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December 20, 2016

**VIA HAND DELIVERY**

Joel H. Peck, Clerk  
Document Control Center  
State Corporation Commission  
1300 E. Main St., Tyler Bldg., 1<sup>st</sup> Fl.  
Richmond, VA 23219


*Application of Virginia Electric and Power Company for  
Approval and Certification of Electric Facilities: Surry-Skiffes Creek  
500 kV Transmission Line, Skiffes Creek-Wheaton 230 kV Transmission  
Line and Skiffes Creek 500 kV-230 kV-115 kV Switching Station  
Case No. PUE-2012-00029*

Dear Mr. Peck:

Pursuant to Ordering Paragraph (1) of the Order issued by the State Corporation Commission in the above-captioned proceeding, enclosed please find, on behalf of Virginia Electric and Power Company, an original and fifteen copies of the *Update on Status of Certificated Project (December 20, 2016)*. A copy of the further revised mitigation plan is included as Exhibit A and a blackline version showing the changes from the most recent Update is included as Exhibit B.

Please do not hesitate to call if you have any questions in regard to the enclosed.

Very truly yours,

  
Jennifer D. Valaika

Enc.

cc: Hon. Alexander F. Skirpan, Hearing Examiner  
William H. Chambliss  
D. Mathias Roussy  
K. Beth Clowers  
Alisson Klaiber  
Lisa S. Booth  
Charlotte P. McAfee  
Stephen H. Watts II  
Vishwa B. Link

COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION

APPLICATION OF	)	
	)	
VIRGINIA ELECTRIC AND POWER COMPANY	)	
d/b/a DOMINION VIRGINIA POWER	)	
	)	Case No. PUE-2012-00029
For approval and certification of electric facilities:	)	
Surry-Skiffes Creek 500 kV Transmission Line,	)	
Skiffes Creek-Wheaton 230 kV Transmission Line, and	)	
Skiffes Creek 500 kV-230 kV-115 kV Switching Station	)	

**UPDATE ON STATUS OF CERTIFICATED PROJECT**  
**December 20, 2016**

Virginia Electric and Power Company (“Dominion Virginia Power” or the “Company”), by counsel, pursuant to Ordering Paragraph (1) of the Order issued by the State Corporation Commission (“Commission”) in this proceeding on June 5, 2015 (“Order Directing Updates”), hereby files this Update regarding the status of the Surry-Skiffes Creek Line, Skiffes Creek Switching Station (“Skiffes Station”), Skiffes Creek-Wheaton Line, and additional transmission facilities (collectively, the “Certificated Project”). This Update supersedes prior updates submitted by the Company. For this Update to the Commission, the Company respectfully states as follows:

1. By its November 26, 2013 Order, as modified by its February 28, 2014 Order Amending Certificates in the above-styled proceeding and confirmed by its April 10, 2014 Order Denying Petition, the Commission approved and certificated under § 56-46.1 of the Code of Virginia (“Va. Code”) and the Virginia Utility Facilities Act<sup>1</sup> the construction and operation by Dominion Virginia Power of the electric transmission lines and related facilities proposed by the

<sup>1</sup> Va. Code § 56-265.1 *et seq.*

Company in its Application filed in this proceeding on June 11, 2012 (“2012 Application”). Those orders provide that this case is to remain open until the proposed facilities are in service.

2. Those orders were appealed by BASF Corporation and jointly by James City County, Save The James Alliance Trust and James River Association (“JCC Parties”) to the Supreme Court of Virginia, which issued its unanimous opinion in those appeals on April 16, 2015, affirming the Commission’s approval and certification of these transmission facilities, which comprise the Certificated Project. *BASF Corp. v. State Corp. Comm’n*, \_\_\_ Va. \_\_\_, 770 S.E.2d 458, *reh’g denied*, \_\_\_ Va. \_\_\_, \_\_\_ S.E.2d \_\_\_ (2015) (“*BASF*”).

3. The Court’s opinion in *BASF* also reversed and remanded (by a 4-3 vote) the holding in the Commission’s November 26, 2013 Order that the term “transmission line” includes transmission switching stations such as Skiffes Station under Va. Code § 56-46.1 F, which exempts transmission lines approved by the Commission under that section from Va. Code § 15.2-2232 and local zoning ordinances. Petitions of the Commission and the Company seeking rehearing of this aspect of the *BASF* opinion were denied by the Court on May 15, 2015. As a result, the Company is now required to obtain local land use approval from James City County to construct Skiffes Station.

4. The Court issued its mandate and remand on June 4, 2015, returning the case to the Commission for further proceedings consistent with the views expressed in the written opinion of the Court.

5. The Commission stated in its Order Directing Updates:

The evidence in this proceeding shows that the North Hampton Roads Area is in critical need of a significant electric system upgrade. The need is severe and fast approaching, and the reliability risks are far reaching. The facilities approved in this case, for which judicial review thereof has concluded, are needed to avoid violations of mandatory electric reliability standards

approved under federal law to prevent: the loss of electric service to customers; transmission system overloads; and outages in the North Hampton Roads Area with cascading outages into northern Virginia, the City of Richmond, and North Carolina. Given the time required for the construction of significant electric infrastructure projects like the Certificated Project, and the magnitude of the projected reliability violations, the Commission directs Dominion to provide regular updates on the status of the Certificated Project, including but not necessarily limited to the Skiffes Station, the status of the Army Corps process, and the Company's plans for maintaining system reliability in the North Hampton Roads Area.

Order Directing Updates at 2-3.

#### **Updates on Status of the Certificated Project**

6. **Applications for Section 404 and Section 10 Corps Permits.** The Company has continued with its permitting efforts to construct the facilities that have been approved and certificated by the Commission. As the Commission is aware, the Company must obtain permits from the U.S. Army Corps of Engineers ("Corps") under Section 404 of the Clean Water Act to place fill material in the James River for construction of the transmission line towers and Section 10 of the Rivers and Harbors Act of 1899 for resulting obstructions to navigation. The Company filed a Joint Permit Application ("JPA") for the Corps permits in March of 2012 for the Surry to Skiffes Creek portion of the Certificated Project and a separate JPA for the Skiffes Creek to Whealton portion in June of 2013. In August 2013, the Company submitted a combined JPA for the Surry-Skiffes Creek Line and the Skiffes Creek-Whealton Line. This combined JPA superseded the permit applications for each such transmission line that had been submitted in March 2012 and June 2013.<sup>2</sup>

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<sup>2</sup> The JPA also served as the application to obtain an authorization from the Virginia Marine Resources Commission ("VMRC") for encroachment on subaqueous beds of the Commonwealth in the James River and a Virginia Water Protection Permit from the Virginia Department of Environmental Quality. The latter permit also serves as the required Certificate under Section 401 of the Clean Water Act that the discharges for the Certificated Project will not result in a violation of water quality standards.

A. **National Environmental Policy Act (“NEPA”).** The two Corps permits required for the placement of fill and obstruction to navigation trigger review under NEPA. The Corps has indicated it will prepare an Environmental Assessment (“EA”) to satisfy this requirement. NEPA requires the Corps to evaluate alternatives as well as the direct, indirect and cumulative effects of the project on the human environment. As part of this NEPA review, on August 28, 2013, the Corps solicited public comments on the undertaking via public notice in accordance with the requirements of NEPA. The Corps received voluminous comments on the undertaking and has evaluated numerous alternatives. On October 1, 2015, the Corps published their Preliminary Alternatives Conclusions White Paper (“White Paper”), which concluded, in relevant part:

Therefore, based on information presented to date, our preliminary finding is that two alternatives appear to meet the project purpose while reasonably complying with the evaluation criteria. These are Surry-Skiffes-Wheaton 500 kV OH (AC) (Dominion’s Preferred) and Chickahominy-Skiffes-Wheaton 500kV. We have determined that other alternatives are unavailable due to cost, engineering constraints and/or logistics. Please note this is not a decision on whether Dominion’s preferred alternative is or is not permissible, nor does it exclude further consideration of alternatives should new information become available.

White Paper at 7-8. A copy of the White Paper was attached as Exhibit A to the Company’s October 2, 2015 Status Update filed with the Commission. On April 5, 2016, the Corps presented a response (“Corps Response” or “Response”) to an Advisory Council on Historic Preservation (“ACHP”) letter and indicated within its Response to ACHP that, “based on analysis of all information made available to date, the USACE finds nothing to indicate that Dominion’s information regarding practicality of alternatives is flawed or incorrect. Additionally, Dominion has explored all feasible alternatives, including those identified by the consulting parties and the public to date.” Corps Response at 3. A copy of the Corps Response

was attached as Exhibit A to the Company's April 12, 2016 Status Update filed with the Commission. The Corps will make its final selection of alternatives when it issues the EA which will accompany the permit decision.

B. **Endangered Species Act ("ESA").** The two Corps permits also trigger review under the ESA. The Corps must determine that the construction and operation of the facilities will not violate the ESA. The Corps has been consulting with the United States Fish and Wildlife Service regarding the Certificated Project's potential effect on the Northern Long Eared Bat ("NLEB"), and the National Marine Fisheries Service ("NMFS") regarding the Atlantic Sturgeon. Consultation will be completed with the issuance of the permit decision; however, NMFS indicated in a January 28, 2016 letter that they agreed with the Corps that the Project is not likely to adversely affect listed species. On April 12, 2016, the USFWS concurred with the Corps conclusions regarding the NLEB, indicating the Corps would permit Project construction without a time of year restriction on tree clearing.

C. **National Historic Preservation Act ("NHPA").** Finally, the two Corps permits trigger review under the NHPA. Section 106 of the NHPA requires the Corps to take into consideration the effect of permitted activities on historic properties. The NHPA process has four components (a) evaluation of alternatives, (b) identification of historic properties that might be affected, (c) evaluation of whether and to what extent the federally permitted project will have an adverse effect on those historic properties and (d) mitigation of those adverse effects. This process commenced with the issuance of the initial public notice on August 28, 2013. The comments received helped facilitate the initial steps of the review process and provided interested members of the public with an opportunity to comment on alternatives, the identification of historic properties and potential effects, which includes Carter's Grove,

Jamestown and Hog Island. The Corps identified an Area of Potential Effect (APE”) which is shown on a map included as Exhibit A to the Company’s February 9, 2016 Status Update filed with the Commission. The Corps, in coordination with the State Historic Preservation Office (“SHPO”), then identified organizations that have a demonstrated interest in the treatment of historic properties associated with the Certificated Project (“Consulting Parties”) within the APE.

(i) **Alternatives.** The Corps has conducted its alternative analysis under the NHPA concurrently with that under NEPA described in Paragraph 7 above.

(ii) **Historic Property Identification.** On November 13, 2014, the Corps issued a second public notice soliciting comments specific to historic property identification and an alternatives analysis. The Corps and SHPO reached initial agreement on historic properties within the APE on May 1, 2015. On June 19, 2015, the Advisory Council on Historic Preservation (“ACHP”) requested that the Corps consider whether a portion of the Captain John Smith Chesapeake National Historic Trail (“CAJO”) is eligible for inclusion on the National Register of Historic Places. On July 2, 2015, the Corps made a request to the Keeper of the Register (“Keeper”) concerning the eligibility of the CAJO within the APE. On August 14, 2015, the Keeper made a determination that a portion of the CAJO is eligible for listing on the National Register of Historic Places as a contributing element of a historic district within the APE.

(iii) **Determination of Effects.** On May 21, 2015 the Corps issued a third public notice to assist in evaluation of the effects of the Certificated

Project on the identified historic properties and evaluation of alternatives or modifications which could avoid, minimize or mitigate adverse effects of the undertaking. As part of the process to assist in consideration of historic impacts, the Company prepared a Consolidated Effects Report (“CER”) to merge the various studies that had been prepared beginning in 2011 into a single document. The Corps published the CER on October 1, 2015. The Corps and SHPO subsequently reached agreement on the list of adversely effected properties.

(iv) **Mitigation.** A draft mitigation plan was developed, and the Corps provided for a Consulting Parties comment period on the draft mitigation plan; the draft mitigation plan and comment period was noticed to the Consulting Parties on December 30, 2015, and ended January 29, 2016. A fifth Consulting Parties meeting was held February 2, 2016 to discuss mitigation for impacts to historic properties. A revised draft mitigation plan was developed, which the Corps noticed on June 13, 2016 to the Consulting Parties for a comment period ending July 13, 2016. A copy of the revised mitigation plan was attached as Exhibit A to the Company’s June 14, 2016 Status Update filed with the Commission. On July 6, 2016, the Corps extended the comment period until July 27, 2016. On December 7, 2016, the Corps noticed to the Consulting Parties a further revised mitigation plan for a comment period ending December 21, 2016, which subsequently was extended to January 11, 2017. Additionally, the Corps scheduled a conference call among Consulting Parties for January 19, 2017 to allow for any follow-up



and / or clarifying discussion. A copy of the further revised mitigation plan is attached as Exhibit A to this update. The Corps is working toward entering into a Memorandum of Agreement with the SHPO and the ACHP regarding mitigation. If such an agreement is not possible, consultation will terminate and the Corps will make its permit determination after affording the ACHP an opportunity to file comments.

(v) **Consulting Party Meetings.** In total, the Corps has hosted five Consulting Parties meetings to date (September and December 2014, June and October 2015 and February 2016) to discuss alternatives to the Certificated Project, identification of and impacts to historic properties and potential mitigation opportunities. On October 7, 2016, the Corps welcomed the Pamunkey Indian Tribe as a consulting party following their request to participate in the Section 106 consultation process.

D. **Public Hearing.** A fourth public notice was published October 1, 2015 providing notice of a public hearing on all aspects of the Corps permitting process held on October 30, 2015 at Lafayette High School in Williamsburg, Virginia. The Corps conducted its public hearing on October 30, 2015, during which approximately 80 witnesses appeared to present their views to the Corps. The period for written public comments associated with the October 30, 2015 public hearing (originally scheduled to close on November 9, 2015) was subsequently extended to close of business November 13, 2015, concurrent with the public comment period for the CER and White Paper.

7. **Virginia Marine Resources Commission (“VMRC”) Permit.** The Company must obtain an authorization from the VMRC for encroachment on subaqueous beds of the

Commonwealth in the James River. The Company continues to coordinate with VMRC, based upon their desire to have additional certainty surrounding the Corps permitting.

8. **Federal Aviation Administration Review.** Additionally, the Federal Aviation Administration has completed its review of all of the proposed 500 kV structures; the 230 kV structures; and associated cranes and has made a determination of no hazard to air navigation.

9. **James City County Special Use Permit.** Consistent with the Court's opinion in *BASF*, on June 17, 2015, the Company filed a special use permit application ("SUP"), a rezoning request, a substantial accord determination request and a height waiver application for a switching station in James City County associated with the Certificated Project. Comments from County staff were received on July 2, 2015, and the Company responded to the County July 10, 2015. The County produced additional comments on the resubmission on July 17, 2015, and the Company responded on July 24, 2015. On July 23, 2015, an open house was hosted by Dominion Virginia Power to discuss the switching station. There were 26 attendees. The switching station was placed on the James City County Planning Commission agenda scheduled for August 5, 2015, and legal notices were run on July 22 and July 29, 2015 to alert the public of the meeting. A favorable staff report was issued July 29, 2015 recommending approval of the switching station. On August 5, 2015, the James City County Planning Commission voted 4 to 2 against recommending approval of the Company's switching station. Pursuant to Va. Code § 15.2-2232, on August 17, 2015, the Company filed an appeal of the substantial accord determination to the James City County Board of Supervisors (the "JCC Board"). The JCC Board will make the final determination on the SUP, rezoning and height waiver requests and will hear the appeal on the substantial accord determination, and it is anticipated that all four items will be considered during the same meeting of the JCC Board. The appeal and the other

pending applications were to be considered by the JCC Board at its October 13, 2015 public meeting, but the Company submitted a letter on September 17, 2015 requesting that action on the appeal be deferred until the JCC Board's meeting on November 24, 2015. The JCC Board approved that request at its meeting on September 22, 2015. A subsequent request was submitted by the Company on November 6, 2015 to defer the vote on the matter until the JCC Board's January 12, 2016 meeting; this request was approved by the JCC Board on November 10, 2015. The Company had anticipated that the decision of the JCC Board would be better informed by the status of the Corps process in January of 2016; so, on December 4, 2015, the Company submitted a letter of request for further deferral of the JCC Board's public hearing on this matter to the JCC Board's February 9, 2016 meeting; this request was approved by the JCC Board on December 8, 2015. The Company sought on January 8, 2016 an additional deferral until the March 8, 2016 JCC Board meeting. The JCC Board approved this request at their January 12, 2016 meeting. However, due to further delay in the Corps process, the Company sought an additional deferral until the August 9, 2016 JCC Board meeting unless the Corps issues its permits before that date, which deferral request was approved by the JCC Board on February 9, 2016. With continuing delays in the Corps process, the Company submitted an additional deferral request dated June 27, 2016 until the December 13, 2016 JCC Board meeting unless the Corps issues its permits before that date. The JCC Board approved the Company's June 27, 2016 deferral request. With additional delays in the Corps process, the Company submitted another deferral request dated November 14, 2016 until the June 27, 2017 JCC Board meeting. The JCC Board approved the Company's November 14, 2016 deferral request on November 22, 2016.

10. **James City County Site Plan.** On September 11, 2015, in advance of the JCC

Board's vote on the aforementioned items, the Company, at its own risk, submitted the Switching Station site plan to the County for review. Comments from JCC and other review agencies have been reviewed by the Company and were addressed in the Company's November 16, 2015 second submission of the Switching Station site plan. Review comments were received on the second submission of the site plan, and the Company reviewed and responded to these comments with a third submission of the site plan with revisions on February 2, 2016. All comments on the third submission have been received, and the Company responded to these comments in their fourth submission of the site plan on April 27, 2016. On May 17, 2016, the County provided approval of the Company's Water Quality Impact Assessment. Further comments were generated by other departments. The Company resubmitted the site plan on July 19, 2016. The switching station site plan received its conditional approval from the County review departments pending the legislative action by the JCC Board.

11. Upon obtaining the required approvals, the Company intends to commence construction of the Certificated Project. The Company will continue to report to the Commission material developments in its permitting and construction activities on the schedule set forth in the Order Directing Updates.

12. **Mercury and Air Toxics Standards ("MATS") Extension.** Additionally, the Company notes that the inability to begin construction for the past three years since the Application was filed with the Commission has made it impossible for the proposed facilities to be completed and in service by December 31, 2015, as provided in the Commission's February 28, 2014 Order Amending Certificates. As permitted by federal environmental regulations, the Company has obtained from the Virginia Department of Environmental Quality a one-year extension of the April 16, 2015 deadline for Yorktown Units 1 and 2 to comply with the U.S.

Environmental Protection Agency's ("EPA") MATS regulation that will be achieved by retiring the units, which drove the original June 1, 2015 need date for the new transmission facilities. On October 15, 2015, the Company submitted a Petition seeking from the EPA an administrative order under EPA's Administrative Order Policy for the MATS rule,<sup>3</sup> which, if granted, would provide an additional one-year waiver of non-compliance with the regulations that drive those retirements and further extend the need date for the Certificated Project to June 1, 2017. On December 2, 2015, the Federal Energy Regulatory Commission ("FERC") issued Comments on the Company's request to EPA, stating that Yorktown Unit Nos. 1 and 2 "are needed during the administrative order period, as requested by Dominion, to maintain electric reliability and to avoid possible NERC Reliability Standard violations."<sup>4</sup> On April 16, 2016, the EPA issued an Administrative Order<sup>5</sup> under Section 113(g) of the Clean Air Act ("CAA") authorizing the Company to operate the Yorktown coal-fired units (Units 1 and 2) through April 15, 2017 under certain limitations consistent with the MATS rule.

13. On June 29, 2015, the United States Supreme Court ("Supreme Court") in *Michigan, et al. v. Environmental Protection Agency, et al.*, \_\_U.S. \_\_ (2015) reversed and remanded (by a 5-4 vote) the EPA's MATS regulation to the United States Court of Appeals for the D.C. Circuit Court ("D.C. Court of Appeals") for further proceedings consistent with the Supreme Court's Opinion. This decision does not change the Company's plans to close coal units at Yorktown Power Station or the need to construct the Certificated Project by 2017. The Court's ruling required that EPA consider the cost of implementation. The decision neither

<sup>3</sup> *The Environmental Protection Agency's Enforcement Response Policy For Use of Clean Air Act Section 113(a) Administrative Orders In Relation To Electric Reliability and the Mercury and Air Toxics Standard.* EPA Memorandum from Cynthia Giles, Assistant Administrator of the Office of Enforcement and Compliance Assurance to EPA Regional Administrators, Regional Counsel, Regional Enforcement Directors and Regional Air Division Directors (December 16, 2011).

<sup>4</sup> *Virginia Electric and Power Company*, Docket No. AD16-11-000, 153 FERC ¶ 61,265.

<sup>5</sup> See <https://www.epa.gov/sites/production/files/2016-04/documents/mats-cao-113a-admin-order-0416-virginia-electric-power-co-virginia.pdf>.

vacated the rule nor placed a stay on its implementation. On July 31, 2015, the Supreme Court formally sent the litigation back to the D.C. Court of Appeals, to decide whether to vacate or leave in place the MATS rule while the EPA works to address the Supreme Court decision.

14. On November 20, 2015, in response to the Supreme Court decision, the EPA proposed a supplemental finding<sup>6</sup> that consideration of cost does not alter the agency's previous conclusion that it is appropriate and necessary to regulate coal- and oil-fired electric utility steam generating units ("EGUs") under Section 112 of the CAA. The proposed supplemental finding was published for public comment on December 1, 2015. 80 Fed. Reg. 75025 (Dec. 1, 2015). The public comment period closed on January 15, 2016.

15. On December 15, 2015, the D.C. Court of Appeals in *White Stallion Energy, LLC v. Environmental Protection Agency*, No. 12-1100, 2015 U.S. App. LEXIS 21819 (D.C. Cir. 2015) issued an order remanding the MATS rulemaking proceeding back to EPA without vacatur. This action means that the MATS rule remains applicable and effective. The D.C. Court of Appeals noted that EPA had represented it was on track to issue by April 15, 2016, a final finding regarding its consideration of cost.

16. On December 1, 2015, the Company filed with the Commission a motion to extend the date for completion and placement in service of the Certificated Project to the date twenty (20) months after the date on which the Corps issues a construction permit for the Certificated Project. On December 22, 2015, the Commission issued an Order granting the Company's motion to extend.

#### **Plans for Maintaining System Reliability in the North Hampton Roads Area**

17. In order to ensure reliability for the Peninsula while the Surry-Skiffes Creek Line

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<sup>6</sup> See <http://www.gpo.gov/fdsys/pkg/FR-2015-12-01/pdf/2015-30360.pdf>.

is being constructed in anticipation of the Yorktown Unit 1 and 2 retirements, the Company is conducting a rigorous inspection and maintenance program (“Inspection Program”). The focus of the Inspection Program is transmission lines and stations for assets that directly serve the Peninsula. This includes, but is not limited to, the lines and stations from Chickahominy east to Newport News, as well as lines from Surry and Chuckatuck that feed into the southern end of the Peninsula. The Inspection Program focuses on the human performance factor that will be emphasized consistently over the work period to ensure the Electric Transmission and Station workforce involved in supporting the assets on the Peninsula are cognizant of the ongoing construction. The Inspection Program will also consist of a complete evaluation of all abnormal equipment logs that require equipment maintenance or replacement in order to ensure that all equipment is in-service, and infrared reviews of stations and transmission lines prior to and during long critical outages to identify any weak links in the system that need attention to prevent unplanned outage events. More frequent aerial and foot patrols of transmission lines and stations will also be incorporated into the Inspection Program. Lastly, the outages required to address any outstanding equipment issues will be scheduled around the necessary planned outages to support the construction of the Certificated Project to limit the overall system exposure.

18. Additional inspection and maintenance work that is currently being conducted as part of the Inspection Program includes performing substation inspections quarterly; augmenting quarterly inspections with Technical Oversight Inspections of select stations; increasing infrared inspections of affected substations; performing infrared inspections every two weeks if load exceeds 18,000 MW; and reviewing all Corrective & Preventative Maintenance orders for substation equipment and relay systems to ensure they are completed or can be deferred during

construction of the Certificated Project.

19. Foundation work on the existing transmission lines at the James River Bridge was completed at the end of 2015. Additional inspection and maintenance work is also being planned for the future (prior to construction of the Certificated Project). This additional future work under the Inspection Program includes the following: all line switches will be inspected and any necessary maintenance performed prior to construction; all questionable compression conductor connections will be inspected and any necessary repairs will be made prior to commencement of work; one month prior to beginning work, a foot patrol will be done on the four 230 kV lines serving the Peninsula, and any issues found will be corrected prior to commencement of work; one week prior to beginning work, an aerial patrol will be done on the four 230 kV lines serving the Peninsula, and any issues found will be corrected prior to commencement of work; and bi-weekly aerial patrols will be done throughout the construction of the Certificated Project on these four 230 kV lines to identify any issues that may have surfaced since the previous patrol. The bi-weekly aerial patrols will specifically look for equipment integrity issues identified through visual inspection, corona camera, and infrared camera; and any third-party work on or near the right-of-way with a potential threat to the lines, which will be identified and addressed accordingly. Should the permit be delayed and Yorktown is forced to shut down without the line in service, the above actions will be taken well in advance of the Yorktown coal unit closures.

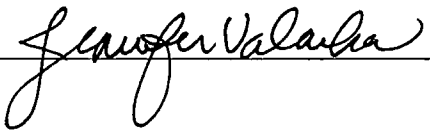
20. If the Certificated Project is not in-service by the time that Yorktown Units 1 and 2 must retire to be in compliance with effective environmental regulations, then the plan for maintaining system reliability for the Peninsula will include careful planning of transmission outages and minimum work on assets on the Peninsula while the planned outages to support the construction of the Certificated Project outages are underway. Under some unplanned event



scenarios, the reliability plan must include shedding of load in the amounts necessary to reduce stress on the system below critical demand levels. The shedding of load could occur in some instances at system load levels well below peak demand levels, on the order of 16,000 MW or higher. The exact system load level, load shed amounts and locations will be dependent on the circumstances that exist on the system at the time.

21. The Company will continue to report to the Commission material developments of its plans for maintaining system reliability on the schedule set forth in the Order Directing Updates.

Respectfully submitted,  
VIRGINIA ELECTRIC AND POWER COMPANY

By: 

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*Counsel for Virginia Electric and Power Company*

December 20, 2016

# Exhibit A

## Exhibit A

From: Steffey, Randy L CIV USARMY CENAO (US) [mailto:Randy.L.Steffey@usace.army.mil]  
Sent: Wednesday, December 07, 2016 12:02 PM  
To: Courtney R Fisher (Services - 6); Gray, Corey; Ramsey, Dave; Brady, Ellen; roger.kirchen@dhr.virginia.gov; andrea.kampinen@dhr.virginia.gov; Julie.langan@dhr.virginia.gov; John Eddins; cvaughn@achp.gov; Pamela Goddard; joakes@npca.org; taskforce@savethejames.com; jdunn@chesapeakeconservancy.org; Elaine\_leslie@nps.gov; becky\_eggleston@nps.gov; jonathan\_connolly@nps.gov; Dorothy\_geyer@nps.gov; kym\_hall@nps.gov; mike\_caldwell@nps.gov; mary\_morrison@nps.gov; Charles\_hunt@nps.gov; joe\_dibello@nps.gov; bonnie\_halda@nps.gov; NPS\_NHL\_NERreview@nps.gov; maxwell.hlaven@jamescitycountyva.gov; liz.young@jamescitycountyva.gov; mduncan@cwf.org; Elizabeth Kostelny; leighton.powell@scenicvirginia.org; rnieweg@savingplaces.org; mquinan@cblaw.com; jbrunkow@jrava.org; Elizabeth\_vehmeyer@nps.gov; jhmccall1@gmail.com; temple@delawaretribe.org; stephenradkins@aol.com; Jack Gary; MNFowler; Rgray58@hughes.net  
Cc: Kelly, Jason E COL USARMY CENAO (US); Walker, William T Jr CIV USARMY CENAO (US); Rhodes, Lynette R CIV USARMY CENAO (US); McDonough, Gregory CIV USARMY CENAO (US); Cotnoir, Audrey L CIV USARMY CENAO (US); Haynes, John H Jr CIV USARMY CENAO (US); Haviland, Mark W CIV USARMY CENAO (US); Bloodgood, Patrick J CIV USARMY CENAO (US)  
Subject: [External] Dominion S-S-W; Draft MOA Coordination {15-DAY COMMENT PERIOD}  
Importance: High

VDHR, ACHP, and Consulting Parties:

Enclosed for your review and comment is the latest MOA saved in .docx and .doc format. Based on previous input, we have worked with Dominion and the Commonwealth of Virginia to refine a framework for the MOA that better defines Dominion's responsibilities, and ensures that Dominion's proposed mitigation is completed in good faith effort. We are seeking your input on the content of this MOA, including any additional compensatory mitigation recommendations that may have been overlooked but could provide additional value. The Corps will use your input to inform whether the MOA and its proposed mitigation could resolve adverse effects and fulfill the responsibilities under Section 106 of the NHPA.

The Corps is awaiting Dominion's submittal of the following documents: (1) Updated Response to Consulting Party Comments RE: Our June 13, 2016 Coordination Package, (2) Revised Context Document RE: Basis for MOA. These items will be forward to everyone for informational purposes as soon as they are available; however these pending items are not necessary to effectively provide comments on this MOA.

If you wish to comment specific to this MOA, you must do so by close of business December 21, 2016. The Corps has decided since the proposed mitigation measures have not changed, but rather the structure of the MOA has, we are only opening this comment period for 15-days. We thank you and look forward to concluding Section 106 of the NHPA as soon as possible.

Do not forget to visit <http://www.nao.usace.army.mil/Missions/Regulatory/SkiffesCreekPowerLine.aspx> . We are routinely adding new and updated information that you may find of interest, but otherwise would not receive specific to the Section 106 NHPA consultation process.

Thanks,

Randy Steffey  
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**CUSTOMER SATISFACTION SURVEY:**

The Norfolk District is committed to providing the highest level of support to the public. In order for us to better serve you, we would appreciate you completing our Customer Satisfaction Survey located at [http://corpsmapu.usace.army.mil/cm\\_apex/f?p=regulatory\\_survey](http://corpsmapu.usace.army.mil/cm_apex/f?p=regulatory_survey). We value your comments and appreciate your taking the time to complete the survey.

MONTH XX, YEAR

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

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

MONTH, YEAR

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

**WHEREAS**, Virginia Electric and Power Company, d/b/a Dominion Virginia Power (Dominion), proposes to construct new electrical transmission line infrastructure in the Hampton Roads area of Virginia. The project is intended to provide sufficient and reliable electricity to residents, businesses, and government agencies located on the Virginia Peninsula, and to meet mandatory federal North American Electric Reliability Corporation Reliability Standards. The project is collectively known as the Surry – Skiffes Creek – Whealton project, located in Surry, James City, and York Counties and the Cities of Newport News and Hampton, Virginia (the Project); and

**WHEREAS**, the Project involves construction of a new high voltage aerial electrical transmission line that consists of three components; (1) Surry – Skiffes Creek 500 kilovolt (kV) aerial transmission line, (2) Skiffes Creek 500 kV – 230 kV – 115 kV Switching Station, and (3) Skiffes Creek – Whealton 230 kV aerial transmission line. The proposed project will permanently impact 2,712 square feet (0.06 acres) of subaqueous river bottom and 281 square feet (0.01 acres) of non-tidal wetlands, and convert 0.56 acres of palustrine forested wetlands to scrub shrub non-tidal wetlands. The transmission lines will cross portions of the James River, Woods Creek, and Skiffes Creek. In addition to structures being

built within the James River, structural discharges are proposed in non-tidal wetlands. The proposed activities will require a Corps permit pursuant to Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act; and

**WHEREAS**, the Corps, in consultation with the Department of Historic Resources (DHR), which serves as the SHPO in Virginia, has determined that this Project's Area of Potential Effects (APE) shall consist of the Direct APE and an Indirect APE; and

**WHEREAS**, the Direct APE is defined to include those areas where physical land disturbing activities may occur. The limits of the Direct APE consist of the limits of the Project right of way (ROW) and identified construction access areas. For construction access areas, a 25-foot width was used along the centerline of field located paths and roads outside of the Project ROW; and

**WHEREAS**, the Indirect APE is defined to include those areas which may experience visual effects. The Indirect APE extends approximately 10 miles upstream and 13 miles downstream from the proposed river crossing and includes a buffer of approximately 0.5-miles inland from the shoreline within this area. The Indirect APE for areas where there are existing towers, and the proposed work will not result in a change in structure height greater than 10% or 20 feet is defined by the adjacent parcel boundaries or a 0.5 mile buffer, whichever is less. The limits of the Direct and Indirect APEs are shown on Attachment A; and

**WHEREAS**, the SHPO, finds that the documents listed in Attachment B satisfy the Secretary of the Interior's *Standards and Guidelines for Archaeological Documentation* (48 FR 44734-37, September 29, 1983) and the SHPO's *Guidelines for Conducting Historic Resources Survey in Virginia (2011)* and the SHPO's "Assessing Visual Effects on Historical Properties;" and

**WHEREAS**, the Corps, in consultation with the SHPO, has determined that 57 resources as described in the attached table (Attachment C) and as depicted on the attached map (Attachment C) are listed, eligible for listing, or treated as eligible for listing in the NRHP for the purposes of Section 106 compliance and are considered historic properties for purposes of the Project. One additional resource, the Jamestown Island-Hog Island Cultural Landscape Historic District, was considered potentially eligible and also was included for consideration, and it also is listed on Attachment C; and

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

MONTH XX, YEAR

Smith Chesapeake NHT within the APE is a contributing element of that district; and

**WHEREAS**, the Corps refers to the eligible historic district identified by the Keeper in its letter of August 14, 2015 as the "Historic District (formally Jamestown Island-Hog Island Cultural Landscape) including CAJO (No VDHR#)" and for the purposes of this Memorandum of Agreement (MOA) shall refer to this property as the "Jamestown Island-Hog Island-Captain John Smith Trail Historic District" (No VDHR#)<sup>1</sup>; and

**WHEREAS**, the Corps, in consultation with the SHPO, Advisory Council on Historic Preservation (ACHP), and Consulting Parties, has determined that the undertaking will have an adverse effect on archaeological site 44JC0662, the Jamestown Island-Hog Island-Captain John Smith Trail Historic District, which includes the contributing section of the Captain John Smith Chesapeake NHT within the APE, Carter's Grove National Historic Landmark (VDHR #047-0001)<sup>2</sup>, Colonial National Historical Park/Colonial Parkway Historic District (VDHR #047-0002), Hog Island Wildlife Management Area (VDHR #090-0121), Jamestown National Historic Site/Jamestown Island/Jamestown Island Historic District (VDHR #047-0009), the Battle of Yorktown (VDHR #099-5283), and Fort Crafford (VDHR #121-0027) (Attachment C); and

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

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

**WHEREAS**, the Corps has invited the following Federally Recognized Tribes: Catawba Indian Nation, the Delaware Tribe of Indians, the Delaware Nation, and the Pamunkey to participate in this consultation and the Delaware Tribe of Indians and the Pamunkey have accepted, and the Catawba Indian Nation and the Delaware Nation have declined to participate; and

**WHEREAS**, the Corps has invited the following Virginia State Recognized Tribes: the Cheroenhaka (Nottoway), the Chickahominy, the Eastern

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

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

Chickahominy, the Mattaponi, the Upper Mattaponi, the Nansemond Tribal Association, the Nottoway Tribe of Virginia, and the Rappahannock to participate in this consultation and only the Chickahominy have elected to participate; and

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

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

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

**WHEREAS**, the Corps has involved the public in the Section 106 process by seeking public comment at the following stages of consultation: the initiation of consultation under Section 106 (August 28, 2013), identification of historic properties (November 13, 2014), and assessment and resolution of adverse effects (May 21, 2015); and

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

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

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



MONTH XX, YEAR

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

**WHEREAS**, Dominion has identified several "Initial Avoidance, Minimization, and Mitigation Measures" (Stipulation I) that it will commence and complete, as further described herein; and

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

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

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

**WHEREAS**, the Signatory Parties find that the mitigation measures that this MOA employs—the Stipulation I "Initial Avoidance, Minimization, and Mitigation Measures" in combination with the Stipulation III "Additional Compensatory Mitigation Projects"—are sufficient to resolve the Project's adverse effects on the historic properties identified in Attachment C.

**NOW THEREFORE**, in order to satisfy the Corp's Section 106 responsibilities to take into account and resolve the effects of the undertaking requiring Corps permits on historic properties, the Signatory Parties here acknowledge that compliance with this MOA shall be made a condition of any permit issued by the Corps for the work described; thereby effectively incorporating all terms, provisions and stipulations of this MOA as conditions to the permit such that if any provision or stipulation herein is not fulfilled, such failure will constitute noncompliance with the permit, and the Corps may pursue enforcement and may seek all available remedies.

**STIPULATIONS**

**I INITIAL AVOIDANCE, MINIMIZATION, AND MITIGATION MEASURES**

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

- 1 Prior to any construction at the Skiffes Creek Switching Station, Dominion in consultation with the Corps, SHPO, ACHP, and the Participating Parties to this MOA shall develop an approved Treatment Plan for site 44JC0662. The Treatment Plan shall be consistent with the Secretary of the Interior's *Standards and Guidelines for Archaeological Documentation* (48 FR 44734-37, September 29, 1983) and the SHPO's *Guidelines for Historic Resources Survey in Virginia (2011)* and shall take into account the ACHP's publications, *Recommended Approach for Consultation on Recovery of Significant Information from Archeological Sites* (1999; updated September 30, 2010) and *Section 106 Archaeology Guidance* (April 2009). The plan shall specify at a minimum, the following:
  - A. the property, properties, or portions of properties where site specific data recovery plans will be carried out;
  - B. the portion(s) of the site(s) to be preserved in place, if any, as well as the measures to be taken to ensure continued preservation;
  - C. any property, properties, or portions of properties that will be destroyed or altered without data recovery;
  - D. the research questions to be addressed through data recovery, with an explanation of their relevance and importance;
  - E. the methods to be used in analysis, and data management with an explanation of their relevance to the research questions;
  - F. the proposed disposition of recovered materials and records;
  - G. proposed methods of disseminating the results of the work to the interested public and/or organizations who have expressed an interest in the data recovery, *subject to revision based on the results of the data recovery proceeds*; and
  - H. a schedule for the submission of progress reports to the Corps, SHPO, ACHP, and other Participating Parties.
- 2 To facilitate plan approval, Dominion will provide a draft plan to the Corps, SHPO, ACHP, and other Participating Parties to this MOA. All parties will be given thirty (30) days to review and provide comment. If

no comments are submitted, the Corps may assume the non-responding party has no comments. Dominion shall consider all comments received and submit the final Treatment Plan to the Corps for approval. The plan will be considered "approved" upon the Corps written approval.

- 3 Prior to commencing construction activities at the Switching Station Site that could affect archaeological site 44JC0662. Dominion shall ensure that the approved Treatment Plan is implemented.
- 4 Dominion shall notify the Corps in writing no later than fifteen (15) days after completion of the fieldwork portion of the Treatment Plan. Notification shall include a brief management summary. If so requested by the Corps, Dominion shall facilitate any site visit.
- 5 Project activities may proceed following this notification while the technical report is in preparation. The Corps may approve construction activities and/or construction related ground disturbing activities in the area and within the boundary of the affected archaeological site while the technical report is in preparation.
- 6 Dominion and/or its assignees shall photograph the work and artifacts, and display in an appropriate place in the Project vicinity on a temporary or permanent basis, artifacts or images, with the exception of human remains, funerary objects, or sacred items.
- 7 Within one (1) year of the notification that fieldwork has been completed, Dominion shall submit to the Corps a report (following the requirements for preparation and review of draft and final reports in stipulation V) of the results of the Treatment Plan investigations. Once the Corps has approved the final report, Dominion shall provide two (2) copies of that document, bound and on acid-free paper and one electronic copy in Adobe® Portable Document Format (.pdf) to the SHPO and one (1) copy to any other Participating Parties requesting a copy.

**b. AVOIDANCE OF UNDERWATER AND TERRESTRIAL ARCHAEOLOGICAL SITES**

- 1 Prior to any construction that could impact archeological resources within the Direct APE Dominion in consultation with the Corps, SHPO, ACHP, and the Participating Parties to this MOA shall develop an approved Avoidance Plan for all archaeological sites listed in Attachment C. The Avoidance Plan shall include:

- A. Project plans showing the location of the cultural anomalies and all archaeological sites identified in Attachment C located within the direct APE;
- B. Boundaries of the buffered anomalies and archaeological sites identified in Attachment C within the direct APE, relative to all proposed project elements including but not limited to coffer dams, tower footers, fenders, and mooring/anchoring locations, access roads, construction staging and equipment and materials storage area;
- C. Detailed steps and construction protocols for ensuring avoidance of buffered areas and the handling of any unanticipated project activity that may inadvertently affect the underwater anomalies or terrestrial archaeological sites during construction; and.
- D. Dominion shall fund an independent archeologist (Archaeological Monitor) who meets the professional qualifications established in Stipulation IV below and who is approved by the SHPO to observe and monitor ground disturbances associated with construction to ensure the protection of all archaeological sites identified in Attachment C. The Archaeological Monitor shall also be responsible for ensuring that the requirements of Stipulation VII for unanticipated discoveries are carried out as appropriate.

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

**c. INTERPRETIVE SIGNAGE**

- 1 Prior to "Limited Construction within the James River", activities as defined in XVII.g, Dominion in consultation with the Corps, SHPO,

ACHP, and the Participating Parties to this MOA shall develop an approved Signage Plan. In developing the Signage Plan Dominion shall:

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

**d. LANDSCAPE DOCUMENTATION OF JAMES RIVER**

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

**e. SURRY – SKIFFES CREEK TOWER COATINGS**

- 1 Dominion shall examine all available and feasible tower coating and finishing materials and methods that will further minimize and/or maintain the visual intensity of the transmission line infrastructure crossing the river, above and beyond the visibility reduction achieved by standard weathered galvanized steel coatings, that meet and comply with all applicable state and federal law.
- 2 Prior to “Limited Construction Within the James River”, Dominion shall submit its analysis of potential tower coatings, finishing materials, and maintenance methods along with its recommendation to the Corps, SHPO, ACHP, and other Participating Parties to this MOA. All parties will be given thirty (30) days to review and provide comment. If no comments are submitted, the Corps may assume the non-responding party has no comments.
- 3 Considering all comments as appropriate, Dominion shall identify suitable tower finishing and coating materials that most minimize visibility of the transmission line infrastructure. Dominion shall apply

the identified coating or finishing material or method to the towers as soon as conditions allow for effective application but no later than one (1) year after energization of the line.

- 4 Dominion shall ensure that all towers are maintained over their lifespan such that their visual contrast and intensity remains at levels consistent or less than when originally installed.

## II ADDITIONAL COMPENSATORY MITIGATION PROJECT FUNDING, REPORTING, AND STUDIES

### a. Project Funding and Annual Reports:

- 1 Prior to any construction within the James River, Dominion shall provide to the Signatory Parties documentation demonstrating that Dominion has made funding available in accordance with the following:

- A. A fund in the amount of \$27,700,000.00 to be managed by the Conservation Fund (TCF) or the appropriate entities of the Commonwealth of Virginia if Alternative Mitigation Projects are pursued, for the resolution of adverse effects. In the establishing documentation, Dominion shall ensure that the funds are used exclusively to implement the projects outlined in Stipulations III.a, III.b, and III.c of this MOA.
- B. A fund in the amount of \$25,000,000.00 to be managed by the Virginia Department of Conservation and Recreation (DCR) for the resolution of adverse effects. In the establishing documentation, Dominion shall ensure that this fund is used exclusively to implement the projects outlined in Stipulation III.d of this MOA.
- C. A fund in the amount of \$4,205,000.00 to be managed by the Virginia Department of Game and Inland Fisheries (DGIF) for the resolution of adverse effects. In the establishing documentation, Dominion shall ensure that this fund is used exclusively to implement the projects outlined in Section III.e of this MOA.
- D. A fund in the amount of \$15,595,000.00 to be managed by the Virginia Environmental Endowment (VEE) for the resolution of adverse effects. In the establishing documentation, Dominion shall ensure that this fund is used exclusively to implement the CMP criteria to execute projects in accordance with Stipulation III.f of this MOA.
- E. A fund in the amount of \$12,500,000.00 to be managed by the Virginia Land Conservation Fund (VLCF) for the resolution of adverse effects. In the establishing documentation, Dominion shall

ensure that this fund is used exclusively to implement the CMP criteria to execute projects in accordance with Stipulation III.g of this MOA.

- 2 All projects funded by the accounts created in accordance with Stipulation II.a.1 above shall comply with all applicable local, Commonwealth, and federal laws and regulations. Execution of this MOA shall not permit Dominion to proceed with any project before obtaining all necessary permits and permissions.
- 3 Dominion shall provide an annual report due by January 30 each year summarizing disbursement of funds from the accounts created in accordance with Stipulation II.a.1 and progress for each project for the preceding year. The annual report shall also identify project changes or challenges experienced during the reporting year, as well as anticipated challenges or changes expected in the coming reporting year. Dominion will submit the annual report to the Signatories. Any disputes regarding dispensing and use of funds shall be handled in accordance with Stipulation XI below.
- 4 All funds shall be obligated within ten (10) years of the effective date of this MOA; however, nothing herein shall require that funded projects be completed within that time frame, unless otherwise noted.
- 5 Dominion shall use reasonable efforts to obligate 50 percent of the funds within five years; and, 100 percent of the funds within ten years of the effective date of this MOA.
- 6 Notwithstanding Stipulations II.a.4-5, a failure to have all funds obligated within ten years after the mitigation fund is established does not constitute a breach of the terms of this MOA, but instead triggers Stipulation II.a.7.
- 7 Any mitigation compensation funds that are not obligated or committed to a project within twelve years after the effective date of this MOA shall be transferred to a legally separate mitigation compensation fund administered by the VLCF for expenditure on projects, programs, and activities at historic properties and associated historic landscapes within or related to the indirect APE that were adversely affected by this project.
- 8 The funds described in Stipulation II.a.1 shall be used exclusively for projects selected in accordance with Stipulation III, or in accordance with Stipulation II.a.7 in appropriate circumstances. Dominion shall separately provide necessary additional funds to complete any mitigation projects required under Stipulations I.a to I.e and to



complete the Heritage Tourism and Visitor Experience Study required under Stipulation II.b.

- 9 The projects selected under Stipulation III shall be scaled, planned, designed, procured, constructed, and operated at funding levels consistent with the allocations set out in Stipulation II.a.1 respectively. If additional funds are required beyond those allocated in Stipulation II.a.1 Dominion shall promptly provide the minimum additional funding necessary to complete the specific mitigation project.

**b. Heritage Tourism and Visitor Experience Study and Enhancement:**

- 1 Prior to construction within the James River, Dominion, in consultation with the Signatory Parties, shall initiate a Heritage Tourism and Visitor Experience study (which includes ecotourism) for publically accessible, publically owned, and actively marketed historic properties (heritage tourism sites) and ecotourism activities located within the Indirect APE). The purpose of the study is to evaluate current heritage tourism and visitor experience within the Indirect APE in order to inform mitigation activities required by this MOA and to develop a marketing and visitation program to promote and enhance heritage tourism sites (which includes the historic properties addressed by this MOA) and visitor experiences within the Indirect APE.
- 2 Dominion shall undertake the Heritage Tourism and Visitor Experience study in collaboration with landowners of heritage tourism sites within the Indirect APE. Dominion shall take appropriate effort to seek the participation of the landowners of Jamestown Island and Historic Jamestowne, Hog Island Wildlife Management Area (WMA), Jamestown Settlement, Colonial Parkway and elements of Colonial National Historical Park, and elements of the Captain John Smith Chesapeake NHT. Should any of the landowners elect not to participate, Dominion shall proceed with the study using otherwise available information.
- 3 Dominion shall complete the Heritage Tourism and Visitor Experience study within eight (8) months of initiation.
- 4 To the extent possible, the Heritage Tourism and Visitor Experience study should include data from shoulder and peak visitation seasons. Shoulder months include March, April, May, September, October or November. Peak months include June, July and August.
- 5 Upon completion, Dominion shall provide the draft study to the Corps, SHPO, ACHP, and other Participating Parties to this MOA. All parties will be given thirty (30) days to review and provide comment. If no comments are submitted, the Corps may assume the non-responding

party has no comments. Dominion shall consider all comments received and submit the study for approval to the Signatories of the MOA. The Heritage Tourism and Visitor Experience study will be considered "final" upon the Corps written approval.

- 6 The implementation of projects in Stipulations III may proceed in advance of the final Heritage Tourism and Visitor Experience study recommendations. However, as the study progresses, Dominion shall use the study's findings to inform its mitigation efforts.
- 7 No more than thirty (30) days after Corps approval of the final Heritage Tourism and Visitor Experience study Dominion shall initiate consultation with the Corps, SHPO, ACHP, Participating Parties and participating management entities of impacted heritage tourism sites, to develop a marketing and visitation program (Program) to promote and enhance the impacted heritage tourism sites and visitor experience within the indirect APE.
- 8 No more than one (1) year following Corps approval of the final Heritage Tourism and Visitor Experience study Dominion shall provide the draft marketing and visitation program to the Corps, SHPO, ACHP, and other Participating Parties to this MOA. All parties will be given thirty (30) days to review and provide comment. If no comments are submitted, the Corps may assume the non-responding party has no comments. Dominion shall consider all comments received and submit the final marketing and visitation program to the Signatories of the MOA. The marketing and visitation program will be considered "approved" upon the Corps written approval.
- 9 No more than thirty (30) days after approval of the marketing and visitation program Dominion shall proceed to partner with the approved implementing organizations to implement the Program. Dominion's funding responsibilities shall be limited to the average annual budget for the preceding two years for marketing programs by the management entities of publicly accessible sites within the Indirect APE.

**III ADDITIONAL COMPENSATORY MITIGATION PROJECTS** - Dominion shall fulfill the following actions as mitigation for the Project's direct, indirect, and cumulative adverse effects to historic properties and the related cultural and natural landscapes contributing to their significance. Dominion shall undertake projects that will, as confirmed by Signatory Parties enhance and/or contribute to preservation of the setting and feeling of sites associated with early Colonial and Native American cultures of this area.

- a. **Within the Jamestown Island-Hog Island-Captain John Smith Trail Historic District and the thematically related areas Dominion shall complete the following projects related to protecting and/or enhancing the early Colonial agricultural landscape and setting. Dominion will make all effort to complete Stipulations III.a.1 - III.a.5 below. Should Dominion be unable to obtain cooperation of the Carters Grove landowner, Dominion shall complete Stipulations III.a.6 – III.a.11.**
- 1 Prior to any construction within the James River, Dominion shall:
    - A. Submit to the Signatories of this MOA written confirmation that Dominion has requested access to property and cooperation from the Landowner of Carters Grove to identify specific landscape and viewshed enhancement, shoreline protection, and other projects that enhance the affected setting and feeling of Carter's Grove.
    - B. Working with the landowner of Carters Grove, identify and submit to the Signatories of this MOA the location and type of shoreline stabilization activities proposed to address approximately 6,000 linear feet of shoreline.
    - C. Working with the landowner of Carters Grove, submit to the Corps, SHPO, ACHP, and Participating Parties a draft list of projects and draft Project Narrative listing and describing projects to be carried out that will preserve and/or enhance the character or viewshed of Carter's Grove. This draft Project Narrative shall identify specific projects, list tasks necessary to execute each project, provide a timeline for accomplishment of each project and describe how each project enhances the historic value of the resource. All parties will be given thirty (30) days to review and provide comment.
  - 2 Before beginning "Limited Construction within the James River" Dominion must receive approval of the list of projects to be carried out at Carters Grove. The project list will be considered "approved" once the SHPO has confirmed that the projects will enhance the historic setting and feeling of Carters Grove and the Corps has provided written approval.
  - 3 Dominion may not proceed further than "Limited Construction within the James River" until the Corps has approved the final Project Narrative for projects to be carried out at Carters Grove. To facilitate this approval, Dominion shall consider all comments and submit to the Signatories of this MOA a final Project Narrative describing projects to be carried out at Carters Grove. This final Project Narrative shall include confirmation that the Dominion and/or all appropriate parties have all access and permissions necessary to complete all identified

mitigation work. This final Project Narrative will be considered “approved” once the SHPO has confirmed that the projects as proposed will enhance the affected setting and feeling of Carter’s Grove and the Corps has provided written approval.

- 4 Within one (1) year of initiating “Limited Construction within the James River” Dominion must receive approval of the final Project Narrative or must remove all structures and/or fill placed within the James River in association with the line installation as approved by this permit action and restore the area to pre-disturbed conditions.
- 5 No more than one (1) year following the initiation of “Construction Above the James River”, and annually thereafter, Dominion shall provide to the Signatories of this MOA, a report containing detailed plans for each project to be accomplished within the next year according to the timeline in the approved Project Narrative and confirmation that appropriate projects have commenced or are under contract to commence. With this annual report, Dominion may also request modification to the project list or narratives to address changes in circumstances over the previous year. A requested modification will be considered “approved” once the SHPO has confirmed that the projects will enhance the affected setting and feeling of Carter’s Grove and the Corps has provided written approval.
- 6 In the event that the Landowner of Carters Grove fails to provide the requisite property access or cooperation as required in Stipulation III.a.1.A to complete the work required in Stipulation III.a.1-5, Dominion shall provide to the Signatory Parties, evidence that Dominion has made good faith effort to secure access and cooperation. Such evidence may include Dominion’s written request for such access and cooperation and the Landowner’s denial or failure to reach a written agreement within 45 days of that written request. In the event that (i) the landowner of Carters Grove and Dominion fail to reach agreement on the requisite property access or cooperation as required in Stipulation III.a.1.A within 45 days of Dominions written request; (ii) the Landowner of Carters Grove and Dominion fail to agree upon the list of projects required in III.a.1.B and III.a.1.C within 30 days of reaching agreement on property access and cooperation; or (iii) the Landowner of Carters Grove and Dominion fail to agree upon the Project Narratives required by III.a.1.C within 60 days of reaching agreement on property access and cooperation, Dominion may request approval to pursue Alternative Measures as defined in Stipulations III.a.7 – III.a.11.
- 7 Once the Corps has approved pursuit of Alternative Measures and prior to any construction within the James River, Dominion shall:

- A. Submit to the Signatories of this MOA written confirmation that Dominion is working in cooperation with the Virginia Department of Conservation and Recreation (DCR) to identify specific landscape and viewshed enhancement, shoreline protection, and other projects that enhance the affected setting and feeling of Chippokes Plantation State Park.
  - B. Working with the SHPO, identify and submit to the Signatories of this MOA the location and type of shoreline stabilization activities proposed to address approximately 8,000 linear feet of shoreline at Chippokes State Park.
  - C. Working with the SHPO, submit to the Corps, SHPO, ACHP, and Participating Parties a draft Project Narrative listing and describing projects to be carried out that will preserve and/or enhance the historic character or viewshed of Chippokes Plantation State Park. This draft Project Narrative shall identify specific projects related to enhancement of visitor facilities, development of 17<sup>th</sup> Century agricultural techniques and colonial life and preservation of Chippokes Mansion. This draft Project Narrative shall also list tasks necessary to execute each project, provide a timeline for accomplishment of each project and describe how each project enhances the historic value of the resource. All parties will be given thirty (30) days to review and provide comment.
- 8 Before beginning "Limited Construction within the James River" Dominion must receive approval of the list of projects to be carried out at Chippokes Plantation State Park. The project list will be considered "approved" once the SHPO has confirmed that the projects will enhance the historic setting and feeling of Chippokes Plantation State Park and the Corps has provided written approval.
- 9 Dominion may not proceed further than "Limited Construction within the James River" until the Corps has approved the final Project Narrative for projects to be carried out at Chippokes Plantation State Park. To facilitate this approval, Dominion shall consider all comments and submit to the Signatories of this MOA a final Project Narrative describing projects to be carried out at Chippokes Plantation State Park. This final Project Narrative shall include confirmation that Dominion and/or all appropriate parties have all access and permissions necessary to complete all identified mitigation work. This final Project Narrative will be considered "approved" once the SHPO has confirmed that the projects will enhance the historic setting and feeling of Chippokes Plantation State Park and the Corps has provided written approval.

MONTH XX, YEAR

- 10 Within one (1) year of initiating “Limited Construction within the James River” Dominion must receive approval of the final Project Narrative or must remove all structures and/or fill placed within the James River in association with the line installation as approved by this permit action and restore the area to pre-disturbed conditions.
- 11 No more than one (1) year following the initiation of “Construction Above the James River”, and annually thereafter, Dominion shall provide to the Signatories of this MOA, a report containing detailed plans for each project to be accomplished within the next year according to the timeline in the approved Project Narrative and confirmation that appropriate projects have commenced or are under contract to commence. With this annual report, Dominion may also request modification to the project list or narratives to address changes in circumstances over the previous year. A requested modification will be considered “approved” once the SHPO has confirmed that the projects will enhance the historic setting and feeling of Chippokes Plantation State Park and the Corps has provided written approval.
- b. Within the Jamestown Island-Hog Island-Captain John Smith Trail Historic District and the thematically related areas Dominion shall complete the following projects related to preserving and/or enhancing the overall landscape. Dominion will make all effort to complete Stipulations III.b.1 - III.b.5 below. Should Dominion be unable to obtain cooperation of the National Park Service (NPS), Dominion shall complete Stipulations III.b.6 – III.b.11.**
- 1 Prior to any construction within the James River, Dominion shall:
- A. Submit to the Signatories of this MOA written confirmation that Dominion has requested property access and cooperation from the NPS, Colonial National Historical Park to identify specific landscape enhancement and shoreline protection or viewshed enhancement projects that preserve the setting and feeling of the Colonial Parkway unit consistent with its design, open and forested areas, other natural elements, and interpretive areas as documented in the National Park Service’s Cultural Landscape Inventory (2008).
- B. Working with the NPS, submit to the Corps, SHPO, ACHP, and Participating Parties a draft list of projects and a Project Narrative listing and describing projects to be carried out that will preserve and/or enhance the character or viewshed of the Colonial Parkway unit. This draft Project Narrative shall identify specific projects, list tasks necessary to execute each project, provide a timeline for accomplishment of each project and describe how each project enhances the historic value of the resource. All parties will be given thirty (30) days to review and provide comment.

- 2 Before beginning "Limited Construction within the James River" Dominion must receive approval of the list of projects to be carried out at Colonial Parkway unit. The project list will be considered "approved" once the SHPO has confirmed that the projects will enhance the historic setting and feeling of Colonial Parkway unit and the Corps has provided written approval.
- 3 Dominion may not proceed further than "Limited Construction within the James River" until the Corps has approved the final Project Narrative for projects to be carried out at the Colonial Parkway unit. To facilitate this approval, Dominion shall consider all comments and submit to the Signatories of this MOA a final Project Narrative describing projects to be carried out at the Colonial Parkway unit. This final Project Narrative shall include confirmation that Dominion and/or all appropriate parties have all access and permissions necessary to complete all identified mitigation work. This final Project Narrative will be considered "approved" once the SHPO has confirmed that the projects will enhance the affected setting and feeling of the Colonial Parkway unit and the Corps has provided written approval.
- 4 Within one (1) year of initiating "Limited Construction within the James River" Dominion must receive approval of the final Project Narrative or must remove all structures and/or fill placed within the James River in association with the line installation as approved by this permit action and restore the area to pre-disturbed conditions.
- 5 No more than one (1) year following the initiation of "Construction Above the James River", and annually thereafter, Dominion shall provide to the Signatories of this MOA, a report containing detailed plans for each project to be accomplished within the next year according to the timeline in the approved Project Narrative and confirmation that appropriate projects have commenced or are under contract to commence. With this annual report, Dominion may also request modification to the project list or narratives to address changes in circumstances over the previous year. A requested modification will be considered "approved" once the SHPO have confirmed that the projects will enhance the affected setting and feeling of the Colonial Parkway unit and the Corps has provided written approval.
- 6 In the event that the NPS fails to provide the requisite property access or cooperation as required in Stipulation III.b.1.A to complete the work required in Stipulation III.b.1-5, Dominion shall provide to the Signatory Parties, evidence that Dominion has made good faith effort to secure property access and cooperation. Such evidence may include Dominion's written request for such property access and cooperation and the NPS's denial or failure to reach a written agreement on property access and cooperation within 45 days of that written request.

In the event that (i) NPS and Dominion fail to reach agreement on property access or cooperation as required in Stipulation III.b.1A within 45 days of Dominion's written request to NPS for property access and cooperation; (ii) the NPS and Dominion fail to agree upon the list of projects required in III.b.1.B within 30 days of reaching written agreement on property access and cooperation; or (iii) the NPS and Dominion fail to agree upon the Project Narratives required by III.b.1.B within 60 days of reaching written agreement on property access and cooperation, Dominion may request approval to pursue Alternative Measures as defined in Stipulations III.b.7 – III.b.11.

- 7 Once the Corps has approved pursuit of Alternative Measures and prior to any construction within the James River, Dominion shall:
  - A. Submit to the Signatories of this MOA written confirmation that Dominion is working in cooperation with the Commonwealth of Virginia to identify specific landscape and viewshed enhancement, shoreline protection, and other projects that preserve and/or enhance the setting, feeling and/or overall understanding of the Jamestown Island-Hog Island-Captain John Smith Trail Historic District and thematically related areas.
  - B. Working with the Commonwealth of Virginia, submit to the Corps, SHPO, ACHP, and Participating Parties a draft Project Narrative listing and describing projects to be carried out that will support, preserve and/or enhance the historic character or viewshed of Jamestown Settlement. This draft Project Narrative shall identify specific projects related to educational exhibits and interpretive programs at Jamestown Settlement that focus on the area's landscape and watershed, before during and after European contact, as well as on the movement of colonists and Native Americans throughout the area, including those areas covered by the Colonial Parkway and Colonial National Historic Park. This draft Project Narrative shall also identify specific projects related to development of exhibits and interpretive programs at Fort Monroe that examine the convergence of three cultures - Virginia Indians, European, and African - related to the Hampton Roads region at the time of exploration and discovery. This draft Project Narrative shall also list tasks necessary to execute each project, provide a timeline for accomplishment of each project and describe how each project enhances the historic value of the resource. All parties will be given thirty (30) days to review and provide comment.
- 8 Before beginning "Limited Construction within the James River" Dominion must receive approval of the list of projects described in III.b.7 above. The project list will be considered "approved" once the SHPO has confirmed that the projects will enhance and preserve the



historic landscape within APE and the Corps has provided written approval.

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

- A. Submit to the Signatories of this MOA written confirmation that Dominion has requested property access and cooperation from the NPS and/or PV to identify specific landscape and viewshed enhancement, shoreline protection, and other projects that preserve and enhance Historic Jamestowne and Jamestown Island's existing setting (i.e., topography, vegetation, and other defining physical features) and feeling gained from the presence its defining physical features that help convey its historic character
  
- B. Working with the NPS and/or PV, submit to the Signatories of this MOA draft plans for:
  - i. Rehabilitation or replacement of the seawall at Historic Jamestowne potentially including additional breakwaters, sills and revetments to provide protection from erosion and sea level rise.
  
  - ii. Restoration of Back Creek at Historic Jamestowne.
  
  - iii. Archaeological investigation and identification at Historic Jamestowne to support ongoing and future investigations including emergency excavation of threatened archaeological sites, excavations around Memorial Church, cooperative excavations with the National Park Service, excavation of areas east and west of the Fort site with a focus on discovering the early churches that stood on the site of the 1617 church, the site of the nation's first representative government, as well as any other archaeological investigations associated with the early occupation and settlement of Jamestown Island, and other areas related to the early settlement.
  
  - iv. Captain John Smith Chesapeake NHT landscape enhancement, visitor engagement, and visitor interpretation programs and projects at the National Park Service's visitor center on Jamestown Island as well as enhancement of the National Park Service's Neck-O-Land facility including the establishment of infrastructure to study and interpret climate change.
  
- C. Working with appropriate curators submit to the Signatories of this MOA a draft plan for conservation, preservation, and study of artifact collections from previously excavated archaeological sites throughout the APE which shall include Jamestown, Martin's Hundred, Carter's Grove, and Kingsmill, as well as partnership projects with a focus on understanding and interpreting the colony's first settlers and their human response to the new environment and climate.

- D. All parties will be given thirty (30) days to review and provide comment on the draft plans identified in Stipulation III.c.1.B and Stipulation III.c.1.C.
- 2 Before beginning "Limited Construction within the James River" Dominion must allow for the conclusion of the 30-day comment period specified in Stipulation III.c.1.D.
  - 3 Dominion may not proceed further than "Limited Construction within the James River" until the Corps has approved the final Plans for all activities described in Stipulation III.c.1.B and Stipulation III.c.1.C. To facilitate this approval, Dominion shall consider all comments and submit to the Signatories of this MOA final Plans that describe specific activities to be carried out and provide a timeline for accomplishment of each. The final Plans shall include confirmation that the Dominion and/or all appropriate parties have all access and permissions necessary to complete all identified mitigation work. The final Plans will be considered "approved" once the SHPO has confirmed that the projects will preserve and enhance Historic Jamestowne and Jamestown Island resources and the Corps has provided written approval.
  - 4 Within one (1) year of initiating "Limited Construction within the James River" Dominion must receive approval of the final Plans or must remove all structures and/or fill placed within the James River in association with the line installation as approved by this permit action and restore the area to pre-disturbed conditions.
  - 5 No more than one (1) year following the initiation of "Construction Above the James River", and annually thereafter, Dominion shall provide to the Signatories of this MOA, a report containing detailed activities to be accomplished within the next year according to the timeline in the approved Plans and confirmation that appropriate projects have commenced or are under contract to commence. With this annual report, Dominion may also request modification to the final plans to address changes in circumstances over the previous year. A requested modification will be considered "approved" once the SHPO has confirmed that the projects will preserve and enhance Historic Jamestowne and Jamestown Island resources and the Corps has provided written approval.
  - 6 In the event that the NPS and/or PV fails to provide property access or cooperation as required in Stipulation III.c.1.A to complete the work required in Stipulation III.c.1-5, Dominion shall provide to the Signatory Parties, evidence that Dominion has made good faith effort to secure property access and cooperation. Such evidence may include Dominion's written request for such property access and cooperation

and the NPS's and/or PV's denial or failure to reach written agreement on property access and cooperation within 45 days of that written request. In the event that (i) NPS and/or PV and Dominion fail to reach written agreement on property access or cooperation as required in Stipulation III.c.1.A within 45 days of Dominion's written request to NPS and/or PV for property access and cooperation; (ii) the NPS and/or PV and Dominion fail to agree upon the Draft Plans required by III.c.1.B within 60 days of reaching written agreement on property access and cooperation, Dominion may request approval to pursue Alternative Measures as defined in Stipulations III.c.7 – III.c.11.

- 7 Once the Corps has approved pursuit of Alternative Measures and Prior to any construction within the James River, Dominion shall:
  - A. Submit to the Signatories of this MOA written confirmation that Dominion is working in cooperation with the Commonwealth of Virginia to identify specific landscape and viewshed enhancement, shoreline protection, and other projects that preserve and/or enhance the setting, feeling and/or overall understanding of the Jamestown Island-Hog Island-Captain John Smith Trail Historic District and thematically related areas.
  - B. Working with the Commonwealth of Virginia, submit to the Signatories of this MOA draft plans for:
    - i. Development of a public boat launch and kayak launch areas with associated interpretive trails and educational exhibits related to the Captain John Smith Chesapeake NHT at Fort Monroe and/or Chippokes State Park; and
    - ii. Erosion and sea level rise protection projects at Fort Monroe and/or Chippokes State Park.
    - iii. Archaeological excavations at Fort Algernon including artifact conservation and exhibit development; and
    - iv. Archaeological excavations at Chippokes State Park including artifact conservation and exhibit development.
  - C. All parties will be given thirty (30) days to review and provide comment on the draft plans identified in Stipulation III.c.7.B.
- 8 Before beginning "Limited Construction within the James River" Dominion must allow for the conclusion of the 30-day comment period specified in Stipulation III.c.7.C.

- 9 Dominion may not proceed further than "Limited Construction within the James River" until the Corps has approved the final Plans for all activities described in Stipulation III.c.7.B. To facilitate this approval, Dominion shall consider all comments and submit to the Signatories of this MOA final Plans that describe specific activities to be carried out and provide a timeline for accomplishment of each. The final Plans shall include confirmation that Dominion and/or all appropriate parties have all access and permissions necessary to complete all identified mitigation work. The final Plans will be considered "approved" once the SHPO has confirmed that the projects will preserve and/or enhance the setting, feeling and/or overall understanding of the Jamestown Island-Hog Island-Captain John Smith Trail Historic District and thematically related areas and the Corps has provided written approval.
  - 10 Within one (1) year of initiating "Limited Construction within the James River" Dominion must receive approval of the final Plans or must remove all structures and/or fill placed within the James River in association with the line installation as approved by this permit action and restore the area to pre-disturbed conditions.
  - 11 No more than one (1) year following the initiation of "Construction Above the James River", and annually thereafter, Dominion shall provide to the Signatories of this MOA, a report containing detailed activities to be accomplished within the next year according to the timeline in the approved Plans and confirmation that appropriate projects have commenced or are under contract to commence. With this annual report, Dominion may also request modification to the final plans to address changes in circumstances over the previous year. A requested modification will be considered "approved" once the SHPO has confirmed that the projects will preserve and/or enhance the setting, feeling and/or overall understanding of the Jamestown Island-Hog Island-Captain John Smith Trail Historic District and thematically related areas and the Corps has provided written approval.
- d. Within the Jamestown Island-Hog Island-Captain John Smith Trail Historic District and the thematically related areas Dominion shall complete the following projects related to enhancement of the visitor experience and the setting and feeling of sites along the Captain John Smith Chesapeake National Historic Trail. These measures will present the natural and cultural values on the York River in the area of Werowocomoco to provide the visitor with an undisturbed landscape and vista that evokes the setting and feeling of the rivers during the period of Captain John Smith's exploration.**
- 1 Prior to any construction within the James River, Dominion shall:

- A. Submit to the Signatories of this MOA written confirmation that Dominion is working in cooperation with the Commonwealth of Virginia to identify specific projects that enhance the visitor experience and the setting and feeling of sites along the Captain John Smith Chesapeake National Historic Trail.
  - B. Working with the Commonwealth of Virginia, submit to the Signatories of this MOA draft plans for:
    - i. Land acquisition, visitor interpretation facilities, archeological investigation and preservation associated with Werowocomoco; and
    - ii. Land acquisition and preservation of sites and expanded facilities at York River State Park which shall serve as a visitors' gateway to understanding the Virginia Indian cultures at Werowocomoco.
  - C. All parties will be given thirty (30) days to review and provide comment on the draft plans identified in Stipulation III.d.1.B.
- 2 Before beginning "Limited Construction within the James River" Dominion must allow for the conclusion of the 30-day comment period specified in Stipulation III.d.1.C.
  - 3 Dominion may not proceed further than "Limited Construction within the James River" until the Corps has approved the final Plans for all activities described in Stipulation III.d.1.B. To facilitate this approval, Dominion shall consider all comments and submit to the Signatories of this MOA final Plans that describe specific activities to be carried out and provide a timeline for accomplishment of each. The final Plans shall include confirmation that Dominion and/or all appropriate parties have all access and permissions necessary to complete all identified mitigation work. The final Plans will be considered "approved" once the SHPO has confirmed that the projects will enhance the visitor experience and the setting and feeling of sites along the Captain John Smith Chesapeake National Historic Trail and the Corps has provided written approval.
  - 4 Within one (1) year of initiating "Limited Construction within the James River" Dominion must receive approval of the final Plans or must remove all structures and/or fill placed within the James River in association with the line installation as approved by this permit action and restore the area to pre-disturbed conditions.
  - 5 No more than one (1) year following the initiation of "Construction Above the James River", and annually thereafter, Dominion shall

provide to the Signatories of this MOA, a report containing detailed activities to be accomplished within the next year according to the timeline in the approved Plans and confirmation that appropriate projects have commenced or are under contract to commence. With this annual report, Dominion may also request modification to the final plans to address changes in circumstances over the previous year. A requested modification will be considered "approved" once the SHPO has confirmed that the projects will enhance the visitor experience and the setting and feeling of sites along the Captain John Smith Chesapeake National Historic Trail and the Corps has provided written approval.

**e. Within the Jamestown Island-Hog Island-Captain John Smith Trail Historic District and the thematically related areas Dominion shall complete the following projects related to natural resource enhancement and cultural resource identification and interpretation at Hog Island WMA.**

- 1 Prior to any construction within the James River, Dominion shall:
  - A. Submit to the Signatories of this MOA written confirmation that Dominion is working in cooperation with the Virginia Department of Game and Inland Fisheries (VDGIF) to identify specific projects that preserve and/or enhance the setting, feeling and/or overall understanding of the Jamestown Island-Hog Island-Captain John Smith Trail Historic District and thematically related areas.
  - B. Working with the Commonwealth of Virginia, submit to the Corps, SHPO, ACHP, and Participating Parties draft plans for:
    - i. Enhancement of 1,100 acres of palustrine emergent marsh at Hog Island WMA;
    - ii. Living shoreline and shoreline restoration in Surry County, with priority given to projects within the APE or projects outside the APE that would benefit natural and cultural resource enhancement within the APE;
    - iii. Acquisition of 400 acres of upland/emergent marsh adjacent to the Chickahominy Wildlife Management Area located in, Charles City County, Virginia to improve water quality within the APE, subject to the approval by the Board of Game and Inland Fisheries;
    - iv. History and remote viewing and interpretation facility at Hog Island WMA that recognizes Hog Island's connection and contributions to the Jamestown Island-Hog Island-John Smith

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MONTH XX, YEAR

Trail Historic District, and the individual significance to the Captain John Smith Chesapeake NHT; and

v. Comprehensive archaeological identification survey of Hog Island WMA.

C. All parties will be given thirty (30) days to review and provide comment on the draft plans identified in Stipulation III.e.1.B.

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



- f. Dominion shall complete the following related to water quality improvements. Such projects will maintain and improve the setting and feeling of the river as a key component of the Jamestown Island-Hog Island-Captain John Smith Trail Historic District, as well as the other character-defining features of the historic district.**
- 1** Dominion shall work with the Commonwealth of Virginia and the Virginia Environmental Endowment (VEE) to develop and submit to the Corps, SHPO, ACHP, and Participating Parties a draft list of criteria to guide the selection of water quality enhancement projects. Efforts should focus on riparian buffer creation and erosion and sediment control, and the projects shall provide water quality improvements benefitting the James River watershed with consideration given to projects located within the indirect APE.
  - 2** All parties will be given thirty (30) days to review and provide comment on the draft framework identified in Stipulation III.f.1.
  - 3** No construction shall take place within the James River until the Corps has approved the final framework to be used in project selection. To facilitate this approval, Dominion shall consider all comments and submit to the Signatories of this MOA a final framework that includes a schedule for requesting, reviewing and approving (funding) proposals. This final framework will be considered "approved" once Corps has provided written approval.
  - 4** No more than one (1) year following the initiation of "Construction Above the James River", and annually thereafter, Dominion shall provide to the Signatories of this MOA, a report containing detailed activities to be accomplished within the next year according to the timeline in the approved framework and confirmation that appropriate projects have commenced or are under contract to commence. With this annual report, Dominion may also request modification to the final framework to address changes in circumstances over the previous year. A requested modification will be considered "approved" once the Corps has confirmed that the adjusted framework includes water quality improvement projects benefitting the James River watershed in the indirect APE and the Corps has provided written approval.
- g. Within the Jamestown Island-Hog Island-Captain John Smith Trail Historic District and the thematically related areas, Dominion shall complete the following projects related to Landscape and Battlefield Conservation.**
- 1** Dominion shall work with the Commonwealth of Virginia and the Virginia Land Conservation Fund (VLCF) to develop and submit to the Corps, SHPO, ACHP, and Participating Parties a draft list of criteria to

MONTH XX, YEAR

guide the selection of land conservation and open space easement projects that are focused on:

- A. The enhancement and/or preservation of the setting and feeling for the Battle of Yorktown and Fort Crafford or Development of public interpretive programs, signage, and exhibits focusing on the Peninsula Campaign including the Battle of Hampton Roads, the Battle of Yorktown, the Battle of Williamsburg, and the strategic importance of Fort Monroe in each, and development of a 3D Laser Scan of Fort Crafford and an earthwork preservation plan to include a landscape management plan.
  - B. Landscape preservation with an emphasis on projects within the James River watershed benefitting the historic properties and district.
  - C. Landscape scale conservation that may lead to permanently protecting lands necessary to preclude future river crossings and non-compatible shoreline development within the APE, to the greatest extent possible.
  - D. All parties will be given thirty (30) days to review and provide comment on the draft framework identified in Stipulation III.g.1.
- 2 No construction shall take place within the James River until the Corps has approved the final framework to be used in the selection of projects as identified in III.g.1. To facilitate this approval, Dominion shall consider all comments and submit to the Signatories of this MOA a final framework that includes a schedule for requesting, reviewing and approving (funding) proposals. This final framework will be considered "approved" once the SHPO has confirmed that the framework will promote landscape and battlefield conservation and the Corps has provided written approval.
  - 3 No more than one (1) year following the initiation of "Construction Above the James River", and annually thereafter, Dominion shall provide to the Signatories of this MOA, a report containing detailed activities to be accomplished within the next year according to the timeline in the approved framework and confirmation that appropriate projects have commenced or are under contract to commence. With this annual report, Dominion may also request modification to the final framework to address changes in circumstances over the previous year. A requested modification will be considered "approved" once the Corps has confirmed that the adjusted framework promotes landscape and battlefield conservation projects and the Corps has provided written approval.

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

- 1 From the date construction is completed until the towers are dismantled, Dominion shall coordinate all project maintenance and repair operations that have the potential to cause or result in ground or underwater disturbance within the project's direct APE, with the SHPO and other regulatory agencies, consistent with the terms of the avoidance plan. Such coordination shall not prohibit the repair of the project required in response to emergency events; however, Dominion shall advise the SHPO and other regulatory agencies, as appropriate, of the completed emergency repair work as soon as practicable.
- 2 From the date construction is completed until the towers are dismantled, Dominion shall not construct or place any new or additional transmission line infrastructure, or increase the height or otherwise scale of the existing tower infrastructure within the project's defined indirect APE for the river crossing. Nothing in this commitment, however, shall preclude or otherwise prevent Dominion from adding additional lines or replacing lines to the existing tower infrastructure.
- 3 From the date construction is completed, Dominion shall examine the ongoing need for the river crossing at ten (10) year increments, taking into account the most current PJM Interconnection load forecast data.
- 4 If, at any time prior to the conclusion of the project's life span of fifty (50) years from energizing, Dominion determines that the river crossing is no longer needed, Dominion shall remove all river crossing and associated terrestrial based infrastructure and return the land-side area within the indirect APE of the river crossing to its pre-project condition.
- 5 If, at the conclusion of the project's life span of fifty (50) years from energizing, Dominion determines that the project is still needed, Dominion shall examine the viability and feasibility of a submerged river crossing. If, at that time, industry accepted technology is available and required regulatory approvals are received, Dominion will replace the overhead river crossing with a submerged crossing.

**V REPORTING REQUIREMENTS**

Upon the completion of each requirement to this MOA, Dominion shall provide the Corps, SHPO, ACHP, and the Participating Parties to this MOA with a signed memorandum documenting that Dominion has fulfilled such requirement. At the completion of all of the requirements,

Dominion shall notify such parties that it has satisfied all its responsibilities under this MOA.

## VI PROFESSIONAL QUALIFICATIONS

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

## VII PREPARATION AND REVIEW OF DOCUMENTS

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

or provide approvals as appropriate within the thirty (30) day review period, the Corps shall notify Dominion of the delay and provide an anticipated comment or approval date.

## VIII CURATION

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

## IX POST-REVIEW DISCOVERIES

- 1 Dominion shall ensure that the following provision is included in all construction contracts: "If previously unidentified historic properties or unanticipated adverse effects to historic properties are discovered during construction, the construction contractor shall immediately halt all activity within a one hundred (100) foot radius of the discovery, notify Dominion Virginia Power of the discovery and implement interim measures to protect the discovery from looting and vandalism."
- 2 Immediately upon receipt of the notification required in Stipulation IX.1 above, Dominion shall:
  - A. Inspect the construction site to determine the extent of the discovery and ensure that construction activities have halted;
  - B. Mark clearly the area of the discovery;
  - C. Implement additional measures, as appropriate, to protect the discovery from looting and vandalism;
  - D. Engage a professional archeologist to inspect the construction site to determine the extent of the discovery and provide recommendations regarding its NRHP eligibility and treatment; and

- E. Notify the Corps and the SHPO of the discovery describing the measures that have been implemented to comply with this stipulation.
- 3 Upon receipt of the information required in the above stipulation, the Corps shall provide Dominion and the SHPO with its assessment of the NRHP eligibility of the discovery and the measures proposed to resolve adverse effects. In making its evaluation, the Corps, in consultation with the SHPO, may assume the discovery to be NRHP eligible for the purposes of Section 106 pursuant to 36 CFR § 800.13(c). Dominion, the SHPO and other Consulting Parties shall respond to the Corps' assessment within forty-eight (48) hours of receipt.
- 4 The Corps will take into account the SHPO recommendations on eligibility and treatment of the discovery and will notify Dominion of any appropriate required actions. Dominion must comply with the required actions and provide the Corps and SHPO with a report on the actions when implemented. Any actions that the Corps deems appropriate for Dominion to take with regard to such discovery will automatically become additional stipulations to this MOA and thereby will be incorporated in the permit and become conditions to the permit. If Dominion fails to comply with such actions, such failure will constitute a breach of this MOA and noncompliance with the permit.
- 5 Construction may proceed in the area of the discovery when the Corps has determined that implementation of the actions undertaken to address the discovery pursuant to this stipulation are complete.

**X HUMAN REMAINS**

- 1 Dominion shall make all reasonable efforts to avoid disturbing gravesites, including those containing Native American human remains and associated funerary artifacts. Dominion shall treat all human remains in a manner consistent with applicable federal and state law [and to the extent such laws do not apply, the ACHP's *Policy Statement Regarding Treatment of Burial Sites, Human Remains and Funerary Objects* (February 23, 2007; <http://www.achp.gov/docs/hrpolicy0207.pdf>)].
- 2 Dominion shall ensure that human skeletal remains and associated funerary objects encountered during the course of actions taken as a result of this MOA shall be treated in accordance with the Regulations Governing Permits for the Archaeological Removal of Human Remains (Virginia Register 390-01-02) found in the *Code of Virginia* (10.1-2305, et seq., Virginia Antiquities Act). If removal is proposed, Dominion

shall apply for a permit from the SHPO for the removal of human remains in accordance with the regulations stated above.

- 3 Dominion shall make a good faith effort to ensure that the general public is excluded from viewing any Native American burial site or associated funerary artifacts. The Consulting Parties to this MOA shall make no photographs of any Native American burial site or associated funerary artifacts. The Corps shall notify the Delaware Tribe of Indians, the Pamunkey Indian Tribe, and other appropriate federally-recognized Tribe(s) and/or appropriate tribal leaders when Native American burials, human skeletal remains, or funerary artifacts are encountered on the Project, prior to any analysis or recovery of remains or associated artifacts, and implement appropriate measures based on these consultations. Dominion shall deliver any Native American human skeletal remains and associated funerary artifacts recovered pursuant to this MOA to the appropriate tribe to be reinterred. The disposition of any other human skeletal remains and associated funerary artifacts shall be governed as specified in any permit issued by the SHPO or any order of the local court authorizing their removal. Dominion will be responsible for all reasonable costs associated with treatment of human remains and associated funerary objects.

## **XI DISPUTE RESOLUTION**

- 1 Should any Signatory Party to this MOA object in writing to the Corps regarding any action carried out or proposed with respect to any undertakings covered by this MOA or to implementation of this MOA, the Corps shall consult with the objecting party to resolve the objection.
- 2 If after initiating such consultation, the Corps determines that the objection cannot be resolved through consultation, the Corps shall forward all documentation relevant to the objection to the ACHP, including the proposed response to the objection.
- 3 Within thirty (30) days after receipt of all pertinent documentation, the ACHP shall exercise one of the following options:
  - A. Advise the Corps that the ACHP concurs with the Corps' proposed response to the objection; whereupon the Corps will respond to the objection accordingly; or
  - B. Provide the Corps with recommendations, which the Corps shall take into account in reaching a final decision regarding its response to the objection; or

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

## **XII AMENDMENTS AND TERMINATION**

- 1 Any Signatory Party to this MOA may propose to the Corps that the MOA be amended, whereupon the Corps will consult with the other parties to this MOA to consider such an amendment. All Signatory Parties to the MOA must agree to the proposed amendment in accordance with 800.6(c)(7).
- 2 If Dominion decides it will not proceed with the undertaking, it shall so notify the Corps, SHPO, ACHP, and the Consulting Parties and this MOA shall become null and void.
- 3 If Dominion determines that it cannot implement the terms of this MOA, or if the Corps, ACHP, or SHPO determines that the MOA is not being properly implemented, Dominion, the Corps, ACHP, or the SHPO may propose to the other parties to this MOA that it be amended or terminated.
- 4 This MOA may be terminated by any Signatory Party to the MOA in accordance with the procedures described in 800.6(c)(8). Termination shall include the submission of a technical report or other documentation by Dominion on any work done up to and including the date of termination. If the Corps is unable to execute another MOA



following termination, the Corps may choose to modify, suspend, or revoke the Department of the Army permit as provided by 33 CFR 325.7.

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

### **XIII ANNUAL REPORTING AND MEETING**

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

### **XIV COORDINATION WITH OTHER FEDERAL REVIEWS**

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

### **XV DURATION OF MOA**

This MOA will continue in full force and effect until fifty (50) years after the effective date of the MOA. Dominion shall fulfill the requirements of this MOA prior to and in conjunction with the work authorized by the Corps permit. All obligations under this MOA must be complete before expiration of this MOA. If any obligation is not complete, the party responsible for such obligation is in violation of this MOA; such violation may also constitute a violation of the Corps permit. Failure of the Corps to pursue such violation is NOT a waiver. At any time in the six-month period prior to such date, the Corps may request the Signatory Parties to consider an extension or modification of this MOA. No extension or modification will be effective unless all parties to the MOA have agreed with it in writing.

**XVI ANTI-DEFICIENCY ACT**

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

**XVII DEFINITIONS**

- a. The term "Concurring Parties" means each Consulting Party signing the Memorandum of Agreement.
- b. The term "Consulting Parties" means the following organizations: The National Parks and Conservation Association; The Save the James Alliance; The Chesapeake Conservancy; United States Department of Interior (National Park Service, Colonial National Historic Park); United States Department of Interior (National Park Service, Northeast Region); James City County; The Colonial Williamsburg Foundation; Preservation Virginia; Scenic Virginia; The National Trust for Historic Preservation; Christian & Barton, LLP (on behalf of BASF Corp); James River Association; United States Department of Interior (National Park Service, American Battlefield Protection Program); First California Company Jamestowne Society; Delaware Tribe of Indians; Chickahominy Tribe; Council of Virginia Archaeologists; Margaret Nelson Fowler; and the Pamunkey Indian Tribe.
- c. The term "enhancement" shall mean an increase or improvement in quality, value, or extent.
- d. The term "Invited Signatory Party" shall mean Dominion.
- e. The term "Participating Party" shall mean Concurring Parties and each Consulting Party, whether or not such party executes the MOA as a Concurring Party, that requests to remain involved, by providing input to the Corps at the times identified herein and at such times as the Corps in its discretion requests Participating Party input, with implementation of this MOA.
- f. The term "Signatory Parties" shall mean the Corps, SHPO, and ACHP.
- g. The phrase "Limited Construction Within the James River" shall only mean construction activities within the James River associated with tower

MONTH XX, YEAR

foundations and fender protection systems, This term does not include the construction of any steel lattice transmission towers atop the foundations.

- h. The phrase "Construction Above the James River" shall mean any remaining construction activities atop the foundations within the James River described above in Stipulation XVII.g.
- i. The term "Project Narrative" shall mean a document that identifies specific projects, lists tasks necessary to execute each project, provides a timeline for accomplishment of each project and describes how each project enhances the historic value of the resource. A Project Narrative is not a detailed engineering plan and need not include drawings or other technical information.

#### **XVIII ENFORCEMENT AND CONTRACT RIGHTS**

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

#### **XIX EXECUTION OF MOA**

- 1 This MOA may be executed in counterparts, with a separate page for each Signatory Party and shall be effective from the date of the issuance of the Department of the Army Standard permit for the Project. The Corps will ensure that each party is provided with a copy of the fully executed MOA.
- 2 Execution of this MOA by the Corps, the ACHP, and the SHPO, shall, pursuant to 36 CFR 800.6(c), be considered to be an agreement pursuant to the regulations issued by the ACHP for the purposes of Section 110(l) of the NHPA. Execution and submission of this MOA, and implementation of its terms, evidence that the Corps has afforded the ACHP an opportunity to comment on the proposed undertaking and its effect on historic properties, and that the Corps has taken into account the effect of the undertaking on historic properties.

MONTH XX, YEAR

161240106

**INVITED SIGNATORY PARTY:**

DOMINION

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

**SIGNATORY PARTIES:**

NORFOLK DISTRICT, U. S. ARMY CORPS OF ENGINEERS

By: \_\_\_\_\_ Date: \_\_\_\_\_  
William T. Walker  
Chief, Regulatory Branch

VIRGINIA STATE HISTORIC PRESERVATION OFFICER

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

ADVISORY COUNCIL ON HISTORIC PRESERVATION

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

MONTH XX, YEAR

161240106

**CONCURRING PARTY:**

NATIONAL PARKS CONSERVATION ASSOCIATION

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