



Preserving America's Heritage

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

Ref: Revised Draft Memorandum of Agreement for *Proposed Dominion Power
Surry-Skiffes Ck-Wheaton Transmission Line Project
Corps Permit Application NAO-2012-00080 / 13-V0408 (James River)
James City County, Virginia*

Dear Colonel Kelly:

The Advisory Council on Historic Preservation (ACHP) has reviewed the revised draft Memorandum of Agreement (MOA) provided by the Corps of Engineers, Norfolk District (Corps) on December 12, 2016. The revised draft MOA was developed by the Corps and the project proponent, Virginia Electric and Power Company / Dominion Virginia Power (Dominion) as part of the Corps' compliance with Section 106 (54 U.S.C. § 306108) of the National Historic Preservation Act (NHPA) (54 U.S.C. § 300101 et seq.) and its implementing regulations, "Protection of Historic Properties" (36 C.F.R. part 800). We also acknowledge receipt of an updated "Response To Comments Made By The Consulting Parties" (comment matrix) and "Basis for Proposed Memorandum of Agreement to Resolve Adverse Effects to Historic Properties" (context). We are providing general comments on the revised MOA per your request. As our comments demonstrate, we note that major issues that are central to the Section 106 consultation remain unresolved. These issues include the sufficiency of the alternatives analysis and the ability of Dominion and the Corps to adequately resolve adverse effects to the collection of significant historic properties located within the project's area of potential effects (APE).

We appreciate that the current draft MOA was revised to respond to many of the comments submitted by consulting parties, including the ACHP. The MOA established a funding package to support the resolution of the adverse effects to the concentration of highly significant historic properties in the APE, focusing on issues of concern to the consulting parties including: (1) effects to the context and setting of significant historic properties; (2) degradation of visitor experience; (3) reversal of long-term efforts to preserve the significant historic properties; (4) cumulative effects resulting from implementation of this undertaking.

We have suggested previously that the Section 106 agreement document that is appropriate for this undertaking and consistent with Section 800.14(b)(iii) of our regulations, "Protection of Historic Properties" (36 CFR Part 800) is a Programmatic Agreement (PA). It is evident that the applicant will assume the primary responsibility for implementing the terms of the draft MOA, including the future

development of protocols and activities for the enhancement and protection of the affected historic properties and their context and setting. We acknowledge that the protocols for development, review, and approval of projects, plans, and reports have been clarified to a limited extent. However, many of the projects are still vague and will require input from the SHPO and the consulting parties, many who are knowledgeable about the preservation and promotion of historic properties in the APE.

Overall, the MOA presents a reasonably well-focused resolution package targeted at compensating for the way the undertaking challenges the ability of visitors to experience the characteristics that help convey the significance of the historic properties in the APE. We want to stress the fundamental importance of ensuring that consulting parties are involved in the development of the projects set forth in the MOA, as well as the review of studies, reports, and other components that result. The MOA should use the terminology for signatories, invited signatories, and consulting parties as specified in the Section 106 regulations to avoid confusion and to help all parties understand their status and rights within the MOA. Further, all consulting parties should have the opportunity to review and comment throughout all aspects of the steps set forth in the MOA. Likewise, consulting parties should have the opportunity to raise objections to the Corps regarding post agreement actions carried out under the terms of the MOA including dispute resolutions.

As you know, the consulting parties, including the National Park Service (NPS) which manages a number of historic park properties in the project's APE, have continued to question whether it is possible to adequately mitigate the adverse effects resulting from the preferred alternative. The unique set of historic properties affected by the undertaking are associated with events and periods that are fundamentally linked with the founding of the nation, including: the beginnings of European settlement in North America; competition between European colonists and Native Americans for the land and resources; the ultimate disruption and curtailment of Native American lifeways; the transportation of African slaves to North America and establishment of an economy and culture inextricably linked with dependence on slave labor; the Revolutionary War; and the Civil War. For nearly a century, the historic resources that will be affected by the undertaking have been the focus of funding and initiatives intended to preserve and reinforce the properties and their setting and context, establishing a place apart for generations of Americans to experience, contemplate, and celebrate. The preferred alternative, placement of a towering transmission line across the James River adjacent to Jamestown Island and within view of historic properties like Carters Grove National Historic Landmark (NHL) and the Colonial National Parkway, is the antithesis of that preservation and conservation work. Despite the mitigation projects proposed by Dominion in the draft MOA that are intended to aid in the preservation of many of the historic properties, it is apparent that the transmission line will irreparably alter the historic setting and context.

In addition to questions about the adequacy and appropriateness of the proposals to mitigate the adverse effect, we still believe that the consideration of alternatives to achieve the purpose and need of this undertaking is unresolved. It should be noted that neither the ACHP nor any of the consulting parties dispute the importance of insuring a reliable energy supply. Affordable, sustainable, and reliable energy is of fundamental importance. However, it does not appear that Dominion has adequately considered the effects to the unique and highly significant concentration of historic properties in the APE when developing the preferred alternative. Dominion appears to have focused on developing an economically viable project to supply reliable electrical supply to the North Hampton Roads Load Area, in a manner that will meet the North American Electric Reliability Corporation (NERC) standards. Further, Dominion intends to utilize unused capacity at the Surrey Nuclear Power Plant as well as to achieve compliance with the Mercury Air Toxics Standard (MATS) ruling promulgated by the Environmental Protection Agency (EPA), which requires closure or upgrade of older, coal based power units at the Yorktown Power Station. The project planning did not adequately consider the effects to these very special historic properties in the APE for the undertaking. While the Commonwealth of Virginia State Corporation Commission (SCC) review and approval of the project did include consideration of effects to historic properties, it did not occur at the level required by the Section 106 review process and or for an area of national significance to the American people.

The studies sponsored by several of the consulting parties have challenged the justification for selection of the preferred alternative. Ultimately it is the Corps responsibility to make an informed decision about the sufficiency of the alternatives analysis provided by Dominion. However, should the Corps approve this project as proposed, the mitigation package will fall short in its attempt to protect historic properties and their setting and enhance visitor education and experience.

The ACHP looks forward to reviewing the comments of the other consulting parties and evaluating their position regarding the issues we have articulated. We also look forward to participating in the conference call scheduled for January 19, 2017. In moving forward, the Corps should consider our transition to the new administration as an opportunity to reexamine the timelines associated with MATS compliance. This may relax the time pressure which is preventing consideration of more creative but feasible alternatives, and also enable the Corps to develop a Draft Environmental Impact Statement (DEIS) as recommended by consulting parties when the Section 106 consultation for the transmission line was formally initiated.

Should you have any questions or wish to discuss this matter further, please contact me at cvaughn@achp.gov, or John T. Eddins, PhD at jeddins@achp.gov.

Sincerely,

A handwritten signature in cursive script that reads "Charlene Dwin Vaughn". The signature is written in black ink and is positioned above the typed name.

Charlene Dwin Vaughn, AICP
Assistant Director
Federal Permitting, Licensing, and Assistance Section
Office of Federal Agency Programs