MEMORANDUM
OF AGREEMENT AMONG
THE RIVANNA CONSERVATION SOCIETY,
THE VIRGINIA STATE HISTORIC PRESERVATION OFFICE
AND THE NORFOLK DISTRICT, ARMY CORPS OF ENGINEERS
FOR WOOLEN MILLS DAM REMOVAL,
ALBEMARLE COUNTY, VIRGINIA

March 27, 2007

WHEREAS, The Rivanna Conservation Society ("Applicant") intends to remove the Woolen Mills Dam, located in the Rivanna River in Albemarle County, Virginia; and

WHEREAS, the Virginia Department of Game and Inland Fisheries and the Department of Conservation and Recreation, has determined that the Woolen Mills Dam is a migration barrier to anadromous fish, impedes recreational watercraft, and is a safety hazard; and

WHEREAS, removal of the Woolen Mills Dam will include the following elements:

- Construction of an access road from Macadam Road and the southern bank of the river to a point immediately downstream of the dam;
- Staged and strategic removal of the rock face in a manner that minimizes the export of sediment from behind the dam, and;

WHEREAS, pursuant to Section 10 and Section 404 of the Clean Water Act, permits form the Norfolk District Corps of Engineers ("Corps") will be required for temporary and permanent impacts to Federal Jurisdictional Wetlands and other Waters of the United States that will result from the project; and

WHEREAS, pursuant to 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470f, and 33 CFR Part 325, Appendix C, Processing of Department of the Army Permits: Procedures for Protection of Historic Places, the 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 State Historic Preservation Officer ("SHPO"); and

WHEREAS, the Woolen Mills Dam (002-1260-0009) is eligible for listing on the NRHP, as a contributing resource within the Woolen Mills Historic District (002-1260) and the Rivanna Navigation Historic District (032-0036); and

WHEREAS, the Corps, in consultation with the SHPO, has determined that the Woolen Mills Dam is also individually eligible for listing in the National Register of Historic Places under Criteria A and C in the areas of Commerce and Engineering; and
WHEREAS, the Applicant has conducted an Identification (Phase I) cultural resources survey and submitted the report entitled Phase I Cultural Resources Survey of 0.07 Acres for a Proposed Temporary Access Road to the Woolen Mills Dam, Albemarle County, Virginia to the Corps and the SHPO for review and approval: and

WHEREAS, the Corps, in consultation with the SHPO, has determined that issuance of permits to the Applicant for undertakings in jurisdictional wetlands or waters of the United States will have an adverse effect on the Woolen Mills Dam (002-1260-0009), the Woolen Mills Historic District (002-1260), and the Rivanna Navigation Historic District (032-0036); and

WHEREAS, the Corps has invited the Advisory Council on Historic Preservation (Council) to participate in consultation regarding the breach of the Woolen Mills Dam, and the Council has declined to participate; and

WHEREAS, the Corps has invited Albemarle County, the City of Charlottesville, the Woolen Mills Neighborhood Association, Katherine Chester, Laura Covert, Jonathan Fink, William J. Maloney, John St. Ours, John Semmelhack and Roger L. Voisinet to participate in consultation towards this Memorandum and the parties have declined to participate; and

NOW, THEREFORE, the Corps and the SHPO hereby agree that the Project shall be implemented in accordance with the following Stipulations in order to satisfy the Corps' Section 106 responsibilities to take into account the effect of the undertaking on the historic properties:

STIPULATIONS

The Corps will insure that the following stipulations are carried out:

I. TREATMENT OF ARCHITECTURAL PROPERTIES

A. The Applicant has designed a partial breach of the Woolen Mills Dam and will leave a 50-foot section of the dam in place for purposes of historical interpretation provided that the remaining structure is safe and sound as determined by a licensed, professional engineer per the Department of Conservation and Recreation, Division of Dam Safety - Dam Safety Certificate Alteration Permit Number 00393 and letter dated December 4, 2006 (Appendix 1). The Applicant will provide a written assessment, prepared by the engineer, on the structural stability of the remaining portions of the dam to the Corps and DHR within sixty (60) days of completing the breach. Furthermore, any approvals required by the Virginia Soil and Water Conservation Board as a result of changes to the original breaching plan (Dam Safety Certificate Alteration Permit Number 00393) shall be provide to the Corps and DHR within fifteen (15) days of approval by the Department of Conservation and Recreation.

B. The applicant must ensure breaching the dam is staged in a manner that
minimizes the flush of sediment from the impoundment. All appropriate steps must be taken to protect and maintain downstream water quality per the Virginia Department of Environmental Quality’s antidegradation policies promulgated at 9 VAC 25-260-30.

C. Prior to any demolition activities, the Applicant will document the Woolen Mills Dam at the Intensive Level. This documentation will include measured drawings, black and white photography, a written description, and additional historical research. The resulting information will be submitted in archival form and in report form to the Corps and the SHPO for review and approval. The SHPO shall provide comments on the documentation to the Applicant and the Corps within thirty (30) calendar days of receipt. The Applicant shall ensure that all comments submitted within thirty (30) calendar days of receipt of the documentation are responded to in writing. If the SHPO fails to respond to the Applicant and the Corps within thirty (30) calendar days of receipt of the documentation, the Applicant and the Corps may assume the SHPO’s concurrence. Once approved, copies of the documentation materials and any other materials resulting from this agreement will be provided to the University of Virginia Library, the Albemarle-Charlottesville Historical Society, the Virginia Canals and Navigation Society, and the Rivanna Conservation Society at no cost to these institutions.

D. The demolition of the dam will be documented photographically by an architectural historian with experience in documenting engineering resources. In the event that demolition exposes previously unrecorded aspects of the Woolen Mills Dam, demolition shall cease until these aspects are recorded as stated above.

E. The Applicant will also leave in place the dam abutments on both riverbanks for historical interpretation. This includes the original head race and lock system.

F. The Applicant will cause all documentation materials to be posted on The Rivanna Conservation Society’s website (http://www.rivannariver.org).

G. The Applicant shall design and install an on-site information kiosk at the dam site on the north/east side of the river (river left) to aid historical interpretation for site visitors. This site will augment the proposed “Old Mills Trail” proposed by Albemarle County Parks & Recreation Department. The contents of the kiosk will be developed in consultation with the SHPO and other consulting parties.

H. The Applicant will photo document one stone block (or a fraction thereof as desired) and a representative piece of the timber crib framing behind the dam. In addition, the Applicant will donate one block or fraction thereof and a representative piece of timber crib frame to the Albemarle-Charlottesville Historical Society.
II. PROFESSIONAL QUALIFICATIONS

A. All architectural work carried out pursuant to this agreement shall be conducted by or under the direct supervision of an individual or individuals who meets, at a minimum, the Secretary of the Interior's Professional Qualifications Standards for Architectural History (48 FR 44738-9, September 29, 1983).

III. PREPARATION AND REVIEW OF DOCUMENTS

A. All architectural studies resulting from this agreement 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).

IV. UNEXPECTED DISCOVERIES

A. In the event that previously unidentified archaeological resources are discovered during ground disturbing activities within the area of potential effect, the applicant will immediately halt all construction work involving subsurface disturbance in the area of the resource and in the surrounding area where further subsurface resources can reasonably be expected to occur and immediately notify the Corps and the SHPO of the discovery.

B. The Corps and the SHPO, or an archaeologist approved by them, will immediately inspect the work site and determine the area and nature of the affected archaeological resource. Construction work may then continue in the area outside the archaeological resource as defined by the Corps and the SHPO, or their designated representative.

C. Within five (5) working days of the original notification of discovery, the Corps, in consultation with the SHPO, will determine the National Register eligibility of the resource.

D. If the resource is determined eligible for the National Register, the applicant shall prepare a plan for its avoidance, protection, or recovery of information. The Corps and SHPO shall approve such plan, prior to implementation.

E. Work in the affected area shall not proceed until either:

1) the development and implementation of appropriate data recovery or other recommended mitigation procedures, or

2) the determination is made that the located resources are not eligible for inclusion on the National Register.
F. Any disputes over the evaluation or treatment of previously unidentified resources will be resolved as provided in the section of this agreement entitled Dispute Resolution.

V. HUMAN REMAINS

A. The applicant shall ensure that human skeletal remains and associated funerary objects encountered during the course of actions taken as a result of this agreement 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). The applicant will obtain a permit from the SHPO for the removal of human remains in accordance with the regulations stated above.

VI. DISPUTE RESOLUTION

A. Should any party to this agreement object in writing to the Corps regarding any action carried out or proposed with respect to any undertakings covered by this agreement or to implementation of this agreement, the Corps will consult with the objecting party to resolve the objection.

B. 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 Council, including the proposed response to the objection.

C. Within thirty (30) days after receipt of all pertinent documentation, the Council shall exercise one of the following options:

1) Advise the Corps that the Council concurs with the Corps’ proposed response to the objection, whereupon the Corps will respond to the objection accordingly; or

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

3) 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(1) of the NHPA.

D. Should the Council not exercise one of the above options within thirty (30) days after receipt of all pertinent documentation, the Corps may assume the Council’s concurrence in its proposed response to the objection.

E. The Corps shall take into account any Council 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 agreement that are not the subjects of the objections shall remain unchanged.

F. At any time during implementation of the measures stipulated in this agreement, should an objection pertaining to this agreement be raised by a member of the public, the Corps shall notify the parties to this agreement and take the objection into account, consulting with the objector and, should the objector so request, with any of the parties to this agreement to resolve the objection.

VII. AMENDMENTS AND TERMINATION

A. Any party to this agreement may propose to the Corps that the agreement be amended, whereupon the Corps will consult with the other parties to this agreement to consider such an amendment. All signatories to the agreement must agree to the proposed amendment in accordance with 800.6(c)(7).

B. If the Applicant decides it will not proceed with the undertaking, it shall so notify the Corps and the SHPO, and this agreement shall become null and void.

C. If the Applicant determines that it cannot implement the terms of this agreement, or if the Corps or SHPO determines that the agreement is not being properly implemented, the Applicant, the Corps, or the SHPO may proposed to the other parties to this agreement that it be amended or terminated.

D. This agreement may be terminated by any signatory to the agreement in accordance with the procedures described in 800.6(c)(8). Termination shall include the submission of a technical report by the Applicant on any work done up to and including the date of termination. If the Corps is unable to execute another memorandum of agreement following termination, the Corps may choose to modify, suspend, or revoke the Department of the Army permit as provided by 33 CFR 325.7.

VIII. VIII. DURATION OF AGREEMENT

A. This agreement will continue in full force and effect until five (5) years after the date of the last signature. 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 agreement. No extension or modification will be effective unless all parties to the agreement have agreed with it in writing.
IX. FAILURE TO CARRY OUT THE TERMS OF THE MEMORANDUM

A. In the event that the terms of this agreement are not carried out, the Corps shall comply with 36 C.F.R. § 800 with regard to actions covered by this agreement.

Execution of this Memorandum of Agreement by the Corps and SHPO and its submission to the Council in accordance with 36 CFR 800.6(b)(1)(iv) shall, pursuant to 36 CFR 800.6(c), be considered to be an agreement with the Council for the purposes of Section 110(q) of NHPA of NHPA. Execution and submission of this MOA, and implementation of its terms, evidence that the Corps has afforded the Council 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.

Signatures

VIRGINIA STATE HISTORIC PRESERVATION OFFICER

By: Kathleen S. Kilpatrick
Director, Department of Historic Resources

Date:

THE RIVANNA CONSERVATION SOCIETY

By: Angus Murdoch
President

Date: 3-27-07

UNITED STATES DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, NORFOLK DISTRICT

By: J. Robert Hume, III
Chief, Regulatory Branch

Date: 3/28/07