

**DOMINION VIRGINIA POWER
 RESPONSE TO COMMENTS MADE BY THE CONSULTING PARTIES
 CONCERNING THE REVISED DRAFT MEMORANDUM OF AGREEMENT COORDINATED DECEMBER 7, 2016**

March 1, 2017

Comments in Support of Revised MOA			
General Response: In many of the comment letters received on the 12-7-16 Revised Draft MOA (“Revised MOA”), the commenter recommended changes made to the Revised MOA in response to comments. This table reflects those acknowledgments.			
<u>No.</u>	<u>Commenter</u>	<u>Comment</u>	<u>Response</u>
1	Preservation Virginia (1), Chesapeake Conservancy (1), National Trust for Historic Preservation (1) ¹	Appreciates that there is an option to participate as a “participating party” for consulting parties that do not concur in the MOA.	Comment acknowledged.
2	Preservation Virginia (1), Chesapeake Conservancy (1)	Appreciates the deletion of some Whereas clauses.	Comment acknowledged. The removed Whereas clauses have been deleted from the Revised MOA not because they are inaccurate, but because they were unnecessary for purposes of the MOA.
3	Preservation Virginia (1), Chesapeake Conservancy (1), National Trust for Historic Preservation (2)	Appreciates removal of Dominion references on interpretive signage and other mitigation projects.	Comment acknowledged.
4	ACHP (1)	Revised MOA establishes a funding package to support resolution of adverse effects to the highly significant historic properties in the APE, focusing	Comment acknowledged.

¹ The number in parentheses following the commenter’s name refers to the page number of the commenter’s comment letter submitted regarding the Revised MOA. For most commenters, that means their comment letter dated January 11, 2017.

Comments in Support of Revised MOA			
		on (1) effects to the context and setting, (2) degradation of visitor experience, (3) past preservation efforts, and (4) cumulative effects.	
5	ACHP (2)	Overall, MOA presents a well-focused resolution package to compensate for impacts to visitor experience.	Comment acknowledged.
6	Chesapeake Conservancy (1)	Appreciates thoughtful time frames, detailed uses for mitigation funds.	Comment acknowledged.

Issue Category 1 – 106 Process / Section 110(f) Compliance

General Response: Comments in this category raise specific issues that are best addressed individually, rather than with a general response as used in the majority of the Issue Categories. The specific comments and responses are listed below.

<u>No.</u>	<u>Commenter</u>	<u>Comment</u>	<u>Response</u>
1	Preservation Virginia (1), Save the James Alliance (2), Scenic Virginia (2), National Parks Conservation Association (1)	The Corps needs to respond to December 9, 2016, letter from Frank Hayes outlining outstanding issues, including process-related issues, before moving the process forward. Otherwise, incorporates prior comments regarding process deficiencies.	The Corps has received comments on and/or actively addressed all of the issues presented in the National Park Service’s (“NPS”) 12-9-16 letter. A separate response to NPS’ 1-12-17 letter is attached, which also incorporates responses to NPS’ 12-9-16 letter. In each case, the Corps has indicated when it desires additional information from Dominion or other party to ensure it has a complete and robust record to allow it to address each issue. As the Corps has indicated repeatedly, it has not made a final decision on the permit, or any issue. Instead, consistent with its obligations, it has engaged the public, the consulting parties, experts, and expert agencies, to inform its decision making. The Corps has also indicated when it has reached milestones in the ACHP regulations, <i>e.g.</i> , identification of historic properties, adversely affected historic properties and effects. Contrary to NPS’ demand in the 12-9-16 letter, the Corps has no obligation to respond to any consulting party on a point-by-point basis. Contrary to the comment, the Corps need not halt the process regarding the Revised MOA in order to respond to one consulting party. Previous comments that have been incorporated have been considered and/or addressed as they were raised.
2	ACHP (1)	Major issues central to the Section 106 consultation remain	As set out in numerous places in the record, the Corps has fully complied with the Section 106 process, and

Issue Category 1 – 106 Process / Section 110(f) Compliance			
		unresolved. It believes the historic properties at issue in the APE are important.	has provided additional process and opportunities for consultation than the Section 106 regulations require. <i>See, e.g.,</i> Dominion, Response to Comments on 6-13-16 MOA at 52, 75-76, and the record materials cited therein. ACHP does not provide any additional issues regarding the Section 106 process that have not already been addressed in previous responses to comments. No one disagrees that historic properties in APE are important.
3	National Trust for Historic Preservation (6-7)	Failed to meet higher standard of care established by NHPA §110(f) for National Historic Landmarks because the Corps failed to prepare an EIS, failed to respond to TCR Report, failed to require Dominion to respond to TCR’s power flow data request. Removing the relevant Whereas clause does equate to compliance with § 110(f).	<p>Section 110(f) creates obligations under the NHPA and not NEPA. As such, Section 110(f) does not compel an EIS to ensure compliance with it (even NEPA does not compel an EIS in most all circumstances). As such, the Corps’ decisions and preparation of specific documents under NEPA are not compelled by its compliance with Section 110(f). Further, the Whereas clause regarding § 110(f) was removed in the Revised MOA because, although accurate, it was unnecessary for purposes of the MOA.</p> <p>The statute requires that the Corps provide ACHP with a reasonable opportunity to comment regarding the undertaking, and to take actions to prevent direct impacts to the landmark to the maximum extent possible. The record here reveals that the Corps timely notified ACHP (and all other parties) about the Project and Carter’s Grove and that ACHP has been intimately involved in commenting on the undertaking since April of 2015, and continues to be. The Corps has met the requirements of 110(f). The language of Section 110(f) is clear. It applies only to a “Federal undertaking which may <i>directly and adversely</i> affect</p>

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			<p>any National Historic Landmark.” (Emphasis added). The Project’s proposed route was designed to avoid any direct effect on Carter’s Grove, and there in fact will be no ground disturbing or physical effects to the resource’s character defining assets. At its closest point, the Project is 1.49 miles away from the shore of the James River at Carter’s Grove.</p> <p>To the extent the distinction between direct and indirect effects is not supported by the statute, as set forth in Dominion’s letter to the Corps (June 28, 2016), the Corps has complied with the requirements of Section 110(f) and 36 C.F.R. § 800.10 and taken actions, to the maximum extent possible, to minimize harm to Carter’s Grove; the visual adverse effects will be mitigated by landscape and viewshed enhancement projects and shoreline protection activities. <i>See</i> Context Document; Response to MOA Comments (12-9-16), Issue Category 1, Comment 30, page 15, and Issue Category 13.</p> <p>Regarding the TCR Report (or Tabors Report), data requests, and alternatives generally, the record makes clear that the Corps has engaged vigorously with all parties on these issues (and has not denied a request to discuss or take comments on these issues). <i>See</i> general response to Category 2 for summary of responses to Tabors Report. When the Corps believed it needed additional information or clarification about issues, it sought the information out until, presumably, it was satisfied. Taken together with all of the other actions to minimize harm to Carter’s Grove (including the mitigation in the Revised MOA) (see Dominion,</p>

Issue Category 1 – 106 Process / Section 110(f) Compliance			
			<p>Response to Comments on 6-13-16 MOA at 15 (Cmt. 30), 55-56 (Issue Cat. 13)), the actions described above demonstrate that the Corps' actions and planning meet the required standard in Section 110(f). In any event, and needless to say, Section 110(f) does not compel a response from the Corps or Dominion in any particular circumstance.</p>

Issue Category 2 – Purpose and Need/Alternatives

General Response: Commenters may disagree with the purpose and need of the project as well as the careful analysis of possible alternatives, but this does not make the Corps' determinations unreasonable or not in accordance with the law. Commenters continue to claim that the alternatives analysis and evaluation of purpose and need is unresolved and that additional technical review is needed. Yet, again, the commenters provide no explanation or suggestion as to why the work that has been done is inadequate, what additional technical review is needed, or what additional alternatives need to be evaluated. To the extent commenters have suggested alternatives, those have been evaluated and their flaws identified. As summarized in Dominion's Response to Comments on 6-13-16 MOA at 17, 29-30, 46-50, the Project and alternatives thereto have been the subject of significant and continued expert review before both the Virginia State Corporation Commission ("SCC"), PJM, and the Corps. This review evaluated an exhaustive list of alternatives. Based on its review to date, the Corps has confirmed the purpose and need and identified two alternatives that meet the Project's purpose and need, and otherwise are reasonable and practicable (the Project and the Chickahominy route). *Id.* There is no purpose in evaluating alternatives that fail to meet the Project purpose and need. The comments provided give the Corps no reason to change course. Time is of the essence as the Northern Hampton Roads Load Area ("NHRLA") will be at risk of rolling blackouts when Yorktown Units 1 and 2 are no longer operable. Even if the permit were issued today, the Project cannot be constructed in time to avoid that risk.

On November 17, 2016, following a comprehensive review of the four alternatives by Dominion's transmission planning experts, Dominion provided a response ("Dominion Tabors Response"). That letter demonstrates that, contrary to NTHP/Tabors' claims, none of the proffered alternatives resolved all of the projected NERC violations (*i.e.*, none were NERC-compliant). Further, the letter also demonstrates that, even assuming the alternatives were NERC-compliant, the alternatives are neither reasonable nor practicable because they are prohibitively expensive and take far too long to permit and construct. In light of this, NTHP is incorrect to suggest that issues are unresolved or that the Corps' alternatives analysis is deficient. NTHP and Tabors responded to the Dominion Tabors Response by letter dated December 9, 2016, in which Tabors allegedly reconfirm its conclusions and requests, yet again, additional information from Dominion. As discussed above in the responses in Issue Category 1, the Corps has indicated when it desires additional information from Dominion or other parties to ensure it has a complete and robust record to allow it to address each issue. As noted above, since Dominion provided its Dominion Tabors Response, the Corps has not requested any additional information or clarification from Dominion, and, as set forth in Dominion's recent letter to the Corps regarding NTHP/Tabors' December 9th letter, nothing further is needed. Letter from S. Miller, Dominion, to Col. J. Kelly, Corps (Feb. 2, 2017). The Corps did, however, inform Dominion that it was reviewing the response. In a January 3, 2017, letter to the Corps, PJM reconfirmed the need for the Project and that it is the most effective and efficient solution to the reliability criteria violations that will result on the retirement of Yorktown Units 1 and 2. Based on the forgoing, Dominion believes that the Corps is satisfied with the information it has been provided to make a reasonable determination regarding project alternatives.

Issue Category 2 – Purpose and Need/Alternatives			
<u>No.</u>	<u>Commenter</u>	<u>Comment</u>	<u>Response</u>
1	Preservation Virginia (1), Save the James Alliance (2), National Trust for Historic Preservation (2, 4-5), Scenic Virginia (2), National Parks Conservation Association (1), Council on Environmental Quality (1-2)	NTHP’s October 28, 2016 analysis provides four workable alternatives that should be considered through an EIS. The alternatives are viable, prudent, cost-effective options that can be completed within a reasonable timeframe. Corps needs to independently evaluate alternatives.	See general response to Issue Category 2. A specific response to the request for an EIS is in Issue Category 9.
2	ACHP (1-2), National Trust for Historic Preservation (2, 4), Chesapeake Conservancy (2), National Parks Conservation Association (1)	Consideration of alternatives to achieve the purpose and need of the project is unresolved. To date, there has not been a robust technical review of project alternatives.	See general response to Issue Category 2.
3	ACHP (3)	This transition to a new administration may be a good opportunity to re-examine MATS compliance and time pressures associated with it.	There has been no indication that the MATS rule will be repealed by the new administration and electric reliability in the NHRLA cannot be risked based on speculation about such future, potential actions. The Supreme Court and DC Circuit Court of appeals did not vacate or stay the effective date of the MATS rule and, thus, the deadlines imposed in the rule remain unchanged.

Issue Category 3 – Cumulative Effects

General Response: While the ACHP found that the Revised MOA establishes a funding package that supports the resolution of cumulative effects issues, other commenters again claim that the consideration of cumulative effects has been inadequate. These latter comments generally do not raise any new issues to which a response has not been given. NTHP continues to argue that the methodology used to consider cumulative effects of the Project is flawed and that the cumulative effects analysis in the CREA (and elsewhere) fails to look at reasonably foreseeable cumulative effects. Specifically, NTHP argues that the analysis fails to look at reasonably foreseeable future development as a result of the Project. As an example, NTHP states that the construction of the Skiffes Creek switching station makes the future construction of additional transmission lines to that station “highly likely,” not just reasonably foreseeable. NTHP’s reasoning is that Project is proposed to be “built in its current location because it is connecting the existing substations located at the Surry Nuclear Power Station and Whealton. If either the Surry or Whealton station did not exist, it is possible that this Project would never have been proposed in its current form.” NTHP Cmt. Ltr. at 6. From this, NTHP concludes: “It is clear that if the Project is permitted and a new substation is constructed at Skiffes Creek, future transmission planning will include the new station, and the mere existence of a Skiffes Creek station will tend to result in construction of additional transmission projects.” *Id.* NTHP is incorrect.

The proposed location of the Project was based, not on the location of existing substations, but on Dominion’s obligation to provide a reliable source of power to the NHRLA. As the Corps’ Preliminary Alternatives Conclusions White Paper (Oct. 1, 2015) demonstrates, among countless other record documents, with the loss of generation of power at Yorktown, Dominion was faced with either developing new generation in the NHRLA, or transporting power generated elsewhere to the NHRLA. While numerous alternatives were considered, the only alternatives that provided a timely, long-term, practicable, adequate power source for the NHRLA were those that connected the NHRLA to Dominion’s 500 kV system. As such, it is not the location of substations, but the location of Dominion’s existing 500 kV infrastructure (of which Surry Nuclear Power Plant is a part) that ultimately determined the possible locations for the transmission line as it came into the NHRLA (either across the James River or down along the Chickahominy alternative’s route).

But even if NTHP was correct, the fact that the mere existence of a substation might “tend to result in construction of additional transmission projects,” as NTHP posits, does not make any particular, future and as yet unplanned transmission project “reasonably foreseeable,” which is the touchstone for the inquiry. As Dominion set out in its Response to Comments submitted by Consulting Parties concerning the Surry-Skiffes Creek-Whealton Project at 33-35 (December 18, 2015), actions that are reasonably foreseeable are those that are sufficiently likely to occur. Case law on this issue confirms that in order to determine whether an action is sufficiently likely to occur, it must be far enough along in the planning process to provide the indication to a person of ordinary prudence that the project’s completion is more likely than not. As such, courts have rejected arguments (just like NTHP’s here) that

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an agency's cumulative effects analysis was faulty because it failed to consider the mere possibility that a currently planned project may someday be expanded or spawn additional projects where there was no evidence that any such expansions or additional projects were even in contemplation, let alone sufficiently likely to be completed. *Id.* Performing cumulative effects analyses is not an exercise in what an action agency can imagine might happen, or in the hypothetical. Including speculative or hypothetical actions in the analysis does not inform whether a historic property is adversely affected under 36 C.F.R. § 800.5. It also does not inform whether there are cumulative impacts under NEPA that rise to level of significance (either alone or when combined with direct and indirect impacts). Thus, it does not serve either of NEPA's twin goals of public participation and informed decision making. NTHP has not identified any reasonably foreseeable future transmission line projects that would connect to the proposed Skiffes Creek Substation, or otherwise. Thus, its position is simply speculation, which must be disregarded.

Commenters also focus on cumulative effects related to the Project's impact on the tourism economy of the Williamsburg-Yorktown-Jamestown Historic Triangle. As discussed in Dominion's Response to Comments submitted by Consulting Parties concerning the Surry-Skiffes Creek-Wheaton Project at 28-29, 41-42 (December 18, 2015), the overwhelming economic impact related to the Project is the adverse impact on the economy if the Project is not completed. Regarding economic effects on tourism, initially, it is worth noting that such effects are not within the scope of analysis under the NHPA process, as that process is focused on identifying and resolving adverse effects on historic properties. The comment is relevant, however, to the Corps' NEPA analysis. During the SCC process, the Virginia SCC evaluated this issue and found that the Project will not have any negative effects on tourism, and in fact will have a beneficial economic impact. SCC, Order at 52-53 (Nov. 26, 2013). Because the Project will not have negative economic effects, there are no negative effects from past, present, or reasonably foreseeable future actions with which such effects could accumulate. That is, there are no such cumulative effects.

Further, record evidence demonstrates that tourism has not been negatively affected by the current level of development in the area. The inverse is true. Dominion, Assessment of Potential Impacts on Heritage Tourism at 3-5 (June 10, 2016) ("Heritage Tourism") (the number of tourists to the area grew and continued to grow when, for example, the Surry Nuclear Power Plant was constructed across the river from Jamestown Island and the Colonial Parkway, and directly adjacent to Hog Island. The same is true during the time the BASF chemical facility was constructed and began operation). While there have been variations in tourist numbers over the years, and thus, likely corresponding impacts to heritage tourism, the record information shows that those variations are caused more by weather and economic recessions, rather than any modern development. *Id.* Even this conclusion, however, does not hold perfectly. Since 1994, annual visitation to the historic properties in the area has remained constant between 3,122,557 and 3,459,965 visitors. *Id.* This period includes the significant recession of 2007/2008. It also includes a large, heavily promoted celebration of the 400th anniversary of the Jamestown Settlement in 2007, known as "Jamestown 2007." *Id.* Instead of large events or development impacting tourism, the monthly visitation data from 1979 to the present reveals that, year in and year out, visitation increases in late

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spring and is highest in the summer months, and declines in early fall. And, while this seasonal variation results in monthly volumetric changes, the annual visitation data nevertheless remains consistent with the numbers discussed above. *Id.* Even assuming a 5% decline in visitation due to the Project, which is an assumption the NPS used to attempt to evaluate economic impacts related to a decline in visitation at another project, that number would be within the average annual variations seen since 1994, and thus be imperceptible economically speaking. *Id.*

Those conclusions make sense in light of record evidence that heritage tourism has a symbiotic relationship with modern development, and is dependent upon the provision of reliable services, including electricity, for its existence, let alone its success. *Id.* at 1-2. Information from NTHP demonstrates the importance of this relationship, and the expectations of heritage tourists—that they expect modern hotels, restaurants, and amenities nearby historic properties, as well as the infrastructure necessary for that modernity. *Id.* Along similar lines, the NPS recently decided to allow cell phone towers and high-speed fiber optic cable to be placed in some of its national parks because of visitors expectations to be able to stay connected to the digital world while visiting the more natural world. Greenwire, NPS@100: National Parks: Instagram nirvana or digital detox? (July 5, 2016) (“The Park Service is pushing to enhance cell and internet connectivity at hundreds of sites across the country, hoping to cater to younger visitors and an increasingly wired society.”). This information supports the conclusion that modern development that meets the expectations of visitors, be it in the distance in support of hotels, restaurants, or amenities, or directly in the park one is visiting, does not deter visitation. Instead, quite the opposite is true. The constant visitation numbers NPS has collected since 1994 bear this out for the area when one considers the high density of modern amenities in that area, Heritage Tourism at 6, all of which require electricity.

Further informing this issue is the fact that the historic properties potentially impacted by the Project and the heritage tourism at issue here is contained within the larger Historic Triangle which contains numerous other historic properties and sites, as well as a number of non-historic related tourist destinations. Record evidence shows that this larger area generates approximately \$1.15 billion annually in tourism-related revenue. *Id.* at 6. The NPS estimates that in 2015, 3,343,909 people visited Colonial National Historic Park and this accounted for \$191,476,400 in gross economic activity associated with park visitor spending in the local/regional area. Dominion, Correlating the Scope of the Proposed Compensatory Mitigation to the Adverse Impacts and/or Value of Impacted Resources at 13 (Sept. 16, 2016) (“Mitigation Correlation”). While these are not apples-to-apples comparisons, this information demonstrates that only approximately 17% of the local tourism economy appears to be connected to historic properties and areas at issue with respect to the Project. *Id.* When combined with the information above regarding any lack of correlation between modern development and declines in heritage tourism, it supports the conclusion any negative impact on heritage tourism from the Proposed Alternative would be imperceptible, if there was any at all.

Instead, the impact of the project, and any cumulative effect it has with existing development, will be beneficial to tourism and the

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local economy. That is the conclusion reached by the Virginia SCC. The Project would provide a reliable source of power to the NHRLA and permit the residents, businesses (including the robust tourism industry), critical defense installations, and public services to continue to function in their personal and professional lives as they do today. That has a substantial and critical beneficial economic and social impact. Heritage Tourism at 7. As stated at the public hearing by Mr. Robert Coleman, Vice Mayor of Newport News City Council (Public Hearing Tr. Pg. 56), and Mr. Ross A Mugler, Commissioner of Revenue for the City of Hampton (see Public Hearing Tr. Pg. 88), the Project is needed to attract and retain businesses in the Peninsula. Not having reliable electricity would damage the economy of the area as a business destination. Businesses that would be affected include military, Federal, civilian, and national security installations. The same logic applies to hotels and restaurants. Without them, there would be no tourism. The Project is necessary to maintain tourism, and thus, benefits it.

Cumulative effects have been properly considered, including related to issues such as visitor experience, tourism and economic activity. Dominion’s Response to Comments submitted by Consulting Parties concerning the Surry-Skiffes Creek-Whealton Project at 30-37 (December 18, 2015); Dominion’s Response to Comments on 6-13-16 MOA at 39-41 (the Corps believes that the cumulative effects analysis has been performed properly and reasonably).

<u>No.</u>	<u>Commenter</u>	<u>Comment</u>	<u>Response</u>
1	Preservation Virginia (2), Save the James Alliance (2), National Trust for Historic Preservation (3), Scenic Virginia (2)	Consideration of cumulative effects has been inadequate, especially considering the project’s impact on the tourism economy of the Williamsburg-Yorktown-Jamestown Historic Triangle (EIS and socioeconomic impact study requested for concerns such as decreases in property value for the switching station).	See general responses to Issue Categories 3 & 9.
2	National Trust for Historic Preservation (2, 4-6)	Need to reconsider methodology used to consider cumulative effects of the Project. Dominion just restates justifications in the CREA and fails to look at	See general response to Issue Category 3.

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		reasonably foreseeable cumulative effects. It is highly likely that the mere existence of a Skiffes Creek station will result in construction of additional transmission projects.	
3	National Parks Conservation Association (2)	Requests a cumulative impacts study.	See general response to Issue Category 3.

Issue Category 4 – Mitigation Projects

General Response: Commenters previously have made these same comments. As set out in Dominion’s Response to Comments on 6-13-16 MOA at 24-26, the visual impacts analysis in the CREA establishes that setting, feeling, and to some minimal extent association, are the adversely affected aspects of the historic properties at issue. NPS’ past comments, for example, also make that point clear. See Dominion’s Response to Comments on 6-13-16 MOA at 62-71 (discussing impacts disagreements regarding setting and feeling, among other things); Dominion’s Response to Comments submitted by Consulting Parties concerning the Surry-Skiffes Creek-Wheaton Project at 22-23 (December 18, 2015).

The proposed mitigation directly addresses setting, feeling, and association by, among other things, providing enhancements to the physical nature of the historic properties, and to those areas surrounding the properties that help convey the properties’ historic character, and does so consistent with the consulting parties’ (particular NPS’) position that landscape scale consideration must be included. Dominion’s Response to Comments on 6-13-16 MOA at 19-20; *see also* ACHP comments (Issue Category 1, Comments 2 and 3, above praising the structure and mechanism to achieve its purpose). The Context Document and Dominion’s response to comments provide discussions of why the types and kinds of mitigation proposed enhance the historic properties’ adversely affected aspects of integrity and values and functions—that is the mitigation provides equivalent compensation through the enhancement of like values (ensuring a landscape scale approach) for the values of the historic properties that have been effected. Dominion’s Response to Comments on 6-13-16 MOA at 24-31. Further, the mitigation package does so on a scale that is correlated to the scale of the effects for the life of the Project, while provided a substantial amount of value added. *See* Mitigation Correlation; Dominion’s Response to Comments on 6-13-16 MOA at 33-34 (discussing durability of mitigation), 43-45 (discussing the mitigation methodology); Context Document at 5-6 (detailing the process of developing the mitigation in a that best addressed the consulting parties comments).

No.	Commenter	Comment	Response
1	Preservation Virginia (2), Save the James Alliance (2), ACHP (3)	Projects outlined are not reasonably related to the harm caused by this proposed project. If project approved as proposed, mitigation package will fall short in its attempt to protect historic properties and their setting and enhance visitor experience.	See general response in Issue Category 4.
2	Preservation Virginia (2), Save the James Alliance (2),	Mitigation Distribution Timeframes are too short for	The 30-day timeframes provided for parties review of draft project lists, draft Project Narratives, and the like

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	National Trust for Historic Preservation (3), Scenic Virginia (2)	agreeing on details of property access and project funding – need more than 30 days (at least 90).	in the MOA Stip. III.a.1.C, Stip. III.b.1.B, Stip. III.c.1.D, Stip.III.d.1.C, Stip.III.e.1.C., Stip.III.f..2, and Stip. III.g.1.D are set at 30 days to ensure mitigation projects are timely undertaken following the Corps’ approval of the Project. This will ensure that development and construction of the required mitigation projects will proceed, more or less, in lock-step with Dominion’s construction of the Project. Thus, while a 30-day review period may appear short, the agencies and participating parties have sufficient notice regarding the intended operation of the MOA, and are urged to plan accordingly so as to maximize their ability to participate effectively (to the extent they so choose).
3	Preservation Virginia (3), Save the James Alliance (2), National Trust for Historic Preservation (3)	Mitigation is weighted too much in favor of state-managed resources rather than historic resources directly impacted.	<p>Dominion disagrees with this comment. A brief review of the Stipulations shows that the mitigation projects are aimed directly at preserving and enhancing the historic properties at issue.</p> <ul style="list-style-type: none"> • Stip.I.a calls for the development and implementation of a Treatment Plan directly at Site 44JC0662. • Stip.I.b calls for the development and implementation of an Avoidance Plan related to underwater and archeological sites within the direct APE on the land and in the river, the vast amount of which is in the Historic District (along with the contributing feature CAJO Trail), a historic property at issue. • Stip.I.c calls for the development, installation,

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			<p>placement, and maintenance of interpretive signs designed to inform visitors to the area about the historic significance of the Historic District (including the CAJO), and the other thematically related historic properties at issue.</p> <ul style="list-style-type: none"> • Stip.1.d calls for the development of a HALS survey of the Historic District and the rest of the historic properties adversely effected. This work will provide educational, investigation, preservation, and interpretative benefits to all of the historic properties at issue. • Stip.1.e calls for the additional evaluation of tower coatings that reduce the visibility of the towers over the river above and beyond the visibility reduction achieved by standard weatherized galvanized steel coatings. This additional minimization work will benefit all of the historic properties. • Stip.II.a provides for the funding of funds that carry out the compensatory mitigation projects under Stipulation III, which as discussed below directly benefits all of the historic projects. • Stip.II.b calls for a heritage tourism and visitor experience study to better inform the mitigation work under the MOA and to develop a marketing and visitation program to enhance heritage tourism in the area, including at the historic properties at issue. Such visitation brings money to those properties,

Issue Category 4 – Mitigation Projects			
			<p>which benefits their long term preservation, among other things.</p> <ul style="list-style-type: none"> • Stip.III.a.1-5 calls for mitigation projects at Carter’s Grove. Such projects would directly benefit that historic property, and the Historic District in which it is located. If the owner of Carter’s Grove fails to cooperate, Stip.III.a.6-11 calls for mitigation projects at Chippokes Plantation State Park, also located in and adjacent to the Historic District, and directly across the river from Jamestown Island, Colonial Parkway, and (to a lesser extent) Hog Island (all historic properties). Enhancing the viewshed, historic character, and landscape at Chippokes enhances the setting, feeling, and association of these historic properties. While the first choice in the MOA is to perform projects at Carter’s Grove, the document recognizes that there are other ways to enhance the historic properties at issue, and it provides a mechanism to do so if one or more parties that own land in question do not want to cooperate. These benefits accrue regardless of the entity that manages/owns the property in question. • Stip.III.b.1-5 calls for mitigation projects at Colonial National Park. Such projects would directly benefit that historic property, and the Historic District in which it is located. If NPS fails to cooperate, Stip.III.b.6-11 calls for

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			<p>mitigation projects at Jamestowne Settlement, which is located on Jamestown Island (a historic property at issue). It also calls for the development of exhibits and interpretive programs at Fort Monroe to examine the convergence of three cultures directly related to the historical significance of the Historic District (and the other historic properties at issue). All of these projects directly benefit the historic properties at issue. While the first choice in the MOA is to perform projects at Colonial National Park, the document recognizes that there are other ways to enhance the historic properties at issue, and it provides a mechanism to do so if one or more parties that own land in question do not want to cooperate. These benefits accrue regardless of the entity that manages/owns the property in question.</p> <ul style="list-style-type: none"> • Stip.III.c.1-5 call for mitigation projects at Historic Jamestowne and Jamestown Island. Among the things, it calls for a CAJO Trail enhancement projects. Such projects would directly benefit these historic properties, and the Historic District in which they are located. If either NPS or Preservation Virginia fails to cooperate, Stip.III.c.6-11 directs Dominion to work with the Commonwealth to develop landscape and viewshed enhancement, shorelines projection, and other projects to enhance the CAJO Trail (which is a

Issue Category 4 – Mitigation Projects			
			<p>contributing property to the Historic District). All of the properties benefited here are historic properties. While the first choice in the MOA is to perform projects at Jamestown, the document recognizes that there are other ways to enhance the historic properties at issue, and it provides a mechanism to do so if one or more parties that own land in question do not want to cooperate. These benefits accrue regardless of the entity that manages/owns the property in question.</p> <ul style="list-style-type: none"> • Stip.III.d calls for the enhancement projects along the CAJO Trail, and land acquisition, and visitor interpretation and preservation projects associated with Werowocomoco and facilities at York River State Park nearby for the same purposes. Part of these projects will occur in the Historic District (and CAJO Trail) and directly enhance the historic properties at issue. Part of these projects will indirectly enhance the Historic District and all of the historic properties at issue by providing and preserving an undisturbed landscape evocative of the setting and feeling of the area during the time of Captain Smith’s exploration, and interaction with Native Americans. These benefits accrue regardless of the entity that manages/owns the property in question. • Stip.III.e calls for preservation and enhancement projects in the Historic District,

Issue Category 4 – Mitigation Projects			
			<p>and specifically including at Hog Island, and projects that enhance the water quality of the Historic District (and CAJO Trail). These projects directly enhance numerous historic properties at issue. These benefits accrue regardless of the entity that manages/owns the property in question.</p> <ul style="list-style-type: none"> • Stip.III.f. calls for water quality improvement to maintain the river as a character setting feature of the Historic District (and CAJO Trail). These projects will directly and indirectly enhance historic properties at issue. These benefits accrue regardless of the entity that manages/owns the property in question. • Stip.III.g calls for interpretative programs, exhibits, signage regarding the Battle of Yorktown and Fort Crafford, preservation and landscape management at Fort Crafford, and additional landscape preservation and conservation efforts focused on protecting and benefitting the Historic District and other historic properties at issue. These projects will directly and indirectly enhance historic properties at issue. These benefits accrue regardless of the entity that manages/owns the property in question. <p>The forgoing makes clear that the comment is without merit. The management or ownership of the properties at which a mitigation project is conducted is irrelevant to whether the mitigation provided for in the</p>

Issue Category 4 – Mitigation Projects			
			MOA benefits the historic properties at issue. The MOA provides mechanisms to address implementation issues related to first priority projects. This makes the MOA stronger and more reasonable, not the other way around.
4	ACHP (2)	Many of the projects are still vague and will require SHPO and consulting party input.	While Dominion would agree that the specific details of each mitigation project are yet to be determined, Dominion believes that the MOA strikes an appropriate balance in defining and delineating the mitigation projects, their locations, their goals, their funding, and how and by whom they will be accomplished. As ACHP acknowledges, the MOA contemplates the continued involvement of the consulting parties during the development of the mitigation project details and many of those parties are “knowledgeable about the preservation and promotion of historic properties in the APE.” ACHP Cmt. at 2. This was by design, to ensure that stakeholders within the APE that manage/own, steward, or regularly visit and interact with the historic properties at issue are involved at a detailed level, and in a continuing role. Dominion believes this will result in mitigation projects that provide the greatest benefit to the historic properties at issue. Dominion believes that the Corps and SHPO concur.
5	Chesapeake Conservancy (2)	Questions adequacy of proposed mitigation project on the substantial long-term impacts (attaches prior letter).	See general response in Issue Category 4.
6	First California Company Jamestowne Society (1)	Mitigation ignores impacts to major portion of the APE,	Dominion disagrees with this comment. As the response to Comment 4 in this Issue Category

Issue Category 4 – Mitigation Projects		
		<p>namely upriver portion from Hog Island to Jamestown Island and fails to adhere to the VDHR’s <i>Visual Effects Guidance</i>. Members do not come to Jamestown via the industry-rich lower parts of the James, but instead from Richmond, a route the proposed mitigation measures do not improve.</p> <p>demonstrates, a substantial portion of the mitigation is aimed directly at Jamestown Island (including Historic Jamestown), Carter’s Grove, Colonial National Park (focusing on Colonial Parkway), Hog Island, Chippokes, and water quality projects that enhance the Historic District (and CAJO Trail) that, by their nature, must do so from upstream. Further, additional mitigation is dedicated to landscape and viewshed enhancement in the Historic District (and CAJO Trail), and could be allocated to projects in the northern portion of the APE. These facts demonstrate that, contrary to the comment, a large portion of the mitigation is focused on historic properties in the northern portion of the APE.</p> <p>Further, while the comment merely makes an unexplained or supported statement that the mitigation fails to adhere to the <i>Visual Effects Guidance</i>, Dominion notes that the facts above make clear that the mitigation is consistent with VDHR’s guidance because the mitigation is focused on enhancing the setting, feeling, and association of the historic properties at issue, which is precisely what VDHR directs. See VDHR, <i>Visual Effects Guidance</i> at 6-7. The mitigation plan also is consistent with the guidance because, as discussed above in response to Comment 4, it establishes a mitigation strategy and structure that invites and takes into account the views of the community (as well as managers/owners) that use the resources at issue. <i>Id.</i> at 7. Probably most importantly, the SHPO (<i>i.e.</i>, VDHR) supports the MOA and planned mitigation.</p>

Issue Category 4 – Mitigation Projects			
7	Council on Environmental Quality (2)	Avoidance appears to be the only way to mitigation the direct impacts of the project, but otherwise mitigation must have a nexus to the impacts of an action, be proportional to the impacts, and be durable for the duration of the impacts of the action. In the context of its durability comments, urges the Corps to consider whether Dominion is going to use easements and other preservation instruments for later development based on, for example, the growth inducing effects of the Project.	<p>See general response to Issue Category 4.</p> <p>The Revised MOA projects are structured to proportionally mitigate the impacts of the Project. Details of this proportionality and connection between the mitigation projects in the MOA and the impacts of the Project are explained in detail in Issue Category 4 – Equivalence in the Response to Consulting Party Comments Concerning Draft MOA 6-13-2016; <i>see also</i> Context Document and Mitigation Correlation regarding the nexus of the mitigation to the impacts, as well as its scope.</p> <p>The Revised MOA also addresses the durability of the mitigation, ensuring that the mitigation projects are durable for the duration of the impacts of the Project. Details of the mitigation project’s durability are explained in Issue Category 5 – Durability in the Response to Consulting Party Comments Concerning Draft MOA 6-13-2016. Nevertheless, additional clarifying language will be added to the MOA to ensure the planned mitigation is durable for the life of the Project. Finally, with respect CEQ’s suggestion that the Project could be growth inducing, in light of the type of project it is, the record does not support that conclusion. <i>See, e.g.</i>, Letter from S. Miller, Dominion, to Col. J. Kelly, Corps at 11-12 (Sept. 16, 2016). Further, the MOA does not envision easement or preservation projects that would revert to Dominion for its own future use. In any event, what projects or actions Dominion (or any other actor) may or may not take at the end of the life of Project (at least 50 years</p>

Issue Category 4 – Mitigation Projects			
			from its in-service date) are unknown and any suggestion as to what they might be would be pure speculation. <i>Id.</i> (the Corps need only consider reasonably foreseeable cumulative impacts).

Issue Category 5– Funding			
General Response: Comments in this category raise specific issues that are best addressed individually, rather than with a general response as used in the majority of the Issue Categories. The specific comments and responses are listed below.			
<u>No.</u>	<u>Commenter</u>	<u>Comment</u>	<u>Response</u>
1	Preservation Virginia (2), Save the James Alliance (2), Scenic Virginia (1-2), National Parks Conservation Association (2)	Funding is inadequate and does not resolve adverse effects on historic properties most directly impacted by the project (instead funds other resources to ensure similar harm does not occur elsewhere).	The commenters make unsupported and unexplained statements that the funding is inadequate. They do not explain why, for example, the funding amount falls short for any specific MOA established fund, or what the appropriate amount might be for a specific fund or project. As set out in the Mitigation Correlation, even using NPS-approved methodologies and impact quantification analyses, the funding scope more than accounts for the effects, and provides additional value. Indeed, depending on the model of analysis, the funding levels provide substantial added value. The commenters make no argument that the analysis in the Mitigation Correlation is flawed or incorrect.
2	National Trust for Historic Preservation (3), Save the James Alliance (2), Scenic Virginia (2), National Parks Conservation Association (2)	Funding is weighted in favor of state-managed resources, many of which will not be directly affected by the Project; allocation of mitigation funding should be altered so that more funding can be guaranteed to support projects managed by NPS and Preservation Virginia (that is, Colonial National Park, CAJO Trail, and Historic Jamestown).	Dominion disagrees. As set forth the response to Comment 3, Issue Category 4 above, the mitigation projects (and thus, their dedicated funding) are focused nearly exclusively on the historic properties at issue (all of which are affected by the Project). Further, as noted, these historic properties all benefit from the projects without regard to the entity that manages/owns them. The commenter provides no suggestion as to what allocation of funding would be appropriate, or why projects managed by NPS and Preservation Virginia should be allocated additional funds beyond the \$27.7 million currently allocated (nearly 1/3 of the total funding). We note also that

Issue Category 5– Funding			
			\$25 million has been allocated to fund CAJO Trail projects under Stip.III.d, and projects funded out of the \$4.2 million under Stip.III.e and the \$15.5 million under Stip.III.f also will directly benefit the CAJO Trail. With over half of all funds benefiting the CAJO Trail and NPS/Virginia Preservation-managed properties (NTHP’s focus), we believe the allocation of funding is appropriate.
3	Preservation Virginia (3), Save the James Alliance (2), National Trust for Historic Preservation (3), Scenic Virginia (2), National Parks Conservation Association (2)	Conservation Fund should be responsible for contacting, discussing, and negotiating with parties regarding projects to be completed with funding allocated for NPS, Preservation VA, and Carter’s Grove site. Dominion should have no role after submitting payment to The Conservation Fund. The Conservation Fund should be in charge of contracting and planning projects as well as certifying their completion.	Based on past discussions, Dominion understands that the Corps’ position is that Dominion, must be the responsible party in implementing the mitigation. This is because Dominion will be the permittee that will be responsible for permit compliance (specifically that the mitigation is carried out in accordance with the terms of the MOA). Nevertheless, the MOA currently provides for substantial involvement by the consulting parties, and review and ultimate approval of mitigation decisions by the Corps. This alleviates any of the commenters’ unstated reasons as to why Dominion should not be involved.
4	Pamunkey Indian Tribe (1-2)	Requests four additional mitigation provisions be added to the Revised MOA: (1) purchase of Uttamusack and sufficient surrounding land to protect and access site (\$4M); (2) funds to expand, operate, and maintain museum and cultural center for 50 years (\$3M); (3) funds to stand-up, operate, and maintain a	The Corps and Dominion have had numerous, positive and productive consultation meetings and correspondence with the Pamunkey Tribe regarding its comments and mitigation requests. <i>See, e.g.</i> , Letter from Chief R. Gray, Pamunkey Tribe, to Col. J. Kelly, Corps (Feb. 12, 2017) (summarizing the parties’ good-faith consultation and the Tribe’s satisfaction with the process and the result). The MOA has been revised to reflect this successful consultation. MOA, Stips. I.b.1.E, III.d.1.A-B, III.e.1.A-B, III.h.1-5, IX.2.F, X.3.

Issue Category 5– Funding			
		THPO for 50 years (\$4M); (4) funds to expand, operate, and maintain shad hatcheries and educate Native American youth (\$4M).	
5	National Trust for Historic Preservation (7-8)	Mitigation funding amount was determined arbitrarily and was simply rationalized, post hoc, by the Correlation Document. Project should not be compared to the S-R line as they are entirely different. The methodology used for the S-R line is inappropriate and the mitigation amount for that project was determined through an EIS.	Dominion disagrees with this comment. As discussed in the Mitigation Correlation, Dominion first began the process of using NPS-used/approved mitigation correlation scoping techniques following NPS’ use of them in for the Susquehanna-to-Roseland 500 kV transmission line project. It started this process in August 2015 using the NPS-approved methods as a starting point, and then worked with the SHPO to develop additional thoughts and information about appropriate mitigation on this point. The Mitigation Correlation provides Dominion’s initial conclusions during this process (using NPS-approved methods from the SR Line, which would yield a total mitigation package of ~\$30 million), and also provides a host of different other calculations to demonstrate that the mitigation is appropriately correlated. Most importantly, Dominion used NPS’ visual impacts assessment calculations without modification, as well as NPS’ own thoughts about a low and high range of severity of impacts (and that the actual reality was somewhere between the low and high range), and found that the mitigation package was correlated appropriately. The commenter does not provide any critique of the Mitigation Correlation, or suggest that it is incorrect or unreasonable in its analysis or conclusions.

Issue Category 5– Funding			
			<p>Dominion also disagrees with the comment that the comparison of the Project to the SR Line and the use of the SR Line mitigation methodology are inappropriate. The commenter provides no reasoning for its conclusion. Nevertheless, Dominion previously responded fully to this assertion when it was made by NPS. Dominion’s Response to Comments on 6-13-16 MOA at 44-45.</p>

Issue Category 6 – Specific MOA Changes Requested

General Response: Comments in this category raise specific issues that are best addressed individually, rather than with a general response as used in the majority of the Issue Categories. The specific comments and responses are listed below.

<u>No.</u>	<u>Commenter</u>	<u>Comment</u>	<u>Response</u>
1	ACHP (2)	Should use terminology for signatories, invited signatories, and consulting parties as specified in Section 106 regulations.	Dominion understands ACHP’s apparent desire to use standardized terms as they are defined in the Section 106 regulations. Consistent with 36 C.F.R. 800.6(c), the MOA uses the terms Signatory Parties, Concurring Parties, and Invited Signatory Party. MOA Stip. XVII. In light of the specific facts and circumstances regarding this matter, and at the request of consulting parties, the MOA also uses Participating Party to identify consulting parties that otherwise are invited to sign the MOA as a Concurring Party, but for whatever reason do not wish to, but do wish to remain involved with the implementation of the MOA. Dominion, the Corps, and SHPO believe this is appropriate and consistent with the spirit of ACHP’s regulations, particularly when many of the consulting parties possess experience in preservation and conservation and that experience might be lost and not utilized during implementation if the Participating Party category did not exist. As such, Dominion recommends that we retain the MOA as is on this point. As noted in the comment in Issue Category 1, many of the consulting parties agree.
2	ACHP (2)	All consulting parties should have the opportunity to review and comment throughout all aspects and implementation of the MOA, including objecting to	We believe that the MOA as drafted provides consulting parties (as Participating Parties) with the ability to remain significantly involved in the implementation of the mitigation projects through their participation in their development and through

Issue Category 6 – Specific MOA Changes Requested			
		post agreement actions and dispute resolution.	annual reporting and meetings regarding implementation. During these processes, consulting parties will be free to provide their input on post-agreement actions. Dominion disagrees, however, that consulting parties should be permitted to participate in dispute resolution. Ultimately, Dominion is the permittee that is held responsible for the implementation of the MOA, and the Corps is the permitting agency responsible for enforcement, including under the dispute resolution procedures. Permitting parties, many of whom have claimed, and continue to claim, that the adverse effects from the Project that were not avoided and that cannot be minimized further cannot be mitigated and oppose any implementation of the Project could unacceptably impede implementation to the detriment of the historic properties. The purpose of the MOA is not to rehash disagreements about the effects and potential mitigation, it is to implement the selected mitigation. Dominion believes the MOA strikes an appropriate balance regarding these issues.
3	Pamunkey Indian Tribe (1)	Remove words “and/or appropriate tribal leaders” from Section X.3 because NAGPRA consultation is limited only to federally-recognized tribes.	Dominion agrees with this comment, and the MOA has been revised to reflect it.
4	National Trust for Historic Preservation (2)	No phased approach for above and below water construction – no construction until Dominion has satisfied its MOA obligations or at least funded the compensatory mitigation.	As the commenter is aware, the people in the NHRLA already are facing rolling blackouts or worse due to the delays in permitting the Project. As comments in the record reflect (for example, Letter from the Dep’t of Veterans Affairs Medical Hospital (June 24, 2016)), these outages likely will have severe negative

Issue Category 6 – Specific MOA Changes Requested			
			consequences for all who live and work in the NHRLA. As such, the MOA provides a structure that allows Dominion to proceed with the construction of the tower foundations in the river after establishing the mitigation funds (as the commenter desires), as well as after Dominion initiates other mitigation actions. It also allows Dominion to proceed with this in-river work while the details for the mitigation, which is designed to compensate for visual effects from the Project towers, is developed and finalized. As precaution to ensure that the mitigation proceeds in lock-step with the construction, the MOA prohibits above river tower construction until final Project Narratives have been approved by the Corps. The MOA ensures impacts will not be felt without mitigation being fully developed, funded, and implemented, which appears to be what the commenter seeks.
5	National Trust for Historic Preservation (2)	Include provision similar to that for interpretive signage that prohibits Dominion advertising on any compensatory mitigation derived from Project.	Dominion agrees with this comment, and the MOA has been revised to reflect it.
6	National Trust for Historic Preservation (3)	Should add contact person for NPS, Preservation Virginia, and the Landowner of Carter’s Grove to reach out to directly regarding mitigation projects.	This comment is acceptable, and the MOA has been revised to reflect it.
7	National Trust for Historic Preservation (3)	The timeframes for the participation/cooperation of NPS, Preservation Virginia, and the owner of Carter’s Grove	It appears the commenter misapprehends how this part of the MOA is intended to operate. Using Stip. III.a.6 as an example, the owner of Carter’s Grove has 45 days to agree to access and to cooperate. If the owner

Issue Category 6 – Specific MOA Changes Requested			
		<p>regarding access, funding, and initial project lists set out in Stips. III.a-c are unreasonably short. Should be at least 90 days, not 30 days.</p>	<p>fails, Dominion can proceed to the secondary project in Stip.III.a.7 with Corps approval. If the owner agrees, the parties have 30 days from the date of agreement to agree on a specific list of projects and additional access and cooperation. If the parties fail to agree at that point, Dominion can proceed to the secondary project in Stip.III.a.7 with Corps approval. If the parties agree, the parties have 30 additional days from the date of their first agreement to agree on Project Narratives for each of the projects on the list. If they fail to agree, Dominion can proceed to secondary project in Stip.III.a.7 with Corps approval. If they agree, the selected projects are implemented consistent with the remainder of Stip.III.a (which then contemplates a 30 day review and comment period with the Corps, SHPO, ACHP, and the Participating Parties). This process contemplates an iterative 105 day process where the owner of Carter’s Grove and Dominion will work together to generate the list of projects, the Project Narrative, terms of access, and terms of cooperation. Contrary to the comment, NPS, Preservation Virginia, and the owner of Carter’s Grove is provided ample time to work through the issues of access and cooperation.</p>
8	National Trust for Historic Preservation (3)	<p>MOA should include a draft avoidance plan reviewed and approved by the Corps, SHPO, ACHP, and Consulting parties for Underwater Archaeology, before the MOA is finalized.</p>	<p>Dominion disagrees with the comment. The development and execution of the MOA should not be delayed while the parties bicker over the terms of the avoidance plan. In Stip. I.b., the MOA provides that Dominion shall submit a draft avoidance plan to the Corps, SHPO, ACHP, and Participating Parties for review and comment. Dominion shall consider all comments received and submit a final avoidance plan</p>

Issue Category 6 – Specific MOA Changes Requested			
			to the Corps for approval. Dominion cannot proceed with work that could affect the archeological sites without Corps approval of the final avoidance plan. This mechanism ensures that all parties will have an opportunity to participate in the development of the plan, and that final approval rests with the Corps to ensure Dominion appropriately addresses all comments.
9	National Trust for Historic Preservation (5), Advisory Council on Historic Preservation (1-2)	Should be using a Programmatic Agreement (“PA”) instead of an MOA.	<p>Dominion disagrees with the comment. As has been discussed prior responses and record documents, the circumstances permitting the use of a PA under 36 C.F.R. § 800.14(b)(1) are not present in this case. The Corps has completed the Section 106 process of identifying historic properties and obtained SHPO concurrence, determining how and the extent to which those properties are adversely effected and obtained SHPO concurrence, and resolved those effects through avoidance, minimization, and mitigation consistent with 36 C.F.R. § 800.6, and SHPO has indicated it concurs in that decision and will execute the MOA. As such, the circumstances that typically would justify the use of a PA are not present here. There are no circumstances that would warrant a departure from the normal Section 106 process; that process worked as intended in this case. Dominion Response to Comments on 6-13-16 MOA at 10-11; Context Document at 1, fn 1; Corps’ April 5, 2016 letter to ACHP.</p> <p>The Corps’ decision to execute an MOA under these circumstances is consistent with the plain terms of the regulations and supported by the facts in the record,</p>

Issue Category 6 – Specific MOA Changes Requested			
			and thus, is reasonable. Based on ACHP’s positive comments regarding the MOA and its structure set out in Issue Category 1, Dominion believes ACHP agrees.

Issue Category 7 – Assessment of Adverse Impacts

General Response: The comments raised herein have been raised and addressed repeatedly. To summarize those responses, Dominion applied the criteria of adverse effects to identified historic property in accordance with 36 C.F.R. § 800.5(a). The adverse effect for each resource was adequately addressed in the CREA. Potential adverse effects were discussed for each identified property and how the relevant aspects of integrity may be affected. While some of the consulting parties may disagree with the level of detail provided or the manner or presentation, both the Corps and SHPO have concurred that the analysis of adverse effects of the Project on the historic properties is adequate. Dominion Response to Comments on 6-13-16 MOA at 62-63; Virginia Department of Historic Resources February 17, 2016 letter. With respect to the CAJO Trail specifically, it was expressly considered in the CREA, and in other record documents. Dominion Response to Comments on 6-13-16 at 10-11 (the effects on the CAJO Trail were considered individually and as contributing elements to the Historic District have been determined and recognized. Both the Corps and the SHPO are in agreement with that effects determination); White Paper Regarding Severity of Impacts on Historic Properties (Aug. 31, 2016).

ACHP states that Dominion did not adequately consider the effects on historic properties when developing the Project and the review of the Project before the Virginia SCC did not occur at a level required by Section 106. Dominion disagrees with the comment, and believes that to the extent the ACHP is taking exception with Dominion performing its obligation to provide reliable power to nearly ½ million people in a manner consistent with applicable law, the comment is misplaced. In any event, the comment is belied by the record before the Virginia SCC, which reflects a long, robust consideration of the potential adverse effects of the Project on historic properties, an exhaustive list of alternatives, and ways to avoid and minimize adverse impacts to the greatest extent possible. Among other things, these evaluations included the SCC's use of independent consultant's with expertise in the adverse effects of transmission line projects on historic properties, and other resources, as well as review of the project by numerous state resources agencies. *See, e.g.*, SCC Senior Hearing Officer's Report (Aug. 2, 2013); SCC Order (Nov. 26, 2013). Whether the SCC proceeding met the level of a Section 106 process in ACHP's view is ultimately of no consequence; the SCC is not required to comply with Section 106. But, the SCC is required to ensure projects are in the public interest and minimize their impacts on, among other things, important historic properties. It is clear that, contrary to the ACHP's suggestion, the SCC and all parties involved fully understood the importance of the issues involved, and gave them deep and serious consideration. The SCC stated:

The Commission understands the importance of this case to the many people who cherish Virginia's historical and natural assets and to those who depend on the reliable electric service so critical to Virginia's economic strength, safety, and quality of life. The Commission takes seriously its responsibility, under the Code of Virginia, to determine whether the public convenience and necessity require the construction of transmission lines in the Commonwealth. This is one of the most important responsibilities that the General Assembly has entrusted to the Commission because of the many impacts from constructing - or from not constructing transmission lines. Ultimately, the Commission must

Issue Category 7 – Assessment of Adverse Impacts

base its decision on the law as applied to the factual record of the case. That is what we have done herein, as will be explained in detail below. The evidence is clear that the Proposed Project is necessary to continue reliable electric service to the hundreds of thousands of people who live and work across this broad region of Virginia.

SCC Order at 10-11 (Nov. 26, 2013). In its analysis, the SCC evaluated all of the same issues regarding the existence and extent of adverse effects on the historic properties at issue that the Corps now addresses, and did so with the knowledge that additional federal review would occur. *See id.* at 47-51, 67. It also evaluated numerous alternative routes that impacted the extent of these effects, and the purpose and need of the Project. *Id.* at 23-47. Thus, the Project was planned adequately, subjected to intense scrutiny, and ultimately was approved by the SCC after nearly two years of consideration. Dominion is not suggesting that the SCC proceedings take the place of the Corps’ Section 106 process, but only that ACHP’s attempt to brush it aside is inappropriate. The SCC process provided the development of a large, complete record regarding the Project, which was subjected to review by independent experts in addressing impacts from transmission lines. The SCC record provides the Corps a strong record to be studied and reviewed and incorporated into the Corps’ decision making.

<u>No.</u>	<u>Commenter</u>	<u>Comment</u>	<u>Response</u>
1	ACHP (2-3)	Dominion did not adequately consider the effects to the historic properties when developing the preferred alternative and the SCC did not consider impact to historic properties at the level required by Section 106.	See general response to Issue Category 7.
2	Chesapeake Conservancy (2)	Insufficient assessment of adverse effects to the CAJO Trail (attached prior letters).	See general response to Issue Category 7
3	Save the James Alliance (1-2)	No one has stood with the applicant to fight for approval of the project.	The commenter is incorrect in stating that no other party has fought for approval of the Project. In fact, Joint Base Langley-Eustis (representing the Air Force and the Army), the Department of the Navy, the Department of Veterans Affairs, Department of the Navy, along with numerous businesses in the area that depend on electric reliability have provided their

Issue Category 7 – Assessment of Adverse Impacts		
		<p>support for the Project. <i>See</i> 8-26-2015 letter from Col. Miller, Department of the Air Force; 8-3-2015 letter from Mayor Wallace; 9-8-2015 letter from Bon Secours Hospital; 8-4-2015 letter from Mayor Price; 8-18-2015 letter from Jones, Blechman, Woltz & Kelly, P.C.; 8-11-2015 letter from Sentara; 7-13-2015 letter from Dominion Terminal Associates; 8-11-2015 letter from Comm’n Mugler; 8-5-2015 letter from Admiral Williamson, Department of the Navy; 7-21-2015 letter from Riverside Health System; 7-24-2015 letter from Hampton University; 6-24-2016 letter from Hampton VA Medical Center. In addition, the Project was approved as the best, and most appropriate means to meet the purpose and need of providing reliable power to the NHRLA consistent with applicable law by the Virginia SCC. PJM, a third-party expert, has concurred on that point no less than three times. <i>See, e.g.,</i> Letter from S. Herling, PJM, to Col. J. Kelly, Corps (Jan. 25, 2016). Finally, dozens of people stood up to express their support for the Project at the Corps’ October 30, 2015, public hearing regarding the Project, and many of those people represent others and businesses that speak for countless more. Dominion, Response to Comments Made at the Public Hearing Held on October 30, 2015, Concerning the Surry-Skiffes Creek-Wheaton Project at 1-11 (Mar. 30, 2016)</p>

Issue Category 8 – Context Document			
General Response: NA (only one comment).			
<u>No.</u>	<u>Commenter</u>	<u>Comment</u>	<u>Response</u>
1	National Trust for Historic Preservation (8)	Objects to a statement in the Context Document that the Revised MOA’s mitigation approach is consistent with NTHP’s Oct. 15, 2016, presentation regarding mitigation or its January 29, 2016 letter regarding mitigation.	NTHP’s comment is without merit. As set out in the Context Document, Dominion acknowledges that parties (including NTHP) may disagree about the extent of effects on historic properties from the Project in this case, and the extent of mitigation necessary to resolve those effects. Nevertheless, it is the principles regarding mitigation and the mitigation hierarchy (and in particular the use of compensatory mitigation) set forth in NTHP’s presentation and letter to which Dominion is referring. In so doing, Dominion cites a recent case in which the court upheld NPS’ use of compensatory mitigation to resolve the adverse effects of a transmission line project. Context Document at 3. It is capricious for NTHP to suggest that the generally accepted principles of mitigation discussed in its presentation and letter (and its provision of transmission line project examples using those principles) somehow conflicts with the approach used for the Project (which applied those same principles) merely because NTHP perceives that it will not agree with the outcome of the application of those principles. It certainly cannot disguise this inconsistency by claiming, without any explanation, that the “methodology” used to calculate the compensatory mitigation in this case does not comply with “federal legal requirements.” That is particularly true given that there are no “federal legal requirements” governing how to calculate

Issue Category 8 – Context Document			
			compensatory mitigation. In any event, as described in detail in Dominion’s Mitigation Correlation White Paper (Sept. 16, 2016), Dominion’s approach is consistent with the approach NPS used for this Project, as well as for other transmission line projects.

Issue Category 9 – EIS

General Response: Commenters repeatedly request that the Corps prepare an Environmental Impact Statement (“EIS”) under NEPA, as opposed to an Environmental Assessment (“EA”). The commenters do not provide any additional reasons as to why they believe an EIS is required that have not been addressed already in previous responses. As such, the response to this same comment that was provided in the Dominion Response to Comments on 6-13-16 MOA at 53-55 provides a response to this comment. *See also* 33 C.F.R. § 230.7(a); 40 C.F.R. § 230.10(a), Severity White Paper. In short, however, an EIS is not required here because the unmitigated adverse effects of the Project are not significant, and to the extent they are significant, the provisions of the MOA will more than adequately mitigate the unavoidable effects such that there are no significant adverse effects from the Project.

<u>No.</u>	<u>Commenter</u>	<u>Comment</u>	<u>Response</u>
1	Save the James Alliance (2), National Trust for Historic Preservation (4), Preservation Virginia (2), Scenic Virginia (2), National Parks Conservation Association (2);	The Project has failed to consider and address the negative impacts to recreational resources and values of the CAJO Trail and Colonial Parkway, and socioeconomic impacts from the Project, such as the degradation in property values that would be caused by the Skiffes Switching Station to owners in James City County whose property the line crosses. These impacts should be addressed in an EIS.	<p>Contrary to the commenters’ position, the record reflects that these issues have been considered, and that any impacts thereto are negligible and insignificant.</p> <p>Regarding the potential diminution of property values of land crossed by the transmission line in James City County, the land uses crossed by, or in the immediate vicinity of, the Project are predominantly industrial and commercial lands. The land-based portion of this alternative in James City County crosses the BASF site before converging with the Skiffes Creek Switching Station. The remainder of the land crossed by the Project is owned predominantly by Dominion either in fee or through permanent easements, including existing easements over the BASF property. The easements over the BASF property would be expanded for the Project, but would not be considered new.</p> <p>Considerations regarding impacts to the property/use value of BASF’s property were considered extensively before the Virginia SCC. That process revealed that</p>

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		<p>the BASF property is the former site of manufacturing facilities, primarily for acrylic fiber. Although the property is still zoned industrial, in approximately the year 2000, all manufacturing operations ceased. BASF currently is conducting extensive environmental remediation at the over 620-acre property, which has over two miles of frontage on the James River. While BASF has stated intentions to develop the site at some point in the future, its environmental remediation severely limits that goal, and to date it has been unable to sell or lease the site (or portions thereof) for such use, or been able to change the zoning for the site from industrial. At this point, development at the BASF site is speculative at best. Evidence was presented by a real estate expert that the placement of the transmission line over and near the BASF property would not significantly impact the value of that property or the ability for it to be redeveloped. It demonstrated that BASF's claims that the property could be developed as anything other than for industrial use were flawed, and that industrial use property values generally are not adversely impacted by the presence of power lines (particularly when there is an existing power corridor already crossing the BASF property). Even assuming it could be developed as something other than industrial, evidence provided supported the conclusion that planned mixed use or residential use would be designed to minimize any impact from existing electricity corridors. Env'tl Routing Study at 4-21; SCC Order at 15, 48, 55-58 (Nov. 26, 2013); SCC Hearing Officer's Report at 163-70 (Aug 2, 2013); Rebuttal Testimony of Dr.</p>

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		<p>M.L. Wolverton at 19-30 (Mar. 14, 2014); SCC Hearing Testimony of Dr. M.L. Wolverton at 1784-85 (Apr. 18, 2013). The evidence provided to the SCC (and now the Corps) supports a conclusion that impacts on the BASF property value would be negligible, if even perceptible.</p> <p>Evidence also was offered before the SCC that supported the conclusion that there would be only minimal to no impact on the property values of the small number of residences abutting or nearby the Project right-of-ways in James City County. SCC Hearing Officer’s Report at 123 (Aug 2, 2013); Rebuttal Testimony of Dr. M.L. Wolverton at 8-13 (Mar. 14, 2014); SCC Hearing Testimony of Dr. M.L. Wolverton at 1796 (Apr. 18, 2013).</p> <p>In light of the minimal impacts to property values in James City County and the fact that the vast majority of the land crossed by the Project is Dominion-owned property and existing right of ways, the Project’s impacts to existing property value and use is minimal and not significant.</p> <p>Potential impacts to the recreation resources within the APE also were evaluated during the SCC process. In addition to the James River itself (<i>i.e.</i>, the CAJO Trail), the Project also passes nearby the Hog Island WMA. Env’tl. Routing Study at 3-5. The portion of the James River where the proposed crossing will be located is within a segment that is currently designated by the Commonwealth of Virginia as scenic, and is</p>

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		<p>used for waterborne recreation (e.g., boating and fishing). As noted, this portion of the river also is part of the CAJO Trail, which can be used for waterborne tourism. The construction of the transmission line will have temporary impacts on waterborne recreation and tourism by potentially limiting the areas in which recreators and tourists can go on the water. Given the width of the river, however, this impact should be minimal. Following construction completion, aside from the very small footprint of the tower piles in the river, waterborne recreation and tourism will not be impeded or impacted, and neither will water quality. <i>See</i> NOAA/NMFS Letter Jan. 28, 2016 at 15-18 (discussing the activities Dominion will undertake to minimize the impacts of construction on water quality and fish; the Project will not have a significant adverse impact on essential fish habitat); Letter from C. Fisher, Dominion, to R. Steffey at 1-2 (Nov. 13, 2015) (any impedance to the free flow of the river by the tower piles will be negligible and insignificant, if even perceptible, in light of the size of the river as compared to the small footprint of the piles). The construction or placement of the piles, for example, will not adversely impact any of the categories that the James River Association uses to annually measure the health of the James River. <i>See</i> James River Association, <i>State of the James 2015</i>, at http://jrava.org/about-the-james-river/state-of-the-james/ (last visited Jan. 16, 2017) (the state of the James report is “designed to examine the status and trends of indicators in four categories – Fish and Wildlife, Habitat, Pollution Reductions, and Protection</p>

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			<p>and Restoration Actions”). Instead, the water quality improvement mitigation projects planned in the MOA to enhance the setting and feeling of the Historic District will benefit the health and the James, and subsequently, recreational use of the area.</p> <p>Any other impacts from the river crossing on recreation within the CAJO Trail are visual, and are being addressed through the visual impacts analyses and MOA process. The same is true for any impacts to recreation at the Hog Island WMA, as the route does not physically cross this resource.</p> <p>The Project has a negligible and insignificant impact on recreation. It also should be noted that the BASF site is a former industrial site currently undergoing environmental remediation and is not used for recreation. Further, the land-based portion of the Project on the Surry side passes through a buffer area for the nuclear power plant owned by Dominion that is not used for recreation.</p>
2	Chesapeake Conservancy (2)	General need for an EIS, greater scrutiny of the project need (attaches prior letters).	See general response to Issue Category 9.
3	First California Jamestowne Society, Supplement (1)	Wants an EIS to more adequately analyze the proposed project’s “aspects and claims.”	See general response to Issue Category 9.
4	Council on Environmental Quality (1-2)	Agrees with other commenters’ recommendations to complete an EIS. Corps must involve Dominion and the public in the	See general response to Issue Category 9. Further, the record reveals robust public participation in the Corps’ permitting process. <i>See, e.g.,</i> Response above to Comment 1, Issue Category 1.

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		preparation of an EA. Should provide for increased public participation.	