

**PROGRAMMATIC AGREEMENT
AMONG
THE U.S. DEPARTMENT OF ENERGY,
AND
THE NEW YORK STATE HISTORIC PRESERVATION OFFICER
FOR
MANAGING HISTORIC PROPERTIES THAT MAY BE AFFECTED
BY
AUTHORIZING THE CONSTRUCTION, OPERATION, CONNECTION AND
MAINTENANCE OF THE
CHAMPLAIN HUDSON POWER EXPRESS HVDC TRANSMISSION LINE PROJECT**

WHEREAS, pursuant to the authority delegated by the President of the United States under Executive Order 10485, as amended by Executive Order 12038, the U.S. Department of Energy (“DOE”) receives and considers applications for permits for the construction, operation, maintenance, and connection of facilities for the transmission of electric energy at the borders of the United States (“Presidential Permit”); and

WHEREAS, Champlain Hudson Power Express, LLC (“CHPE”) have applied to the DOE’s Office of Electricity for a Presidential Permit for the Champlain Hudson Power Express HVDC Transmission Line Project (“Project”) in accordance with the DOE’s applicable administrative procedures at 10 CFR § 205.320 *et. seq.*; and

WHEREAS, the proposed Project would consist of a 1,250-megawatt high-voltage direct current (“HVDC”) transmission system extending approximately 333 miles from the United States’ border with Canada to a converter station to be constructed in Astoria, Queens, New York; a 3-mile long high-voltage alternating current transmission system extending from the proposed converter station to an existing substation in Astoria; and ancillary facilities (such as temporary work areas, contractor yards, laydown areas, and access roads); and

WHEREAS, construction of the Project will entail installation of buried transmission cables along waterways and within the rights-of-way of existing transportation infrastructure, including railroads and roadways located within the State of New York; and

WHEREAS, Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470f) (“Section 106”), directs federal agencies to take into account the effects of their undertakings on historic properties listed in or eligible for inclusion in the National Register of Historic Places (“National Register”) and to afford the Advisory Council on Historic Preservation (“ACHP”) a reasonable opportunity to comment; and

WHEREAS, the procedures set forth in 36 CFR Part 800 - Protection of Historic Properties define how federal agencies meet their statutory responsibilities pursuant to Section 106; and

WHEREAS, the DOE has determined that the issuance of a Presidential Permit for the Project is an undertaking, as defined in 36 CFR § 800.16(y), requiring compliance with Section 106 and its implementing regulations; and

WHEREAS, construction of portions of the Project will also require authorization by the U.S. Army Corps of Engineers (“USACE”) pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 403) and Section 404 of the Clean Water Act (33 U.S.C. § 1344), and the USACE and the DOE have agreed that the DOE is the lead federal agency for purposes of compliance with Section 106, in accordance with 36 CFR § 800.2(a)(2); and

WHEREAS, consistent with 36 CFR § § 800.4(a) and 800.16(d), the area of potential effects (“APE”) for this undertaking has been defined to include all areas that could be directly or indirectly affected by construction and/or operation of the Project, including ground-disturbing activities associated with installation of the transmission line, construction of the converter station, and ancillary facilities (such as temporary work areas, contractor yards, laydown areas, and access roads); and

WHEREAS, the Project’s APE generally includes the geographic area defined in the attached maps and may be further refined through additional engineering assessments; and

WHEREAS, the Project is located within the identified area of interest of four federally recognized Indian tribes, and the DOE has consulted with the Delaware Indian Nation, the Saint Regis Mohawk Tribe, the Shinnecock Indian Nation, and the Stockbridge-Munsee Community Band of Mohican Indians on a government-to-government basis in accordance with 36 CFR § 800.2(c)(ii); and

WHEREAS, the DOE has determined that its undertaking associated with the Project has the potential to adversely affect historic properties listed in or eligible for the National Register and have consulted with the ACHP, the USACE, the New York State Historic Preservation Officer (NYSHPO), and federally recognized Indian tribes pursuant to 36 CFR § 800.14 of the regulations implementing Section 106; and

WHEREAS, pursuant to 36 CFR § 800.14(b), the DOE has elected to execute this Programmatic Agreement (“PA”); and

WHEREAS, pursuant to 30 CFR §§ 800.2(c)(2), 800.6(c)(3), and 800.2(c)(4), the Delaware Indian Nation, the Saint Regis Mohawk Tribe, the Shinnecock Indian Nation, the Stockbridge-Munsee Community Band of Mohican Indians, CHPE, and USACE (collectively, the “Concurring Parties”) have been invited to concur in this PA.

NOW, THEREFORE, the DOE and the NYSHPO (the “Signatory Parties”) agree that the Project shall be administered and implemented in accordance with the following stipulations to satisfy the responsibilities of the DOE under Section 106 for all aspects of the Project.

STIPULATIONS

I. APPLICABILITY

DOE, CHPE, and the NYSHPO shall ensure that the following stipulations are carried out:

- A. DOE, CHPE and the NYSHPO will review Undertakings in accordance with the terms of this agreement.
- B. This Programmatic Agreement will be in effect for a period of five years from the date of its execution.
- C. DOE will send a copy of this Programmatic Agreement to the ACHP upon execution.

II. CULTURAL RESOURCES MANAGEMENT PLAN

- A. Within one year following the issuance of the Presidential Permit for the Project, CHPE shall develop a Cultural Resources Management Plan (“CRMP”) specifying how historic properties within the Project’s APE will be considered and managed and submit the CRMP to the Signatory and Concurring parties.
- B. The CRMP will be prepared by or under the supervision of an individual who meets, or individuals who meet, at minimum, the professional qualification standards for archaeology defined in the *Secretary of the Interior’s Professional Qualification Standards* (48 FR 44738–44739, September 19, 1983).
- C. The CRMP will be prepared with reference to:
 - 1. The ACHP’s guidance on conducting archaeology under Section 106 (ACHP 2009);
 - 2. The ACHP’s February 23, 2007 *Policy Statement Regarding the Treatment of Burial Sites, Human Remains, and Funerary Objects* (ACHP 2007);
 - 3. The NYSHPO’s *Human Remains Discovery Protocol* (NYSHPO 2021);
 - 4. The New York Archaeological Council’s (NYAC) *Standards for Cultural Resource Investigations and the Curation of Archaeological Collections in New York State* (1994), as adopted by the NYSHPO in 1995;
 - 5. *The Secretary of the Interior’s Standards and Guidelines for Archaeology and Historic Preservation* (48 FR 44716-44742, September 29, 1983), as amended and revised;
 - 6. The DOE’s *American Indian and Alaska Native Tribal Government Policy* (DOE 2006); and
 - 7. DOE Policy 141.1: *Management of Cultural Resources* (DOE 2011).

D. The CRMP will, at minimum, include the following:

1. An introduction explaining the scope and purpose of the CRMP, the regulatory context and basis under which the CRMP is developed, and the organization of the CRMP.
2. A description of the Project, including the Project's setting, principal Project facilities, and proposed methods of construction.
3. A description of the APE for this undertaking, including potential causes and types of Project effects.
4. Maps of the Project's APE.
5. An overview synthesizing and summarizing data on the history and prehistory of the Project area to provide information regarding the nature and character of historic properties within or potentially within the Project's APE and to provide a context in which to evaluate and consider alternative treatment strategies for historic properties.
6. A summary of cultural resources investigations previously conducted within the APE, including those conducted to identify historic properties that may be affected by the Project.
7. An inventory of known or recorded historic and archaeological resources within the APE, including the following information:
 - a) Location and description of known or reported resources based on available information, including the nature and type of resource (i.e., historic, prehistoric, or multi-component archaeological site, district, historic building, structure, or object);
 - b) Whether cultural resources investigations conducted to identify and/or evaluate historic properties that may be affected by the Project have confirmed the presence or absence of a previously reported archaeological or historic resource; and
 - c) Whether a known or reported historic or archaeological resource is listed in or has been previously determined eligible for inclusion in the National Register.
8. The procedures for completing the identification and, if necessary, the evaluation of historic properties (including properties of traditional religious or cultural significance) within the Project's APE that may be affected (directly and/or indirectly) by the Project.
9. The procedures for assessing the Project's effects (if any) on identified historic properties.
10. Procedures and specific management and/or control measures for resolving any adverse effects on identified archaeological sites and/or historic resources within the APE through the consideration of prudent and feasible Project alternatives, modifications,

or treatment measures that would avoid, minimize, reduce, or mitigate adverse effects on historic properties listed in or eligible for inclusion in the National Register.

11. The process for identifying, developing, and implementing additional management and treatment measures for historic properties within the APE, as necessary.
12. Procedures for the unanticipated discovery of archaeological resources.
13. Procedures for the unanticipated discovery of human remains, taking into account applicable state and local laws, and
 - a) The NYSHPO's *Human Remains Discovery Protocol* (NYSHPO 2021);
 - b) The Native American Graves Protection and Repatriation Act of 1990 (25 USC 3001 *et seq.*) (NAGPRA) and its implementing regulations at 43 CFR Part 10;¹ and
 - c) The ACHP's 2007 *Policy Statement Regarding the Treatment of Burial Sites, Human Remains, and Funerary Objects*.
14. Measures for the curation and/or repatriation of artifacts and collections removed from state lands consistent with Title 1, Article 5, Section 233 of the New York State Education Law, as applicable.
15. Procedures for training CHPE staff, contractors, and other appropriate personnel in the requirements of the CRMP and their responsibility to protect historic properties.
16. Measures to prevent looting and vandalism of historic properties within the APE during Project construction.
17. Requirements for any post-construction management or monitoring of identified historic properties.
18. Measures for public interpretation of historic properties and cultural values, to the extent prudent and reasonable.
19. Procedures for implementing the CRMP, including the following:
 - a) The specific individuals responsible for coordinating activities conducted under the CRMP, including coordinating consultation and maintenance of relevant records;

¹ Pursuant to 43 CFR Part 10, NAGPRA applies to human remains, sacred objects, and items of cultural patrimony (described as "cultural items" in the statute) located on federal or tribal lands or in the possession and control of federal agencies or certain museums. The Project will not occupy federal or tribal lands. Notwithstanding the limits of NAGPRA's applicability, the principles described in NAGPRA and its implementing regulations will serve as guidance for CHPE's actions should remains or associated artifacts be identified as Native American, and to the extent such principles and procedures are consistent with any other applicable requirements.

- b) A dispute resolution process that is consistent with the process described in Section V of this PA;
- c) The use of qualified cultural resources professionals to conduct certain activities under the CRMP (see Stipulation II.B, above);
- d) Appropriate standards for cultural resources investigations and reporting;
- e) A consultation protocol to coordinate with the Signatory and Concurring parties during implementation of the CRMP, including provisions for periodic reporting, and meetings; and
- f) Procedures for review of and amendment to the CRMP.

III. CRMP REVIEW AND APPROVAL

- A. CHPE will provide a draft CRMP to the following parties (collectively, the “Consulting Parties”):
 - 1. The Signatory Parties;
 - 2. The Concurring Parties;
 - 3. The National Park Service; and
 - 4. The New York State Department of Public Service.
- B. The Consulting Parties will be afforded a 30-day review period to provide comments on the draft CRMP.
- C. At the conclusion of the 30 day review period, CHPE will provide the DOE with a revised draft CRMP that includes:
 - 1. Documentation of the views of the Consulting Parties;
 - 2. Revisions adopted by CHPE;
 - 3. An explanation of any revisions proposed by the Consulting Parties not adopted by CHPE.
- D. Within 30 days of receipt of the revised draft CRMP described in Stipulation III.C of this CRMP, the DOE shall direct CHPE to make any necessary or appropriate revisions to finalize the CRMP.
- E. Following DOE’s acceptance of the final CRMP, CHPE shall submit the final CRMP along with documentation of the views of the Consulting Parties to the Signatory and Concurring parties.

- F. If any of the Signatory or Concurring parties object to the final CRMP, the objecting party will notify the DOE in writing within 30 days of their receipt of the final CRMP. The DOE will consult with the objecting party, CHPE, and with other Signatory and/or Concurring parties, as appropriate, to seek agreement on the CRMP. If consensus is not reached within 30 days, the DOE will notify the ACHP of the objection, provide all pertinent information and request that the ACHP provide its advisory comments within 30 days of receipt of notification in accordance with Stipulation V of this Programmatic Agreement.

IV. INTERIM MEASURES FOR COMPLIANCE

- A. Until the CRMP is accepted by the DOE, the DOE will continue to apply 36 CFR §§ 800.4 through 800.6 for all actions taken with regard to the Project.
- B. Upon acceptance of the final CRMP, the DOE shall notify the Signatory and Concurring parties to this agreement of its acceptance, and CHPE shall implement the CRMP in lieu the procedures set forth in 36 CFR §§ 800.4 through 800.6.

V. DISPUTE RESOLUTION

- A. Except as provided for in Section III.F of this PA, if at any time during implementation of this PA, the Signatory or Concurring parties object to any action or any failure to act pursuant to this PA, they may file written objections with the DOE.
 - 1. The DOE will consult with the objecting party, and with other Signatory and/or Concurring parties as appropriate, to resolve the objection. The DOE may initiate on its own such consultation to resolve any of the DOE's objections to actions taken or products produced by any party pursuant to this agreement.
 - 2. If the DOE determines that the objection cannot be resolved through consultation alone, the DOE will forward all documentation relevant to the dispute to the ACHP and request that the ACHP comment. After receiving all pertinent documentation, the ACHP will either:
 - a) Provide the DOE with recommendations, which the DOE will take into account in reaching a final decision regarding the dispute; or
 - b) Notify the DOE that it will comment pursuant to 36 CFR §§ 800.7(c)(1) through (c)(3) and Section 110(l) of the National Historic Preservation Act of 1966, as amended, and proceed to comment.
 - 3. The DOE will take into account any ACHP comments provided in response to such a request, with reference to the subject of the dispute, and will issue a decision on the matter. The DOE's responsibility to carry out all actions under this PA and the CRMP that are not the subject of dispute will remain unaffected.

VI. DURATION, AMENDMENT, AND TERMINATION OF THIS PROGRAMMATIC AGREEMENT

- A. This PA shall take effect on the date it has been fully executed by the Signatory Parties and will remain in effect until terminated pursuant to Stipulation VI.C of this agreement. Any amendments to this PA shall take effect on the dates they are fully executed by the Signatory Parties, or such other self-executing dates as may be described in those documents.
- B. Any Signatory Party to this PA may request in writing to the other Signatory Parties that this PA be amended. The Signatory Parties will consult in accordance with 36 CFR § 800.14(b) to consider such amendment.
- C. Any Signatory Party to this PA may terminate this agreement by providing 30 days written notice to the other Signatory Parties, provided that the Signatory and Concurring parties are consulted during the 30-day notice period in order to seek agreement on amendments or other actions that would avoid termination. In the event of termination, the DOE will comply with 36 CFR Part 800 with regard to individual actions covered by this PA.

EXECUTION of this PA by the Signatory Parties and implementation of the stipulations provided herein evidences that the DOE and USACE have taken into account the effects of this Project on historic properties and afforded the ACHP an opportunity to comment on those effects.

SIGNATORY PARTIES

NEW YORK STATE HISTORIC PRESERVATION OFFICER

BY: *R Daniel Mackay* DATE: *3/10/21*
Name *R Daniel Mackay*
Title *DSUP*

U.S. DEPARTMENT OF ENERGY

BY: _____ DATE: _____
Name
Title

SIGNATORY PARTIES

NEW YORK STATE HISTORIC PRESERVATION OFFICER

BY: _____ DATE: _____

Name
Title

U.S. DEPARTMENT OF ENERGY

BY: **Michael P. Coe** Digitally signed by Michael P. Coe
Date: 2021.03.02 16:14:27
-05'00' _____ DATE: _____

Name
Title

Michael P. Coe
Director, Energy Planning and Strategy
Energy Resilience Division
Office of Electricity

CONCURRING PARTIES

DELAWARE NATION

BY: _____ DATE: _____
Name
Title

SAINT REGIS MOHAWK TRIBE

BY: _____ DATE: _____
Name
Title

SHINNECOCK INDIAN NATION

BY: _____ DATE: _____
Name
Title

**STOCKBRIDGE-MUNSEE COMMUNITY
BAND OF MOHICAN INDIANS**

BY: _____ DATE: _____
Name
Title

CHPE LLC

BY: *William S. Helmer* DATE: *March 8, 2021*
Name *William S. Helmer*
Title *Executive Vice President and General Counsel*

U.S. ARMY CORPS OF ENGINEERS

BY: _____ DATE: _____
Name
Title