

## **MEMORANDUM OF AGREEMENT**

### **AMONG THE U.S. ARMY CORPS OF ENGINEERS, CHARLESTON DISTRICT; THE SOUTH CAROLINA STATE HISTORIC PRESERVATION OFFICE; AND DOMINION ENERGY SOUTH CAROLINA, INC. REGARDING THE CONGAREE RIVER REMEDIATION PROJECT, RICHLAND COUNTY, SOUTH CAROLINA**

**WHEREAS**, pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) and/or Section 404 of the Clean Water Act (33 U.S.C. 1344), an application (SAC-2011-01356) has been submitted to the U. S. Army Corps of Engineers, Charleston District (Corps) by Dominion Energy South Carolina, Inc. (the applicant) for a Department of the Army (DA) permit to authorize impacts to waters of the United States associated with the Congaree River Remediation Project (undertaking); and

**WHEREAS**, the undertaking consists of the construction of cofferdams and removal of a Tar-Like Material that is comingled with sediment in the Congaree River, Richland County, South Carolina, as illustrated in the Attached Figure 1; and

**WHEREAS**, the Corps has defined the undertaking's permit area as approximately 13 acres for landside operations and 5.8 acres within the river, as depicted on Figure 2 attached hereto; and

**WHEREAS**, the Corps has determined that the undertaking will have an adverse effect on archaeological site 38RD286/38RD278(the Ordnance Dump Site/historic underwater site), 38RD223, 38RD224, and 38RD234, described in Exhibit A, which are eligible for listing in the National Register of Historic Places (NRHP) and are considered "historic properties"; and

**WHEREAS**, the Corps has consulted with the South Carolina State Historic Preservation Officer (SHPO) pursuant to 36 CFR Part 800, the regulations implementing Section 106 of the National Historic Preservation Act (54 U.S.C. § 300101, previously codified at 16 U.S.C. § 470f); and

**WHEREAS**, the Corps has consulted with the Applicant regarding the effects of the undertaking on historic properties and has invited them to sign this MOA as an invited signatory; and

**WHEREAS**, in accordance with the Corps' "Revised Interim Guidance for Implementing Appendix C of 33 CFR Part 325 with the Revised Advisory Council on Historic Preservation Regulations at 36 CFR Part 800" (April 25, 2005); 33 CFR Part 325, Appendix C, Par. 8; and 36 CFR § 800.6(a)(1), the Corps has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination with specified documentation, and the ACHP has chosen not to participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii); and

**NOW, THEREFORE**, the Corps, the SHPO, and the Applicant agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

### **STIPULATIONS**

[These are examples of stipulations. Applicant must cater stipulations to project/site/mitigation]

The Corps will monitor the progress of the following stipulated tasks to ensure that the undertaking is carried out in accordance with this MOA, and the Applicant shall ensure that the following measures are carried out:

#### **I. GENERAL REQUIERMENTS AND STANDARDS**

The Applicant shall allow representatives from the SHPO and the Corps to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of this MOA. During any inspection the Corps and the SHPO will follow all safety protocols established at the work site.

All work carried out pursuant to this MOA shall meet the *Secretary of Interior's Standards and Guidelines for Archeology and Historic Preservation* ("Secretary's Standards") set forth at 36 C.F.R. § 68.3, taking into account the suggested approaches to new construction in the Secretary's Standards.

#### **II. PROTECTIONS**

- a. The Applicant will protect and preserve the area labeled as Archaeological sites 38RD223, 38RD224 and 38RD234, as shown in Figure 2 by completing the requirements stated in Stipulation II.d.
- b. No less than 10 days prior to any land disturbing activities within 50 feet of a historic property, unless the historic property has already been subjected to data recovery through a SHPO-approved Treatment Plan, applicant shall ensure that a license surveyor has surveyed the boundaries of the Archaeological Sites 38RD223, 38RD224 and 38RD234.
- c. All historic properties are marked on construction and maintenance plans with treatment notes and this MOA referenced. All newly constructed roads in the vicinity of sites 38RD223, 38RD224 and 38RD234 will be elevated above grade with successive layers of fill, geotextile matting and gravel in order to protect potential subsurface deposits.
- d. The boundaries of Archaeological Sites 38RD223, 38RD224 and 38RD234 are cordoned off in the field with orange safety fencing, or a similar highly visible barrier which shall remain in place until all construction activity is complete.

- e. An archaeologist will be present to monitor construction activities in the vicinity of Archaeological Sites 38RD223, 38RD224 and 38RD234.

### **III. PLANS AND REPORTS**

For historic properties that will be mitigated, a specific Treatment Plan will be prepared by applicant's archaeological consultant. The Treatment Plan shall include archaeological data recovery and provisions for disseminating information to the public. The public information should convey broad patterns pertaining to research themes associated with the historic properties within Congaree River Remediation Project.

All treatment plans and reports developed for the treatment of the archaeological sites shall incorporate guidance provided by the Secretary of Interior's "*Standards and Guidelines for Archaeological Documentation*" (48 FR 44734-37) and the ACHP's *Treatment of Archaeological Properties* (ACHP 1980) and *Section 106 Archaeology Guidance* (ACHP 2009). In addition, these materials will be consistent with the *South Carolina Standards and Guidelines for Archaeological Investigations* (Council of South Carolina Professional Archaeologists et al. 2013). Treatment plans for the archaeological sites may be implemented only after approval by the SHPO and Corps, which approval shall be based on the above-stated standards. The SHPO and the Corps have thirty (30) days from receipt of the specific treatment plan(s) to provide comments. If no comments are provided at the expiration of thirty (30) calendar days, approval is presumed.

### **IV. DATA RECOVERY EXCAVATIONS**

Dominion Energy South Carolina, Inc. (Applicant) will have an archaeological consultant who meets the Secretary of the Interior's Professional Qualifications Standards for Archaeology conduct data recovery investigations at site 38RD286/38RD273. Data recovery investigations will follow the procedures outlined in the Data Recovery Plan set forth in Attachment 1. At the conclusion of the data recovery, a detailed Management Summary will be prepared by the Applicant's archaeological consultant and will be submitted to SHPO and the Corps for review within forty-five (45) calendar days after the completion of fieldwork. The Management Summary will include a discussion of the research methods, field investigations, and data recovery results, and other such requirements as contained in the *South Carolina Standards and Guidelines for Archaeological Investigations* (Council of South Carolina Professional Archaeologists et al. 2013). The SHPO and Corps will have thirty (30) days to review the Management Summary. If no comments regarding the Management Summary are provided by SHPO and the Corps at the expiration of thirty (30) calendar days, approval is presumed.

### **V. TECHNICAL REPORT**

A minimum of two copies of the draft technical report will be prepared by the Applicant's archaeological consultant and submitted for review and approval to the SHPO and the Corps no later than two years (2) from the completion of fieldwork. SHPO will forty-five (45) days to review and comment on the draft report and may submit the report to outside reviewers for peer review. If the SHPO elects to utilize this option, the Applicant's archeological consultant

will be advised and additional report copies may be requested. If revisions of the draft report are recommended, the Applicant is responsible for ensuring that these are addressed in the final report. The final report will be submitted within three (3) months of receipt of all agency and peer review comments.

## **VI. PUBLIC INFORMATION**

The applicant and the SHPO will consult to determine the appropriate format for a public education component. The applicant will ensure that a public education plan is developed and submitted to the SHPO with the draft technical report. All public education materials will be implemented within two (2) years of the last day of fieldwork.

## **VII. CURATION**

The applicant shall ensure that all artifacts recovered during archaeological investigations are stabilized and processed for curation at an approved curation facility. A sample of artifacts may be retained by the applicant for display and educational purposes.

The applicant and the SHPO will consult to determine the final disposition of the artifacts recovered in accordance with the Underwater Antiquities Act of 1991 (Article 5, Chapter 7, Title 54, Code of Laws of South Carolina, 1976).

Copies of all records, including, but not limited to field notes, maps, catalog sheets, and representative photographs and digital files shall be submitted for curation with the artifacts. The Applicant will supply the SHPO documentation that the repository has received and accepted the collections.

## **VIII. DURATION**

This MOA will expire if its terms are not carried out within ten (10) years from the date of its execution. Prior to such time, Corps may consult with the other signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation  below.

## **IX. POST-REVIEW DISCOVERIES**

If human remains or other unanticipated culturally significant resources are discovered during archaeological data recovery excavations or at any time during the undertaking, all ground disturbance in the area will halt immediately and a 50-foot buffer will be established around the discovery. The Applicant and/or Corps shall notify the SHPO, and, in the case of human remains, the State Archaeologist, the Richland County Coroner, and the Catawba Indian Nation THPO, within two (2) business days of the discovery. Each of these parties has two (2) business days to respond. The parties shall attempt to reach a consensus on the treatment of the human and/or culturally significant remains. If a consensus is reached, ground disturbing activities may resume once the conditions of the agreement are met. If a consensus cannot be reached, the dispute resolution procedures in Stipulation XI of this MOA will be followed.

Furthermore, no photographs are to be taken of the burial, human remains and/or funerary objects at any time. Human remains and burial grounds are also subject to South Carolina law that addresses abandoned cemeteries and burials, including but not limited to S.C. Code Ann. §§ 27-43-10 to 27-43-30, 16-17-600, and 61-19-29.

## **X. MONITORING AND REPORTING**

Each one (1) year following the execution of this MOA until it expires or is terminated, the Applicant will provide the Corps and SHPO a summary report detailing work undertaken pursuant to its terms. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received in the Applicant's efforts to carry out the terms of this MOA. The applicant will also report on plans for the next year. The report may be submitted to the Corps via e-mail and SHPO by hard copy.

## **XI. DISPUTE RESOLUTION**

Should any signatory or concurring party to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, the Corps shall consult with such party to resolve the objection. If the Corps determines that such objection cannot be resolved, the Corps will:

Forward all documentation relevant to the dispute, including the Corps' proposed resolution, to the ACHP. The ACHP shall provide the Corps with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, Corps shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories and concurring parties, and provide them with a copy of this written response. Corps will then proceed according to its final decision.

If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, Corps may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, Corps shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the MOA, and provide them and the ACHP with a copy of such written response.

The Signatories' responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged.

## **XII. AMENDMENTS**

This MOA may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all of the signatories is filed with the ACHP.

## **XIII. FINAL PROJECT APPROVAL**

The Applicant shall notify the SHPO and the Corps when the Applicant believes all of the above stipulations have been completed. The SHPO and Corps will review the Applicant's performance and provide written notification to the Applicant as to whether the terms of this MOA are deemed complete. If not complete, the Applicant will provide to the SHPO and Corps any unfinished items before final project approval is authorized.

#### **XIV. TERMINATION**

If any signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other signatories to attempt to develop an amendment per Stipulation XI, above. If within thirty (30) days (or another time period agreed to by all signatories) an amendment cannot be reached, any signatory may terminate the MOA upon written notification to the other signatories.

If the MOA is terminated, the Applicant must halt work stop work and prior to work continuing on the undertaking, Corps must either (a) execute an MOA pursuant to 36 CFR § 800.6 or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. Corps shall notify the signatories as to the course of action it will pursue.

#### **XV. EXECUTION IN COUNTERPARTS**

Execution of this MOA by the Corps and SHPO and implementation of its terms evidence that the Corps has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.

This MOA may be executed in counterparts. A copy with all original executed signature pages affixed shall constitute the original MOA. The date of execution shall be the date of the signature of the last party to sign.

**IN WITNESS WHEREOF**, the signatories hereto have caused this MOA to be executed by their duly authorized representatives as of the last date signed.

SIGNATORIES:

U.S. ARMY CORPS OF ENGINEERS

\_\_\_\_\_  
By: Travis G. Hughes, Chief, Regulatory Division

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

[Applicant/Developer/Agency/]

\_\_\_\_\_  
By: [insert agency official name and title]

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

STATE HISTORIC PRESERVATION OFFICER

\_\_\_\_\_  
By: Dr. Eric Emerson, State Historic Preservation Officer

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

INVITED SIGNATORIES:

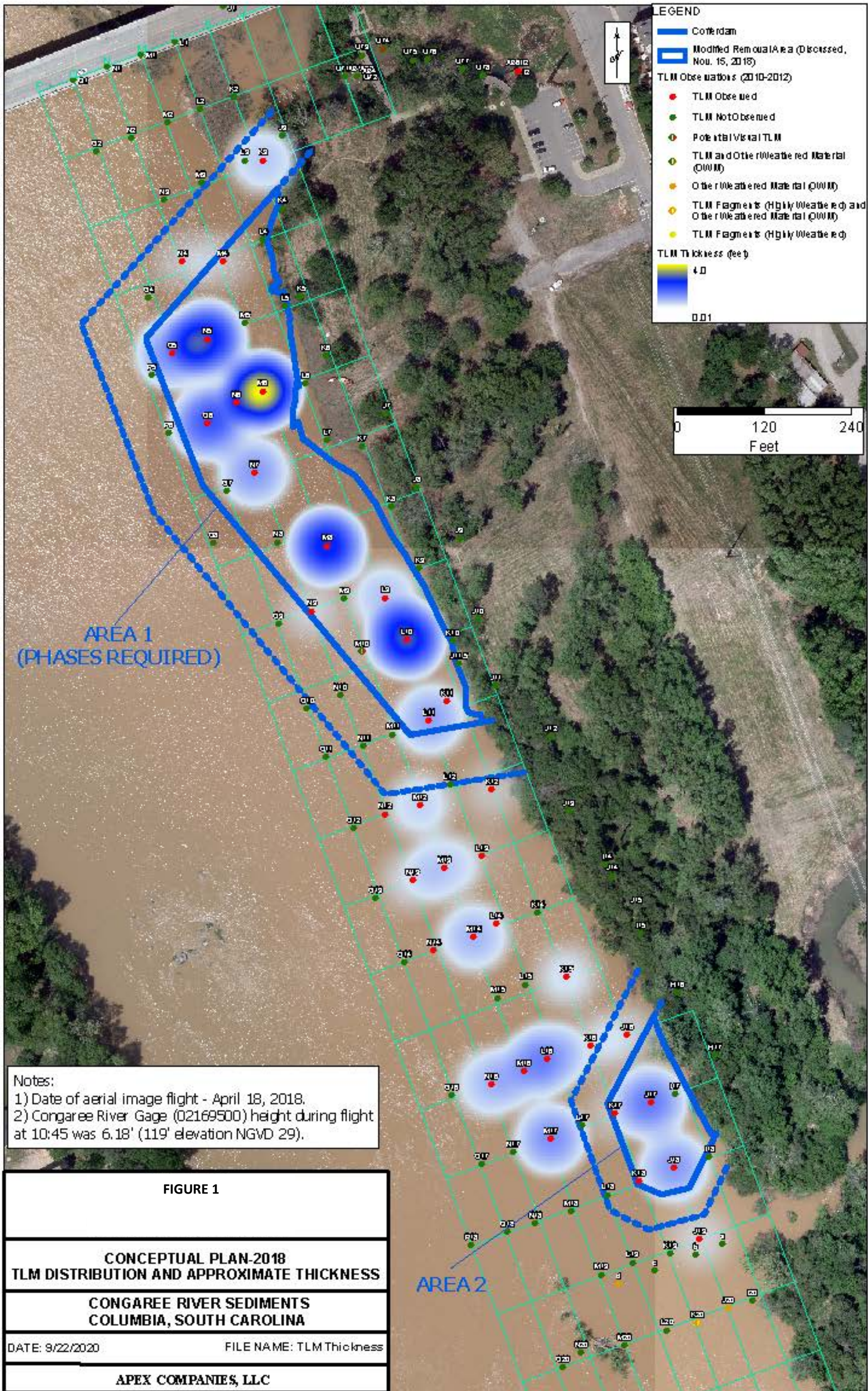
STATE UNDERWATER ARCHAEOLOGIST

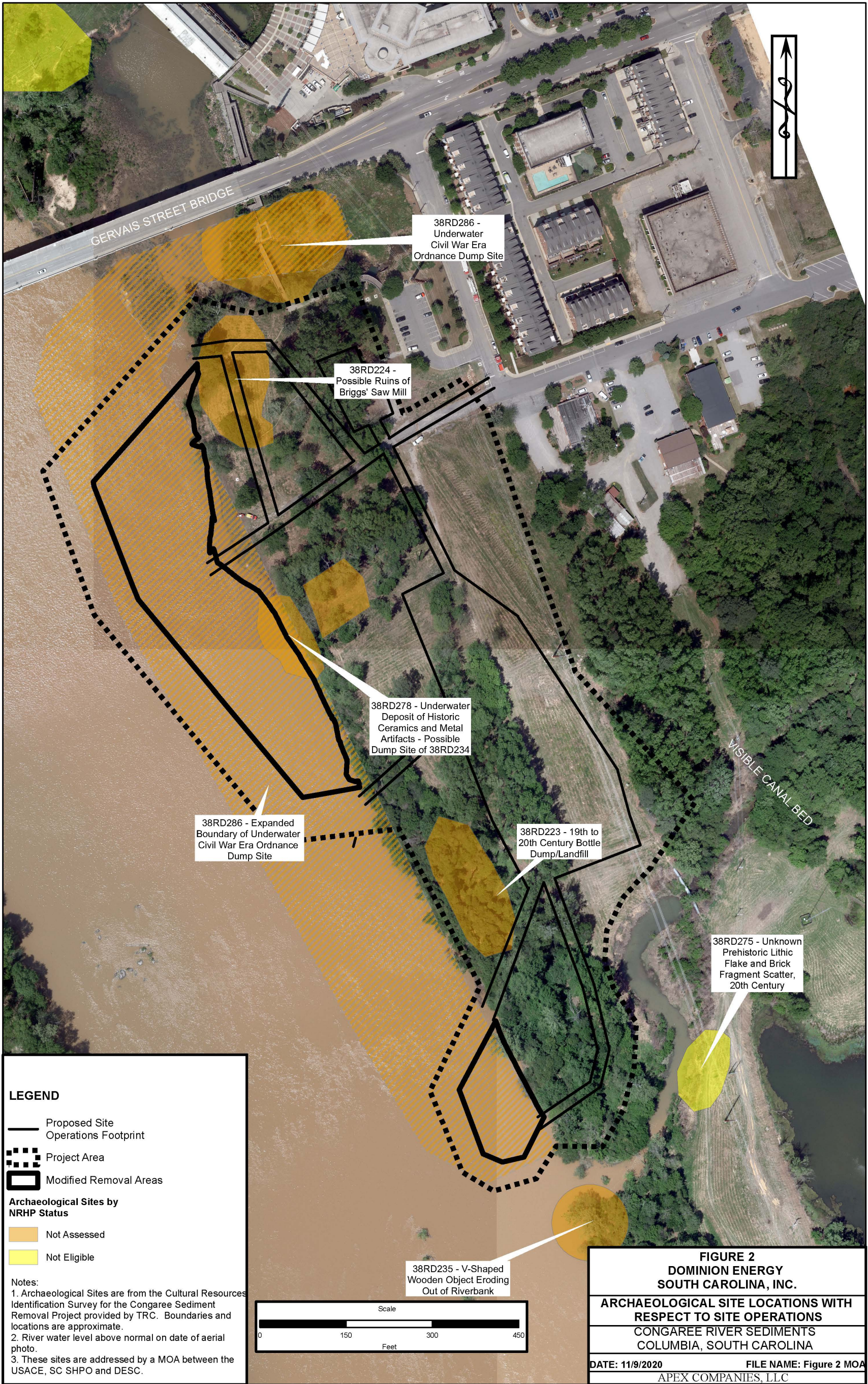
\_\_\_\_\_  
By: Dr. James Spirek, State Underwater Archaeologist

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



## FIGURES





Document Path: G:\GIS\Projects\SCE&G Congaree\MXD\Arch Sites\Figure 2 MOA.mxd

**EXHIBIT A – Treatment Plan/Site Description**