

**GENERAL AGREEMENT
REGARDING EEL LADDER CONSTRUCTION
CHESAPEAKE AND OHIO NATIONAL HISTORICAL PARK
MARYLAND HISTORICAL TRUST**

August 17, 2010

This agreement between the National Park Service (NPS), U. S. Fish and Wildlife Service (USFWS) (collectively “Federal Agencies”), and the Maryland Historical Trust (MD SHPO) governs the construction of an eel ladders at historic Dams 4 and 5 on the Potomac River, Washington County, Maryland, and is intended to ensure compliance with the National Historical Preservation Act.

WHEREAS, the NPS, Chesapeake and Ohio Canal National Historical Park (C & O Canal NHP), and the USFWS are proposing to install one eel ladder at NPS owned Dam 4 within the boundaries of the C & O Canal NHP, and one eel ladder outside of C & O Canal NHP boundaries, but adjacent to the C & O Canal NHP owned Dam 5, along the West Virginia/Maryland boundary. The project area is located within the Conococheague and Four Locks Maintenance Districts of the historic C & O Canal NHP which is owned in fee and administered by the NPS within Washington County, Maryland;

WHEREAS, construction of the eel ladders will reestablish access to the historic American eel (*Anguilla rostrata*) habitat within the Potomac River basin per the objectives of the Atlantic State Fisheries Commission’s Interstate Fishery Management Plan;

WHEREAS, the proposed project will establish passages around the historic dams, built to supply water to the Chesapeake and Ohio Canal. The dams are impediments to the upstream migration of the eels, which spend most of their lives within the freshwaters of the Potomac River. The American eel migrates to the Sargasso Sea to spawn, with the juveniles finding their way back to freshwater. The eels are part of the historic riverine ecosystem;

WHEREAS, the proposed eel ladder construction is considered an “undertaking” as defined in Section 106 of the National Historic Preservation Act (16 U.S.C. §470f) and its implementing regulations, 36 CFR Part 800, and is therefore subject to the Act;

WHEREAS, the Federal Agencies have determined that the National Park Service will be the lead Federal agency to fulfill the collective responsibilities of the Federal agencies pursuant to 36 C.F.R. § 800.2(a)(2). USFWS remains a consulted agency and signatory pursuant to 36 C.F.R. § 800.6(c);

WHEREAS, the Federal Agencies have divided the responsibility for construction and monitoring of the eelways in Interagency Agreement no. F3100060039, dated July 1, 2006, as it may be amended from time to time;

WHEREAS, Allegheny Energy, owner and operator of hydroelectric facilities attached to Dams 4 and 5, has agreed to allow construction of an eelway attached to its powerhouse at Dam

5, and has agreed to assume operational oversight of the eelways, as described in the Supplemental Agreement for Dam Use between the United States Department of the Interior and Allegheny energy Supply, Company, LLC, dated September 29, 2002, as it may be amended from time to time;

WHEREAS, the NPS, as lead agency, has consulted with the MD SHPO pursuant to 36 CFR Part 800 and the regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. §470f);

WHEREAS, the MD SHPO has determined the proposed project will have an adverse effect on the C & O Canal NHP, which is included in the National Register of Historic Places;

WHEREAS, the NPS has sought and considered the views of the public on this undertaking as evidenced by the NPS' Environmental Assessment dated November 2009;

WHEREAS, the Advisory Council on Historic Preservation (hereinafter "Council") has declined to participate in the Section 106 consultation for this undertaking.

NOW THEREFORE, NPS, USFWS, and MD SHPO agree that the undertaking shall be implemented in accordance with the following stipulations:

ARTICLE I AUTHORITY

Authority to enter into this Agreement is provided by the National Historic Preservation Act, 16 U.S.C. § 470 *et seq.*

ARTICLE II Stipulations

The Federal Agencies shall ensure that construction of the eelways is carried out in accordance with the following stipulations:

1. The majority of the eel ladder at Dam 4 shall be placed underground to reduce the impacts to the historic structure. Initial alternative designs for the Maryland location had the eel ladder attached to the face of the dam/abutment for the entire length of the eel ladder. Non-overflows were also a component of the earlier design. Underground construction avoids these impacts. The earthen fill of the Dam 4 abutment has been extensively impacted due to modern flooding and, as a result, is comprised of modern fill. The combination of little to no impacts to archeological resources and reduction of the amount of eel ladder structure that is visible will reduce impacts to the historic structure.
2. Masonry joint anchors, rather than drilling into historic fabric, shall be used when feasible to minimize the impact on the historic dams.
3. Design work will take into account coloration and materials of the eel ladders to provide a harmonious element to the landscape.

4. Impacts on the historic viewshed shall be mitigated through context sensitive design and by a public interpretation program such as wayside exhibit(s) that will explain the presence of the non-historic elements in the historic setting.
5. Live wells and collection boxes will be camouflaged to minimize the impact to aesthetics and the visual landscape and reduce potential attractive nuisance.
6. A permanent record of actions undertaken shall be produced as related to the furtherance of this project.
7. Review copies of design drawings shall be provided to the MHT for review prior to construction. As-built drawings of the eel ladders shall be provided to the MD SHPO within 6 months of completion of construction.

ARTICLE III KEY CONTACTS

Should any issues arise regarding this project, the following person may be contacted:

For NPS – Cultural Resources Program Manager for the C & O Canal NHP, (301) 714-2211, 1850 Dual Highway, Suite 100, Hagerstown, MD 21740, Fax (301) 714-2232

For MD SHPO – Preservation Officer for the Maryland Historical Trust, (410) 514-7630, 100 Community Place, Crownsville, MD 0132, Fax (410-987-4071).

FOR FWS – Biologist for Ecological Services, U.S. Fish and Wildlife Service, (413) 253-8631, 300 Westgate Center Drive, Hadley, MA 01035, Fax 413-253-8482

ARTICLE IV STANDARD PROVISIONS

Compliance with Applicable Laws: This Agreement and performance thereunder is subject to all laws, regulations and management policies governing NPS property and resources, whether now in force or hereafter enacted or promulgated. Nothing in this Agreement shall be construed as in any way impairing the general powers of the NPS for supervision, regulation, and control of its property under such applicable laws, regulations, and management policies. Nothing in this Agreement shall be deemed inconsistent with or contrary to the purpose of or intent of any Act of Congress or laws of the State of Maryland.

Modifications: All modifications to this Agreement shall be in writing and shall be signed by the parties.

Federal Agency Appropriations: Nothing contained in this Agreement shall be construed as binding the Federal Agencies to expend in any one fiscal year any sum in excess of appropriations made by Congress, and available for the purposes of this Agreement for that fiscal year, or as involving the United States in any contract or other obligation for the further expenditure of money in excess of such appropriations.

Unexpected Discovery of Historic Properties

Should historic properties be unexpectedly identified during the implementation of the Undertaking, NPS shall ensure that reasonable efforts are made to avoid, minimize, or mitigate adverse effects to such properties, and shall consult the MD SHPO to resolve any unavoidable adverse effects pursuant to 36 CFR 800.6. NPS shall ensure that any resulting cultural resources work is accomplished in accordance with the relevant performance standards in Article IV.

Dispute Resolution

Should any of the signatories to this Agreement, object in writing within 30 days to any plans or actions proposed pursuant to this Agreement, NPS shall consult with the objecting party to resolve the objection. If NPS determines that the objection cannot be resolved, NPS shall request the comments of the Council pursuant to 36 CFR 800.7. Any Council comment provided in response to such a request will be taken into account by NPS in accordance with 36 CFR 800.7(c)(4) with reference only to the subject of the dispute; NPS's responsibility to carry out all actions under this Agreement that are not subjects of the dispute will remain unchanged.

AMENDMENT

If any of the signatories to this Agreement believes that its terms cannot be carried out, or that an amendment to these terms must be made, that signatory shall immediately consult with the other signatories to develop amendments in accordance with 36 CFR 800.6(c)(7). If an amendment cannot be agreed upon, the dispute resolution process set forth in Article IV will be followed.

DURATION

This Agreement shall be null and void if its terms are not carried out within fifteen (15) years from the date of its execution, unless the signatories agree in writing to an extension for carrying out its terms.

Execution of the Agreement by the NPS, FWS, and MD SHPO, its subsequent submission to the Council, and implementation of its terms evidence that the Federal Agencies have afforded the signatories an opportunity to comment on the Undertaking and its effects on historic properties, and that they have taken into account the potential effects of the undertaking on historic properties.

ARTICLE V SIGNATURES

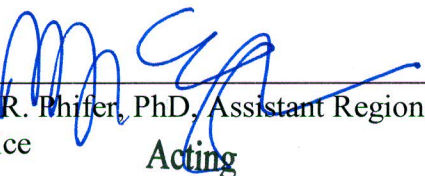
MARYLAND STATE HISTORIC PRESERVATION OFFICE

By:  Date: 10-26-10
Mr. J. Rodney Little, Maryland State Historic Preservation Officer

NATIONAL PARK SERVICE, C & O CANAL NATIONAL HISTORIC PARK

By:  Date: 9/30/2010
Mr. Kevin D. Brandt, Superintendent, C & O Canal National Historic Park

UNITED STATES FISH AND WILDLIFE SERVICE

By:  Date: 9/1/2010
Paul R. Phifer, PhD, Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service
Acting