



Preserving America's Heritage

**US Army Corps of Engineers
Norfolk District Regulatory
Office
Received by: RLS
Date: April 11, 2017**

April 11, 2017

Colonel Jason E. Kelly
Commander
U.S. Army Corps of Engineers, Norfolk District
803 Front Street
Norfolk, VA 23510-1096

Ref: ACHP edits on Revised Draft MOA for Dominion Surry-Skiffes Creek Transmission Line
Corps Permit Application NAO-2012-00080 / 13-V0408 (James River)
James City County, Virginia

Dear Colonel Kelly:

The Advisory Council on Historic Preservation (ACHP) submits the following edits on the third draft of the Memorandum of Agreement (MOA), dated March 17, 2017, and circulated by the Army Corps of Engineers (Corps) for the proposed Surry-Skiffes Creek Transmission Line Project. We provide summary edits below. We also provide red-line strikeout, insertions, and comments in the attached copy of the revised draft MOA.

The agreement document has been improved but stills needs modification. ACHP has provided a series of edits to the MOA to strengthen its ability to enhance and protect the affected historic properties and their setting and context. We have specified the need for clarification of the processes for development and implementation of the projects and studies proposed for resolution of adverse effects. Our edits also reinforce inclusion of consulting parties, who have extensive expertise in historic preservation and the protection and enhancement of historic properties, in the development and implementation of the range of projects proposed in the MOA for resolution of adverse effects.

As we have indicated, the ACHP is developing a comment letter pursuant to 36 C.F.R. § 800.7(b) of the Section 106 implementing regulations. The purpose of the comment letter is to address issues of concern that we feel limit the ability of federal agencies and consulting parties to consider alternatives to large infrastructure projects like this that would better avoid and minimize adverse effects to nationally significant historic properties and their setting and context, such as those affected by this undertaking. We anticipate submitting those comments along with our executed copy of the appropriately revised agreement once our comments have been satisfactorily addressed.

General Edits

- The Corps should use standard terminology as defined in the Section 106 regulations to reference signatories, invited signatories, consulting parties, and concurring parties.
- The Corps should ensure that all citations to the National Historic Preservation Act (NHPA) reflect the recent recodification of NHPA.
- The Corps should invite and collaborate on the studies and projects proposed for mitigation with regional and national preservation advocates and experts, including the National Park Service (NPS), National Parks Conservation Association (NPCA), Preservation Virginia, National Trust for Historic Preservation (NTHP), and others, in order to benefit from their expertise.
- While it is correct that the Section 106 process is intended to resolve the adverse effects of an undertaking, the use of the terms “resolve” and “resolution” in many places in the MOA implies that the consulting parties find the adverse effects satisfactorily “resolved.” This is obviously not the case, and the stipulated actions are more properly characterized as “mitigation” of adverse effects that cannot be avoided by the project as proposed. We have made appropriate edits to reflect this.

Whereas Clauses

- The Corps should add a concise Whereas Clause to clarify the focus of proposed mitigation projects and studies, similar to the clarification provided in the revised context for the MOA. The intent of the MOA should be clear to a cold reader without the need to refer to a separate document. Text from the Context document should be adapted for use in the MOA to clarify overall goals of the MOA. See suggested text.

Stipulations

- Add the standard “Corps shall ensure” phrase to introduce the stipulations section of the MOA.
- The protocols for review and approval of draft and final plans, projects, treatments, studies, alternative projects, etc., should be consistent throughout the MOA and include consulting parties.
- The MOA needs to specify in a Stipulation that the MOA will be made a condition of any Corps permit(s) issued.
- Stipulation XVIII regarding the “Enforcement and Contract Rights” needs to be replaced as proposed by our General Counsel last Thursday. That new language is as indicated in our edits to the MOA.
- The MOA requires Dominion to fund a number of studies and projects, but the projects are still only generally described. The Corps should ensure that the protocol for participation in development of and review of studies and projects clearly includes all consulting parties, regardless of whether they sign the agreement as concurring parties. Many of the consulting parties have substantial expertise in historic preservation issues and knowledge of the Historic Triangle.
- A number of Stipulations do reference an intent to coordinate with the NPS for mitigation projects related to Colonial National Parkway, Historic Jamestowne, Jamestown Island, and the Captain John Smith National Water Trail, and also archaeological investigations at Historic Jamestowne.

However, the MOA should foster development of a stronger working relationship with NPS given the significant investment and experience NPS has in the region.

- The timeframe for the Corps' permit is not clear, nor is how it will relate to the duration of this MOA and the undertaking.
- Consulting parties should be included in the "Dispute Resolution" stipulation.
- The Stipulations for Amendment and for Termination need to be separated and modified according to our edits in the MOA.

Finally, the ACHP has no further advice on the designation of this agreement document as an MOA instead of a Programmatic Agreement (PA). While we raised that issue in our recent teleconference on April 4, 2017, we agree that it would be appropriate for the ACHP to further address the distinction between these types of agreement documents with Corps Headquarters after we have concluded consultation on the subject MOA.

Should you have any questions or wish to discuss this matter further, please contact Charlene Vaughn at (202)517-0207, or by e-mail at cvaughn@achp.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Reid J. Nelson", with a long horizontal flourish extending to the right.

Reid J. Nelson
Director
Office of Federal Agency Programs

Enclosure

March 17, 2017

**DRAFT
MEMORANDUM OF AGREEMENT
AMONG
DOMINION VIRGINIA POWER,
THE VIRGINIA STATE HISTORIC PRESERVATION OFFICE,
U.S. ARMY CORPS 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. The project is intended to provide sufficient and reliable electricity to residents, businesses, and government agencies located on the Virginia Peninsula, and to meet mandatory federal North American Electric Reliability Corporation Reliability Standards. 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

March 17, 2017

wetlands. The proposed activities will require a Corps permit pursuant to Section 10 of the Rivers and Harbors 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 this Project's Area of Potential Effects (APE) ~~shall consist of the~~includes a Direct APE and an Indirect APE; and

WHEREAS, the Direct APE is defined to include those areas where physical 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; and

WHEREAS, the Indirect APE is defined to include those areas which may experience visual effects. 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 there are existing towers, and 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, the SHPO, finds that the documents listed in Attachment B satisfy 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 for the purposes of Section 106 compliance 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

March 17, 2017

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 in its letter of August 14, 2015 as the “Historic District (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#)¹; 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, which includes the contributing section of the Captain John Smith Chesapeake NHT within the APE, Carter’s Grove National Historic Landmark (VDHR #047-0001)², 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~~initiated consultation with the Virginia SHPO ~~in this consultation as who is a~~ Signatory Party Signatory, as that term is further defined in Stipulation XVII.f herein, and the SHPO has elected to participate; and

Comment [ACHP-JTE1]: Use terminology as defined in the Section 106 regulations

WHEREAS, the Corps ~~has invited the participation of notified~~ the ACHP ~~in this consultation which agreed to participate in the consultation and will be as~~ a Signatory Party Signatory, as that term is further defined in Stipulation XVII.f herein, and ACHP has elected to participate; and

WHEREAS, the Corps has invited Dominion to participate in this consultation and to sign this MOA as an Invited Signatory Party Signatory, as that term is further defined in Stipulation XVII.d herein, and Dominion has elected to participate; and

¹ 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 MOA only.

² The Virginia Department of Historic Resources and Virginia Outdoors Foundation are the current holders of historic preservation and open space easements on the Carter’s Grove property.

March 17, 2017

WHEREAS, the Corps has invited the following Federally Recognized Tribes: Catawba Indian Nation, the Delaware Tribe of Indians, the Delaware Nation, and the Pamunkey Indian Tribe to participate in this consultation. The Catawba Indian Nation and the Delaware Nation declined; however the Delaware Tribe of Indians and the Pamunkey Indian Tribe have elected to participate and the Corps has invited them to concur with this MOA; and.

WHEREAS, the Corps has invited the following Virginia State Recognized Tribes: the Cheroenhaka (Nottoway), the Chickahominy, the Eastern Chickahominy, the Mattaponi, the Upper Mattaponi, the Nansemond Tribal Association, the Nottoway Tribe of Virginia, and the Rappahannock to participate in this consultation and only the Chickahominy have elected to participate; and the Corps has invited them to concur with this MOA; and

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, and only James City County has elected to participate; and the Corps has invited them to concur with this MOA; and

WHEREAS, the Corps has invited the following Consulting Parties: The National Parks and Conservation Association (NPCA), the Save the James Alliance, the Chesapeake Conservancy, United States Department of the Interior (National Park Service, Colonial National Historical Park) (NPS), United States Department of the Interior (National Park Service, Northeast Region) (NPS), 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 and they have all elected to participate; and the Corps has invited them to concur with this MOA; 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 and they all have declined to participate; and

WHEREAS, the Corps has involved the public in the Section 106 process by seeking public comment at the following stages of consultation: the 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

WHEREAS, the Corps, ACHP, SHPO, Dominion, and the Consulting Parties have held five official Consulting Party meetings (September 25, 2014; December 9, 2014; June 24, 2015; October 15, 2015; and, February 2, 2016), which also were open to the public, as well as numerous informal meetings, correspondence, and conferences/teleconferences (Attachment E); and

March 17, 2017

WHEREAS, the Corps issued a separate public notice (October 1, 2015) (Attachment E), which announced that the Corps would hold a public hearing and which the Corps advertised electronically; and

WHEREAS, the Corps conducted a Public Hearing for the Project on October 30, 2015, to solicit public comments and held the Public Comment Period open until November 13, 2015 (Attachment E); and

WHEREAS, the Corps has completed its identification of historic properties and its evaluation of the Project’s potential adverse effects thereon under 36 C.F.R. §§ 800.4 & 800.5, and the SHPO concurred with the Corps’ conclusions; and

WHEREAS, Dominion has identified several “Initial Avoidance, Minimization, and Mitigation Measures” (as set forth in Stipulation I below) that it will commence and complete, as further described herein; and

WHEREAS, Dominion has also identified several properties (the Identified Properties) where it proposes to fund additional mitigation projects (e.g., land acquisition, natural and cultural resource restoration or preservation, property or landscape enhancements, etc.) that the Signatory Parties conclude will contribute to or improve the overall integrity, most notably the setting and feeling, of the Identified Property Properties and the broader historic district, as set forth in Stipulations II and III below; and

WHEREAS, the SHPO’s guidance document titled “Assessing Visual Effects on Historical Properties” (SHPO Visual Effects Guidance) outlines its recommended approach to evaluating and mitigating visual effects on historic properties; and

WHEREAS, the SHPO Visual Effects Guidance advises, among other things, that mitigation should take into account the views of the property owner, community, and other interested members of the public; and

WHEREAS, Dominion worked with the Commonwealth of Virginia in considering the concerns expressed by regional preservation advocates to develop the range of projects supported by an extensive financial funding package to mitigate adverse effects to historic properties, their setting, and context, as set forth in the following Stipulations; and

WHEREAS, the MOA defines a series of mitigation initiatives that are intended to enhance the affected values and integrity of the historic properties and the cultural landscape, and strengthen the general public and visitor’s understanding of and experience at significant places within and related to this landscape through enhanced heritage tourism opportunities including development of additional interpretive and orientation facilities. Proposed mitigation also seeks to ensure future permanent preservation of existing above-ground cultural landscape features, such as natural resources and systems, vegetation, landform and topography, land uses, circulation, buildings and structures, Native American

Comment [ACHP-JTE2]: It is appropriate to clarify Dominion’s major role in both funding and implementing the projects set forth in the stipulations.

Comment [ACHP-JTE3]: The MOA should more clearly indicate the focus of mitigation projects, similar to the clarification provided in the revised context for the MOA. The intent of the MOA should be clear to a cold reader without the need to refer to a separate document. Text from the context should be adapted for use in the MOA to clarify **overall goals of the MOA in a Whereas clause** and goals of **each** project funded in appropriate stipulations below. Example provided.

Formatted: Font: Not Bold

Formatted: Font: Not Bold

Formatted: Font: Not Bold

Formatted: Font: Not Bold

March 17, 2017

settlements, views, and small-scale features through land acquisition, and acquisition of historic preservation and open space easements.

WHEREAS, the Signatory Parties ~~find that~~ agree to the proposed ~~the~~ mitigation measures that this MOA employs—~~the~~ Stipulation I “Initial Avoidance, Minimization, and Mitigation Measures” in combination with ~~the~~ Stipulations II and III regarding “Additional Compensatory Mitigation Projects”—~~are sufficient to resolve~~ as mitigation of the Project’s adverse effects on the historic properties identified in Attachment C for compliance with Section 106 of the NHPA; and

WHEREAS, Dominion commits to developing, through the projects proposed as mitigation of adverse effects, long-term working relationships with the National Park Service and other preservation advocates who have participated in this Section 106 review as consulting parties and regional preservation experts; and-

NOW THEREFORE, in order to satisfy the Corps’s Section 106 responsibilities to take into account and resolve the effects of the undertaking requiring Corps permits on historic properties, the Signatory Parties here acknowledge that compliance with this MOA shall be made a condition of any permit issued by the Corps for the work described; 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.

Comment [ACHP-JTE4]: Remove language that asserts that the signatories find that the mitigation proposed is “sufficient to resolve” the projects adverse effects on historic properties. The signatories have only agreed to the proposed mitigation as the resolution of adverse effects in compliance with Section 106 without any characterization or qualification of its sufficiency or of its value in terms of “compensatory mitigation”. Section 106 regulations require that signatories accept the stipulations as the resolution of adverse effects.

Comment [ACHP-JTE5]: Also add a stipulation, at beginning or end of the stipulations, that specifies that Corps will require compliance with the MOA as a condition of the permit.

STIPULATIONS

The Corps, in coordination with Dominion, shall ensure that the following stipulations will be carried out.

Comment [ACHP-JTE6]: This is a required statement at beginning of stipulations in a 106 agreement document.

I INITIAL AVOIDANCE, MINIMIZATION, AND MITIGATION MEASURES

a. TREATMENT OF ARCHEOLOGICAL SITE 44JC0662 (Switching Station)

- 1 Prior to any construction at the Skiffes Creek Switching Station, Dominion in consultation with the Corps, SHPO, ACHP, and the ~~Participating Consulting~~ Parties to this MOA shall develop an approved Treatment Plan for site 44JC0662. The Treatment Plan shall be consistent with the Secretary of the Interior's *Standards and Guidelines*

Comment [ACHP-JTE7]: Use terminology as defined in the Section 106 regulations

March 17, 2017

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:

- A. the property, properties, or portions of properties where site specific data recovery plans will be carried out;
 - B. 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;
 - C. any property, properties, or portions of properties that will be destroyed or altered without data recovery;
 - D. the research questions to be addressed through data recovery, with an explanation of their relevance and importance;
 - E. the methods to be used in analysis, and data management with an explanation of their relevance to the research questions;
 - F. the proposed disposition of recovered materials and records;
 - G. 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
 - H. a schedule for the submission of progress reports to the Corps, SHPO, ACHP, and other **Participating Consulting** Parties.
2. **To facilitate plan approval**, Dominion will provide a draft plan to the Corps, SHPO, ACHP, and other **Participating Consulting** Parties to this MOA. All parties will be given thirty (30) days to review and provide comment. If no **timely** comments are submitted **by a Consulting Party**, the Corps may assume the non-responding party has no comments. Dominion shall consider all **timely** comments received and submit the final Treatment Plan to the Corps for approval. The final Treatment Plan shall be accompanied with a separate document that summarizes the comments received and an explanation for how each comment was considered and/or incorporated into the development of the final Plan. The plan will be considered "approved" upon **receipt of** the Corps written approval.

Comment [ACHP-JTE8]: The review process for all treatments, studies, and projects, etc., should be the same, as follows, and should be specified in Stipulation VII: "All parties to the MOA (Signatories, Invited Signatories, Concurring Parties, and other Consulting Parties) will be given thirty (30) days to review and provide comment. If no timely comments are submitted by a Consulting Party, the Corps may assume the non-responding party has no comments. Dominion shall consider all timely comments received prior to developing a draft final version of the "study/project." The Corps will submit the draft final version to the Signatories of the MOA, along with copies of any timely comments received from the Consulting Parties, for an additional 15-day review. The Corps will consider any timely additional comments from the Signatories and direct Dominion to make changes it determines are necessary. The "study" will be considered "final" upon the Corps written approval."

March 17, 2017

- 3 Prior to commencing construction activities at the Switching Station Site that could affect archaeological site 44JC0662, Dominion shall ensure that the approved Treatment Plan is implemented.
- 4 Dominion shall notify the Corps in writing no later than fifteen (15) days after completion of the fieldwork portion of the Treatment Plan. Notification shall include a brief management summary. If so requested by the Corps, Dominion shall facilitate any site visit.
- 5 Project activities may proceed following this notification while the technical report is in preparation. The Corps may approve construction activities and/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.
- 6 Dominion and/or its assignees shall photograph the work and artifacts, and display in an appropriate place in the Project vicinity on a temporary or permanent basis, artifacts or images, with the exception of human remains, funerary objects, or sacred items.
- 7 Within one (1) year of the notification that fieldwork has been completed, Dominion shall submit to the Corps 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. Once the Corps has approved the final report, Dominion 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 (1) copy to the ACHP and any other Participating Consulting Parties that request~~ing~~ a copy.

b. AVOIDANCE OF UNDERWATER AND TERRESTRIAL ARCHAEOLOGICAL SITES

- 1 Prior to any construction that could impact archeological resources within the Direct APE Dominion in consultation with the Corps, SHPO, ACHP, and the Participating Consulting Parties to this MOA shall develop an approved Avoidance Plan for all archaeological sites listed in Attachment C. The Avoidance Plan shall include:
 - A. Project plans showing the location of the cultural anomalies and all archaeological sites identified in Attachment C located within the direct APE;
 - B. Boundaries of the buffered anomalies and archaeological sites identified in Attachment C 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

Comment [ACHP-JTE9]: Stipulation V does not provide any requirements for preparation and review of draft and final reports!!! Stipulation VII does deal with a review process. Corps should ensure that all references to Stipulations are up-to-date and consistent.

SHPO needs to have prominent role in review of results of the data recovery.

All reviews of treatment plans, draft reports, studies, and products generated as result of this MOA should be equivalent to the following, and this should be included in Stipulation VII:

"All parties to the MOA (Signatories, Invited Signatories, Concurring Parties, and other Consulting Parties) will be given thirty (30) days to review and provide comment. If no timely comments are submitted by a Consulting Party, the Corps may assume the non-responding party has no comments. Dominion shall consider all timely comments received prior to developing a draft final version of the "study/project." The Corps will submit the draft final version to the Signatories of the MOA, along with copies of any timely comments received from the Consulting Parties, for an additional 15-day review. The Corps will consider any timely additional comments from the Signatories and direct Dominion to make changes it determines are necessary. The "study" will be considered "final" upon the Corps written approval."

March 17, 2017

roads, construction staging and equipment and materials storage area;

- C. Detailed steps and construction protocols for ensuring avoidance of buffered areas and the handling of any unanticipated project activity that may inadvertently affect the underwater anomalies or terrestrial archaeological sites during construction;
- D. Dominion shall fund an independent archeologist (Archaeological Monitor) who meets the professional qualifications established in Stipulation IV below and who is approved by the SHPO to observe and monitor ground disturbances associated with construction to ensure the protection of all archaeological sites identified in Attachment C. The Archaeological Monitor shall also be responsible for ensuring that the requirements of Stipulation VII for unanticipated discoveries are carried out as appropriate; and
- E. The Pamunkey Indian Tribe may have a member or representative present to observe and monitor ground disturbances associated with construction to ensure the protection of Native American Artifacts. Dominion will coordinate with the Pamunkey Indian Tribe regarding scheduling and any safety training requirements for tribal monitors.

- 2. To facilitate plan approval, Dominion will provide a draft plan to the Corps, SHPO, ACHP, and other Participating Consulting Parties to this MOA. All parties will be given thirty (30) days to review and provide comment. If no comments are submitted, the Corps may assume the non-responding party has no comments. Dominion shall consider all comments received and submit the final Avoidance Plan to the Corps for approval. The final Avoidance Plan shall be accompanied with a separate document that summarizes the comments received and an explanation for how each comment was considered and/or incorporated into the development of the final Plan. The plan will be considered "approved" upon the Corps written approval.
- 3. Prior to any construction activities that could affect archeological sites identified in Attachment C, Dominion shall ensure the approved Avoidance Plan has been fully implemented
- 4. Dominion shall notify the Corps in writing no later than fifteen (15) days after plan implementation. Notification shall include a brief management summary. If so requested by the Corps, Dominion shall facilitate any site visit.

c. INTERPRETIVE SIGNAGE

Comment [ACHP-JTE10]: Make consistent with Stipulation VII per ACHP comments

Comment [ACHP-JTE11]: Add (on publicly accessible lands in Jamestown Island-Hog Island-Captain John Smith Trail Historic District and other thematically related locations). As noted above, the MOA should more clearly indicate the historic properties that are focus of mitigation projects, similar to the clarification provided in the revised context for the MOA. The intent of the MOA should be clear to a cold reader without the need to refer to that separate document. Text from the context should be adapted for use in the MOA to clarify goals of each project funded in appropriate stipulations.

March 17, 2017

- 1 Prior to “Limited Construction within the James River”, activities as defined in XVII.g, Dominion in consultation with the Corps, SHPO, ACHP, and the Participating Consulting Parties to this MOA shall develop an approved Signage Plan. In developing the Signage Plan Dominion shall:
 - A. Identify locations on publically accessible lands, including recreational and heritage tourism destinations, for a minimum of ten (10) interpretive signs,
 - B. Ensure that signs are designed to enhance visitor experience by informing visitors about the historic significance and character of the Jamestown Island-Hog Island-Captain John Smith Trail Historic District and other thematically related locations,
 - C. Review and evaluate existing and any planned signage and other interpretive media currently serving the historic properties at issue so as to develop signage that is complementary,
 - D. Include proposed signage text, images and other materials, and
 - E. Include proposed signage locations and confirm any necessary authorizations and/or permissions to allow sign placement.
- 2 To facilitate plan development, Dominion will provide a draft Signage Plan to the Corps, SHPO, ACHP, and other Participating Consulting Parties to this MOA. All parties will be given thirty (30) days to review and provide comment. If no comments are submitted, the Corps may assume the non-responding party has no comments. Dominion shall consider all comments received and submit the final Signage Plan to the Corps for approval. The final Signage Plan shall be accompanied with a separate document that summarizes the comments received and an explanation for how each comment was considered and/or incorporated into the development of the final Plan. The plan will be considered “approved” upon the Corps written approval.
- 3 Prior to “Construction Above the James River” activities as defined in XVII.h, Dominion shall complete fabrication and installation of all signage in accordance with the approved Signage Plan.
- 4 Interpretive signage or any other mitigation under this Memorandum of Agreement (MOA) shall not contain any information about Dominion or its business.
- 5 Dominion shall pay for the fabrication and installation of all interpretive signs and notify the Signatory Parties in writing of the installation within thirty (30) days of their completion.

Comment [ACHP-JTE12]: Make consistent with Stipulation VII regarding participation and review by consulting parties per ACHP comments

Comment [ACHP-JTE13]: Dominion should consider including information about Dominion working in partnership with consulting parties, part of long term commitment to the historic preservation values of the area.

March 17, 2017

- 6 Dominion shall secure an agreement between corresponding landowners outlining long term maintenance responsibilities and obligations; otherwise Dominion shall be responsible for any required maintenance for the life of the MOA.

d. LANDSCAPE DOCUMENTATION OF JAMES RIVER

- 1 Prior to any construction on the Project within the James River, Dominion shall develop a Historic American Landscapes (HALS) Survey of the Jamestown Island-Hog Island-Captain John Smith Trail Historic District and all other adversely effected properties identified in Attachment C. Dominion shall comply with National Park Service (NPS) Heritage Documentation Program Standards and Guidelines. Development shall include completion of all required photography and preparation of all necessary illustrations, maps and line drawings in accordance with the most recent SHPO archival guidelines
- 2 Prior to any construction on the Project within the James River Dominion shall submit the completed HALS survey to the NPS Heritage Documentation Program for review and approval and provide copies to the Corps, SHPO, ACHP, and the Participating Consulting Parties to this MOA.
- 3 Following acceptance of the HALS Survey by NPS, Dominion shall arrange for the submittal of the required documentation to the Library of Congress and to the SHPO so it is available for researchers in the region-
- 4 Consistent with National Park Service guidance, the completed HALS Survey and photo-documentation ~~should will~~ be made available by Dominion to the recipients of funding under Stipulations II and III so that it may, among other things, inform the mitigation projects under this MOA, as well as to aid in educational, investigative, preservation, and interpretive activities that enhance, directly or indirectly, the relevant historic properties.

e. SURRY – SKIFFES CREEK TOWER COATINGS

- 1 Dominion shall examine all available and feasible tower coating and finishing materials and methods that will further minimize and/or maintain the visual intensity of the transmission line infrastructure crossing the river, above and beyond the visibility reduction achieved by standard weathered galvanized steel coatings, that meet and comply with all applicable state and federal law.
- 2 Prior to “Limited Construction Within the James River”, Dominion shall submit its analysis of potential tower coatings, finishing materials, and maintenance methods along with its recommendation to the Corps,

March 17, 2017

SHPO, ACHP, and other ~~Participating~~ ~~Consulting~~ Parties to this MOA. All parties will be given thirty (30) days to review and provide comment. If no comments are submitted, the Corps may assume the non-responding party has no comments.

- 3 Considering all comments as appropriate, Dominion shall identify suitable tower finishing and coating materials that most minimize visibility of the transmission line infrastructure. Dominion shall apply the identified coating or finishing material or method to the towers as soon as conditions allow for effective application but no later than one (1) year after energization of the line.
- 4 Dominion shall ensure that all towers are maintained over their lifespan such that their visual contrast and intensity remains at levels consistent or less than when originally installed.

II ADDITIONAL COMPENSATORY MITIGATION PROJECT FUNDING, REPORTING, AND STUDIES

a. Project Funding and Annual Reports:

- 1 Prior to any construction on the Project within the James River, Dominion shall provide to the Signatory Parties documentation demonstrating that Dominion has made funding available in accordance with the following:
 - A. A fund in the amount of \$27,700,000.00 to be managed by the Conservation Fund (TCF) or the appropriate entities of the Commonwealth of Virginia if Alternative Mitigation Projects are pursued, for the resolution of adverse effects. In the establishing documentation, Dominion shall ensure that the funds are used exclusively to implement the projects outlined in Stipulations III.a, III.b, and III.c of this MOA.
 - B. A fund in the amount of \$25,000,000.00 to be managed by the Virginia Department of Conservation and Recreation (DCR) for the resolution of adverse effects. In the establishing documentation, Dominion shall ensure that this fund is used exclusively to implement the projects outlined in Stipulation III.d of this MOA.
 - C. A fund in the amount of \$4,205,000.00 to be managed by the Virginia Department of Game and Inland Fisheries (DGIF) for the resolution of adverse effects. In the establishing documentation, Dominion shall ensure that this fund is used exclusively to implement the projects outlined in Section III.e of this MOA.
 - D. A fund in the amount of \$15,595,000.00 to be managed by the Virginia Environmental Endowment (VEE) for the resolution of

March 17, 2017

adverse effects. In the establishing documentation, Dominion shall ensure that this fund is used exclusively to implement and execute projects in accordance with Stipulation III.f of this MOA.

- E. A fund in the amount of \$12,500,000.00 to be managed by the Virginia Land Conservation Fund (VLCF) for the resolution of adverse effects. In the establishing documentation, Dominion shall ensure that this fund is used exclusively to implement and execute projects in accordance with Stipulation III.g of this MOA.
- 2 All projects funded by the accounts created in accordance with Stipulation II.a.1 above shall comply with all applicable local, Commonwealth, and federal laws and regulations. Execution of this MOA shall not permit Dominion to proceed with any project before obtaining all necessary permits and permissions.
 - 3 Dominion shall provide an annual report due by January 30 each year, beginning in 2018, summarizing disbursement of funds from the accounts created in accordance with Stipulation II.a.1 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. Dominion will submit the annual report to the Signatories and Consulting Parties. Any disputes regarding dispensing and use of funds shall be handled in accordance with Stipulation XI below.
 - 4 All funds shall be obligated within ten (10) years of the effective date of this MOA; however, nothing herein shall require that funded projects be completed within that time frame, unless otherwise noted.
 - 5 Dominion shall use reasonable efforts to obligate 50 percent of the funds within five years; and, 100 percent of the funds within ten years of the effective date of this MOA.
 - 6 Notwithstanding Stipulations II.a.4-5, a failure to have all funds obligated within ten years after the mitigation fund is established does not constitute a breach of the terms of this MOA, but instead triggers Stipulation II.a.7.
 - 7 Any mitigation compensation funds that are not obligated or committed to a project within twelve years after the effective date of this MOA shall be transferred to a legally separate mitigation compensation fund administered by the VLCF for expenditure on projects, programs, and activities at historic properties and associated historic landscapes within or related to the indirect APE that were adversely affected by this project.

Comment [ACHP-JTE14]: Is this the Virginia Land Conservation Foundation??

Comment [ACHP-JTE15]: Consider posting on public website as an alternative.

March 17, 2017

- 8 The funds described in Stipulation II.a.1 shall be used exclusively for projects selected in accordance with Stipulation III, or in accordance with Stipulation II.a.7 in appropriate circumstances. Dominion shall separately provide necessary additional funds to complete any mitigation projects required under Stipulations I.a to I.e and to complete the Heritage Tourism and Visitor Experience Study required under Stipulation II.b.
- 9 The projects selected under Stipulation III shall be scaled, planned, designed, procured, constructed, and operated at funding levels consistent with the allocations set out in Stipulation II.a.1 respectively. If additional funds are required beyond those allocated in Stipulation II.a.1 Dominion shall promptly provide the minimum additional funding necessary to complete the specific mitigation project.
- 10 In the event the Corps revokes the permit for the project for any reason, or the permit is invalidated for any reason, all unexpended mitigation funds identified in Stipulation II(a)(1) above shall be returned to Dominion within 90 days of receipt of notice from the Corps that the project has been cancelled or terminated. Specific mitigation projects in the process of implementation at the time of notice shall be completed and documented in accordance with the terms of the MOA.

b. Heritage Tourism and Visitor Experience Study and Enhancement:

- 1 Prior to construction on the Project within the James River, Dominion, in consultation with the Signatory Parties, shall initiate a Heritage Tourism and Visitor Experience study (which includes ecotourism) for publically accessible, publically owned, and actively marketed historic properties (heritage tourism sites) and ecotourism activities located within the Indirect APE). Dominion will invite and coordinate collaboration in this study by regional and national preservation advocates and experts, including the NPS, NPCA, Preservation Virginia, and other consulting parties, in order to benefit from their expertise. The purpose of the study is to evaluate current heritage tourism and visitor experience within the Indirect APE in order to inform mitigation activities required by this MOA and to develop a marketing and visitation program to promote and enhance heritage tourism sites (which includes the historic properties addressed by this MOA) and visitor experiences within the Indirect APE.
- 2 Dominion shall undertake the Heritage Tourism and Visitor Experience study in collaboration with landowners and/or managers of heritage tourism sites within the Indirect APE. Dominion shall take appropriate effort to seek the participation of the landowners of Jamestown Island and Historic Jamestowne, Hog Island Wildlife Management Area (WMA), Jamestown Settlement, Colonial Parkway and elements of Colonial National Historical Park, and elements of the Captain John

March 17, 2017

Smith Chesapeake NHT. Should any of the landowners elect not to participate, Dominion shall proceed with the study using otherwise available information.

- 3 Dominion shall complete the Heritage Tourism and Visitor Experience study within eight (8) months of initiation.
- 4 To the extent possible, the Heritage Tourism and Visitor Experience study should include data from shoulder and peak visitation seasons. Shoulder months include March, April, May, September, October or November. Peak months include June, July and August.
- 5 Upon completion, Dominion shall provide the draft study to the Corps, SHPO, ACHP, and other Participating Consulting Parties to this MOA. All parties will be given thirty (30) days to review and provide comment. If no timely comments are submitted by a Consulting Party, the Corps may assume the non-responding party has no comments. Dominion shall consider all timely comments received and submit the study for approval to the Signatories of the MOA. The Heritage Tourism and Visitor Experience study will be considered "final" upon the Corps written approval.
- 6 The implementation of projects in Stipulations III may proceed in advance of the final Heritage Tourism and Visitor Experience study recommendations. However, as the study progresses, Dominion shall use the study's findings to inform its mitigation efforts.
- 7 No more than thirty (30) days after Corps approval of the final Heritage Tourism and Visitor Experience study, Dominion shall initiate consultation with the Corps, SHPO, ACHP, Participating Consulting Parties, regional and national preservation advocates and experts as referenced above, and participating management entities of impacted heritage tourism sites, to develop a marketing and visitation program (Program) to promote and enhance the impacted heritage tourism sites and visitor experience within the indirect APE.
- 8 No more than one (1) year following Corps approval of the final Heritage Tourism and Visitor Experience study Dominion shall provide the draft marketing and visitation program to the Corps, SHPO, ACHP, and other Participating Consulting Parties to this MOA. All parties will be given thirty (30) days to review and provide comment. If no comments are submitted, the Corps may assume the non-responding party has no comments. Dominion shall consider all comments received and submit the final marketing and visitation program to the Signatories of the MOA. The marketing and visitation program will be considered "approved" upon the Corps written approval.

Comment [ACHP-JTE16]: Is this the "final" mentioned at the end of subparagraph 5, just below? Is the review under subparagraph 5 part of this 8 month process? Just need to be clear.

Comment [ACHP-JTE17]: Make consistent with Stipulation VII per ACHP comments.

Comment [ACHP-JTE18]: Make consistent with Stipulation VII per ACHP comments.

March 17, 2017

- 9 No more than thirty (30) days after approval of the marketing and visitation program Dominion shall proceed to partner with the **approved implementing organizations** to implement the Program. Dominion's funding responsibilities shall be limited to the average annual budget for the preceding two years for marketing programs by the management entities of publicly accessible sites within the Indirect APE.

Comment [ACHP-JTE19]: Clarify who these entities are. Presumably they will be identified in the marketing and visitation study and program

III ADDITIONAL COMPENSATORY MITIGATION PROJECTS - Dominion shall fulfill the following actions as mitigation for the Project's direct, indirect, and cumulative adverse effects to historic properties and the related cultural and natural landscapes contributing to their significance. Dominion shall undertake projects that will, as confirmed by Signatory Parties, enhance and/or contribute to preservation of the setting and feeling of sites associated with early Colonial, **African-American**, and Native American cultures of this area. All mitigation actions shall be designed, operated and maintained to provide these benefits for at least the life of this Memorandum of Agreement (MOA).

Comment [ACHP-JTE20]: Here MOA references "confirmation" of projects to be funded by **Signatory Parties**. Below, the MOA references comment on draft list of projects by Signatory and Consulting Parties and approval of list of projects based on **SHPO confirmation** that the projects will enhance the historic setting and feeling of Carters Grove and the Corps has provided written approval.

- a. **Within the Jamestown Island-Hog Island-Captain John Smith Trail Historic District and the thematically related areas Dominion shall complete the following projects related to protecting and/or enhancing the early Colonial agricultural landscape and setting. Dominion will make all effort to complete Stipulations III.a.1 - III.a.5 below. Should Dominion be unable to obtain cooperation of the Carters Grove landowner, Dominion shall complete Stipulations III.a.6 – III.a.11.**

Make sure all references to "confirmation" and "approval" of projects are consistent.

Make consistent with Stipulation VII per ACHP comments.

Comment [ACHP-JTE21]: , the MOA should more clearly indicate the historic properties that are focus of mitigation projects, similar to the clarification provided in the revised context for the MOA. As appropriate, reference in the intro to each section, the specific historic properties that are the focus of projects/studies set forth in the Sub-stipulation

- 1 Prior to any construction on the Project within the James River, Dominion shall:
- A. Submit to the Signatories **and Consulting Parties** of this MOA written confirmation that Dominion has requested access to property and cooperation from the Landowner of Carters Grove to identify specific landscape and viewshed enhancement, shoreline protection, and other projects that enhance the affected setting and feeling of Carter's Grove.
 - B. Working with the landowner of Carters Grove, identify and submit to the Signatories **and Consulting Parties** of this MOA the location and type of shoreline stabilization activities proposed to address approximately 6,000 linear feet of shoreline.
 - C. Working with the landowner of Carters Grove, submit to the Corps, SHPO, ACHP, and **Participating Consulting** Parties a draft list of projects and draft Project Narrative listing and describing projects to be carried out that will preserve and/or enhance the character or

March 17, 2017

viewshed of Carter's Grove. This draft Project Narrative shall identify specific projects, list tasks necessary to execute each project, provide a timeline for accomplishment of each project and describe how each project enhances the historic value of the resource. All parties will be given thirty (30) days to review and provide comment.

- 2 Before beginning "Limited Construction within the James River" Dominion must receive approval of the list of projects to be carried out at Carters Grove. The project list will be considered "approved" once the SHPO has confirmed that the projects will enhance the historic setting and feeling of Carters Grove and the Corps has provided written approval.

Comment [ACHP-JTE22]: Make consistent with Stipulation VII per ACHP comments

- 3 Dominion may not proceed further than "Limited Construction within the James River" until the Corps has approved the final Project Narrative for projects to be carried out at Carters Grove. To facilitate this approval, Dominion shall consider all comments and submit to the Signatories of this MOA a final Project Narrative describing projects to be carried out at Carters Grove. This final Project Narrative shall include confirmation that the Dominion and/or all appropriate parties have all access and permissions necessary to complete all identified mitigation work. This final Project Narrative will be considered "approved" once the SHPO has confirmed that the projects as proposed will enhance the affected setting and feeling of Carter's Grove and the Corps has provided written approval.

Comment [ACHP-JTE23]: Include Consulting Parties. Make consistent with III.a.2 and with Stipulation VII per ACHP comments.

- 4 Within one (1) year of initiating "Limited Construction within the James River" Dominion must receive approval of the final Project Narrative or must remove all structures and/or fill placed within the James River in association with the line installation as approved by this permit action and restore the area to pre-disturbed conditions.

- 5 No more than one (1) year following the initiation of "Construction Above the James River", and annually thereafter, Dominion shall provide to the Signatories of this MOA, a report containing detailed plans for each project to be accomplished within the next year according to the timeline in the approved Project Narrative and confirmation that appropriate projects have commenced or are under contract to commence. With this annual report, Dominion may also request modification to the project list or narratives to address changes in circumstances over the previous year. A requested modification will be considered "approved" once the SHPO has confirmed that the projects will enhance the affected setting and feeling of Carter's Grove and the Corps has provided written approval.

Comment [ACHP-JTE24]: Make consistent with Stipulation VII per ACHP comments

March 17, 2017

- 6 In the event that the Landowner of Carters Grove fails to provide the requisite property access or cooperation as required in Stipulation III.a.1.A to complete the work required in Stipulation III.a.1-5, Dominion shall provide to the Signatory Parties and Consulting Parties, evidence that Dominion has made good faith effort to secure access and cooperation. Such evidence may include Dominion's written request for such access and cooperation and the Landowner's denial or failure to reach a written agreement within 45 days of that written request. In the event that (i) the landowner of Carters Grove and Dominion fail to reach agreement on the requisite property access or cooperation as required in Stipulation III.a.1.A within 45 days of Dominions written request; (ii) the Landowner of Carters Grove and Dominion fail to agree upon the list of projects required in III.a.1.B and III.a.1.C within 30 days of reaching agreement on property access and cooperation; or (iii) the Landowner of Carters Grove and Dominion fail to agree upon the Project Narratives required by III.a.1.C within 60 days of reaching agreement on property access and cooperation, Dominion may request approval from the Corps to pursue Alternative Measures as defined in Stipulations III.a.7 – III.a.11.
- 7 Once the Corps has approved pursuit of Alternative Measures and prior to any construction within the James River, Dominion shall:
- A. Submit to the Signatories and Consulting Parties of this MOA written confirmation that Dominion is working in cooperation with the Virginia Department of Conservation and Recreation (DCR) to identify specific landscape and viewshed enhancement, shoreline protection, and other projects that enhance the affected setting and feeling of Chippokes Plantation State Park.
 - B. Working with the SHPO, identify and submit to the Signatories and Consulting Parties of this MOA the location and type of shoreline stabilization activities proposed to address approximately 8,000 linear feet of shoreline at Chippokes State Park.
 - C. Working with the SHPO, submit to the Corps, SHPO, ACHP, and Participating Consulting Parties a draft Project Narrative listing and describing projects to be carried out that will preserve and/or enhance the historic character or viewshed of Chippokes Plantation State Park. This draft Project Narrative shall identify specific projects related to enhancement of visitor facilities, development of 17th Century agricultural techniques and colonial life and preservation of Chippokes Mansion. This draft Project Narrative shall also list tasks necessary to execute each project, provide a timeline for accomplishment of each project and describe how each project enhances the historic value of the resource. All parties will be given thirty (30) days to review and provide comment.

Comment [ACHP-JTE25]: , the MOA should more clearly indicate the historic properties that are focus of mitigation projects, similar to the clarification provided in the revised context for the MOA. As appropriate, reference in the intro to each section, the specific historic properties that are the focus of projects/studies set forth in the Sub-stipulation

March 17, 2017

- 8 Before beginning “Limited Construction within the James River” Dominion must receive approval of the list of projects to be carried out at Chippokes Plantation State Park. The project list will be considered “approved” once the SHPO has confirmed that the projects will enhance the historic setting and feeling of Chippokes Plantation State Park and the Corps has provided written approval.
- 9 Dominion may not proceed further than “Limited Construction within the James River” until the Corps has approved the final Project Narrative for projects to be carried out at Chippokes Plantation State Park. To facilitate this approval, Dominion shall consider all comments and submit to the Signatories of this MOA a final Project Narrative describing projects to be carried out at Chippokes Plantation State Park. This final Project Narrative shall include confirmation that Dominion and/or all appropriate parties have all access and permissions necessary to complete all identified mitigation work. This final Project Narrative will be considered “approved” once the SHPO has confirmed that the projects will enhance the historic setting and feeling of Chippokes Plantation State Park and the Corps has provided written approval.
- 10 Within one (1) year of initiating “Limited Construction within the James River” Dominion must receive approval of the final Project Narrative or must remove all structures and/or fill placed within the James River in association with the line installation as approved by this permit action and restore the area to pre-disturbed conditions.
- 11 No more than one (1) year following the initiation of “Construction Above the James River”, and annually thereafter, Dominion shall provide to the Signatories of this MOA, a report containing detailed plans for each project to be accomplished within the next year according to the timeline in the approved Project Narrative and confirmation that appropriate projects have commenced or are under contract to commence. With this annual report, Dominion may also request modification to the project list or narratives to address changes in circumstances over the previous year. A requested modification will be considered “approved” once the SHPO has confirmed that the projects will enhance the historic setting and feeling of Chippokes Plantation State Park and the Corps has provided written approval.
- b. **Within the Jamestown Island-Hog Island-Captain John Smith Trail Historic District and the thematically related areas Dominion shall complete the following projects related to preserving and/or enhancing the overall landscape. Dominion will make all effort to complete Stipulations III.b.1 - III.b.5 below. Should Dominion be unable to obtain cooperation of the National Park Service (NPS), Dominion shall complete Stipulations III.b.6 – III.b.11.**

Comment [ACHP-JTE26]: Make consistent with Stipulation VII per ACHP comments

Comment [ACHP-JTE27]: Make consistent with Stipulation VII per ACHP comments

Comment [ACHP-JTE28]: Make consistent with Stipulation VII per ACHP comments

Comment [ACHP-JTE29]: , the MOA should more clearly indicate the historic properties that are focus of mitigation projects, similar to the clarification provided in the revised context for the MOA. As appropriate, reference in the intro to each section, the specific historic properties that are the focus of projects/studies set forth in the Sub-stipulation

March 17, 2017

- 1 Prior to any construction on the Project within the James River, Dominion shall:
 - A. Submit to the Signatories of this MOA written confirmation that Dominion has requested property access and cooperation from the NPS, Colonial National Historical Park to identify specific landscape enhancement and shoreline protection or viewshed enhancement projects that preserve the setting and feeling of the Colonial Parkway unit consistent with its design, open and forested areas, other natural elements, and interpretive areas as documented in the National Park Service's Cultural Landscape Inventory (2008).
 - B. Working with the NPS, submit to the Corps, SHPO, ACHP, and Participating Consulting Parties a draft list of projects and a Project Narrative listing and describing projects to be carried out that will preserve and/or enhance the character or viewshed of the Colonial Parkway unit. This draft Project Narrative shall identify specific projects, list tasks necessary to execute each project, provide a timeline for accomplishment of each project and describe how each project enhances the historic value of the resource. All parties will be given thirty (30) days to review and provide comment.
- 2 Before beginning "Limited Construction within the James River" Dominion must receive approval of the list of projects to be carried out at Colonial Parkway unit. The project list will be considered "approved" once the SHPO has confirmed that the projects will enhance the historic setting and feeling of Colonial Parkway unit and the Corps has provided written approval.
- 3 Dominion may not proceed further than "Limited Construction within the James River" until the Corps has approved the final Project Narrative for projects to be carried out at the Colonial Parkway unit. To facilitate this approval, Dominion shall consider all comments and submit to the Signatories of this MOA a final Project Narrative describing projects to be carried out at the Colonial Parkway unit. This final Project Narrative shall include confirmation that Dominion and/or all appropriate parties have all access and permissions necessary to complete all identified mitigation work. This final Project Narrative will be considered "approved" once the SHPO has confirmed that the projects will enhance the affected setting and feeling of the Colonial Parkway unit and the Corps has provided written approval.
- 4 Within one (1) year of initiating "Limited Construction within the James River" Dominion must receive approval of the final Project Narrative or must remove all structures and/or fill placed within the James River in association with the line installation as approved by this permit action and restore the area to pre-disturbed conditions.

Comment [ACHP-JTE30]: Make consistent with Stipulation VII per ACHP comments

Comment [ACHP-JTE31]: Make consistent with Stipulation VII per ACHP comments

March 17, 2017

- 5 No more than one (1) year following the initiation of “Construction Above the James River”, and annually thereafter, Dominion shall provide to the Signatories **and Consulting Parties** of this MOA, a report containing detailed plans for each project to be accomplished within the next year according to the timeline in the approved Project Narrative and confirmation that appropriate projects have commenced or are under contract to commence. With this annual report, Dominion may also request modification to the project list or narratives to address changes in circumstances over the previous year. A requested modification will be considered “approved” once the SHPO have confirmed that the projects will enhance the affected setting and feeling of the Colonial Parkway unit and the Corps has provided written approval.
- 6 In the event that the NPS fails to provide the requisite property access or cooperation as required in Stipulation III.b.1.A to complete the work required in Stipulation III.b.1-5, Dominion shall provide to the Signatory Parties, evidence that Dominion has made good faith effort to secure property access and cooperation. Such evidence may include Dominion’s written request for such property access and cooperation and the NPS’s denial or failure to reach a written agreement on property access and cooperation within 45 days of that written request. In the event that (i) NPS and Dominion fail to reach agreement on property access or cooperation as required in Stipulation III.b.1A within 45 days of Dominion’s written request to NPS for property access and cooperation; (ii) the NPS and Dominion fail to agree upon the list of projects required in III.b.1.B within 30 days of reaching written agreement on property access and cooperation; or (iii) the NPS and Dominion fail to agree upon the Project Narratives required by III.b.1.B within 60 days of reaching written agreement on property access and cooperation, Dominion may request approval to pursue Alternative Measures as defined in Stipulations III.b.7 – III.b.11.
- 7 **Once the Corps** has approved pursuit of Alternative Measures and prior to any construction within the James River, Dominion shall:
- A. Submit to the Signatories **and Consulting Parties** of this MOA written confirmation that Dominion is working in cooperation with the Commonwealth of Virginia to identify specific landscape and viewshed enhancement, shoreline protection, and other projects that preserve and/or enhance the setting, feeling and/or overall understanding of the Jamestown Island-Hog Island-Captain John Smith Trail Historic District and thematically related areas.
 - B. Working with the Commonwealth of Virginia, submit to the Corps, SHPO, ACHP, and **Participating Consulting** Parties a draft Project Narrative listing and describing projects to be carried out that will

Comment [ACHP-JTE32]: Make consistent with Stipulation VII per ACHP comments

Comment [ACHP-JTE33]: Make consistent with Stipulation VII per ACHP comments.

Comment [ACHP-JTE34]: , the MOA should more clearly indicate the historic properties that are focus of mitigation projects, similar to the clarification provided in the revised context for the MOA. As appropriate, reference in the intro to each section, the specific historic properties that are the focus of projects/studies set forth in the Sub-stipulation

March 17, 2017

support, preserve and/or enhance the historic character or viewshed of Jamestown Settlement. This draft Project Narrative shall identify specific projects related to educational exhibits and interpretive programs at Jamestown Settlement that focus on the area's landscape and watershed, before during and after European contact, as well as on the movement of colonists and Native Americans throughout the area, including those areas covered by the Colonial Parkway and Colonial National Historic Park. This draft Project Narrative shall also identify specific projects related to development of exhibits and interpretive programs at Fort Monroe that examine the convergence of three cultures - Virginia Indians, European, and African - related to the Hampton Roads region at the time of exploration and discovery. This draft Project Narrative shall also list tasks necessary to execute each project, provide a timeline for accomplishment of each project and describe how each project enhances the historic value of the resource. All parties will be given thirty (30) days to review and provide comment.

- 8 **Before beginning "Limited Construction within the James River"** Dominion must receive approval of the list of projects described in III.b.7 above. The project list will be considered "approved" once the SHPO has confirmed that the projects will enhance and preserve the historic landscape within APE and the Corps has provided written approval.
- 9 Dominion may not proceed further than "Limited Construction within the James River" until the Corps has approved the final Project Narrative for projects as identified in Stipulation III.b.6 above. To facilitate this approval, Dominion shall consider all comments and submit to the Signatories of this MOA a final Project Narrative describing projects as identified in Stipulation III.b.6 above. This final Project Narrative shall include confirmation that Dominion and/or all appropriate parties have all access and permissions necessary to complete all identified mitigation work. **This final Project Narrative will be considered "approved"** once the SHPO has confirmed that the projects will support, preserve and/or enhance the historic character or viewshed of Jamestown Settlement and the Corps has provided written approval.
- 10 Within one (1) year of initiating "Limited Construction within the James River" Dominion must receive approval of the final Project Narrative or must remove all structures and/or fill placed within the James River in association with the line installation as approved by this permit action and restore the area to pre-disturbed conditions.
- 11 No more than one (1) year following the initiation of "Construction Above the James River", and annually thereafter, Dominion shall

Comment [ACHP-JTE35]: Make consistent with Stipulation VII per ACHP comments

Comment [ACHP-JTE36]: Make consistent with Stipulation VII per ACHP comments

March 17, 2017

provide to the Signatories and Consulting Parties of this MOA, a report containing detailed plans for each project to be accomplished within the next year according to the timeline in the approved Project Narrative and confirmation that appropriate projects have commenced or are under contract to commence. With this annual report, Dominion may also request modification to the project list or narratives to address changes in circumstances over the previous year. A requested modification will be **considered "approved"** once the SHPO has confirmed that the projects will support, preserve and/or enhance the historic character or viewshed of Jamestown Settlement and the Corps has provided written approval.

Comment [ACHP-JTE37]: Make consistent with Stipulation VII per ACHP comments

- c. **Within the Jamestown Island-Hog Island-Captain John Smith Trail Historic District and the thematically related areas Dominion shall complete the following projects that preserve and enhance Historic Jamestown and Jamestown Island and promote heritage tourism. Dominion will make all effort to complete Stipulations III.c.1 - III.c.5 below. Should Dominion be unable to obtain cooperation of the National Park Service (NPS) and/or Preservation Virginia (PV), Dominion shall complete Stipulations III.c.6 – III.c.11.**

Comment [ACHP-JTE38]: , the MOA should more clearly indicate the historic properties that are focus of mitigation projects, similar to the clarification provided in the revised context for the MOA. As appropriate, reference in the intro to each section, the specific historic properties that are the focus of projects/studies set forth in the Sub-stipulation

- 1 Prior to any construction on the Project within the James River, Dominion shall:

- A. Submit to the Signatories and Consulting Parties of this MOA written confirmation that Dominion has requested property access and cooperation from the NPS and/or PV to identify specific landscape and viewshed enhancement, shoreline protection, and other projects that preserve and enhance Historic Jamestowne and Jamestown Island's existing setting (i.e., topography, vegetation, and other defining physical features) and feeling gained from the presence its defining physical features that help convey its historic character
- B. Working with the NPS and/or PV, submit to the Signatories and Consulting Parties of this MOA draft plans for:
- i. Rehabilitation or replacement of the seawall at Historic Jamestowne potentially including additional breakwaters, sills and revetments to provide protection from erosion and sea level rise.
 - ii. Restoration of Back Creek at Historic Jamestowne.
 - iii. Archaeological investigation and identification at Historic Jamestowne to support ongoing and future investigations including emergency excavation of threatened archaeological

March 17, 2017

sites, excavations around Memorial Church, cooperative excavations with the National Park Service, excavation of areas east and west of the Fort site 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, as well as any other archaeological investigations associated with the early occupation and settlement of Jamestown Island, and other areas related to the early settlement.

iv. Captain John Smith Chesapeake NHT landscape enhancement, visitor engagement, and visitor interpretation programs and projects at the National Park Service's visitor center on Jamestown Island as well as enhancement of the National Park Service's Neck-O-Land facility including the establishment of infrastructure to study and interpret climate change.

- C. Working with appropriate curators submit to the Signatories and Consulting Parties of this MOA a draft plan for conservation, preservation, and study of artifact collections from previously excavated archaeological sites throughout the APE which shall include Jamestown, Martin's Hundred, Carter's Grove, and Kingsmill, as well as partnership projects with a focus on understanding and interpreting the colony's first settlers and their human response to the new environment and climate.
- D. All parties will be given thirty (30) days to review and provide comment on the draft plans identified in Stipulation III.c.1.B and Stipulation III.c.1.C.
- 2 Before beginning "Limited Construction within the James River" Dominion must allow for the conclusion of the 30-day comment period specified in Stipulation III.c.1.D.
- 3 Dominion may not proceed further than "Limited Construction within the James River" until the Corps has approved the final Plans for all activities described in Stipulation III.c.1.B and Stipulation III.c.1.C. To facilitate this approval, Dominion shall consider all comments and submit to the Signatories of this MOA final Plans that describe specific activities to be carried out and provide a timeline for accomplishment of each. The final Plans shall include confirmation that the Dominion and/or all appropriate parties have all access and permissions necessary to complete all identified mitigation work. The final Plans will be considered "approved" once the SHPO has confirmed that the projects will preserve and enhance Historic Jamestowne and Jamestown Island resources and the Corps has provided written approval.

Comment [ACHP-JTE39]: Make consistent with Stipulation VII per ACHP comments

March 17, 2017

- 4 Within one (1) year of initiating “Limited Construction within the James River” Dominion must receive approval of the final Plans or must remove all structures and/or fill placed within the James River in association with the line installation as approved by this permit action and restore the area to pre-disturbed conditions.
- 5 No more than one (1) year following the initiation of “Construction Above the James River”, and annually thereafter, Dominion shall provide to the Signatories **and Consulting Parties** of this MOA, a report containing detailed activities to be accomplished within the next year according to the timeline in the approved Plans and confirmation that appropriate projects have commenced or are under contract to commence. With this annual report, Dominion may also request modification to the final plans to address changes in circumstances over the previous year. A requested modification will be considered “approved” once the SHPO has confirmed that the projects will preserve and enhance Historic Jamestowne and Jamestown Island resources and the Corps has provided written approval.
- 6 In the event that the NPS and/or PV fails to provide property access or cooperation as required in Stipulation III.c.1.A to complete the work required in Stipulation III.c.1-5, Dominion shall provide to the Signatory **and Consulting Parties**, evidence that Dominion has made good faith effort to secure property access and cooperation. Such evidence may include Dominion’s written request for such property access and cooperation and the NPS’s and/or PV’s denial or failure to reach written agreement on property access and cooperation within 45 days of that written request. In the event that (i) NPS and/or PV and Dominion fail to reach written agreement on property access or cooperation as required in Stipulation III.c.1.A within 45 days of Dominion’s written request to NPS and/or PV for property access and cooperation; (ii) the NPS and/or PV and Dominion fail to agree upon the Draft Plans required by III.c.1.B within 60 days of reaching written agreement on property access and cooperation, Dominion may request approval to pursue Alternative Measures as defined in Stipulations III.c.7 – III.c.11.
- 7 **Once the Corps has approved pursuit of Alternative Measures and Prior to any construction within the James River, Dominion shall:**
 - A. Submit to the Signatories **and Consulting Parties** of this MOA written confirmation that Dominion is working in cooperation with the Commonwealth of Virginia to identify specific landscape and viewshed enhancement, shoreline protection, and other projects that preserve and/or enhance the setting, feeling and/or overall understanding of the Jamestown Island-Hog Island-Captain John Smith Trail Historic District and thematically related areas.

Comment [ACHP-JTE40]: Make consistent with Stipulation VII per ACHP comments

Comment [ACHP-JTE41]: Make consistent with Stipulation VII per ACHP comments

Comment [ACHP-JTE42]: , the MOA should more clearly indicate the historic properties that are focus of mitigation projects, similar to the clarification provided in the revised context for the MOA. As appropriate, reference in the intro to each section, the specific historic properties that are the focus of projects/studies set forth in the Sub-stipulation

March 17, 2017

- B.** Working with the Commonwealth of Virginia, submit to the Signatories and Consulting Parties of this MOA draft plans for:
- i.** Development of a public boat launch and kayak launch areas with associated interpretive trails and educational exhibits related to the Captain John Smith Chesapeake NHT at Fort Monroe and/or Chippokes State Park; and
 - ii.** Erosion and sea level rise protection projects at Fort Monroe and/or Chippokes State Park.
 - iii.** Archaeological excavations at Fort Algernon including artifact conservation and exhibit development; and
 - iv.** Archaeological excavations at Chippokes State Park including artifact conservation and exhibit development.
- C.** All parties will be given thirty (30) days to review and provide comment on the draft plans identified in Stipulation III.c.7.B.
- 8** Before beginning “Limited Construction within the James River” Dominion must allow for the conclusion of the 30-day comment period specified in Stipulation III.c.7.C.
- 9** Dominion may not proceed further than “Limited Construction within the James River” until the Corps has approved the final Plans for all activities described in Stipulation III.c.7.B. To facilitate this approval, Dominion shall consider all comments and submit to the Signatories of this MOA final Plans that describe specific activities to be carried out and provide a timeline for accomplishment of each. The final Plans shall include confirmation that Dominion and/or all appropriate parties have all access and permissions necessary to complete all identified mitigation work. The final Plans will be considered “approved” once the SHPO has confirmed that the projects will preserve and/or enhance the setting, feeling and/or overall understanding of the Jamestown Island-Hog Island-Captain John Smith Trail Historic District and thematically related areas and the Corps has provided written approval.
- 10** Within one (1) year of initiating “Limited Construction within the James River” Dominion must receive approval of the final Plans or must remove all structures and/or fill placed within the James River in association with the line installation as approved by this permit action and restore the area to pre-disturbed conditions.
- 11** No more than one (1) year following the initiation of “Construction Above the James River”, and annually thereafter, Dominion shall provide to the Signatories and Consulting Parties of this MOA, a report

Comment [ACHP-JTE43]: Make consistent with Stipulation VII per ACHP comments

March 17, 2017

containing detailed activities to be accomplished within the next year according to the timeline in the approved Plans and confirmation that appropriate projects have commenced or are under contract to commence. With this annual report, Dominion may also request modification to the final plans to address changes in circumstances over the previous year. A requested modification will be considered "approved" once the SHPO has confirmed that the projects will preserve and/or enhance the setting, feeling and/or overall understanding of the Jamestown Island-Hog Island-Captain John Smith Trail Historic District and thematically related areas and the Corps has provided written approval.

Comment [ACHP-JTE44]: Make consistent with Stipulation VII per ACHP comments

d. Within the Jamestown Island-Hog Island-Captain John Smith Trail Historic District and the thematically related areas Dominion shall complete the following projects related to enhancement of the visitor experience and the setting and feeling of sites along the Captain John Smith Chesapeake National Historic Trail. These measures will present the natural and cultural values on the York River in the area of Werowocomoco to 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.

1 Prior to any construction on the Project within the James River, Dominion shall:

- A. Submit to the Signatories and Consulting Parties of this MOA written confirmation that Dominion is working in cooperation with the Commonwealth of Virginia and the Pamunkey Indian Tribe to identify specific projects that enhance the visitor experience and the setting and feeling of sites along the Captain John Smith Chesapeake National Historic Trail.
- B. Working with the Commonwealth of Virginia and the Pamunkey Indian Tribe, submit to the Signatories and Consulting Parties of this MOA draft plans for:
 - i. Land acquisition, visitor interpretation facilities, archeological investigation and preservation associated with Werowocomoco; and
 - ii. Land acquisition and preservation of sites and expanded facilities at York River State Park which shall serve as a visitors' gateway to understanding the Virginia Indian cultures at Werowocomoco.
- C. All parties will be given thirty (30) days to review and provide comment on the draft plans identified in Stipulation III.d.1.B.

March 17, 2017

- 2 Before beginning “Limited Construction within the James River” Dominion must allow for the conclusion of the 30-day comment period specified in Stipulation III.d.1.C.
 - 3 Dominion may not proceed further than “Limited Construction within the James River” until the Corps has approved the final Plans for all activities described in Stipulation III.d.1.B. To facilitate this approval, Dominion shall consider all comments and submit to the Signatories of this MOA final Plans that describe specific activities to be carried out and provide a timeline for accomplishment of each. The final Plans shall include confirmation that Dominion and/or all appropriate parties have all access and permissions necessary to complete all identified mitigation work. The final Plans will be considered “approved” once the SHPO has confirmed that the projects will enhance the visitor experience and the setting and feeling of sites along the Captain John Smith Chesapeake National Historic Trail and the Corps has provided written approval.
 - 4 Within one (1) year of initiating “Limited Construction within the James River” Dominion must receive approval of the final Plans or must remove all structures and/or fill placed within the James River in association with the line installation as approved by this permit action and restore the area to pre-disturbed conditions.
 - 5 No more than one (1) year following the initiation of “Construction Above the James River”, and annually thereafter, Dominion shall provide to the Signatories **and Consulting Parties** of this MOA, a report containing detailed activities to be accomplished within the next year according to the timeline in the approved Plans and confirmation that appropriate projects have commenced or are under contract to commence. With this annual report, Dominion may also request modification to the final plans to address changes in circumstances over the previous year. A requested modification will be considered “approved” once the SHPO has confirmed that the projects will enhance the visitor experience and the setting and feeling of sites along the Captain John Smith Chesapeake National Historic Trail and the Corps has provided written approval.
- e. **Within the Jamestown Island-Hog Island-Captain John Smith Trail Historic District and the thematically related areas Dominion shall complete the following projects related to natural resource enhancement and cultural resource identification and interpretation at Hog Island WMA.**
- 1 Prior to any construction on the Project within the James River, Dominion shall:

Comment [ACHP-JTE45]: Make consistent with Stipulation VII per ACHP comments

Comment [ACHP-JTE46]: Make consistent with Stipulation VII per ACHP comments

Comment [ACHP-JTE47]: , the MOA should more clearly indicate the historic properties that are focus of mitigation projects, similar to the clarification provided in the revised context for the MOA. As appropriate, reference in the intro to each section, the specific historic properties that are the focus of projects/studies set forth in the Sub-stipulation

March 17, 2017

- A. Submit to the Signatories **and Consulting Parties** of this MOA written confirmation that Dominion is working in cooperation with the Virginia Department of Game and Inland Fisheries (VDGIF) and the Pamunkey Indian Tribe to identify specific projects that preserve and/or enhance the setting, feeling and/or overall understanding of the Jamestown Island-Hog Island-Captain John Smith Trail Historic District and thematically related areas.
 - B. Working with the Commonwealth of Virginia and the Pamunkey Indian Tribe, submit to the Corps, SHPO, ACHP, and **Participating Consulting** Parties draft plans for:
 - i. Enhancement of 1,100 acres of palustrine emergent marsh at Hog Island WMA;
 - ii. Living shoreline and shoreline restoration in Surry County, with priority given to projects within the APE or projects outside the APE that would benefit natural and cultural resource enhancement within the APE;
 - iii. Acquisition of 400 acres of upland/emergent marsh adjacent to the Chickahominy Wildlife Management Area located in, 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 WMA 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; and
 - v. Comprehensive archaeological identification survey of Hog Island WMA.
 - C. **All parties will be given thirty (30) days to review and provide comment on the draft plans identified in Stipulation III.e.1.B.**
- 2 **Before beginning "Limited Construction within the James River" Dominion must allow for the conclusion of the 30-day comment period specified in Stipulation III.e.1.C.**
- 3 **Dominion may not proceed further than "Limited Construction within the James River" until the Corps has approved the final Plans for all activities described in Stipulation III.e.1.B. To facilitate this approval, Dominion shall consider all comments and submit to the Signatories of this MOA final Plans that describe specific activities to be carried out and provide a timeline for accomplishment of each. The final Plans**

March 17, 2017

shall include confirmation that the Dominion and/or all appropriate parties have all access and permissions necessary to complete all identified mitigation work. The final Plans will be considered “approved” once the SHPO has confirmed that the projects will preserve and/or enhance the setting, feeling and/or overall understanding of the Jamestown Island-Hog Island-Captain John Smith Trail Historic District and thematically related areas and the Corps has provided written approval.

Comment [ACHP-JTE48]: Make consistent with Stipulation VII per ACHP comments

4 Within one (1) year of initiating “Limited Construction within the James River” Dominion must receive approval of the final Plans or must remove all structures and/or fill placed within the James River in association with the line installation as approved by this permit action and restore the area to pre-disturbed conditions.

5 No more than one (1) year following the initiation of “Construction Above the James River”, and annually thereafter, Dominion shall provide to the Signatories **and Consulting Parties** of this MOA, a report containing detailed activities to be accomplished within the next year according to the timeline in the approved Plans and confirmation that appropriate projects have commenced or are under contract to commence. With this annual report, Dominion may also request modification to the final plans to address changes in circumstances over the previous year. A requested modification will be considered “approved” once the SHPO has confirmed that the projects will preserve and/or enhance the setting, feeling and/or overall understanding of the Jamestown Island-Hog Island-Captain John Smith Trail Historic District and thematically related areas and the Corps has provided written approval.

Comment [ACHP-JTE49]: Make consistent with Stipulation VII per ACHP comments

f. **Dominion shall complete the following related to water quality improvements. Such projects will maintain and improve the setting and feeling of the river as a key component of the Jamestown Island-Hog Island-Captain John Smith Trail Historic District, as well as the other character-defining features of the historic district.**

Comment [ACHP-JTE50]: , the MOA should more clearly indicate the historic properties that are focus of mitigation projects, similar to the clarification provided in the revised context for the MOA. As appropriate, reference in the intro to each section, the specific historic properties that are the focus of projects/studies set forth in the Sub-stipulation

1 Dominion shall work with the Commonwealth of Virginia and the Virginia Environmental Endowment (VEE) to develop and submit to the Corps, SHPO, ACHP, and **Participating Consulting** Parties a draft list of criteria to guide the selection of water quality improvement projects. Efforts should focus on riparian buffer creation, replacement or enhancement and erosion and sediment control, and the projects shall provide water quality improvements benefitting the James River watershed with consideration given to projects located within the indirect APE.

March 17, 2017

2 All parties will be given thirty (30) days to review and provide comment on the draft list of criteria identified in Stipulation III.f.1.

3 No construction on the Project shall take place within the James River until the Corps has approved the final list of criteria to be used in project selection. To facilitate this approval, Dominion shall consider all comments and submit to the Signatories of this MOA a final list of criteria that includes an anticipated schedule for requesting, reviewing and approving (funding) proposals. This final criteria will be considered “approved” once Corps has provided written approval.

Comment [ACHP-JTE51]: Make consistent with Stipulation VII per ACHP comments

4 No more than one (1) year following the initiation of “Construction Above the James River”, and annually thereafter, Dominion shall provide to the Signatories and Consulting Parties of this MOA, a report containing detailed activities to be accomplished within the next year according to the approved criteria and anticipated schedule for making grant awards to demonstrate annual progress on the implementation of the water quality improvement mitigation. With this annual report, Dominion may also request modification to the approved criteria to address changes in circumstances over the previous year. A requested modification will be considered “approved” once the Corps has confirmed that the adjusted criteria includes water quality improvement grant criteria benefitting the James River watershed with consideration given to projects located within the indirect APE and the Corps has provided written approval.

Comment [ACHP-JTE52]: Make consistent with Stipulation VII per ACHP comments

g. Within the Jamestown Island-Hog Island-Captain John Smith Trail Historic District and the thematically related areas, Dominion shall complete the following projects related to Landscape and Battlefield Conservation.

Comment [ACHP-JTE53]: , the MOA should more clearly indicate the historic properties that are focus of mitigation projects, similar to the clarification provided in the revised context for the MOA. As appropriate, reference in the intro to each section, the specific historic properties that are the focus of projects/studies set forth in the Sub-stipulation

1 Dominion shall work with the Commonwealth of Virginia and the Virginia Land Conservation Fund (VLCF) to develop and submit to the Corps, SHPO, ACHP, and Participating Consulting Parties a draft list of criteria to guide the selection of land conservation and open space easement projects that are focused on:

A. The enhancement and/or preservation of the setting and feeling for the Battle of Yorktown and Fort Crafford or Development of public interpretive programs, signage, and exhibits focusing on the Peninsula Campaign including the Battle of Hampton Roads, the Battle of Yorktown, the Battle of Williamsburg, and the strategic importance of Fort Monroe in each, and development of a 3D Laser Scan of Fort Crafford and an earthwork preservation plan to include a landscape management plan.

March 17, 2017

- B. Landscape preservation with an emphasis on projects within the James River watershed benefitting the historic properties and district.
 - C. Landscape scale conservation that may lead to permanently protecting lands necessary to preclude future river crossings and non-compatible shoreline development within the APE, to the greatest extent possible.
 - D. All parties will be given thirty (30) days to review and provide comment on the draft framework identified in Stipulation III.g.1.
2. No construction on the Project shall take place within the James River until the Corps has approved the final framework to be used in the selection of projects as identified in III.g.1. To facilitate this approval, Dominion shall consider all comments and submit to the Signatories of this MOA a final framework that includes a schedule for requesting, reviewing and approving (funding) proposals. This final framework will be considered “approved” once the SHPO has confirmed that the framework will promote landscape and battlefield conservation and the Corps has provided written approval.
3. No more than one (1) year following the initiation of “Construction Above the James River”, and annually thereafter, Dominion shall provide to the Signatories and Consulting Parties of this MOA, a report containing detailed activities to be accomplished within the next year according to the timeline in the approved framework and confirmation that appropriate projects have commenced or are under contract to commence. With this annual report, Dominion may also request modification to the final framework to address changes in circumstances over the previous year. A requested modification will be considered “approved” once the Corps has confirmed that the adjusted framework promotes landscape and battlefield conservation projects and the Corps has provided written approval.
- h. Dominion shall complete and fund the following initiatives that will preserve and enhance the Pamunkey Indian Tribe’s cultural values and way of life.**
- 1. Prior to any construction on the Project within the James River, Dominion shall submit to the Signatory Parties of this MOA, written confirmation that Dominion has made a one-time donation of \$4,500,000.00 to the Pamunkey Indian Tribe for three initiatives:
 - i. expansion and operation of the Pamunkey Cultural Center;
 - ii. establishment of a Tribal Historic Preservation Office; and

Comment [ACHP-JTE54]: Make consistent with Stipulation VII per ACHP comments

Comment [ACHP-JTE55]: Make consistent with Stipulation VII per ACHP comments

March 17, 2017

- iii. expansion and operation of the Pamunkey Indian Tribe's shad hatchery facility.
2. Prior to any construction on the Project within the James River, Dominion shall provide all Signatory Parties and Consulting Parties of this MOA proof of appropriate assurance, obtained from the Tribe, acknowledging their agreement that funding will be allocated among the three initiatives at the discretion of the Tribe, with no less than \$100,000.00 being given to any single initiative.
3. Assuming there is a willing seller, Dominion shall initiate immediate action to acquire the parcel of land containing Uttamusack (44KW0072).
 - i. Dominion shall pay as much as 125% of the fair market value if required, to acquire the parcel.
 - ii. Dominion shall also fund acquisition a permanent easement for an access road from the public right-of-way (Route 30) to the parcel of land containing Uttamusack (44KW0072).
 - iii. Following acquisition of the property containing Uttamusack (44KW0072), Dominion shall donate the parcel and easement free and clear of any encumbrances to the Pamunkey Indian Tribe along with a one-time donation of \$500,000.00 for the tribe's use to protect, maintain, and interpret the site.
 - iv. Dominion shall also provide funding up to \$400,000.00 for the construction of an access road up to but not crossing the railroad on the parcel of land containing Uttamusack (44KW0072).

IV AVOIDANCE AND MINIMIZATION OF POTENTIAL FUTURE AND CUMULATIVE EFFECTS WITHIN THE DIRECT AND INDIRECT APE OF THE RIVER CROSSING

- 1 From the date construction is completed until the towers are dismantled, Dominion shall coordinate all project maintenance and repair operations that have the potential to cause or result in ground or underwater disturbance within the project's direct APE, with the SHPO and other regulatory agencies, consistent with the terms of the avoidance plan. Such coordination shall not prohibit the repair of the project required in response to emergency events; however, Dominion shall advise the SHPO and other regulatory agencies, as appropriate, of the completed emergency repair work as soon as practicable.
- 2 From the date construction is completed until the towers are dismantled, Dominion shall not construct or place any new or additional transmission line infrastructure, or increase the height or

otherwise scale of the existing tower infrastructure within the project's defined indirect APE for the river crossing. Nothing in this commitment, however, shall preclude or otherwise prevent Dominion from adding additional lines or replacing lines to the existing tower infrastructure.

- 3 From the date construction is completed, Dominion shall examine the ongoing need for the river crossing at ten (10) year increments, taking into account the most current PJM Interconnection load forecast data.
- 4 If, at any time prior to the conclusion of the project's life span of fifty (50) years from energizing, Dominion determines that the river crossing is no longer needed, Dominion shall remove all river crossing and associated terrestrial based infrastructure and return the land-side area within the indirect APE of the river crossing to its pre-project condition.
- 5 If, at the conclusion of the project's life span of fifty (50) years from energizing, Dominion determines that the project is still needed, Dominion shall examine the viability and feasibility of a submerged river crossing. If, at that time, industry accepted technology is available and required regulatory approvals are received, Dominion will replace the overhead river crossing with a submerged crossing.

V REPORTING REQUIREMENTS

Upon the completion of each requirement to this MOA, Dominion shall provide the Corps, SHPO, ACHP, and the Participating Consulting Parties to this MOA with 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.

Comment [ACHP-JTE56]: As incorrectly referenced earlier in the MOA, Stipulation V does not provide any requirements for preparation and review of draft and final reports!!!

VI 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. Individuals designated by federally recognized tribes as qualified regarding properties of religious and cultural significance to them are not required to meet the referenced Professional Qualification Standards.

Comment [ACHP-JTE57]: The review process for all treatments, studies, and projects, etc., should be the same, as follows, and should be specified in Stipulation VII:

"All parties to the MOA (Signatories, Invited Signatories, Concurring Parties, and other Consulting Parties) will be given thirty (30) days to review and provide comment. If no timely comments are submitted by a Consulting Party, the Corps may assume the non-responding party has no comments. Dominion shall consider all timely comments received prior to developing a draft final version of the "study/project." The Corps will submit the draft final version to the Signatories of the MOA, along with copies of any timely comments received from the Consulting Parties, for an additional 15-day review. The Corps will consider any timely additional comments from the Signatories and direct Dominion to make changes it determines are necessary. The "study" will be considered "final" upon the Corps written approval."

Incorporate the above.

VII PREPARATION AND REVIEW OF DOCUMENTS

- 1 Except as otherwise stated elsewhere in the stipulations, Dominion shall submit a draft of all technical reports, treatment plans and other

March 17, 2017

required documentation to the Corps (one (1) copy), ACHP (one (1) copy), SHPO (two (2) hard copies and one electronic copy in Adobe® Portable Document Format (.pdf)) and to Participating 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 both the Corps and ACHP, and any other Participating Consulting Party to the MOA which requests a copy.

- 2 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.
- 3 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).
- 4 The Corps, SHPO, ACHP, and other Participating Consulting Parties of the MOA agree to respond and 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 within the thirty (30) day review period, Dominion may assume the non-responding party has no comments. If the Corps is unable to respond or provide approvals as appropriate within the thirty (30) day review period, the Corps shall notify Dominion of the delay and provide an anticipated comment or approval date.

VIII 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*

March 17, 2017

Collections. Dominion shall be responsible for all DHR curation fees associated with materials recovered during the project. 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.

IX POST-REVIEW DISCOVERIES

- 1 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.”
- 2 Immediately upon receipt of the notification required in Stipulation IX.1 above, Dominion shall:
 - A. Inspect the construction site to determine the extent of the discovery and ensure that construction activities have halted;
 - B. Mark clearly the area of the discovery;
 - C. Implement additional measures, as appropriate, to protect the discovery from looting and vandalism;
 - D. Engage a professional archeologist to inspect the construction site to determine the extent of the discovery and provide recommendations regarding its NRHP eligibility and treatment; and
 - E. Notify the Corps, ~~and the~~ SHPO, ~~and~~ ACHP of the discovery describing the measures that have been implemented to comply with this stipulation.
 - F. Notify the Pamunkey Indian Tribe of any materials resembling Native American Artifacts including burials, human skeleton remains, and funerary artifacts.
- 3 Upon receipt of the information required in the above stipulation, the Corps shall provide Dominion and the SHPO and other Consulting Parties 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

March 17, 2017

~~Consulting-Consulting~~ Parties shall respond to the Corps' assessment within forty-eight (48) hours of receipt.

- 4 The Corps will take into account the SHPO recommendations on eligibility and treatment of the discovery and any comments from other Consulting Parties and will notify Dominion of any appropriate required actions. Dominion must comply with the required actions and provide the Corps, ~~and~~ SHPO, and other Consulting Parties 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.
- 5 Construction 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.

X HUMAN REMAINS

- 1 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>)].
- 2 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.
- 3 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-Consulting~~ Parties to this MOA shall make no photographs of any Native American burial site or associated funerary artifacts. The Corps shall notify the Delaware Tribe of Indians, the Pamunkey Indian Tribe, and other appropriate federally-recognized Tribe(s) when Native American burials, human skeletal remains, or funerary artifacts are encountered on the Project,

March 17, 2017

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.

XI DISPUTE RESOLUTION

- 1 Should any ~~Signatory Party~~Consulting 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.
- 2 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.
- 3 The ACHP shall provide the Corps 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 Corps shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories and concurring parties, and provide them with a copy of this written response. The Corps will then proceed according to its final decision.
- ~~3~~ If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, the Corps may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the Corps shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the MOA, and provide them and the ACHP with a copy of such written response. Within thirty (30) days after receipt of all pertinent documentation, the ACHP shall exercise one of the following options:
 - ~~A. 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~~

~~B. Provide the Corps with recommendations, which the Corps shall take into account in reaching a final decision regarding its response to the objection; or~~

~~C. 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.~~

Comment [ACHP-JTE58]: This relates to termination, not dispute resolution.

4 ~~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.~~

Comment [ACHP-JTE59]: You can never assume the ACHP's concurrence

5 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.

6 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.

XII AMENDMENTS AND TERMINATION

~~1 If Dominion determines that it cannot implement the terms of this MOA, or if the Corps, ACHP, or SHPO determines that the MOA is not being properly implemented, Dominion, the Corps, ACHP, or the SHPO may propose to the other parties to this MOA that it be amended or terminated.~~

Comment [ACHP-JTE60]: Separate the Amendment and Termination Stipulations. When they are merged like this they are very confusing.

Formatted: Font: Not Bold

Formatted: List Paragraph, Indent: Left: 0.56", Hanging: 0.13"

~~2 Any Signatory Party Signatory 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 Signatory Parties to the MOA must agree to the proposed amendment in accordance with 800.6(c)(7).~~

Comment [ACHP-JTE61]: No need to refer to the regulations, this MOA specifies process for amendment.

Formatted: Font: Bold

~~13 Consideration of amendments shall not interrupt or delay any actions taken pursuant to the existing MOA.~~

~~24 If Dominion decides it will not proceed with the undertaking prior to its initiation, it shall so notify the Corps, SHPO, ACHP, and the Consulting Parties and this MOA shall become null and void.~~

Comment [ACHP-JTE62]: Make this a separate Stipulation

~~5 If Dominion determines that it cannot implement the terms of this MOA, or if the Corps, ACHP, or SHPO determines that the MOA is not being properly implemented, Dominion, the Corps, ACHP, or the SHPO may propose to the other parties to this MOA that it be amended or terminated.~~

Comment [ACHP-JTE63]: Move up to include in Amendment Stipulation

Formatted: Font: Bold

3 TERMINATION

Comment [ACHP-JTE64]: Make this a separate Stipulation

Formatted: No bullets or numbering

Comment [ACHP-JTE65]: Clarify whether Dominion is included in parties that may terminate

46 This MOA may be terminated by any ~~Signatory Party~~ Signatory 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 shall request, consider, and respond to the ACHP's comments per 36 C.F.R. § 800.7 prior to the Corps may choose to choosing whether to~~ modify, suspend, or revoke the Department of the Army permit as provided by 33 CFR 325.7.

Comment [ACHP-JTE66]: Need this. It's in 800.6(c)(8), but we need to be explicit.

~~57 Consideration of amendments shall not interrupt or delay any actions taken pursuant to the existing MOA.~~

Comment [ACHP-JTE67]: Move up to include in Amendment Stipulation

XIII ANNUAL REPORTING AND MEETING

1 Dominion shall provide an annual status report within twelve (12) months of the execution of this MOA, and every twelve (12) months thereafter, the Corps, SHPO, ACHP, and ~~Participating~~ Consulting Parties until the Dominion's obligations under this MOA are complete.

Comment [ACHP-JTE68]: We agree with the NTHP that annual reporting is not frequent enough to provide adequate oversight. Semi-annual reports on all topics addressed in the MOA would substantially improve the oversight given to the details of implementation.

2 Dominion shall conduct an annual meeting with the Corps, SHPO, ACHP, and ~~Participating~~ Consulting Parties within twelve (12) months of the execution of this Agreement and every twelve (12) months thereafter until Dominion's obligations under this Agreement are complete. The purpose of the annual meeting is to review implementation and achieved outcomes of the terms of this MOA and to determine whether amendments are needed.

XIV 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 and Termination.

XV DURATION OF MOA

March 17, 2017

This MOA will continue in full force and effect until fifty (50) 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.

XVI 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 MOA, the Corps shall consult in accordance with the amendment and termination procedures found at Stipulation XII of this MOA.

Comment [ACHP-JTE69]: scrub the document to make sure all final cross-references match.

XVII DEFINITIONS

- a. The term "Concurring Parties" means each Consulting Party signing the Memorandum of Agreement as a Concurring Party.
- b. The term "Consulting Parties" means the following organizations: The National Parks and Conservation Association; The Save the James Alliance; The Chesapeake Conservancy; United States Department of Interior (National Park Service, Colonial National Historic Park); United States Department of Interior (National Park Service, Northeast Region); James City County; The Colonial Williamsburg Foundation; Preservation Virginia; Scenic Virginia; The National Trust for Historic Preservation; Christian & Barton, LLP (on behalf of BASF Corp); James River Association; United States Department of Interior (National Park Service, American Battlefield Protection Program); First California Company Jamestowne Society; Delaware Tribe of Indians; Chickahominy Tribe; Council of Virginia Archaeologists; Margaret Nelson Fowler; and the Pamunkey Indian Tribe.
- c. The term "enhancement" shall mean an increase or improvement in quality, value, or extent.

- d. The term “Invited ~~Signatory Party~~ Signatory” shall mean Dominion.
- e. The term “Participating Consulting Party” shall mean Concurring Parties and each Consulting Party, whether or not such party ~~executes signs~~ the MOA as a Concurring Party, ~~that requests to remain involved, by providing input to the Corps at the times identified herein and at such times as the Corps in its discretion requests Participating Party input, with implementation of this MOA.~~
- f. The term “Signatory Parties” shall mean the Corps, SHPO, and ACHP.
- g. The phrase “Limited Construction Within the James River” shall only mean construction activities within the James River associated with tower foundations and fender protection systems, This term does not include the construction of any steel lattice transmission towers atop the foundations.
- h. The phrase “Construction Above the James River” shall mean any remaining construction activities atop the foundations within the James River described above in Stipulation XVII.g.
- i. The term “Project Narrative” shall mean a document that identifies specific projects, lists tasks necessary to execute each project, provides a timeline for accomplishment of each project and describes how each project enhances the historic value of the resource. A Project Narrative is not a detailed engineering plan and need not include drawings or other technical information.

Comment [ACHP-JTE70]: Does this term have the definition as provides at 36 C.F.R. § 800.6(c)(2)? Clarify.

Comment [ACHP-JTE71]: The term “Participating Party” adds unnecessary confusion to the agreement document. Corps needs to use the terminology set forth in and defined in the Section 106 regulations. Note comment below, that Concurring Parties do not execute an MOA or PA. They merely sign to indicate their concurrence with the agreement. Consulting parties who do not concur and those who do concur have no rights to terminate or amend the agreement. They are not signatories. They should be allowed to review and comment on all draft plans, treatments, projects, reports, etc., but they do not approve those drafts, just comment.

Comment [ACHP-JTE72]: Concurring parties do not execute an MOA, they only sign indicating their concurrence.

Comment [ACHP-JTE73]: Does Dominion have the right to terminate. Does Signatory Parties include Invited Signatories? Both “Signatories” and “Signatory Parties” are used in the MOA. If we use the terminology as defined in 36 CFR 800, there will be no confusion.

XVIII ~~ENFORCEMENT AND CONTRACT RIGHTS~~

~~The terms of this MOA may only be enforced by the Corps, ACHP, and SHPO. The Concurring Parties, Participating Parties, and cooperative management entities referenced in this MOA are third parties and are not Signatory Parties as set forth in 36 C.F.R. § 800.6(c)(1), and are not an Invited Signatory Party under 36 C.F.R. § 800.6(c)(2), and instead are parties whose input has been invited as part of the administration of this MOA, as well as invited to concur in the MOA. These third parties have not been provided, and do not have, any rights hereunder, including the right to enforce the agreement. Signatory and Invited Signatory Parties otherwise have the rights afforded to them under 36 C.F.R. part 800.~~

Status of non-Signatory Parties

The Concurring Parties, Consulting Parties, and cooperative management entities referenced in this MOA are not Signatory Parties as set forth in 36 C.F.R. § 800.6(c)(1), and are not Invited Signatories under 36 C.F.R. § 800.6(c)(2), and instead are parties who have been

Comment [ACHP-JTE74]: Delete and replace with the following.

Comment [ACHP-JTE75]: Make this Stipulation XVIII per discussion among ACHP OGC, Dominion lawyers, and Corps

March 17, 2017

consulted in the negotiation of this MOA, as well as invited to concur in the MOA.”

Add separate Stipulation that states: Corps will make compliance with the terms of this MOA a condition of any permits issued for the referenced undertaking.

Comment [ACHP-JTE76]: If stipulation is added here, there will be less need for change in earlier numbering of stipulations.

XIX EXECUTION OF MOA

- 1** This MOA may be executed in counterparts, with a separate page for each ~~Signatory Party~~ Signatory 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.
- 2** 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.

Comment [ACHP-JTE77]: Check recodification of NHPA

March 17, 2017

INVITED SIGNATORY PARTIES:

DOMINION

By: _____ Date: _____
Robert M. Blue
President, Dominion Virginia Power

Formatted: Space After: 12 pt

Formatted: Space After: 12 pt, Don't add space between paragraphs of the same style

Comment [ACHP-JTE78]: Move down below Signatories.

SIGNATORY PARTIES/SIGNATORIES:

NORFOLK DISTRICT, U. S. ARMY CORPS OF ENGINEERS

By: _____ Date: _____
William T. Walker
Chief, Regulatory Branch

Comment [ACHP-JTE79]: Per the MOA, these should be separate pages; Signatories usually listed before invited signatories.

VIRGINIA STATE HISTORIC PRESERVATION OFFICER

By: _____ Date: _____
Julie V. Langan
Director, Virginia Department of Historic Resources

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____ Date: _____
John M. Fowler
Executive Director, Advisory Council on Historic Preservation

INVITED SIGNATORIES

Formatted: Font: Bold

Department of Natural Resources, Commonwealth of Virginia

By: _____ Date: _____
Molly Joseph Ward
Secretary of Natural Resources, Commonwealth of Virginia

DOMINION

By: _____ Date: _____
Robert M. Blue
President, Dominion Virginia Power

March 17, 2017

CONCURRING PARTY:

NATIONAL PARKS CONSERVATION ASSOCIATION

By: _____ Date: _____

March 17, 2017

CONCURRING PARTY:

SAVE THE JAMES ALLIANCE

By: _____ Date: _____

March 17, 2017

CONCURRING PARTY:

CHESAPEAKE CONSERVANCY

By: _____ Date: _____

March 17, 2017

CONCURRING PARTY:

UNITED STATES DEPARTMENT OF INTERIOR (NATIONAL PARK SERVICE,
COLONIAL NATIONAL HISTORIC PARK)

By: _____ Date: _____

March 17, 2017

CONCURRING PARTY:

UNITED STATES DEPARTMENT OF INTERIOR (NATIONAL PARK SERVICE,
NORTHEAST REGION)

By: _____ Date: _____

March 17, 2017

CONCURRING PARTY:

JAMES CITY COUNTY

By: _____ Date: _____

March 17, 2017

CONCURRING PARTY:

THE COLONIAL WILLIAMSBURG FOUNDATION

By: _____ Date: _____

March 17, 2017

CONCURRING PARTY:

PRESERVATION VIRGINIA

By: _____ Date: _____

March 17, 2017

CONCURRING PARTY:

SCENIC VIRGINIA

By: _____ Date: _____

March 17, 2017

CONCURRING PARTY:

NATIONAL TRUST FOR HISTORIC PRESERVATION

By: _____ Date: _____

March 17, 2017

CONCURRING PARTY:

CHRISTIAN & BARTON, LLP (ON BEHALF OF BASF CORP)

By: _____ Date: _____

March 17, 2017

CONCURRING PARTY:

JAMES RIVER ASSOCIATION

By: _____ Date: _____

March 17, 2017

CONCURRING PARTY:

UNITED STATES DEPARTMENT OF INTERIOR (NATIONAL PARK SERVICE,
AMERICAN BATTLEFIELD PROTECTION PROGRAM)

By: _____ Date: _____

March 17, 2017

CONCURRING PARTY:

FIRST CALIFORNIA COMPANY JAMESTOWNE SOCIETY

By: _____ Date: _____

March 17, 2017

CONCURRING PARTY:

DELAWARE TRIBE OF INDIANS

By: _____ Date: _____

March 17, 2017

CONCURRING PARTY:

CHICKAHOMINY TRIBE

By: _____ Date: _____

March 17, 2017

CONCURRING PARTY:

COUNCIL OF VIRGINIA ARCHAEOLOGISTS

By: _____ Date: _____

March 17, 2017

CONCURRING PARTY:

MARGARET NELSON FOWLER

By: _____ Date: _____

March 17, 2017

CONCURRING PARTY:

PAMUNKEY INDIAN TRIBE

By: _____ Date: _____