



Preserving America's Heritage

US Army Corps of Engineers
Norfolk District Regulatory Office
Received by: RLS
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May 2, 2017

Colonel Jason Kelly
Commander and District Engineer
Norfolk District, U.S. Army Corps of Engineers
803 Front Street
Norfolk, VA 23510-1011

Ref: Executed Memorandum of Agreement
Dominion Surry Skiffes Creek Whealton Transmission Project
James City County, Virginia

Dear Colonel Kelly:

Enclosed is the Advisory Council on Historic Preservation's (ACHP) original signature page for the final Memorandum of Agreement (MOA) for the referenced undertaking. By carrying out the terms of the Agreement, the Corps will fulfill its responsibilities under Section 106 of the National Historic Preservation Act and the Section 106 implementing regulations, "Protection of Historic Properties" (36 C.F.R. Part 800). We recommend you provide a copy of the fully executed Agreement to the Virginia State Historic Preservation Officer (SHPO) and the other signatories and consulting parties for their records.

While execution of the MOA formally concludes the Section 106 process for this project, the ACHP also is providing comments pursuant to 36 C.F.R. § 800.7(b) to Mr. Douglas Lamont, Acting Assistant Secretary of the Army for Civil Works, and to you, in order to address concerns about the conduct of the Section 106 review regarding the treatment of effects on historic properties of transcendent national significance. The ACHP's comments are intended to highlight issues encountered in this case related to the planning and review of large infrastructure projects that can impede the ability of project proponents, federal agencies, and consulting parties to effectively consider alternatives that would avoid and minimize adverse effects to historic properties.

We thank you and your staff for working with the ACHP in this complex and challenging consultation and for your efforts to address the concerns raised by the consulting parties. As you know, the majority of consulting parties believe the adverse effects of this undertaking on the nationally significant historic properties cannot be appropriately mitigated. The ACHP is not unsympathetic to these concerns but has signed the MOA because it does include commitments to carry out extensive mitigation projects to address the project's effects and enhance long-term protections of historic properties and the river corridor that may help to prevent the siting of similar projects in this region. It is our hope that the studies and projects required by the MOA will limit long term and cumulative effects and ultimately lead to the reversal of the direct and indirect effects by replacing the overhead transmission line with a buried line under the James River.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

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The studies and projects proposed in the MOA should be managed in a reasoned and strategic way to maximize their effectiveness. The engagement of the preservation community, especially the National Park Service, is critical to achieving this goal. The degree to which the proposed mitigation projects can actually resolve the adverse effects to the concentration of nationally significant historic properties will depend on the effectiveness of the post-agreement negotiations that are necessary to flesh out the details. To that end, the ACHP looks forward to working with the Corps, Dominion, the Virginia SHPO, and the consulting parties to help ensure implementation of the MOA.

It is abundantly clear that the purpose and need of the proposed undertaking is linked to Dominion's intention to retire two of three power plants at its Yorktown facility in order to comply with the requirements of the Mercury Air Toxics Standard (MATS), promulgated by the Environmental Protection Agency (EPA) in 2012. We are aware that EPA has recently stated its intention to review the MATS rule consistent with President Trump's Executive Order No. 13783, 82 Fed. Reg. 16,093 (March 28, 2017). We also are aware of a court challenge to a supplemental agency finding made by EPA regarding the MATS rule in April 2016. It is unclear how the current court proceeding and the federal agency review prompted by Executive Order No. 13783 will affect Dominion's obligation to comply with MATS and the purpose and need of this undertaking. As the Corps proceeds to finalize its consideration of Dominion's permit application, we request that it clarify to all consulting parties how changes to the purpose and need of the undertaking which might result from a revision to the MATS rule would be factored into the Corps decision on whether to issue the permit or implement the MOA.

If you have questions or concerns, please contact Charlene Dwin Vaughn, AICP, at (202) 517-0207, or via 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

Enclosures