation programs and projects at the National Park Service's visitor center on Jamestown Island.
2. All projects funded in accordance with Stipulations I(a)(1)(i-iii) above, shall comply with all applicable local, Commonwealth, and federal laws and regulations in force and effect at the time of the project award.
  3. TCF shall prepare an annual report due by January 30 each year summarizing disbursement of funds and progress for each project for the preceding year. The annual report shall also identify project changes or challenges experienced during the reporting year, as well as anticipated challenges or changes expected in the coming reporting year. The annual report shall be distributed to the Corps, ACHP, SHPO, Dominion and other consulting parties as appropriate for review and comment. Any disputes regarding

dispensing and use of funds shall be handled in accordance with Stipulation X below.

**b. HISTORIC PROPERTY TREATMENT AT HOG ISLAND WILDLIFE MANAGEMENT AREA**

Within 90 days of the effective date of this MOA, Dominion shall establish a legally separate mitigation compensation fund to be administered by the Virginia Department of Game and Inland Fisheries (DGIF). Dominion shall make a onetime contribution the fund within 30 days of its legal establishment.

The funds shall be disbursed by the administrator, in coordination with the SHPO, over a period not to exceed ten (10) years, to support projects on Commonwealth, municipal, county, and private lands located within the Jamestown Island-Hog Island-Captain John Smith Trail Historic District unless otherwise noted, and shall be distributed according to the following guidelines:

1. The funds shall be used for natural resource enhancement and cultural resource identification and interpretation projects to include:
  - i. Enhancement of 1,100 acres of palustrine emergent marsh at Hog Island
  - ii. Living shoreline and shoreline restoration in Surry County
  - iii. Acquisition of 400 acres of upland/emergent marsh at the Chickahominy Wildlife Management Area, Charles City County, Virginia to improve water quality within the APE, subject to the approval by the Board of Game and Inland Fisheries
  - iv. History and remote viewing and interpretation facility at Hog Island that recognizes Hog Island's connection and contributions to the Jamestown Island-Hog Island-John Smith Trail Historic District, and the individual significance to the Captain John Smith Chesapeake NHT.
  - v. Comprehensive archaeological identification survey of Hog Island
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2. All projects funded in accordance with Stipulation I(b)(1) above, shall comply with all applicable local, Commonwealth, and federal laws and regulations in force and effect at the time of the project award.
3. DGIF shall prepare an annual report due by January 30 each year summarizing disbursement of funds and progress for each project



for the preceding year. The annual report shall also identify project changes or challenges experienced during the reporting year, as well as anticipated challenges or changes expected in the coming reporting year. The annual report shall be distributed to the Corps, ACHP, SHPO, Dominion, and other consulting parties as appropriate for review and comment. Any disputes regarding dispensing and use of funds shall be handled in accordance with Stipulation X below.

### **c. WATER QUALITY IMPROVEMENTS**

Within 90 days of the effective date of this MOA, Dominion shall establish a legally separate mitigation compensation fund to be administered by Virginia Environmental Endowment (VEE). Dominion shall make a onetime contribution to the fund within 30 days of its legal establishment.

The James River was a vital resource for navigation and as a food source for Native Indians, the European settlers at Jamestown and later as a national security asset during the Revolutionary and Civil Wars. Today, the health of the river remains a valuable resource as a segment of the Captain John Smith Chesapeake NHT.

The funds shall be disbursed by the administrator, in coordination with the SHPO, over a period not to exceed ten (10) years, to support projects on federal, Commonwealth, municipal, county, and private lands to enhance water quality and mitigate the cumulative impacts of the Project and shall be distributed according to the following guidelines:

1. The funds shall be used for water quality improvement projects in the James River watershed to include:
  - i. Riparian buffer enhancement projects
  - ii. Erosion and sediment control projects

The parties to this MOA recognize that water quality improvement projects in the James River watershed benefit the Jamestown Island-Hog Island-Captain John Smith Trail Historic District.

2. All projects funded in accordance with Stipulation I(c)(1) above, shall comply with all applicable local, Commonwealth, and federal laws and regulations in force and effect at the time of the project award.
3. The VEE shall prepare an annual report due by January 30 each year summarizing disbursement of funds and progress for each project for the preceding year. The annual report shall also identify project changes or challenges experienced during the reporting year, as well as anticipated challenges or changes expected in the coming reporting year. The annual report shall be distributed to the

Corps, ACHP, SHPO, Dominion, and other consulting parties as appropriate for review and comment. Any disputes regarding dispensing and use of funds shall be handled in accordance with Stipulation X below.

#### **d. LANDSCAPE AND BATTLEFIELD CONSERVATION**

Within 90 days of the effective date of this MOA, Dominion shall establish a legally separate mitigation compensation fund to be administered by the Virginia Land Conservation Foundation (VLCF). Dominion shall make a onetime contribution to the fund within 30 days of its legal establishment. In accordance with the *Code of Virginia* §10.1-1020(B) the funds shall be restricted for the purposes described in Stipulation (1)(d)(1)(i-ii) below.

The James River is a vital component of the signature landscape of the region that promoted commerce, travel and exploration. Today, preserving the river and shoreline landscape will address the cumulative impacts of the Project and will ensure that the health of the river remains a valuable resource as a segment of the Captain John Smith Chesapeake NHT.

The funds shall be disbursed by the administrator, in coordination with the SHPO, over a period not to exceed ten (10) years, to support projects on Commonwealth, municipal, and private lands and shall be distributed according to the following guidelines:

1. The funds shall be used for land conservation and open space easement projects that are associated with and will enhance the James River and the Jamestown Island-Hog Island-Captain John Smith Trail Historic District to include:
  - i. Battlefield land conservation on local government or private lands associated with the Battle of Yorktown, and Fort Crafford,
  - ii. Landscape preservation to include land and easement acquisition in the James River watershed.
2. All projects funded in accordance with Stipulation I(d)(1) above, shall comply with all applicable local, Commonwealth, and federal laws and regulations in force and effect at the time of the project award.
3. VLCF shall prepare an annual report due by January 30 each year summarizing disbursement of funds and progress for each project for the preceding year. The annual report shall also identify project changes or challenges experienced during the reporting year, as well as anticipated challenges or changes expected in the coming reporting year. The annual report shall be distributed to the Corps, ACHP, SHPO, Dominion, and other consulting parties as

appropriate for review and comment. Any disputes regarding dispensing and use of funds shall be handled in accordance with Stipulation X below.

**e. ALLOCATION OF FUNDS**

An amount of \$85,000,000 shall be available for activities described in Stipulations I(a),I(b),I(c) and I(d) in the following distributions:

1. The Jamestown Island-Hog Island-Captain John Smith Trail Historic District a total of \$52,700,000.00, of which no less than \$25,000,000.00 shall be for (a)(1)(i)(d);
2. Historic Property Treatment at Hog Island Wildlife Management Area a total of \$4,205,000.00;
3. Water Quality Improvements a total of \$15,595,000.00; and,
4. Landscape and Battlefield Conservation a total of \$12,500,000.00.

**II. TREATMENT OF ARCHEOLOGICAL SITE 44JC0662**

- a. Dominion shall develop a Treatment Plan in consultation with the Corps, the SHPO and the other consulting parties for site 44JC0662. The Treatment Plan shall be consistent with the Secretary of the Interior's *Standards and Guidelines for Archaeological Documentation* (48 FR 44734-37, September 29, 1983) and the SHPO's *Guidelines for Historic Resources Survey in Virginia (2011)* and shall take into account the ACHP's publications, *Recommended Approach for Consultation on Recovery of Significant Information from Archeological Sites* (1999; updated September 30, 2010) and *Section 106 Archaeology Guidance* (April 2009). The plan shall specify at a minimum, the following:
  1. the property, properties, or portions of properties where site specific data recovery plans will be carried out;
  2. the portion(s) of the site(s) to be preserved in place, if any, as well as the measures to be taken to ensure continued preservation;
  3. any property, properties, or portions of properties that will be destroyed or altered without data recovery;
  4. the research questions to be addressed through data recovery, with an explanation of their relevance and importance;
  5. the methods to be used with an explanation of their relevance to the research questions;
  6. the methods to be used in analysis, data management, and dissemination of data, including a schedule;

7. the proposed disposition of recovered materials and records;
  8. proposed methods of disseminating the results of the work to the interested public and/or organizations who have expressed an interest in the data recovery, *subject to revision based on the results of the data recovery proceeds*; and
  9. a schedule for the submission of progress reports to the Corps, the SHPO and other consulting parties.
- b. Dominion shall submit the draft Treatment Plan to the Corps for review and approval and to the SHPO and the consulting parties for review and comment. Following approval in writing from the Corps, Dominion shall proceed to implement the Treatment Plan.
  - c. Dominion shall ensure that the approved Treatment Plan is implemented prior to commencing those project activities that could affect the archaeological site(s).
  - d. Dominion shall notify the Corps in writing once the fieldwork portion of the Treatment Plan is complete and provide a brief management summary so that a site visit may be scheduled, if requested. Project activities may proceed following this notification while the technical report is in preparation. The Corps may approve implementation of the undertaking's construction or construction related ground disturbing activities in the area and within the boundary of the affected archaeological site while the technical report is in preparation.
  - e. Dominion and/or its assignees may photograph the work and artifacts, and display on a temporary or permanent basis artifacts or images, with the exception of human remains, funerary objects, or sacred items, in an appropriate place within the Project vicinity.
  - f. Dominion shall prepare a report (following the requirements for preparation and review of draft and final reports in stipulation V) of the results of the Treatment Plan investigations within one (1) year of the notification that fieldwork has been completed. When the final report has been approved by the Corps, the Permittee shall provide two (2) copies of that document, bound and on acid-free paper and one electronic copy in Adobe® Portable Document Format (.pdf) to the SHPO; and one copy to each of the other consulting parties.

### **III. AVOIDANCE OF ARCHAEOLOGICAL SITES**

- a. Prior to the initiation of construction in the water, Dominion shall provide the Corps and SHPO for review and comment detailed plans for avoiding direct and indirect effects to identified underwater cultural anomalies and

archaeological sites located within the direct APE. The avoidance plans shall include the following:

1. Project plans showing the location of the 76 potentially cultural anomalies and all NRHP eligible or listed archaeological sites located within the direct APE;
  2. Boundaries of the 23 buffered anomalies and NRHP eligible or listed archaeological sites within the direct APE, relative to all proposed project elements including but not limited to coffer dams, tower footers, fenders, and mooring/anchoring locations, access roads, construction staging and equipment and materials storage area;
  3. Detailed steps and construction protocols for ensuring avoidance of buffered areas and the handling of any unanticipated project activity that may inadvertently affect the anomalies or archaeological sites during construction.
- b. Following review and comment, Dominion will address any comments received and submit the final avoidance plans to the Corps, SHPO, ACHP, and other consulting parties.
- c. Following the approval by the Corps of the final avoidance plans, Dominion shall implement the plans.

#### **IV. REPORTING REQUIREMENTS**

Upon the completion of each Permittee requirement to this MOA, Dominion shall provide the Corps, the SHPO and other consulting parties a signed memorandum documenting that Dominion has fulfilled such requirement. At the completion of all of the requirements, Dominion shall notify such parties that it has satisfied all its responsibilities under this MOA.

#### **V. PROFESSIONAL QUALIFICATIONS**

All archaeological and/or architectural work carried out pursuant to this MOA shall be conducted by or under the direct supervision of an individual or individuals who meet the Secretary of the Interior's *Professional Qualifications Standards* (48 FR 44738-9, September 29, 1983) in the appropriate discipline.

#### **VI. PREPARATION AND REVIEW OF DOCUMENTS**

- a. Except as otherwise stated elsewhere in the stipulations, Dominion shall submit a draft of all technical reports, treatment plans and other required Permittee documentation to the Corps (one (1) copy) and the SHPO (two (2) hard copies and one electronic copy in Adobe® Portable Document Format (.pdf)) and to other consulting parties (one (1) Copy) for 30-day

- review and comment. Dominion shall consider all comments received within thirty (30) days of confirmed receipt in the revised technical report/documentation. Following written approval by the Corps, Dominion shall provide two (2) copies of all final reports, bound and on acid-free paper, and one electronic copy in Adobe® Portable Document Format (.pdf) to the SHPO and one (1) copy (.pdf or hardcopy) to the Corps, and one copy to other signatories of the MOA.
- b. All technical reports prepared by Dominion pursuant to this MOA will be consistent with the federal standards entitled *Archeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines* (48 FR 44716-44742, September 29, 1983) and the SHPO's *Guidelines for Conducting Historic Resources Survey in Virginia* (2011), or any subsequent revisions or replacements of these documents.
  - c. All architectural and landscape studies resulting from this MOA shall be consistent with pertinent standards and guidelines of the Secretary of the Interior, including as applicable the Secretary's *Standards and Guidelines for Historical Documentation* (48 FR 44728-30) and for *Architectural and Engineering Documentation* (48 FR 44730-34).
  - d. The Corps, SHPO, and other signatories of the MOA agree to provide comments on all technical reports, treatment plans, and other documentation arising from this MOA within thirty (30) calendar days of receipt. If no comments are received from the Corps, SHPO, or other consulting parties within the thirty (30) day review period, Dominion may assume the non-responding party has no comments.

## **VII. CURATION**

Within thirty (30) days of the Corps' approval of the final technical report, Dominion shall deposit all archaeological materials and appropriate field and research notes, maps, drawings and photographic records collected as a result of archeological investigations arising from this MOA (with the exception of human skeletal remains and associated funerary objects) for permanent curation with the DHR, which meets the requirements in 36 CFR 79, *Curation of Federally Owned and Administered Archeological Collections*. Dominion shall provide the Corps with a copy of the curation agreement as evidence of its compliance with this stipulation. All such items shall be made available to educational institutions and individual scholars for appropriate exhibit and/or research under the operating policies of DHR.

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

- a. Dominion shall ensure that the following provision is included in all construction contracts: "If previously unidentified historic properties or unanticipated adverse effects to historic properties are discovered during

construction, the construction contractor shall immediately halt all activity within a one hundred (100) foot radius of the discovery, notify Dominion Virginia Power of the discovery and implement interim measures to protect the discovery from looting and vandalism.”

- b. Immediately upon receipt of the notification required in stipulation VIII(a) above, Dominion shall:
  1. inspect the construction site to determine the extent of the discovery and ensure that construction activities have halted;
  2. clearly mark the area of the discovery;
  3. implement additional measures, as appropriate, to protect the discovery from looting and vandalism;
  4. have a professional archeologist inspect the construction site to determine the extent of the discovery and provide recommendations regarding its NRHP eligibility and treatment; and
  5. notify the Corps and the SHPO of the discovery describing the measures that have been implemented to comply with this stipulation.
- c. Upon receipt of the information required in the above stipulation, the Corps shall provide Dominion and the SHPO with its assessment of the NRHP eligibility of the discovery and the measures proposed to resolve adverse effects. In making its evaluation, the Corps, in consultation with the SHPO, may assume the discovery to be NRHP eligible for the purposes of Section 106 pursuant to 36 CFR § 800.13(c). Dominion, the SHPO and other consulting parties shall respond to the Corps’ assessment within forty-eight (48) hours of receipt.
- d. The Corps will take into account the SHPO recommendations on eligibility and treatment of the discovery and will notify Dominion of any appropriate required actions. Dominion must comply with the required actions and provide the Corps and SHPO with a report on the actions when implemented. Any actions that the Corps deems appropriate for Dominion to take with regard to such discovery will automatically become additional stipulations to this MOA and thereby will be incorporated in the permit and become conditions to the permit. If Dominion fails to comply with such actions, such failure will constitute a breach of this MOA and noncompliance with the permit.
- e. Construction activities may proceed in the area of the discovery, when the Corps has determined that implementation of the actions undertaken to address the discovery pursuant to this stipulation are complete.

## **IX. HUMAN REMAINS**

- a. Dominion shall make all reasonable efforts to avoid disturbing gravesites, including those containing Native American human remains and associated funerary artifacts. Dominion shall treat all human remains in a manner consistent with applicable Federal and state law [and to the extent such laws do not apply, 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>)].
- b. Dominion shall ensure that human skeletal remains and associated funerary objects encountered during the course of actions taken as a result of this MOA shall be treated in accordance with the Regulations Governing Permits for the Archaeological Removal of Human Remains (Virginia Register 390-01-02) found in the *Code of Virginia* (10.1-2305, et seq., Virginia Antiquities Act). If removal is proposed, Dominion shall apply for a permit from the SHPO for the removal of human remains in accordance with the regulations stated above.
- c. Dominion shall make a good faith effort to ensure that the general public is excluded from viewing any Native American burial site or associated funerary artifacts. The consulting parties to this MOA shall make no photographs of any Native American burial site or associated funerary artifacts. The Corps shall notify the appropriate Federally-recognized Tribe(s) and/or appropriate tribal leaders when Native American burials, human skeletal remains, or funerary artifacts are encountered on the Project, prior to any analysis or recovery of remains or associated artifacts, and implement appropriate measures based on these consultations. Dominion shall deliver any Native American human skeletal remains and associated funerary artifacts recovered pursuant to this MOA to the appropriate tribe to be reinterred. The disposition of any other human skeletal remains and associated funerary artifacts shall be governed as specified in any permit issued by the SHPO or any order of the local court authorizing their removal. Dominion will be responsible for all reasonable costs associated with treatment of human remains and associated funerary objects.

## **X. DISPUTE RESOLUTION**

- a. Should any signatory party to this MOA object in writing to the Corps regarding any action carried out or proposed with respect to any undertakings covered by this MOA or to implementation of this MOA, the Corps shall consult with the objecting party to resolve the objection.
- b. If after initiating such consultation, the Corps determines that the objection cannot be resolved through consultation, the Corps shall forward all documentation relevant to the objection to the ACHP, including the proposed response to the objection.



- c. Within thirty (30) days after receipt of all pertinent documentation, the ACHP shall exercise one of the following options:
  - 1. Advise the Corps that the ACHP concurs with the Corps' proposed response to the objection, whereupon the Corps will respond to the objection accordingly; or
  - 2. Provide the Corps with recommendations, which the Corps shall take into account in reaching a final decision regarding its response to the objection; or
  - 3. Notify the Corps that the objection will be referred for comment pursuant to 36 CFR 800.7(a)(4), and proceed to refer the objection and comment. The Corps shall take the resulting comment into account in accordance with 36 CFR 800.7(c)(4) and Section 110(l) of the NHPA.
- d. Should the ACHP not exercise one of the above options within thirty (30) days after receipt of all pertinent documentation, the Corps may assume the ACHP's concurrence in its proposed response to the objection.
- e. The Corps shall take into account any ACHP recommendation or comment provided in accordance with this stipulation with reference only to the subject of the objection; the Corps' responsibility to carry out all the actions under this MOA that are not the subjects of the objections shall remain unchanged.
- f. At any time during implementation of the measures stipulated in this MOA, should an objection pertaining to this MOA be raised by a member of the public, the Corps shall notify the parties to this MOA and take the objection into account, consulting with the objector and, should the objector so request, with any of the parties to this MOA to resolve the objection.

## **XI. AMENDMENTS AND TERMINATION**

- a. Any signatory party to this MOA may propose to the Corps that the MOA be amended, whereupon the Corps will consult with the other parties to this MOA to consider such an amendment. All signatories to the MOA must agree to the proposed amendment in accordance with 800.6(c)(7).
- b. If Dominion decides it will not proceed with the undertaking, it shall so notify the Corps, the SHPO, and the other consulting parties and this MOA shall become null and void.
- c. If Dominion determines that it cannot implement the terms of this MOA, or if the Corps or SHPO determines that the MOA is not being properly implemented, Dominion, the Corps, or the SHPO may propose to the other parties to this MOA that it be amended or terminated.

- d. This MOA may be terminated by any signatory party to the MOA in accordance with the procedures described in 800.6(c)(8). Termination shall include the submission of a technical report or other documentation by Dominion on any work done up to and including the date of termination. If the Corps is unable to execute another MOA following termination, the Corps may choose to modify, suspend, or revoke the Department of the Army permit as provided by 33 CFR 325.7.
- e. Consideration of amendments shall not interrupt or delay any actions taken pursuant to the existing MOA.

## **XII. COORDINATION WITH OTHER FEDERAL REVIEWS**

In the event that Dominion or other agency applies for additional federal funding or approvals for the Project and the undertaking remains unchanged, such funding or approving agency may comply with Section 106 by agreeing in writing to the terms of this MOA and notifying and consulting with SHPO and ACHP. Any necessary modifications will be considered in accordance with stipulation X, Amendments.

## **XIII. DURATION OF MOA**

This MOA will continue in full force and effect until ten (10) years after the effective date of the MOA. Dominion shall fulfill the requirements of this MOA prior to and in conjunction with the work authorized by the Corps permit. All obligations under this MOA must be complete before expiration of this MOA. If any obligation is not complete, the party responsible for such obligation is in violation of this MOA; such violation may also constitute a violation of the Corps permit. Failure of the Corps to pursue such violation is NOT a waiver. At any time in the six-month period prior to such date, the Corps may request the signatory parties to consider an extension or modification of this MOA. No extension or modification will be effective unless all parties to the MOA have agreed with it in writing.

## **XIV. ANTI-DEFICIENCY ACT**

The Corps' obligations under this MOA are subject to the availability of appropriated funds, and the stipulations of this MOA are subject to the provisions of the Anti-Deficiency Act. The Corps shall make reasonable and good faith efforts to secure the necessary funds to implement this MOA in its entirety. If compliance with the Anti-Deficiency Act alters or impairs the Corps' ability to implement the stipulations of this agreement, the Corps shall consult in accordance with the amendment and termination procedures found at Stipulation XI of this agreement.

## **XV. EXECUTION OF MOA**

This MOA may be executed in counterparts, with a separate page for each signatory party and shall be effective from the date of the issuance of the Department of the Army Standard permit for the Project. The Corps will ensure that each party is provided with a copy of the fully executed MOA.

Execution of this MOA by the Corps, the ACHP, and the SHPO, shall, pursuant to 36 CFR 800.6(c), be considered to be an agreement pursuant to the regulations issued by the ACHP for the purposes of Section 110(l) of the NHPA. Execution and submission of this MOA, and implementation of its terms, evidence that the Corps has afforded the ACHP an opportunity to comment on the proposed undertaking and its effect on historic properties, and that the Corps has taken into account the effect of the undertaking on historic properties.

**SIGNATORY PARTIES:**

NORFOLK DISTRICT, U. S. ARMY CORPS OF ENGINEERS

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

William T. Walker  
Chief, Regulatory Branch

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

ADVISORY COUNCIL ON HISTORIC PRESERVATION

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

John M. Fowler  
Executive Director

VIRGINIA STATE HISTORIC PRESERVATION OFFICER

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

Julie V. Langan  
Director, Virginia Department of  
Historic Resources

DOMINION:

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Edward Baine, Dominion Virginia Power

**CONCURRING PARTIES:**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
CONSULTING PARTY



**ATTACHMENT A: PROJECT APE MAP**

**ATTACHMENT B: LIST OF DOCUMENTS SUBMITTED IN SUPPORT OF  
(Consultation List to be Updated)**

**ATTACHMENT C: LIST OF EFFECTED HISTORIC PROPERTIES UNDER  
CONSIDERATION AND PROPERTY LOCATION MAP**

**ATTACHMENT D: KEEPER'S DOE LETTER AND MAP**

**ATTACHMENT E: CORPS' OCTOBER 13, 2015 EMAIL TO CONSULTING  
PARTIES**