

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, to resolve projected violations of the North American Electric Reliability Corporation (NERC) Reliability Standards, resulting from the closure of two coal-fired power generating units at the Yorktown Power Station which will be deactivated no later than in 2017 and to meet projected growth in regional demand. The Project is designed to provide sufficient and reliable electricity to residents, businesses, and government agencies located on the Virginia Peninsula for public health and human safety, and national security interests. 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 Harbor 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 for this Project the Area of Potential Effects (APE) shall consist of the Direct APE and an Indirect APE. The Direct APE consists of areas where 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. 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 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, Dominion has completed the identification of historic properties; and the Corps, in consultation with the SHPO, finds that the documents listed in Attachment B meet 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 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 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#)¹; 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)², 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 the participation of the ACHP in this consultation as a signatory party, and ACHP has elected to participate; and

WHEREAS, the Corps has invited the Catawba Indian Nation, the Delaware Tribe of Indians and the Delaware Nation to participate in this consultation and the Delaware Tribe of Indians has accepted, and the Catawba Indian National and the Delaware Nation have declined to participate; and

WHEREAS, the Corps has invited Dominion to participate in this consultation and to sign this MOA as a signatory party and Dominion has elected to participate; and

WHEREAS, the Corps has invited the following Virginia State Recognized Tribes: Cheroenhaka (Nottoway), the Chickahominy, the Eastern Chickahominy, the Mattaponi, the Upper Mattaponi, the Nansemond Tribal Association, the Nottoway Tribe of Virginia, the Pamunkey, and the Rappahannock to participate in this consultation and 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

¹ 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.

² 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.

participate in this consultation, and 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 have declined to participate; and

WHEREAS, the Corps has posted notice for public comment on the following: 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 public hearing (October 30, 2015) (Attachment E); 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 notified the consulting parties by email on October 13, 2015, that it had determined that identification and evaluation of historic properties was complete, that the Corps had applied the criteria of adverse effects according to 36 CFR 800.5 and reached a finding of adverse effect for the Project, that the Corps was accepting public comment until November 13, 2015 and that the Corps was now consulting to resolve adverse effects in accordance with 36 CFR 800.6 (Attachment E); and

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

WHEREAS, the Corps, in accordance with 54 U.S.C. § 306107, has undertaken the consideration of all available project alternatives to minimize harm to National Historic Landmarks to the maximum extent possible and to avoid adverse effects to nationally significant historic properties; and

WHEREAS, in developing this MOA, the parties find that the numerous types of mitigation that this MOA employs and contemplates (e.g., land acquisition, natural and cultural resource restoration or preservation, cultural interpretation, historical education, etc.) all create acceptable mitigating value. To address the range of opinions on the mitigation required, the parties have created a flexible structure to implement a diverse suite of mitigation that will appropriately mitigate the Project's adverse effects by providing significant additional value to the historic properties and their greater landscape.

WHEREAS, the Project's adverse effects to historic properties, direct, indirect, and cumulative, have been minimized and avoided to the greatest extent possible, and that through this MOA the parties seek to mitigate the remaining direct, indirect, and cumulative adverse effects to the greatest extent practicable; and

WHEREAS, the Corps and Dominion have fully identified cumulative effects, i.e. *"reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative"* in accordance with 36 CFR § 800.5(a)(1); and

WHEREAS, the Corps and Dominion recognize that conservation efforts have been and can be effective at doing what they were created to do—limit future development and/or impacts related thereto in the APE and the proposed mitigation will further this goal; and

NOW THEREFORE, in order to satisfy the Corp's Section 106 responsibilities to take into account the effects of the undertaking requiring Corps permits on historic properties, the signatories here agree 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. TREATMENT OF ARCHEOLOGICAL SITES

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

1. Prior to construction at the Skiffes Creek Switching Station, Dominion shall develop a Treatment Plan in consultation with the Corps, SHPO, ACHP, and the other concurring parties to this MOA 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).

A. The plan shall specify at a minimum, the following:

- i. the property, properties, or portions of properties where site specific data recovery plans will be carried out;
 - ii. 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;
 - iii. any property, properties, or portions of properties that will be destroyed or altered without data recovery;
 - iv. the research questions to be addressed through data recovery, with an explanation of their relevance and importance;
 - v. the methods to be used with an explanation of their relevance to the research questions;
 - vi. the methods to be used in analysis, data management, and dissemination of data, including a schedule;
 - vii. the proposed disposition of recovered materials and records;
 - viii. 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
 - ix. a schedule for the submission of progress reports to the Corps, SHPO, ACHP, and other concurring parties.
2. Dominion shall submit the draft Treatment Plan to the Corps, SHPO, ACHP, and other concurring parties to this MOA for review and comment. All comments shall be forwarded to the Corps within 30-day of receipt for consideration. The Corps will ensure that all comments received in a timely manner are taken into account. If no comments are submitted, the Corps may

assume the non-responding party has no comments. Following approval in writing from the Corps, Dominion shall proceed to implement the Treatment Plan.

3. Dominion shall ensure that the approved Treatment Plan is implemented prior to commencing construction activities at the Switching Station Site that could affect archaeological site 44JC0662.
4. Dominion shall notify the Corps in writing once the fieldwork portion of the Treatment Plan is complete and provide a brief management summary so that a site visit may be scheduled, if requested. Project activities may proceed following this notification while the technical report is in preparation. The Corps may approve implementation of the undertaking's construction 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.
5. Dominion and/or its assignees may photograph the work and artifacts, and display on a temporary or permanent basis artifacts or images, with the exception of human remains, funerary objects, or sacred items, in an appropriate place within the Project vicinity.
6. Dominion shall prepare 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 within one (1) year of the notification that fieldwork has been completed. When the final report has been approved by the Corps, the Permittee 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 copy to each of the other consulting parties.

b. AVOIDANCE OF UNDERWATER AND TERRESTRIAL ARCHAEOLOGICAL SITES

1. Prior to construction, Dominion shall complete and submit to the Corps and SHPO an underwater archaeological survey sufficient to determine the type and extent of identified underwater anomalies located within 200 feet of proposed structures or mooring locations in the Direct APE.
2. Upon written concurrence of Stipulation I(b)(1) from the Corps and SHPO, Dominion shall use the results of the underwater and terrestrial surveys to develop a draft avoidance plan for archaeological sites listed in Attachment C.

A. Among other things, the draft avoidance plan shall include:

- i. Project plans showing the location of the cultural anomalies and all archaeological sites identified in Attachment C located within the direct APE;
- ii. 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;
- iii. 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.
- iv. 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.

B. A copy of Dominion's draft avoidance plan shall be submitted to the Corps, SHPO, ACHP, and other concurring parties to this MOA for review and comment. All comments shall be forwarded to the Corps within 30-day of receipt for consideration. The Corps will ensure that all comments received in a timely manner are taken into account. If no comments are submitted, the Corps may assume the non-responding party has no comments.

C. Following review and comment, Dominion shall address any comments received and submit their final avoidance plan to the Corps for written approval.

D. Dominion shall implement the final avoidance plan prior to construction.

II. TREATMENT OF ARCHITECTURAL PROPERTIES AND/OR HISTORIC LANDSCAPES

a. INTERPRETIVE SIGNAGE

1. Prior to construction within the James River, Dominion shall commence development of twenty (20) interpretive signs which inform visitors about the historic significance of the Jamestown Island-Hog Island-Captain John Smith Trail Historic District as well as the cultural resources investigations conducted as part of the development process. Signage shall be placed on publically accessible lands and include recreational and heritage tourism destinations.
2. Dominion shall submit a draft of the signage text, images and other materials, and proposed signage locations to the Corps, SHPO, ACHP, and concurring parties to this MOA for a 30-day review and comment. Dominion shall take into account any comments received and make necessary revisions to be submitted for final written approval by the Corps and SHPO.
3. Dominion shall pay for the fabrication and installation of all interpretive signs and notify the Corps, SHPO, ACHP, and concurring parties of the installation in writing within thirty (30) days of their completion.

b. VIEWSHED DOCUMENTATION OF JAMES RIVER

1. Prior to construction within the James River, Dominion shall complete photography required for 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.
2. Prior to construction within the James River, Dominion shall photo-document the current view shed of all adversely effected properties identified in Attachment C. Prior to completion of construction, Dominion shall prepare a written report illustrated with maps and line drawings, and TrueScape (11"x17") quality photographs. Dominion shall ensure documentation, including photographs, are completed in accordance with the most recent SHPO archival guidelines, and that all materials are accepted by the SHPO prior to construction within the James River.
3. Prior to completion of construction, Dominion shall submit the completed HALS survey documentation to the Corps, SHPO,

and other concurring parties to this MOA for review and comment and to the NPS Heritage Documentation Program for review and acceptance.

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

1. Dominion shall examine all viable and feasible tower coating and finishing materials and methods that will minimize the visibility of transmission line infrastructure crossing the river that meet and comply with all applicable state and federal law.
2. Prior to construction within the James River, Dominion shall submit its analysis of potential tower coating and finishing materials and methods along with its recommendation to the Corps, SHPO, ACHP, and other concurring parties to this MOA for review and comment. Following receipt and consideration of comments as appropriate, Dominion shall determine if there are any suitable tower finishing and coating materials and methods that will further minimize visibility of the transmission line infrastructure, above and beyond the standard weathered galvanized coating, and, if so, apply the selected coating or finishing material or method to the towers no earlier than one (1) year after energization of the line, but as soon as conditions allow for effective application.
3. Dominion shall ensure that the selected tower coating or finishing material or method, if applied, is maintained over the lifespan of the project.

d. **PRE-CONSTRUCTION MITIGATION ASSURANCE**

1. Prior to any construction within the James River, Dominion shall secure and provide proof of investments in options on lands, visitor facilities, archaeology documentation and conservation, or site enhancements associated with the Werowocomoco and supporting sites and facilities in Gloucester and York counties as described in Stipulation II.e.1.A.iv.

2. Prior to any construction within the James River Dominion shall secure and provide proof of permission for investments in shoreline stabilization or related enhancements at Carter's Grove from the landowner or The Conservation Fund assuring obligations under Stipulation II.e.1.A.i.

3. Prior to any construction within the James River, Dominion shall secure and provide proof of permission from either: (1) the National Park Service or Preservation Virginia concerning obligations under Stipulation II.e.1.A-C; or (2) entities responsible for the restoration

and preservation of Ft. Monroe in Hampton, Virginia and Chippokes Plantation in Surry County concerning obligations under Stipulation II.e.1.D.i. and ii.

4. Prior to any construction within the James River, Dominion shall secure and provide proof of permission from the DGIF concerning obligations under Stipulation II.d.2.A.i. iv, and v.).

5. Dominion shall pursue the land acquisition and permissions referenced in Stipulations II.d.1.-4. above diligently up and until the earlier of (A) Dominion's reasonable conclusion that the actions cannot be satisfied or (B) twelve months after the effective date of this MOA. Thereafter, Dominion promptly shall coordinate with the Corps, ACHP, SHPO, the concurring parties, and the third party (e.g., The Conservation Fund) implementing the fund under which the proposed mitigation project that cannot be implemented is listed to determine an alternative mitigation project that, directly or indirectly, enhances the integrity and values of the adversely effected historic property(ies) in a manner that is consistent with this MOA.

e. **ADDITIONAL MITIGATION COMPENSATION FOR ADVERSE EFFECTS ON HISTORIC PROPERTIES WITHIN THE APE**

The Corps, in consultation with the SHPO, has determined that the Project will have an adverse effect on the Jamestown Island-Hog Island-Captain John Smith Trail Historic District. Along with specific identified historic properties, the cultural and natural landscapes that contribute to the district (See Attachments C and D), will be visually affected. Dominion shall fulfill the following actions as mitigation for the Project's direct, indirect, and cumulative adverse effects to Historic Properties and cultural and natural landscapes contributing to their significance.

1. **The Jamestown Island-Hog Island-Captain John Smith Trail Historic District Mitigation**

Dominion shall establish and make a contribution to a legally separate mitigation compensation fund in coordination with The Conservation Fund (TCF). Proof of establishment and deposit must be provided to the Corps, SHPO, ACHP, and concurring parties prior to any construction within the James River.

Dominion shall ensure that the funds are disbursed over a period not to exceed ten (10) years, to support the following projects within the Jamestown Island-Hog Island-Captain John Smith Trail Historic District and thematically related areas that contribute to the preservation and enhancement of sites associated with early

American and Native Indian cultures of this area. Dominion shall seek input on specificity for these projects from recognized subject matter experts that are a party to this MOA, including professionals with the Commonwealth of Virginia and within TCF.

The funds shall be used for:

- A. Landscape enhancement and shoreline protection projects to include:
- i. Shoreline landscape enhancement and stabilization of approximately 6,000 linear feet of shoreline or other priority projects to enhance the preservation of Carter's Grove.
 - ii. Landscape enhancement and shoreline protection to preserve the setting and feeling of the Colonial Parkway unit at the Colonial National Historical Park consistent with the National Park Service's Cultural Landscape Inventory (2008).
 - iii. Seawall rehabilitation or replacement at Historic Jamestowne to provide protection from erosion and sea level rise and to execute a project that provides further protections through a series of breakwaters, sills and revetments greater than those provided in 2004; and, the restoration of Back Creek at Historic Jamestowne.
 - iv. Captain John Smith Chesapeake NHT enhanced experiences dedicated for land acquisition, visitor interpretation and facilities, archeological investigation and preservation of Werowocomoco, Gloucester County, Virginia (principal residence of Powhatan, paramount chief of Indian Tribes in Virginia's coastal region at the time English colonists arrived in 1607, and located along the Captain John Smith Chesapeake NHT on the York River) and natural and cultural values on the James River and on the north and south sides of the York River in the area of Werowocomoco that will preserve and 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. In addition to land acquisition of Werowocomoco, sites and facilities at York River state park will serve as the visitors' gateway to understanding the Virginia Indian cultures at Werowocomoco. A visitor center with scholarly exhibits, visitor accommodations and associated infrastructure and a burial ground for Virginia Indians will introduce the visitor to the significance of

Werowocomoco before and during the time of the English settlement at Jamestown.

B. Historic property documentation projects to include:

- i. Archaeological investigation and identification at Historic Jamestowne to support ongoing investigations including excavations around Memorial Church 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.

C. Heritage tourism enhancement projects to include:

- i. Additional visitor interpretation and visitor engagement opportunities at Colonial National Historical Park.
- ii. Captain John Smith Chesapeake NHT visitor engagement and visitor interpretation programs and projects at the National Park Service's visitor center on Jamestown Island.
- iii. Projects identified in Stipulations II.e.1.A-C shall take into account the findings and recommendations resulting from Heritage Tourism studies completed in accordance with Stipulation II(f) below.

D. In the event funding cannot be obligated for projects and activities identified in Stipulation II.e.1.A.i-iii, B.i. or C.i. ii., funding shall be available for restoration, archeological documentation and visitor facilities, access and education at:

- i. Ft. Monroe. Programs shall emphasize the cultural interactions of this historic site that further visitor understanding of the strategic significance of Ft. Monroe, known also as Old Point Comfort. The site is thematically linked to Virginia's pre-colonial period because of its significance for Virginia Native Indian cultures, the English colonists arrival to the New World, including Captain John Smith's journeys of exploration, and as the first landing place of Africans forcefully brought to the colony in August, 1619. Projects shall include exhibits depicting the Captain John Smith Chesapeake National Historic Trail and John Smith's view of the Chesapeake region as recorded in his personal diaries. Support for facilities include a public boat and kayak launch area, interpretative trails, and archaeological investigation and interpretation at Fort Algernon; and

- ii. Chippokes Plantation. Funding shall enhance visitor facilities, interpretative exhibits of 17th century agricultural

techniques and plantation life outside of Jamestown and the preservation of Chippokes Mansion,

iii. Jamestown-Yorktown Foundation. Funding shall be for educational exhibits and programs on the area landscape and watershed before, during and after European contact. Programs are to examine the convergence of the three cultures – Virginia Indian, European and African – and their relationship to documenting and understanding the newly defined Jamestown Island-Hog Island-Captain John Smith Trail Historic District.

E. All projects funded in accordance with Stipulations II.e.1.A-C above, shall comply with all applicable local, Commonwealth, and federal laws and regulations in force and effect at the time of the project award.

F. Dominion shall provide an annual report due by January 30 each year summarizing disbursement of funds 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 distribute the annual report to the Corps, ACHP, SHPO, and other concurring parties to this MOA for 30-day review and comment. Dominion shall address any comments received and submit a revised report to the Corps, SHPO, ACHP, and concurring parties to this MOA. Any disputes regarding dispensing and use of funds shall be handled in accordance with Stipulation IX below.

2. Historic Property Treatment at Hog Island Wildlife Management Area

Dominion shall establish and make a contribution to a legally separate mitigation compensation fund in coordination with Virginia Department of Game and Inland Fisheries (DGIF). Proof of establishment and deposit must be provided to the Corps, SHPO, ACHP, and concurring parties prior to any construction within the James River.

Dominion shall ensure that the funds are disbursed over a period not to exceed ten (10) years, to support the following projects located within the Jamestown Island-Hog Island-Captain John Smith Trail Historic District unless otherwise noted. Dominion shall seek input on specificity for these projects from recognized subject matter experts that are a party to this MOA, including professionals within DGIF.

The funds shall be used for:

- A. Natural resource enhancement and cultural resource identification and interpretation projects to include:
- i. Enhancement of 1,100 acres of palustrine emergent marsh at Hog Island.
 - 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, 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 that recognizes Hog Island's connection and contributions to the Jamestown Island-Hog Island-John Smith Trail Historic District, and the individual significance to the Captain John Smith Chesapeake NHT.
 - v. Comprehensive archaeological identification survey of Hog Island.

B. All projects funded in accordance with Stipulation II(e)(2)(A) above, shall comply with all applicable local, Commonwealth, and federal laws and regulations in force and effect at the time of the project award.

C. Dominion shall provide an annual report due by January 30 each year summarizing disbursement of funds 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 distribute the annual report to the Corps, ACHP, SHPO and other concurring parties to this MOA for 30-day review and comment. Dominion shall address any comments received and submit a revised report to the Corps, SHPO, ACHP, and concurring parties to this MOA. Any disputes regarding dispensing and use of funds shall be handled in accordance with Stipulation IX below.

3. Water Quality Improvements

Dominion shall establish and make a contribution to a legally separate mitigation compensation fund in coordination with the Virginia Environmental Endowment (VEE). Proof of establishment and deposit must be provided to the Corps, SHPO, ACHP, and concurring parties prior to Dominion initiating any construction within the James River.

Dominion shall ensure that the funds are disbursed over a period not to exceed ten (10) years, to support projects that enhance water quality and mitigate the cumulative impacts of the Project. Dominion shall seek input on goals and evaluation criteria for the Water Quality mitigation compensation fund from recognized subject matter experts that are a signatory party to this MOA, as well as professionals within VEE.

The funds shall be used for:

A. Water quality improvement projects benefitting the James River watershed with consideration given to projects located within the indirect APE including, but not limited to:

- i. Riparian buffer creation, replacement and enhancement projects.
- ii. Erosion and sediment control projects.

B. All projects funded in accordance with Stipulation II(e)(3)(A) above, shall comply with all applicable local, Commonwealth, and federal laws and regulations in force and effect at the time of the project award.

C. Dominion shall provide an annual report due by January 30 each year summarizing disbursement of funds 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 distribute the annual report to the Corps, ACHP, SHPO, and other concurring parties to this MOA for 30-day review and comment. Dominion shall address any comments received and submit a revised report to the Corps, SHPO, ACHP, and concurring parties to this MOA. Any disputes regarding dispensing and use of unobligated funds shall be handled in accordance with Stipulation IX below.

4. Landscape and Battlefield Conservation

Dominion shall establish and make a contribution to a legally separate mitigation compensation fund in coordination with the

Virginia Land Conservation Foundation (VLCF). In accordance with the *Code of Virginia* §10.1-1020(B) the funds shall be restricted for the purposes described in Stipulation II.e.4.A. below. Proof of establishment and deposit must be provided to the Corps, SHPO, ACHP, and concurring parties prior to any construction within the James River.

Dominion shall ensure that the funds are disbursed over a period not to exceed ten (10) years, to support land conservation and open space easement projects that are associated with and will enhance the James River and the Jamestown Island-Hog Island-Captain John Smith Trail Historic District. Dominion shall seek input on specificity for these projects from recognized subject matter experts that are a party to this MOA, including professionals within VLCF.

The funds shall be used for:

A. Land conservation and open space easement projects:

- i. Battlefield land conservation on local government or private lands associated with the Battle of Yorktown, and Fort Crafford.
- ii. Landscape preservation to include land and easement acquisition with an emphasis on projects within the indirect APE and then on projects within the James River watershed benefitting the historic properties and district.

B. All projects funded in accordance with Stipulation II.e.4.A. above, shall comply with all applicable local, Commonwealth, and federal laws and regulations in force and effect at the time of the project award.

C. Dominion shall provide an annual report due by January 30 each year summarizing disbursement of funds 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 distribute the annual report to the Corps, ACHP, SHPO, and other concurring parties to this MOA for 30-day review and comment. Dominion shall address any comments received and submit a revised report to the Corps, SHPO, ACHP, and concurring parties to this MOA. Any disputes regarding dispensing and use of funds shall be handled in accordance with Stipulation IX below.

5. Allocation and Expenditure of Funds

A. Subject to Stipulation II.e.5.E., Dominion shall ensure an amount of \$85,000,000 shall be contributed for activities described in Stipulations II.e.1.-4., or alternatives thereto described in Stipulation II.d., in the following distributions:

- i. The Jamestown Island-Hog Island-Captain John Smith Trail Historic District a total of \$52,700,000.00, of which no less than \$25,000,000.00 shall be for Stipulation II.e.1.A.iv.;

Funding for projects that cannot be obligated under this section shall be available to fund activities as follows:

(a) Stipulation II.e.1.A.iv. at 50 percent for York River State Park;

(b) Stipulation II.e.1.D.i. at 30 percent for Ft. Monroe;

(c) Stipulation II.e.1.D.iii. at 15 percent for the Jamestown-Yorktown Foundation; and,

(d) Stipulation II.e.1.D.ii. at 5 percent for Chippokes Plantation State Park.

- ii. Historic Property Treatment at Hog Island Wildlife Management Area a total of \$4,205,000.00;
- iii. Water Quality Improvements a total of \$15,595,000.00; and,
- iv. Landscape and Battlefield Conservation a total of \$12,500,000.00.

B. 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.

C. 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.

D. Notwithstanding Stipulations II.e.5.B-C, 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.e.5.E.

E. Any mitigation compensation funds unobligated twelve years after the effective date of this MOA shall be transferred back to

Dominion. Dominion shall deposit any remaining unobligated funds in the legally separate mitigation compensation fund with the VLFCF for expenditure on projects, programs, and activities at historic properties and associated historic landscapes within or related to the APE that were adversely affected by this project.

F. Dominion promptly shall provide necessary additional funds to complete any mitigation project required under Stipulation I.a., I.b., II.a., II.b., II.c. and II.e.1-5..

f. **ADDITIONAL MITIGATION THROUGH THE ENHANCEMENT OF HERITAGE TOURISM**

1.Prior to construction within the James River, Dominion, in consultation with the Corps, SHPO, ACHP, and concurring 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). At a minimum, the study will include Jamestown Island and Historic Jamestowne, Hog Island Wildlife Management Area, Jamestown Settlement, Colonial Parkway and elements of Colonial National Historical Park, and elements of the Captain John Smith Chesapeake NHT. The purpose of the study is to evaluate current heritage tourism and visitor experience within the Indirect APE in order to develop a marketing and visitation program to promote and enhance heritage tourism sites (which includes the historic properties at issue in this MOA) and visitor experiences within the Indirect APE, as well as inform heritage tourism interpretation and visitor engagement mitigation identified in Stipulations II.e.1.A-C above.

2..The study shall be undertaken in collaboration with management entities of heritage tourism sites within the Indirect APE and be completed within six (6) months of initiation. Upon completion, Dominion shall submit the study to the Corps, SHPO, ACHP and other concurring parties to this MOA for review and comment. Following review and comment, Dominion shall address any comments received and submit the final heritage tourism visitor experience impact study to the Corps, SHPO, ACHP, and concurring parties.

3.Within 30 days of submission of the final study Dominion shall initiate consultation with the Corps, SHPO, ACHP, concurring 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 for the river crossing.

4. Within 30 days of concurrence with and finalization of the Program, Dominion shall make a full contribution to the agreed upon implementing organizations to implement the Program. The contribution shall not exceed the average annual budget for the preceding two years for marketing programs by the management entities of publicly accessible sites within the Indirect APE of the river crossing.

5. The parties agree that, like the projects and activities undertaken pursuant to Stipulations II(e)(1-4), the Program will enhance the setting and feeling, among other aspects of integrity, of the adversely effected historic properties, as well as inform and enhance heritage tourism and visitor experiences with the Indirect APE.

6. Any disputes regarding use and dispensing of funds shall be handled in accordance with Stipulation IX below.

g. **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 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 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.

III. REPORTING REQUIREMENTS

Upon the completion of each Permittee requirement to this MOA, Dominion shall provide the Corps, the SHPO and other consulting parties 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.

IV. 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.

V. PREPARATION AND REVIEW OF DOCUMENTS

- a. Except as otherwise stated elsewhere in the stipulations, Dominion shall submit a draft of all technical reports, treatment plans and other required Permittee documentation to the Corps (one (1) copy) and the SHPO (two (2) hard copies and one electronic copy in Adobe® Portable Document Format (.pdf)) and to other concurring 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 the Corps, and one copy to other signatories of the MOA.

- b. 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.
- c. 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).
- d. The Corps, SHPO, ACHP, and other concurring parties of the MOA agree to 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.

VI. 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.

VII. POST-REVIEW DISCOVERIES

- a. 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.”

- b.** Immediately upon receipt of the notification required in Stipulation VII(a) above, Dominion shall:

 1. Inspect the construction site to determine the extent of the discovery and ensure that construction activities have halted;
 2. Mark clearly the area of the discovery;
 3. Implement additional measures, as appropriate, to protect the discovery from looting and vandalism;
 4. 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
 5. Notify the Corps and the SHPO of the discovery describing the measures that have been implemented to comply with this stipulation.
- c.** 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.
- d.** 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.
- e.** 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.

VIII. HUMAN REMAINS

- a.** 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>)].
- b.** 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.
- c.** 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 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.

IX. DISPUTE RESOLUTION

- a.** 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.

- 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 ACHP, including the proposed response to the objection.
- c.** Within thirty (30) days after receipt of all pertinent documentation, the ACHP shall exercise one of the following options:

 - 1. 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
 - 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(l) of the NHPA.
- d.** 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.
- e.** 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.
- f.** 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.

X. AMENDMENTS AND TERMINATION

- a.** 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 signatories

to the MOA must agree to the proposed amendment in accordance with 800.6(c)(7).

- b.** If Dominion decides it will not proceed with the undertaking, it shall so notify the Corps, the SHPO, and the other consulting parties and this MOA shall become null and void.
- c.** If Dominion determines that it cannot implement the terms of this MOA, or if the Corps or SHPO determines that the MOA is not being properly implemented, Dominion, the Corps, or the SHPO may propose to the other parties to this MOA that it be amended or terminated.
- d.** 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.
- e.** Consideration of amendments shall not interrupt or delay any actions taken pursuant to the existing MOA.

XI. 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.

XII. 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.

XIII. 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 X of this MOA.

XIV. EXECUTION OF MOA

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.

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.

SIGNATORY PARTIES:

NORFOLK DISTRICT, U. S. ARMY CORPS OF ENGINEERS

By: _____

William T. Walker
Chief, Regulatory Branch

Date: _____

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____ Date: _____
John M. Fowler
Executive Director

June 7, 2016

VIRGINIA STATE HISTORIC PRESERVATION OFFICER

By: _____ Date: _____

Julie V. Langan
Director, Virginia Department of
Historic Resources

DOMINION:

By: _____ Date: _____

Robert M. Blue
President
Dominion Virginia Power

CONCURRING PARTIES:

By: _____ Date: _____
CONSULTING PARTY

ATTACHMENT A: DIRECT AND INDIRECT PROJECT APE MAPS

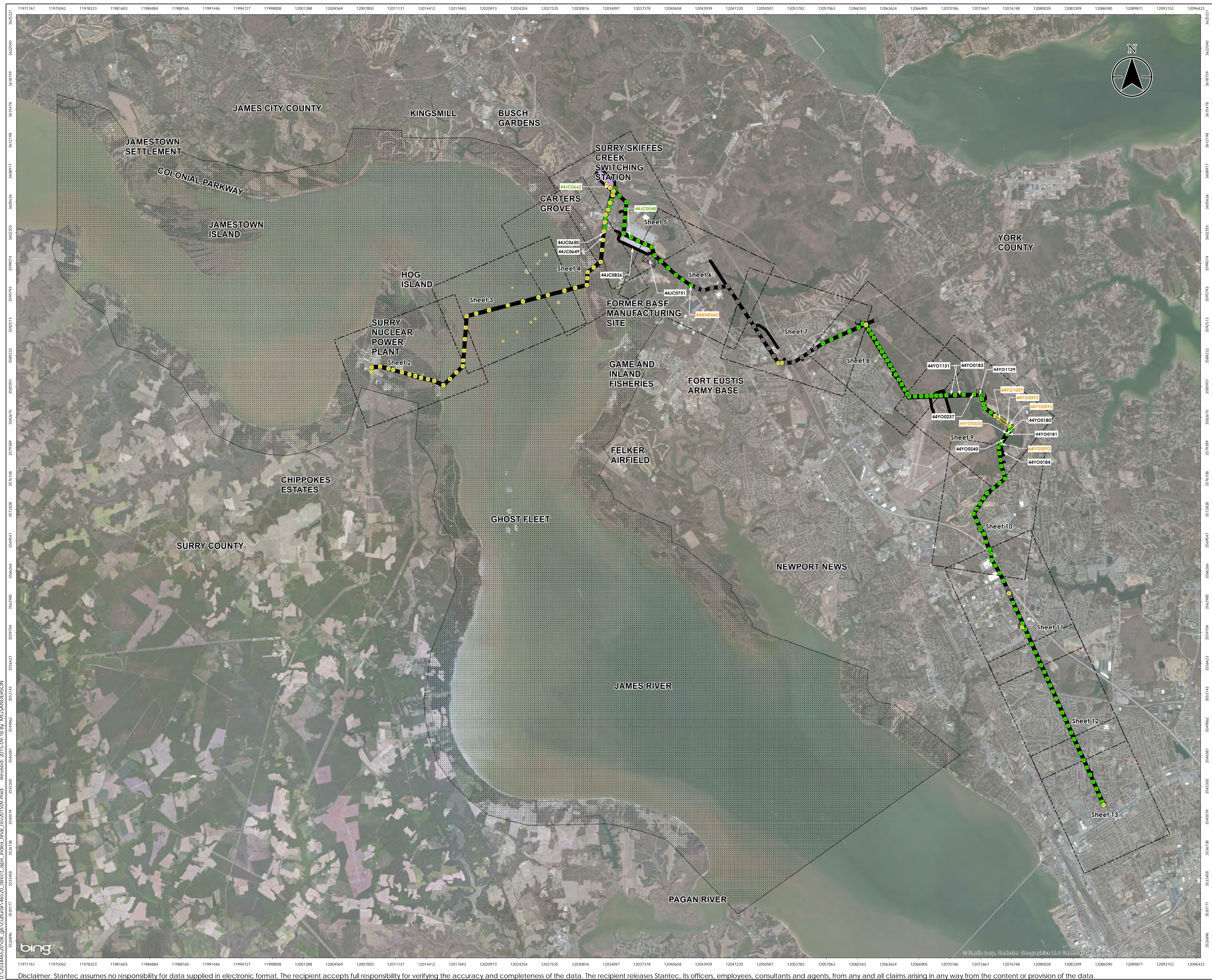


Figure No.
1

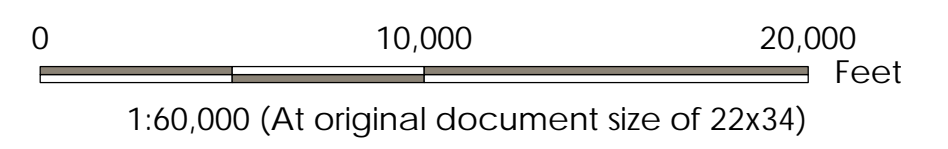
Title
**Direct APE Map-
Archaeological Resources**

Submitted: 2014-09-08
Revised: 2015-05-21
Revised: 2015-07-24
Revised: 2015-09-10

Client/Project
 **Dominion Virginia Power
Surry-Skiffes Creek-Wheaton
Proposed 500/230 kV Line**

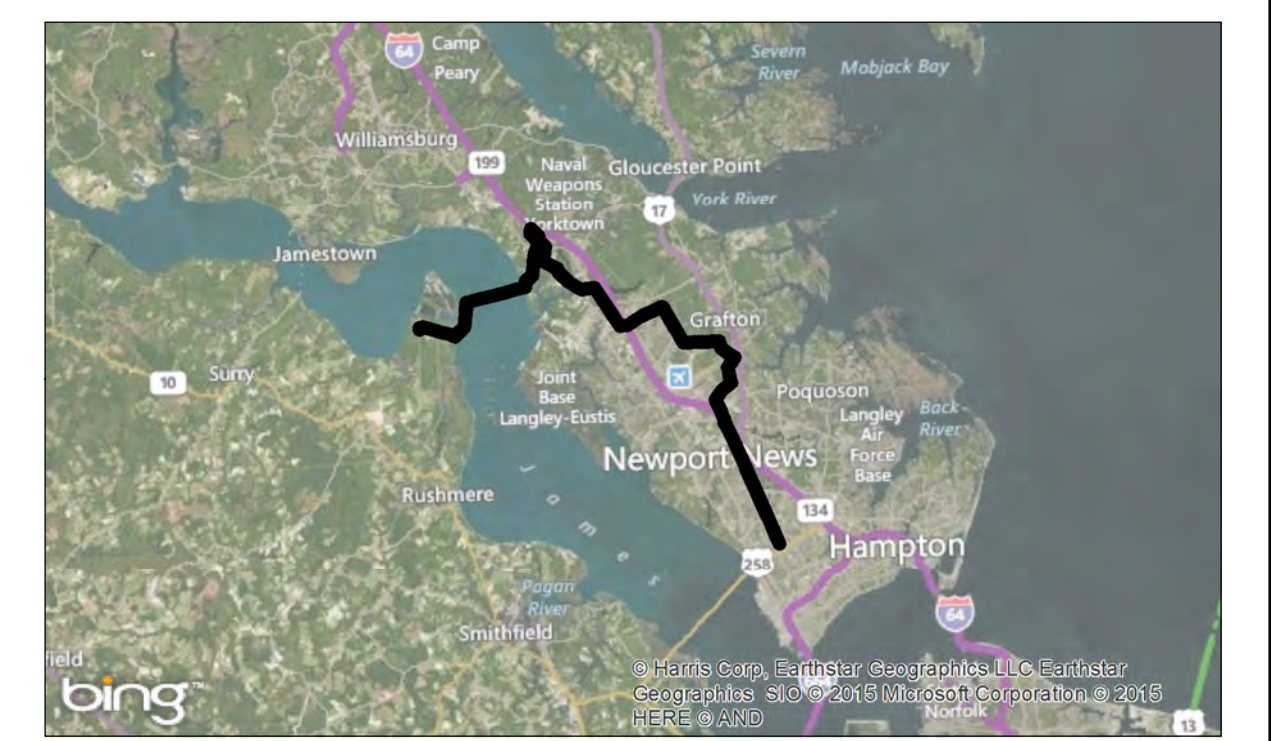
Project Location
James City County, Surry County, York County, City of Newport News, and City of Hampton, Virginia

203446520
Prepared by MGS on 2015-05-19
Technical Review by CPG on 2015-05-19
Independent Review by CFC on 2015-05-19



- Direct APE
- Sheet Index
- Archaeological Resources
 - Resource to be Managed as Unevaluated for Listing on NRHP
 - Resource Potentially Eligible for Listing on NRHP
 - Resource Eligible for Listing on NRHP
 - Eligible Historic District
 - Underwater Buffer of Anomalies to be Managed as Unevaluated for Listing on NRHP
- Structure Activity
 - Proposed New Structure
 - Reconductoring Existing Structure
 - Remove and Replace Existing Structure

US Army Corps of Engineers
Norfolk District Regulatory Office
Received by: RLS
Date: Sept 18, 2015



- Notes
1. Coordinate System: NAD 1983 StatePlane Virginia South FIPS 4502 Feet
 2. Tower Locations and Project Limits provided by Dominion Virginia Power
 3. Orthoimagery © Bing Maps
 4. Only historic properties under the authority of Section 106 are shown. National Register of Historic Places eligibility status provided by the Corps with DHR concurrence on May 1, 2015 and the Keeper of the National Register on August 14, 2015.
 5. Microsoft product screen shot(s) reprinted with permission from Microsoft Corporation



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ATTACHMENT B: LIST OF DOCUMENTS SUBMITTED BY DOMINION IN SUPPORT OF CONSULTATION

- 1) *Phase II Evaluation Site 44JC0662 for the Dominion Virginia Power Skiffes Switching Station, James City County, Virginia (CRI, May 2012).*
- 2) *Phase I Cultural Resources Survey of the Proposed Approximately 20.2-mile Dominion Virginia Power Skiffes Creek to Whealton 230kV Transmission Line in James City and York Counties, and the Cities of Newport News and Hampton, Virginia, Volumes I and II (CRI, July 2012).*
- 3) *Phase I Cultural Resources Survey of the Proposed Dominion Virginia Power Skiffes Creek to Surry 500 kV Transmission Line Alternatives in James City and Surry Counties, Virginia, Volumes I and II, (Stantec, July 2013, Revised April 2014).*
- 4) *Memoranda Titled: Phase IA Walkover and Phase I Archaeological Survey - BASF Corridor Realignment – Surry to Skiffes Creek 500 kV Transmission Line Project (Stantec, July 2014).*
- 5) *Addendum to the Phase I Cultural Resources Survey of the Proposed Dominion Virginia Power Skiffes Creek to Surry 500 kV Transmission Line in James City, Isle of Wight and Surry Counties, Virginia (Stantec, October 2014). (Additional information regarding three properties {i.e. 047-5307; Artillery Site at Trebell's Landing, 090-0121; Hog Island, and 099-5282; Battle of Williamsburg} per VDHR's request was provided in Stantec's letter dated February 2, 2015.)*
- 6) *Addendum to A Phase I Cultural Resources Survey to the Proposed Approximately 20.2-mile Dominion Virginia Power Skiffes Creek to Whealton 230 kV Transmission Line in James City and York Counties, and the Cities of Newport News and Hampton, Virginia, Volumes I: Technical Report (Stantec, July 2015).*
- 7) *Visual Effects Assessment for the Proposed Dominion Virginia Power Surry to Skiffes Creek 500kV Transmission Line Project and Skiffes Creek 500-230-115 kV Switching Station James City, Isle of Wight, and Surry Counties (Stantec, March 2014).*
- 8) *Addendum to the Visual Effects Assessment for the Proposed Dominion Virginia Power Surry to Skiffes Creek 500 kV Transmission Line Project James City, Isle of Wight, and Surry Counties (Stantec, October 2014).*
- 9) *Addendum to the Visual Effects Assessment for the Proposed Dominion Virginia Power Surry to Skiffes Creek 500 kV Transmission Line Green Spring Battlefield (Stantec, November 2014).*

- 10) *Interactive Simulations Surry-Skiffes Creek 500 kV Transmission Line James River Crossing (Dominion/TRUESCAPE, March 2015).*
- 11) *Cultural Resource Affects Assessment, Surry-Skiffes Creek-Whealton Transmission Line Project, Surry, James City, and York Counties, Cities of Newport News and Hampton, Virginia (Stantec, September 2015).*
- 12) *Photo Simulation Overview Surry-Skiffes Creek-Whealton Transmission Line Project, Surry, James City and York Counties, Cities of Newport News and Hampton, Virginia. (Dominion/TRUESCAPE, April 2016).*

**ATTACHMENT C: LIST OF EFFECTED HISTORIC PROPERTIES UNDER
CONSIDERATION**

DHR ID #	Resource Name/Address	VLR/NRHP Status	Distance	COE Effect Determination
046-0031	Bourne-Turner House at Smith's Beach	Potentially Eligible - Criterion C	8.75	No Adverse Effect
046-0037	Fort Huger	NRHP-Listed – Criterion D	3.21	No Adverse Effect
046-0044	Bay Cliff Manor on Burwell's Bay/James C. Sprigg, Jr. House	Potentially Eligible under Criterion C	7.11	No Adverse Effect
046-0094	Basses Choice (Days Point Archeological District, Route 673)	NRHP-Listed; Archaeological Sites 44IW0003-44IW0237 – Criterion D	9.85	No Adverse Effect
046-0095	Fort Boykin Archaeological Site/Herbert T. Greer House and Gardens, Route 705	NRHP-Listed – Criterion D	8.84	No Adverse Effect
046-5045	Barlow-Nelson House, 5374 Old Stage Highway	Potentially Eligible Under Criterion C	6.33	No Adverse Effect
046-5138	Bay View School, 6114 Old Stage Hwy	Potentially Eligible Under Criteria A and C	6.84	No Adverse Effect
046-5415	USS Sturgis (MH- 1A Sturgis, Nuclear Barge, James River Reserve Fleet)	Eligible	1.92	No Adverse Effect
047-0001	Carter's Grove	NHL; NRHP-Listed – Criterion C	0.43	Adverse Effect
047-0002	Colonial National Historic Park; Colonial Parkway Historic District	NRHP-Listed – Criteria A and C	3.16	Adverse Effect
047-0009	Jamestown National Historic Site / Jamestown Island / Jamestown Island Historic District	NRHP-Listed – Criteria A and D	3.26	Adverse Effect
047-0010	Kingsmill Plantation	NRHP-Listed – Criteria A and D	3.16	No Adverse Effect
047-0043	Amblers (Amblers- on-the-James)	Eligible (Recently NRHP- Listed) – Criterion C	6.64	No Adverse Effect
047-0082	Governor's Land Archaeological District	NRHP-Listed – Criteria A and D	5.7	No Adverse Effect
047-5307	Artillery Landing Site at Trebell's Landing	Potentially Eligible - Criterion D	0.52	No Adverse Effect
047-5333	Martin's Hundred Graveyard (Cemetery)	Eligible - Criteria A and D	0	No Adverse Effect
047-5432	4H Camp, 4H Club Road	Potentially Eligible - Criteria A and C	9.2	No Adverse Effect
090-0020	Pleasant Point (Crouches Creek Plantation)	NRHP-Listed – Criteria A and C	4.32	No Adverse Effect
090-0024	New Chippokes (Jones-Stewart Mansion)	NRHP-Listed; associated with Chippokes Plantation Historic District – Criterion C	2.07	No Adverse Effect
090-0070/ 090-0003	Chippokes Plantation Historic District (Chippokes State Park)	NRHP-Listed – Criteria A, C, and D	1.26	No Adverse Effect

090-0121	Hog Island Wildlife Management Area	Potentially Eligible - Criteria A and D for purposes of 106 review	0	Adverse Effect
090-5046	Scotland Wharf Historic District	Potentially Eligible - Criteria A and C	5.03	No Adverse Effect
90-5046-0001	House, 16177 Rolfe Hwy (Rt 31)	Not Individually Eligible; Contributing to Scotland Wharf Historic District	5.16	No Adverse Effect
90-5046-0002	House, 16223 Rolfe Hwy (Rt 31)	Not Individually Eligible; Contributing to Scotland Wharf Historic District	5.16	No Adverse Effect
090-5046-0003	House, 16239 Rolfe Hwy (Rt 31)	Not Individually Eligible; Contributing to Scotland Wharf Historic District	5.16	No Adverse Effect
090-5046-0004	House, 16271 Rolfe Hwy (Rt 31)	Not Individually Eligible; Contributing to Scotland Wharf Historic District	5.14	No Adverse Effect
090-5046-0008	House, 16206 Rolfe Hwy (Rt 31)	Not Individually Eligible; Contributing to Scotland Wharf Historic District	5.12	No Adverse Effect
099-5241	Yorktown and Yorktown Battlefield (Colonial National Monument/Historic al Park)	Listed (as part of Colonial National Historical Park) - Criteria A, C, and D	1.37	No Adverse Effect
099-5283	Battle of Yorktown (Civil War)	Eligible - Criteria A and D	0	Adverse Effect
121-0006	Matthew Jones House	Listed - Criterion C	1.93	No Adverse Effect
121-0017	Crafford House Site/ Earthworks (Fort Eustis)	Listed (as part of 121-0027) - Criteria A and D	3.38	No Adverse Effect
121-0027	Fort Crafford	Listed - Criteria A and D	3.28	Adverse Effect
121-0045	S.S. John W. Brown	Listed - Criterion A	2.18	No Adverse Effect
121-5068	Village of Lee Hall Historic District	Eligible - Criteria A and C (Public Notice notes that Lee Hall NRHP- Listed - Criterion C)	0.25	No Adverse Effect
121-5070	Ghost Fleet (James River Reserve Fleet/ Maritime Admin. Non- Retention Ships)	Eligible - Criterion A	1.64	No Adverse Effect
N/A	Battle of Green Springs	Eligible - Criterion A	5.7	No Adverse Effect
N/A	Historic District (formally Jamestown Island-Hog Island Cultural Landscape) including CAJO	Eligible - Criteria A, B,C, and D	0	Adverse Effect
44JC0048	17th Century Cemetery Martin's Hundred	Eligible - Criteria A and D	0	No Adverse Effect
44JC0649	Indet. Historic	manage as unevaluated	0	No Adverse Effect
44JC0650	Indet. 18th Cent	manage as unevaluated	0	No Adverse Effect

44JC0662	18th to 19th Cent Dwelling	Eligible - Criterion D	0	Adverse Effect
44JC0751	Prehistoric Camp, 18th to 19th Century Dwelling	Manage as Unevaluated	0	No Adverse Effect
44JC0826	19th Century Farmstead	Manage as Unevaluated	0	No Adverse Effect
44NN0060	Indeter. Woodland	Potentially Eligible - Criterion D	0	No Adverse Effect
44YO0092	Civil War Earthworks	Potentially Eligible - Criterion D	0	No Adverse Effect
44YO0180	Prehistoric Camp	Manage as Unevaluated	0	No Adverse Effect
44YO0181	Indet. Late Archaic	Manage as Unevaluated	0	No Adverse Effect
44YO0183	18th Century Domestic	Manage as Unevaluated	0	No Adverse Effect
44YO0184	Indet. 19th to 20th Century	Manage as Unevaluated	0	No Adverse Effect
44YO0233	Civil War Military base	Potentially Eligible - Criterion D	0	No Adverse Effect
44YO0237	Archaic & Woodland Camp	Manage as Unevaluated	0	No Adverse Effect
44YO0240	Historic Bridge & Road	Manage as Unevaluated	0	No Adverse Effect
44YO0592	Mid 18th to 19th Century Military Camp	Potentially Eligible - Criterion D	0	No Adverse Effect
44YO1059	Prehistoric Camp, Early to Mid-18th Century Dwelling	Potentially Eligible - Criterion D	0	No Adverse Effect
44YO1129	Historic Dwelling	Manage as Unevaluated	0	No Adverse Effect
44YO1131	19th Century Dwelling	Manage as Unevaluated	0	No Adverse Effect
N/A	76 submerged anomalies, managed in 23 buffer	Potentially Eligible - Criteria A and D	0	No Adverse Effect

ATTACHMENT D: KEEPER'S DOE LETTER AND MAP



United States Department of the Interior

NATIONAL PARK SERVICE
1849 C Street, N.W.
Washington, DC 20240

AUG 14 2015

H32(2280)

Mr. William T. Walker
Chief, Regulatory Branch
Department of the Army
U.S. Army Corps of Engineers
Norfolk District
Fort Norfolk
803 Front Street
Norfolk, VA 23510-1011

Dear Mr. Walker:

We have received your letter dated July 2, 2015 (arrived at the National Register of Historic Places on July 6, 2015), requesting a determination of eligibility for the National Register for properties located within the vicinity of the Dominion Virginia Power-proposed Surrey-Skiffes Creek-Wheaton aerial transmission line project. The proposed project calls for construction of 7.4 miles of overhead transmission lines from Surry, Virginia, to a proposed switching station in James City County, Virginia. The proposal calls for the transmission line to cross the James River, thus requiring a permit from the U.S. Army Corps of Engineers, which would constitute a Federal undertaking subject to Section 106 of the National Historic Preservation Act.

You have requested that the National Register provide a determination of eligibility for properties located within the project's "Indirect Area of Potential Effect" (Indirect APE) which the Corps of Engineers defines as having both inland land-based and water-based components. The water-based section of the APE extends from just west of Jamestown Island to include portions of the James River downstream to the Pagan River near Smithfield, VA, and its boundary is drawn to include adjacent lands extending several thousand feet from the river's shoreline. The Indirect APE is defined in U.S. Army Corps of Engineers report *Dominion Virginia Power Surry-Skiffes Creek-Wheaton Proposed 500/230kV Line, NAO-2012-00080/13-V0408*, May 7, 2015, p. 1, (hereafter referred to as *Corps of Engineers report*) and is shown as a blue line drawn on the map titled "Indirect APE Map, Surry-Skiffes Creek-Wheaton Proposed 500/230kVline" included as Enclosure 1 with the Determination of Eligibility request.

This request for a determination of eligibility does not extend to the inland, land-based portion of the Indirect APE, which is comprised primarily of an existing overhead utility right-of-way that extends generally from Skiffes Creek south to Hampton, VA (*Corps of Engineers Report*, p. 1).

All further references in this letter to the Indirect APE should be understood to exclude the inland land-based portion referenced above. You have specifically requested a determination of eligibility for the portion of the Captain John Smith Chesapeake National Historic Trail (CAJO) and the Washington-Rochambeau Revolutionary Route National Historic Trail that are located within the Indirect APE.

The Captain John Smith Chesapeake National Historic Trail (CAJO) was established by Congress in 2006, following a feasibility study by the National Park Service and a determination by the National Park System Advisory Board that the trail was nationally significant. The initial trail route extended approximately 3,000 miles along the Chesapeake Bay and the tributaries of the Chesapeake Bay in the States of Virginia, Maryland, and Delaware, and the District of Columbia; it traced the 1607-1609 voyages of Captain John Smith to chart the land and waterways of the Chesapeake Bay. The trail was extended by order of the Secretary of the Interior in 2012 through designation of four rivers as historic components of CAJO. This action extended the trail by 841 miles to include: the Susquehanna River Component Connecting Trail (a 552-mile system of water trails along the main-stem and West Branch of the Susquehanna River in Maryland, Pennsylvania and New York); the Chester River Component Connecting Trail (a 46-mile system of the Chester River and its major tributaries); the Upper Nanticoke River Component Connecting Trail (23-miles of the Nanticoke River, Broad Creek and Deep Creek); and the Upper James River Component Trail (a 220-mile water trail of the James River in Virginia). CAJO, the first designated national historic trail that is composed primarily of a water trail route, now extends along waterways from Cooperstown, New York, to Norfolk, Virginia.

The Washington-Rochambeau Revolutionary Route National Historic Trail (designated in June 2007) includes over 680 miles of land and water trails that follow the route taken by General George Washington and the Continental Army and French General Jean-Baptiste de Rochambeau and the Expédition Particulière to and from the siege of Yorktown, a pivotal event in the American Revolution. The Washington-Rochambeau Revolutionary Route National Historic Trail passes through Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Washington, D.C., and Virginia.

After considering all documentation submitted, we have determined that the entire area encompassed by the Indirect APE is eligible for the National Register of Historic Places as a historic district under National Register Criteria A, B, C, and D, in the areas of significance of Exploration/Settlement, Ethnic Heritage, and Archeology. This historic district forms a significant cultural landscape associated with both the American Indian inhabitants of the area and the later English settlers.

The English colonization of North America was an extraordinary undertaking which had a profound impact on the Old World and the New and much of what was to come had its origins here along the James River: the establishment and growth of the first permanent English settlement in the New World; some of the earliest and most sustained interactions (both cooperative and antagonistic) between the original inhabitants of the area - the American Indians - and the Europeans; the initial English voyages of discovery which took them throughout the Chesapeake Bay and into the interiors following the numerous rivers and led to expanding

contact with the American Indians and the spread of English settlement; the foundation and development of the tobacco economy which would dominate the Chesapeake Bay world; the introduction and firm establishment of chattel slavery; the architectural evolution of buildings in the James River area from the first crude huts built by the English to the flowering of the dominant Georgian architectural style; and the growth of the unique political and social institutions which would lead to the development of representative democracy and the growing impulse of the colonists to gain independence and self-rule from the corporate founders of the colony and later their royal master the King.

The Indirect APE includes numerous significant historic properties already listed in the National Register of Historic Places including all or parts of: Colonial National Historical Park; Jamestown National Historic Site; Colonial Parkway; Yorktown Battlefield; Kingsmill Plantation (which includes a series of important archeological sites); Carter's Grove National Historic Landmark, one of colonial America's most impressive examples of Georgian architecture (built 1750-1755) noted for its exquisite brickwork and finely crafted, fully-paneled interior; the archeological site of Martin's Hundred located at Carter's Grove (established in 1619 as one of the earliest English settlements outside of Jamestown Island, it was destroyed in the American Indian uprising of 1622); and a number of other archeological sites. A significant contributing feature of the district is Hog Island, which was fortified in 1609 to help defend Jamestown Island. In a letter dated March 11, 2015, to the Corps of Engineers, the Virginia State Historic Preservation Office notes that three 17th century archeological sites have been identified on Hog Island and that in their opinion the island is individually eligible for the National Register. In addition to the properties enumerated above, the Virginia State Historic Preservation Office, in letters dated June 12, 2014, and June 19, 2015, to the Corps of Engineers, identify an additional twelve properties within the Indirect APE which are either listed in the National Register or they are considered to be potentially eligible (including the James River National Defense Reserve Fleet, also known as the Ghost Fleet).

The Indirect APE encompasses a portion of the Captain John Smith Chesapeake National Historic Trail (CAJO). The boundary of CAJO extends from shore to shore of the James River. Jamestown Island and Hog Island (an isthmus) are located within the James River and are thus within the boundary of CAJO.

The National Park System Advisory Board in March, 2006, found that the trail was nationally significant for its association with the following historic patterns of events:

- Captain John Smith's Chesapeake Bay voyages are nationally significant because they accelerated the process that destroyed the Powhatan polity and disrupted the native people's world throughout the region.

The Water Trail is significant as:

- a) the route that John Smith followed in his voyages to American Indian towns and territories;
- b) a symbol of the independence of the English colonists from Powhatan's control;
- c) a symbol of the impact on and eventual collapse of the Powhatan polity

and the native peoples' world of the Chesapeake Bay and beyond.

- Captain John Smith's Chesapeake Bay voyages are nationally significant because of their impact on the exploration and settlement of North America.

The Water Trail is significant as:

- a) the route that John Smith followed in his program of exploration and discovery in the Chesapeake Bay and its tributaries;
- b) a symbol of the spirit of adventure and wonder that were important components of Smith's voyages and the English exploration;
- c) the route by which Smith gathered information vital to the survival and growth of the English settlements in North America.

- Captain John Smith's Chesapeake Bay voyages are nationally significant because of their impact on the commerce and trade of North America.

The Water Trail is significant as:

- a) the route by which John Smith surveyed the Bay and explored for gold, silver, copper, and the Northwest Passage, for the benefit of the commerce and trade of the colony and England;
- b) the route by which Smith made contact with American Indian tribes, established trade agreements with them, and increased the chances that the English colony would survive;
- c) a symbol of England's trading power, soon to be increased by the production of tobacco for export from the colony;
- d) a symbol of the long-term impact on the cultural contact between the native peoples and European colonists.

This segment of CAJO is among the most historically significant portions of the overall National Historic Trail's 3,000 plus miles of waterways. Jamestown was the starting and ending point for all of Smith's voyages and was Smith's base of operations and center of political power over the new colony. Properties within and along this segment of the trail are directly associated with the historic patterns of events for which the trail was found to be nationally significant and thus this section of the trail itself is eligible for the National Register of Historic Places as a contributing element in the larger historic district defined by the Indirect APE boundary.

We note that the Virginia State Historic Preservation Office, in a letter to the Corps of Engineers dated May 11, 2015, advised that, in their opinion, what they describe as an eligible cultural landscape within the APE may extend further upstream beyond the boundary of the Indirect APE. We do not have sufficient information to evaluate properties upstream from the district at this time.

As to the Washington-Rochambeau Revolutionary Route National Historic Trail, no information has been provided with this determination of eligibility request regarding the trail section located within the APE, thus we cannot provide a determination of the trail's eligibility.

Please let us know if you have any questions concerning this determination of eligibility.

Sincerely,



Stephanie S. Toothman, Ph.D.
Associate Director, Cultural Resources, Partnerships,
and Science
Keeper, The National Register of Historic Places

Enclosure

IDENTICAL LETTER SENT TO:

Cc: Ms. Julie Langan
State Historic Preservation Officer
Department of Historic Resources
2801 Kensington Avenue
Richmond, VA 23221

Mr. Frank Hays
Acting Associate Regional Director, Stewardship
United States Department of the Interior
National Park Service
Northeast Region
United States Custom House
200 Chestnut Street
Philadelphia, PA 19106

Mr. Charles Hunt
Superintendent
United States Department of the Interior
National Park Service
Chesapeake Bay Office
410 Severn Avenue, Suite 314
Annapolis, MD 21403

Ms. Charlene Dwin Vaughn, AICP
Assistant Director
Federal Permitting, Licensing and Assistance Section
Office of Federal Agency Programs
Advisory Council on Historic Preservation
401 F Street NE, Suite 308
Washington, DC 20001-2637

Ms. Stephanie Meeks
National Trust for Historic Preservation
The Watergate Office Building
2600 Virginia Avenue NW, Suite 1100
Washington, DC 20037

Ms. Sharee Williamson
Associate General Council
National Trust for Historic Preservation
The Watergate Office Building
2600 Virginia Avenue NW, Suite 1100
Washington, DC 20037

Mr. Randy Steffey, Environmental Scientist
US Army Corps of Engineers - Southern Virginia Regulatory Section
803 Front Street
Norfolk, VA 23510

Ms. Courtney R. Fisher
Sr. Siting and Permitting Specialist
Dominion Virginia Power
701 East Cary Street
Richmond, VA 23219

Ms. Pamela Goddard
Senior Manager
Chesapeake & Virginia Program
National Parks Conservation Association
777 6th Street, NW, Suite 700
Washington, DC 20001-3723

Leighton Powell
Executive Director
Scenic Virginia
4 East Main Street, Suite 2A
Richmond, VA 23219

Mr. Edward A. Chappell
Shirley and Richard Roberts Director
of Architecture and Archaeological Research
The Colonial Williamsburg Foundation
P.O. Box 1776
Williamsburg, VA 23187-1776

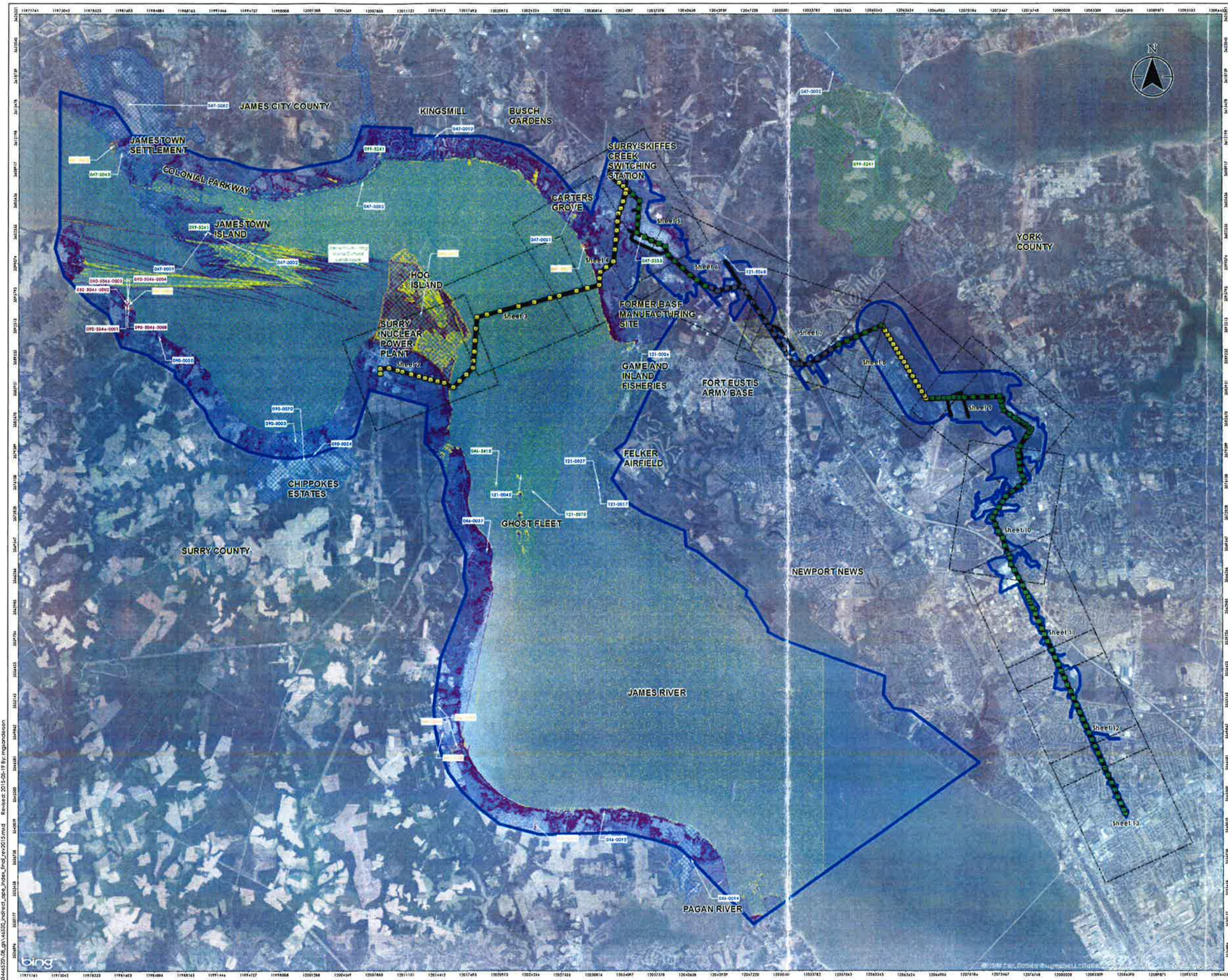
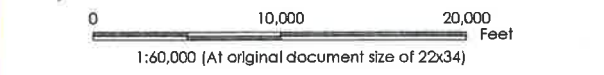


Figure No. 1
 Title: Indirect APE Map - Architectural Resources
 Submitted: 2014-09-08
 Revised: 2015-05-19
 Client/Project: Dominion Virginia Power, Surry-Skiffes Creek-Wheaton Proposed 500/230 kV Line
 Project Location: James City County, Surry County, York County, City of Newport News, and City of Hampton, Virginia
 Prepared by MGS on 2015-05-19
 Technical Review by CPG on 2015-05-19
 Independent Review by CFC on 2015-05-19



- Direct APE
- Indirect APE
- JRV1 Viewshed Analysis - Not Visible
- JRV1 Viewshed Analysis - Visible
- Sheet Index
- Architectural Resources**
- Resource Listed on NRHP
- Resource Not Individually Eligible, Contributing to Scotland Wharf Historic District
- Resource Potentially Eligible for Listing on NRHP
- Resource Eligible for Listing on NRHP
- Structure Activity**
- Replacement with ≤ 10% or 20 Feet Change in Height
- Re conductor Existing Structure
- New Structure or Replacement with > 10% or 20 Feet Change in Height

US Army Corps of Engineers
 Norfolk District Regulatory Office
 Received by: RLS
 Date: May 20, 2015



- Notes**
1. Coordinate System: NAD 1983 StatePlane Virginia South FIPS 4502 Feet
 2. Tower Locations and Project Limits provided by Dominion Virginia Power
 3. Orthoimagery © Bing Maps
 4. Only historic properties under the authority of Section 106 are shown. National Register of Historic Places eligibility status provided by the Corps with DHR concurrence on May 1, 2015 and May 11, 2015.
 5. Microsoft product screen shot(s) reprinted with permission from Microsoft Corporation



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ATTACHMENT E: CORPS' SECTION 106 CONSULTATION AND PUBLIC INVOLVEMENT PLAN

Section 106 Consultation and Public Involvement Plan
Dominion Virginia Power's Surry - Skiffes Creek - Whealton Project
NAO-2012-00080 / 13-V0408

Introduction

Dominion proposes to construct a new high voltage aerial electrical transmission line, known as the Surry-Skiffes Creek -Whealton project. The proposed project 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. In total, 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. (See *Exhibit 1*)

Dominion indicates the proposed project is necessary to ensure continued reliable electric services, consistent with North American Electric Reliability Corporation (NERC) Reliability Standards, are provided to its customers in the North Hampton Road Load Area. The NHRLA consist of over 285,000 customers, including Newport News Shipbuilding, Joint Base Langley-Eustis, Yorktown Naval Weapons Station, NASA, Cannon, and Thomas Jefferson National Accelerator Facility.

A permit is required from the Norfolk District Corps of Engineers under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899, and constitutes a Federal undertaking, subject to Section 106 of the National Historic Preservation Act (NHPA). Section 106 of the NHPA requires Federal agencies to take into account the effects of their actions, including permitted actions, on historic properties.

In accordance with Section 106 of the National Historic Preservation Act (36 Code of Federal Regulations [CFR] 800.2), USACE will provide opportunities for consulting parties and the general public to provide comments concerning project effects on properties and districts listed or eligible for listing in the National Register of Historic Places (NRHP).

Key elements of the Section 106 process include USACE's plan to integrate Section 106 with other environmental reviews, in accordance with 36 CFR 800.3(b), and the plan for conducting consultation and public involvement per the requirements of 36 CFR 800.3 (e) and (f). This document provides further detail about how USACE will integrate reviews and conduct consultation and public involvement.

Approach

In accordance with the requirements of National Environmental Policy Act (NEPA) and Section 106, USACE solicited public comments on the undertaking via public notice on August 28, 2013. These comments helped facilitate the initial steps of Section 106

review process and will be considered when preparing an Environmental Assessment (EA) for NEPA compliance. The public notice also provided interested members of the public with an opportunity to comment on the identification of historic properties and potential effects. The Corps intends to use the studies and information generated during the Virginia State Corporation Commission's review of Dominion's proposed project to inform, not to replace, the Section 106 consultation process. USACE will continue to coordinate with agencies and organizations that have demonstrated an interest in cultural resource impacts resulting from the undertaking.

USACE will continue to provide the public with information about the undertaking and its effects on historic properties, and seek their comment and input at various steps of the process. Members of the public may provide views on their own initiative for USACE officials to consider during the decision-making process.

Public Involvement

Opportunities for public comment regarding historic resource identification and potential effects have previously been provided through USACE's August 28, 2013, November 13, 2014, and May 21, 2015 public notices. Requests for a public hearing due to concerns regarding historic resources, in addition to other issues, were acknowledged by USACE. After careful consideration, USACE conducted a hearing on October 30, 2015. During the 106 process, general information has been, and continues to be, available for review at <http://www.nao.usace.army.mil/Missions/Regulatory/SkiffesCreekPowerLine.aspx>. Our website also contains links to the applicant's and consulting party websites, which contain additional project information and perspectives on the project.

Consulting Parties

As a result of the August 2013 Public Notice and the State Corporation Commission review process, USACE, in coordination with the SHPO, identified organizations that have a demonstrated interest in the treatment of historic properties associated with this undertaking. In addition to those requests received in response to the public notice, Kings Mill Community Services Association and Southern Environmental Law Center were also invited to participate as consulting parties in a letter dated March 5, 2014. On June 20, 2014, USACE notified local governments within the limits of the project (Surry County, City of Williamsburg, York County, City of Newport News, and City of Hampton) by mail, inviting their participation as consulting parties. To date, these parties have not responded positively to their participation invitation. A separate invite included First California Company Jamestowne Society who has accepted the invite to participate. On November 25, 2014, written correspondence was received from the new steward of Carter Grove Plantation indicating an inability to participate at this time. Any organization invited to be a consulting party may elect to participate in current and future steps of the process (but not previous steps) at any time.

At the initial stages of the project, when consulting parties were invited (summer, 2014), the Commonwealth of Virginia had no federally recognized tribes within its state boundaries. However, based on coordination through other projects, the Delaware Tribe of Indians, the Delaware Nation, and the Catawba Indian Nation had expressed an interest in Virginia. In an effort to consider tribal interest, USACE consulted on August 25, 2014 with the aforementioned federally recognized Tribes on a government to government basis. In addition, USACE coordinated with the following state recognized tribes to determine their interest in participating as consulting parties: Cheroenhaka, Chickahominy, Eastern Chickahominy, Mattaponi, Upper Mattaponi, Nansemond, Nottoway, and Rappahannock Tribes. The Pamunkey Tribe, which became federally recognized on January 28, 2016, was consulted on August 25, 2014 when the tribe was state-recognized. Dominion's consultants developed a summary of the historic properties, with an emphasis on those with prehistoric Native American components, which was provided with the August 25, 2014 coordination letters USACE provided to the tribes.

Throughout the process, USACE has maintained a complete list of active "Consulting Parties" (See *Attachment A*). Consulting parties have been afforded an opportunity to comment on identification of historic properties, effect recommendations, proposed measures to avoid or minimize effects and suggested mitigation options for historic properties that would be adversely affected.

Meetings

On September 25, 2014, December 9, 2014, June 24, 2015, October 15, 2015, and February 2, 2016 USACE, SHPO, ACHP, and consulting parties have held Section 106/110 National Historic Preservation Act Meeting at Legacy Hall, 4301 New Town Avenue, Williamsburg, VA 23188. General meeting objectives:

September 25th:

- Status of permit evaluation
- Corps jurisdiction
- Project Overview, Purpose & Need, Alternatives, Construction Methods
- Historic Property Identification Efforts
- Potential Effects on historic properties

December 9th:

- General Item Updates
- Historic Property Identification
- Historic Property Eligibility
- Potential Effects
- Potential Mitigation

June 24th:

- General Updates
- Resolution of Adverse Effects
 - Avoidance, Minimization, Mitigation Considerations/Measures

- Feedback/Ideas
- October 15th:
- General Updates
 - NPS Visual Effects Analysis
 - Stantec Consolidated Effects Report
 - Resolution of Adverse Effects
- February 2nd:
- General Updates
 - Resolution of Adverse Effects

Numerous additional meetings have been held between various consulting parties at various stages in the process.

Resolution of Adverse Effects

MOA development process has included requests for written comments from all consulting parties on a draft MOA that was circulated on December 30, 2015, and discussions of resolution of adverse effects at several consulting party meetings.

After consideration of comments, a revised draft MOA will be shared with consulting parties. This coordination will be the final opportunity to inform a decision on whether Dominion's proposed mitigation plan adequately avoids, minimizes, and/or mitigates adverse effects to historic properties. At the conclusion of a 30-day comment period, the Corps will use the input received to inform a decision on whether to fulfill responsibilities under Section 106 of the NHPA through either an executable MOA or termination of consultation. A teleconference may be scheduled at a later date to discuss mitigation if it is determined to be beneficial.

At this time, it is anticipated that the MOA signatories (including invited signatories) would include USACE, SHPO, ACHP and Dominion. It is also expected that all other consulting parties would be invited to concur in an MOA.

Milestones and Tracking

A list of major milestones in the Section 106 review of the undertaking is provided as an attachment to this document (*See Attachment B*). The milestones table will be updated throughout the review process and distributed to the SHPO, ACHP, Consulting Parties, and Dominion as deemed necessary by USACE.

USACE's Section 106 consultants will receive, track, and organize the responses received in conjunction to various steps throughout the process.

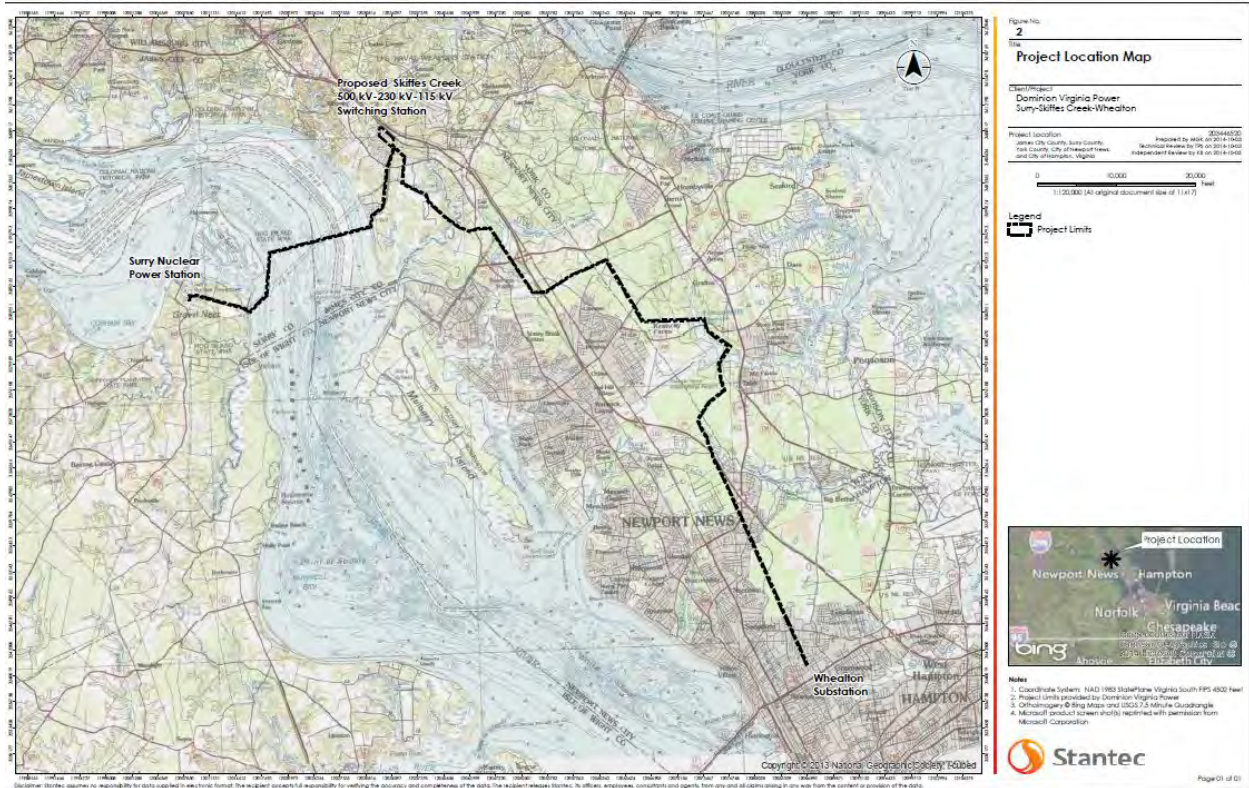


Exhibit 1: Project Location

Attachment A: Section 106 List of POC's (updated as of 04-06-16)

- USACE; Randy Steffey (Project Manager) – randy.l.steffey@usace.army.mil
- Applicant/Agents;
 1. Dominion (applicant); Courtney Fisher – courtney.r.fisher@dom.com
 2. Stantec (agent); Corey Gray – corey.gray@stantec.com , Dave Ramsey – dave.ramsey@stantec.com , and Ellen Brady – ellen.brady@stantec.com
- VDHR (SHPO); Roger Kirchen – roger.kirchen@dhr.virginia.gov and Andrea Kampinen – andrea.kampinen@dhr.virginia.gov
- ACHP; John Eddins – jeddins@achp.gov
- Other Consulting Parties
 1. National Parks Conservation Association; Pamela E. Goddard - pgoddard@npca.org
 2. Save The James Alliance; Wayne Williamson & James Zinn - taskforce@savethejames.com
 3. Chesapeake Conservancy; Joel Dunn - jdunn@chesapeakeconservancy.org
 4. United States Department of the Interior (National Park Service, Colonial National Historic Park); Elaine Leslie – Elaine_leslie@nps.gov
Rebecca Eggleston – becky_eggleston@nps.gov
Jonathan Connolly – jonathan_connolly@nps.gov
Dorothy Geyer – Dorothy_geyer@nps.gov
Kym A. Hall – kym_hall@nps.gov
 5. United States Department of the Interior (National Park Service, North East Region); Mike Caldwell – mike_caldwell@nps.gov - c/o: mary_morrison@nps.gov
Others – Captain Johns Smith National Historic Trail: Charles_hunt@nps.gov
Washington-Rochambeau Revolutionary Route: joe_dibello@nps.gov
Carters Grove National Historic Land Mark: bonnie_halda@nps.gov and NPS_NHL_NERReview@nps.gov
 6. James City County; Bryan J. Hill, County Administrator – c/o: Max Hlavin & Liz Young – Maxwell.Hlavin@jamescitycountyva.gov and Liz.Young@jamescitycountyva.gov
 7. The Colonial Williamsburg Foundation; Mark Duncan - mduncan@cwfb.org
 8. Preservation Virginia; Elizabeth S. Kostelny - ekostelny@preservationvirginia.org
 9. Scenic Virginia; Leighton Powell - leighton.powell@scenicvirginia.org
 10. National Trust for Historic Preservation; Robert Nieweg - rnieweg@savingplaces.org
 11. Christian & Barton, LLP on behalf of BASF Corp; Michael J. Quinan - mquinan@cblaw.com
 12. James River Association; Jamie Brunkow jbrunkow@jrava.org
 13. American Battlefield Protection Program (National Park Service); Elizabeth (Ries) Vehmeyer – Elizabeth_vehmeyer@nps.gov
 14. First California Company Jamestowne Society; James McCall – jhmccall1@gmail.com
 15. Delaware Tribe Historic Preservation Representatives – Susan Bachor; temple@delawaretribe.org
 16. Chickahominy Tribe – Chief Stephen Adkins; stephenradkins@aol.com
 17. Council of Virginia Archaeologist (COVA) – Jack Gary; jack@poplarforest.org
 18. Margaret Nelson Fowler (Former POC under STJA) – onthepond1@gmail.com

=====

Attachment B: Section 106 Milestones

Milestone	Initiation Date	Description	Completion Date
Initial Public Notice (800.3)	August 28, 2013	<ul style="list-style-type: none"> - Established Undertaking - Identified SHPO (VDHR) - Requested Public Comment - Identified Cultural Resources of Concern 	<ul style="list-style-type: none"> • Comment period closed September 28, 2013
Identify Consulting Parties (800.3)	August 28, 2013	<ul style="list-style-type: none"> - August 28, 2013 Public Notice Issued - Dec 3, 2013 Compiled list based on PN & coordinated w/ SHPO for any add'l parties - Mar 3, 2014 notified all requesting parties of their acceptance - Mar 5, 2015 Add'l Party Invites were sent based on SHPO recommendations - June 20, 2014 sent invites to Local Governments to participate - August 25, 2014 invited Tribes to Participate - November 21, 2014 invited Mr. Menco, new owner of Carters Grove Plantation, to participate. 	<ul style="list-style-type: none"> • Process will remain open until the conclusion of the Section 106 process; however any new parties will only be afforded the opportunity to join the process at its present stage moving forward.
Identify Historic Properties (800.4)	August 28, 2013	<ul style="list-style-type: none"> - August 28, 2013 Public Notice - Established APE w/ SHPO <ul style="list-style-type: none"> ➢ Initial APE concurrence Jan 28, 2014 ➢ Refined APE into Direct & Indirect boundaries; rec'd concurrence (verbal) Sept 2014, written Jan 15, 2015 ➢ Minor modification to Direct APE; concurrence Oct 5, 2015 (5 tower locations) - Consulted surveys/data used in part for the VA State Corporation Commission process - May 8, 2014 coordinated w/ SHPO, ACHP, & Consulting Parties on Historic Property Identification, Surveys, and potential effects. - Re-coordinated June 20, 2014 with SHPO, ACHP, & Consulting Parties to finalize Historic Property Identification - Sept 25th & Dec 9th Consulting Party Meetings - November 13, 2014 Public Notice - Comments rec'd were considered in part from the multiple coordination opportunities. - May 1st & May 11, 2015 SHPO provided completion of 800.4. - Sept 4, 2015 SHPO concurrence with Addendum to Phase I Cultural Resources Report for five (5) tower locations not included in previous studies. 	<ul style="list-style-type: none"> • Initially completed May 11, 2015 • Updated Oct 5, 2015 to reflect minor APE expansions due to project modifications
1 st Agency & Consulting Party Meeting (800.4)	September 25, 2014	<ul style="list-style-type: none"> - Status of permit evaluation - Corps jurisdiction - Project Overview, Purpose & Need, Alternatives, Construction Methods - Historic Property Identification Efforts - Potential Effects on historic properties 	<ul style="list-style-type: none"> • September 25, 2014
2 nd Public Notice (800.4)	November 13, 2014	<ul style="list-style-type: none"> - Requested Public Comment on Historic Property Identification and Alternatives 	<ul style="list-style-type: none"> • Comment Period Closed December 6, 2014

2 nd Agency & Consulting Party Meeting (800.4)	December 9, 2014	<ul style="list-style-type: none"> - General Item Updates - Historic Property Identification - Historic Property Eligibility - Potential Effects - Potential Mitigation ➤ Requested written comments on identification, alternatives, effects, and potential mitigation from meeting participants. 	<ul style="list-style-type: none"> • Comment Period closed January 15, 2015
Evaluate Historic Significance (800.4)	May 8, 2014	<ul style="list-style-type: none"> - Several Historic Properties previously Listed on the National Register or determined Eligible. - June 12, 2014 SHPO provided recommendations of eligibility for certain properties and requested additional information on others. - September 2014- February 2015: Stantec conducted additional cultural resource surveys, submitted reports and other documentation. - May 11, 2015 SHPO provided final concurrence pertaining to individual eligibility for all identified historic resources. - July 2, 2015 Consulted with Keeper of the National Register on eligibility status of Captain John Smith Trail <ul style="list-style-type: none"> ➤ Aug 14, 2015 decision rendered by Keeper. <p>Note: Oct 22, 2015 Letter from NPS indicated satisfaction with USACE that CFR 800.4 was completed.</p>	<ul style="list-style-type: none"> • Initially Completed May 11, 2015 • Updated Aug 14, 2015 upon receipt of Keeper of the NPS Eligibility Determination
Assessment of Adverse Effects (800.5)	May 11, 2015	<ul style="list-style-type: none"> - Applied Criteria of Adverse Effects in consultation with SHPO, considering views of consulting parties and public <ul style="list-style-type: none"> ➤ Dominion's Effects Reports; which included visual assessments (Mar 2014, Oct 29, 2014, & Nov 10, 2014) ➤ Consulting Party Effects Analyses - May 21, 2015 Public Notice determined undertaking will have an Overall Adverse Effect <p>Note: Nov 13, 2015 SHPO concurred with USACE that undertaking will have an Adverse Effect confirming the process is at 800.6 "resolution of adverse effect"</p>	<ul style="list-style-type: none"> • Completed May 21, 2015
3 rd Public Notice (800.6)	May 21, 2015	<ul style="list-style-type: none"> - Request Public Comments on effects to final list of historic properties and in preparation to moving to resolution of adverse effects. 	<ul style="list-style-type: none"> • Comment Period Closed June 20, 2015
3 rd Agency & Consulting Party Meeting (800.6)	June 24, 2015	<ul style="list-style-type: none"> - General Updates - Effects to individual historic properties - Resolution of Adverse Effects 	<ul style="list-style-type: none"> • June 24, 2015
4 th Public Notice (800.6)	October 1, 2015	<ul style="list-style-type: none"> - October 1, 2015 Announced Public Hearing seeking input on views, opinions, and information on the proposed project. - November 5, 2015 Extension of PN comment period 	<ul style="list-style-type: none"> • Comment Period Closed November 13, 2015
Resolve Adverse Effects (800.6)	May 21, 2015; Restated Oct 13, 2015	<ul style="list-style-type: none"> - May 21, 2015 Public Notice requested comments on Resolution of Adverse Effects. - May 29, 2015 consulted with the Director NPS in accordance with 36 CFR 800.6 and 800.10 re: Carters Grove NHL and adverse effects. (No Response To date) - June 24, 2015 Consulting Party Meeting 	<ul style="list-style-type: none"> • Ongoing

		<ul style="list-style-type: none"> - October 1, 2015 provided Consulting Parties with Dominion Consolidated Effects Report (CER) dated September 15, 2015 and stamped rec'd by USACE Sept 29, 2015. <ul style="list-style-type: none"> ➤ CER was developed to address comments from VDHR and Consulting Parties. - October 15, 2015 Consulting Party Meeting - December 30, 2015 consulted with SHPO, ACHP, & Consulting Parties to seek input on Dominion's Draft MOA with Mitigation Stipulations and Context Document - January 6, 2016 Dominion's response to Consulting Party comments coordinated with Consulting Parties by email. - Feb 2, 2016 Consulting Party Meeting - Feb 17, 2016 SHPO gave their concurrence with the Jan 29th tables forwarded ahead of Feb 2nd Consulting Party Meeting that show effect determinations for individual historic properties. 	
4 th Agency & Consulting Party Meeting (800.6)	October 15, 2015	<ul style="list-style-type: none"> - General Updates - NPS Visual Effects Analysis - Stantec Consolidated Effects Report - Resolution of Adverse Effects <ul style="list-style-type: none"> ➤ Requested written comments on adverse effects from meeting participants. 	<ul style="list-style-type: none"> • Comment Period Closed November 12, 2015
Public Hearing (800.6)	October 30, 2015	<ul style="list-style-type: none"> - Hearing held for the purpose of seeking input on views, opinions, and information on the proposed project. 	<ul style="list-style-type: none"> • Comment Period Closed November 13, 2015
5 th Consulting Party Meeting (800.6)	February 2, 2016	<ul style="list-style-type: none"> - General Updates - Resolution of Adverse Effects <p>TOPICS:</p> <ul style="list-style-type: none"> ➤ Cumulative Effects ➤ Architectural Viewshed & Cultural Landscape ➤ Socioeconomic Impacts ➤ Visitor Experience ➤ Tourism Economy Impacts ➤ CAJO Evaluated on its Own Merit ➤ Submerged Cultural Resources ➤ Washington Rochambeau Revolutionary Trail 	<ul style="list-style-type: none"> • February 2, 2016

ATTACHMENT F: MOA CONTEXT DOCUMENT

Surry-Skiffes Creek-Wheaton Transmission Line

NOA -2012-00080/13V0408

Basis for Proposed Memorandum of Agreement to Resolve Adverse Effects to Historic Properties

June 8, 2016

EXECUTIVE SUMMARY

This document explains the basis for the proposed Memorandum of Agreement (“MOA”) to satisfy the National Historic Preservation Act (“NHPA”) requirements for resolution of adverse effects on historic properties that would occur from the proposed Surry – Skiffes Creek – Wheaton project, located in Surry, James City, and York Counties and the Cities of Newport News and Hampton, Virginia (the “Project”). The Project requires permits from the United States Army Corps of Engineers (“Corps” or “USACE”), which is required to comply with Section 106 of the NHPA. That statute requires the Corps to “take into account the effect of the undertaking on any historic property” (54 U.S.C. § 306108). This document provides (i) an introduction and background on the Project including the NHPA process completed to date; (ii) a discussion of considerations for developing mitigation under the applicable NHPA regulations and the general characteristics of the historic properties that will be adversely affected by the Project; and (iii) a description of the specific mitigation, the eight historic properties, the steps taken to avoid and minimize adverse effects and how the mitigation imposed by the MOA will mitigate the unavoidable minimized effects. With this document, Dominion concludes that the MOA will mitigate for the adverse effects to historic properties that will result from the project.

DISCUSSION

1. Introduction and Procedural Background

a. Project Purpose and Need

Virginia Electric and Power Company, d/b/a Dominion Virginia Power (“Dominion”), proposes to construct the Project, a new electrical transmission line infrastructure in the Hampton Roads area of Virginia. The Project is required to resolve projected violations of the North American Electric Reliability Corporation Reliability Standards resulting from the closure of two coal-fired power generating units at the Yorktown Power Station, which will be deactivated no later than in 2017 and to meet projected growth in regional demand. The Project is designed to provide sufficient and reliable electricity to residents, businesses, and government agencies located on the Virginia Peninsula for public health and human safety, and national security interests.

Over one-half of a million people live in the North Hampton Roads Load Area (“NHRLA”) in 14 counties and 7 cities, which will be served by the Project. The area also has a diverse mix of government defense facilities, industrial sites, and commercial sites that are both major employers in the region, as well as important contributors to the regional, state, and national economy. Some of these facilities are Joint Base Langley-Eustis, Yorktown Naval Weapons Station, NASA, Newport News Shipbuilding, Cannon, Anheuser-Busch Brewery, Thomas Jefferson National Accelerator Facility, College of William and Mary, Christopher Newport University, Busch Gardens, Water Country USA, Distribution Centers (like Wal-Mart, Food Lion), and the Historic Jamestown-Colonial Williamsburg Complex. All of these residents, governmental entities, facilities, and businesses currently rely primarily on the Yorktown Power Station units to maintain reliable electric service. They would be significantly affected by the loss of a reliable source of electricity (*i.e.*, rolling blackouts or load shedding) without a replacement. Similarly, critical services in the area such as 911 call centers, fire and emergency response centers, water and sewer treatment facilities and hospitals located in the NHRLA localities would also be impacted by the required blackouts. Rolling blackouts are not optional and required to preserve the reliability of the larger electrical grid.

Without replacing the power from Yorktown Power Station, during peak load days, customers in the NHRLA may experience outages of electrical service on a rotating basis (sometimes referred to as rolling blackouts) due to transmission capacity shortage and lack of generation. In addition, blocks of load in the NHRLA may experience sustained outages in varying lengths of time due to reliability issues from unplanned outages. The SCC concluded that these reliability risks in this case are far reaching and significant. SCC Order at 12 (Nov. 26, 2013).

After reviewing extensive information from Dominion, the consulting parties, the Virginia State Corporation Commission and PJM Interconnection (the Regional Transmission Organization), the Corps has found that the relevant analysis “demonstrates there is a need for this project from both Dominion’s and the general public’s perspective.” Letter from Colonel Jason E. Kelly, U.S. Army, Commanding, Norfolk District Army Corps of Engineers to Ms. Charlene Dwin Vaughan, Advisory Council on Historic Preservation, dated April 5, 2016 (“Corps April 5 Letter”) pp. 2-3; see also USACE Preliminary Alternatives Conclusions White Paper; RE: NAO-2012-0080 / 13-V0408 (October 1, 2015) pp. 1-2.

b. Project Description

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 Harbor Act and Section 404 of the Clean Water Act. Prior to issuance of a permit, the Corps is required to comply with the provisions of Section 106 of the NHPA and its implementing regulations 36 CFR Part 800, and 33 CFR Part 325, Appendix C, Processing of Department of the Army Permits: Procedures for Protection of Historic Places.

c. Section 106 Compliance Process

The Corps April 5 Letter describes the steps taken starting in August of 2013, in coordination with the Virginia Department of Historic Resources acting as the State Historic Preservation Office (“SHPO”), to identify the Area of Potential Effect (“APE”) (both direct and indirect) and historic properties that would be adversely affected by the Project (pp. 4-6). On January 29, 2016, the Corps informed the SHPO that it determined that under 36 C.F.R. § 800.5 the following historic properties were adversely affected by the Project and the Corps’ issuance of a Clean Water Act and Rivers and Harbors Act permit authorizing the Project:

1. Carter’s Grove;
2. Colonial National Historic Park/Colonial Parkway Historic District;
3. Jamestown National Historic Site;
4. Hog Island Wildlife Management Area (“WMA”);
5. Archeological Site 44JC0662;
6. Jamestown National Historic Site/Jamestown Island/Jamestown Island Historic District (“Historic District”),¹ including the contributing section of the Captain John Smith Chesapeake National Historic Trail (“CAJO Trail”);
7. Battle of Yorktown; and
8. Fort Crafford.

The SHPO sent two letters to the Corps confirming its concurrence with the Corps’ determination.² The procedures to identify adversely affected properties completed the necessary requirements under the NHPA regulations through 36 C.F.R. § 800.5.³

¹ When the Keeper of the National Register determined this district was eligible for the National Register, it did not establish a formal name for it as a historic property. In the record, it has been referred to as the Eligible Historic District, and, before the Keeper’s determination, was known as the Jamestown Island-Hog Island Cultural Landscape. The SHPO has referred to this property as the Captain John Smith Trail Historic District. In the MOA, the name for this historic property is the Jamestown Island-Hog Island-Captain John Smith Trail Historic District.

² Corps April 5 Letter at p. 6 (discussing SHPO’s concurrence letters of November 13, 2015 and February 17, 2016).

To satisfy the remaining requirement to resolve adverse effects under 36 C.F.R. § 800.6, the Corps is seeking final comments on a draft MOA that sets forth stipulations to mitigate the Project's adverse effects on the above listed historic properties. The draft MOA has been revised a number of times following consultation among the Corps, SHPO, ACHP, Dominion, and the consulting parties.

2. General Considerations

Before discussing the efficacy of the specific mitigation set forth in the draft MOA in addressing specific adverse effects to specific properties, it is important to describe the relevant context, *i.e.*, (a) the general approach to mitigation, (b) the general characteristics of the historic properties, how they relate to one another, and the nature of the adverse effects in a general sense, (c) the public interest served by the Project (d) how mitigation is approached in the context of the historic properties and the Project, and (e) some additional information about the mitigation proposed for the Project.

a. General Approach to Mitigation

When seeking to resolve adverse effects through avoidance, minimization, and mitigation for certain adverse effects, such as adverse visual effects that affect a historic property's setting, sense of place, essential character, or contribution to a larger landscape or district, it often is not possible, or even feasible or prudent, to develop or think of mitigation in quantitative terms. This is because, as the record reflects in this case, the types of resources at issue have qualities and values that are not quantifiable in a rational and useful way, and thus, the effects to those qualities and values cannot be assessed or measured in a quantifiable way. Instead, as is the case here, these qualities and values and the potential effects thereto have been assessed and measured qualitatively. Thus, because there is no exact science or measure to quantify these types of effects, there also is no exact science or measure in determining the amount of mitigation necessary to resolve an adverse effect.

In such situations, the action agency, in consultation with the consulting parties, and relying on guidance and prior examples of mitigation in similar circumstances, among other things, uses its best judgment to reasonably and conservatively determine the types and extent of mitigation activities needed to adequately compensate for and enhance the affected values and integrity of the historic properties, while also providing added value beyond mitigation. This approach is consistent with the National Trust for Historic Preservation's ("NTHP") presentation at the October 15, 2015, consulting parties' meeting, as well as NTHP's more recent January 29, 2016 letter regarding mitigation. There can be no doubt that NTHP's opinions regarding the extent of the

³ The consulting parties and the public have been involved at each stage. See, e.g., Initial Public Notice (Aug. 28, 2013); Public Notice and Request for Comments re Identification of Historic Properties within the APE and regarding Alternatives (Nov. 13, 2014); Public Notice and Request for Comments on Adverse Effects Determination (May 21, 2015); Public Hearing Notice and Public Hearing (Oct. 1 & 30, 2015); Consulting Parties Meetings (Sept. 25, 2014, Dec. 9, 2014, June 24, 2015, Oct. 15, 2015, and Feb. 2, 2016).

adverse effects in this case, and thus, the appropriate amount of compensatory mitigation, differ from other parties' opinions on these subjects. What is clear, however, is that the use of compensatory mitigation to resolve adverse effects is a tried and accepted method to mitigate adverse effects. *Nat'l Parks Conserv. Ass'n v. Jewell*, 965 F. Supp. 2d 67, 75–77 (D.D.C. 2013) (upholding the National Park Service's ("NPS") mitigation decisions, including compensatory mitigation to account for, among other things, effects to historic properties).⁴

In such circumstances, as the record reflects in this case, experts consider appropriate mitigation activities that provide benefits to the historic properties by enhancing the values of the historic properties that have been affected, even if the enhancement is not addressing directly the precise aspect of the value adversely affected. Examples of acceptable compensatory mitigation include: the acquisition in fee or by easement lands that would protect or enhance a historic property's values; activities that implement, continue, restore, and enhance a historic property's values; and, activities that implement, continue, restore, and enhance ongoing landscape initiatives and historic resource preservation strategies and plans. See, e.g., NPS, *Susquehanna to Roseland 500 kV Transmission Line Right-of-Way and Special Use Permit Final Environmental Impact Statement* at 72–73 (Aug. 2012) ("NPS FEIS"). In the case of the *Susquehanna-Roseland* project, NPS identified data recovery and treatment plans as acceptable mitigation for effects to archeological sites that could not be avoided. NPS FEIS at F-12.

For visual effects to historic properties that could not be avoided or further minimized, NPS identified the funding or preparation of educational materials to interpret the history and architecture of the study area related to the project for the public, including publishing histories, making National Register of Historic Places ("NRHP" or "National Register") nominations, and creating informational websites, brochures, exhibits, wayside panels, and driving/walking tours. NPS also identified the funding or completion of improvements to physical aspects of historic properties. *Id.* at F-12 to F-13. The NPS FEIS was upheld against challenge in the *Jewell* case cited above.

As set out below in Section III, the draft MOA identifies compensatory mitigation that falls directly in line with the compensatory mitigation identified in the NPS FEIS, and approved of in *Jewell*. The mitigation also is consistent with the SHPO's guidance regarding visual effects. See Virginia Dep't of Historic Resources, *Assessing Visual Effects on Historic Properties* at 6 (2010). The draft MOA also provides additional avoidance or minimization of effects, which lends further credibility and reasonableness to the identification and selection of compensatory mitigation.

⁴ See also 40 C.F.R. § 1508.20(e) (National Environmental Policy Act regulations saying that mitigation includes "[c]ompensating for the impact by replacing or providing substitute resources or environments").

b. General Considerations of the Adversely Affected Historic Properties

Many of the individual historic properties located within the APE are distinct and significant enough to be either listed or considered eligible for inclusion in the NRHP by themselves. Moreover, their thematic connections make them significant contributing elements to the broader cultural landscape, and as a whole eligible for designation as a historic district, which documents a continuum of American history up through today from both a cultural and natural perspective. Similarly, the cultural landscape contributes historic context to each individual element.

As recognized by the Keeper of the National Register (“Keeper”) and the consulting parties, the entire river crossing APE, direct and indirect, is located within a historic district, which is a cultural landscape of national historic significance.⁵ As a cultural landscape, this area illustrates the specific local response of American Indian, European, and African cultures, land use, and activities to the inherent qualities of the underlying environment. The landscape reflects these aspects of our country’s origins and development through the natural, relatively unaltered river and segments of undeveloped shoreline, evoking the ways it was used by the early inhabitants and continuing to reveal much about our current evolving relationship with the natural world.

c. Public Interest Served by the Project

The MOA also offers the best alternative to mitigate adverse effects consistent with the need for the Project to maintain reliable electric service and avoid unacceptable threats to human health, public safety, and national security that would result from the loss of electrical service. As indicated in the Corps April 5 Letter, the Project is needed to provide electrical reliability in light of the scheduled retirement of two units at the Yorktown Power Station to comply with environmental regulations for mercury and air toxic substances emissions. The need is real and urgent. In its December 10, 2015 letter, the ACHP requests that the Corps confer with the U.S. Environmental Protection Agency (“EPA”) on the time constraints imposed by the Mercury and Air Toxics Standard Rule (“MATS”) that will require cessation of operations of Units 1 and 2 at Yorktown Power Station. Dominion applied to EPA for an extension of the deadline to April 16, 2017. FERC has supported that request for extension. EPA granted that extension on April 16, 2016. Dominion has built the extension into its schedule. Congress has provided no mechanism for EPA to grant further extensions. Thus, time is of the essence for the Corps, SHPO, and ACHP to resolve the adverse effects that are the subject of the MOA.

⁵ More specifically, the Keeper stated that the Indirect APE was eligible for the National Register as a historic district under The National Register Criteria A, B, C, and D, in the areas of significance of Exploration/Settlement, Ethnic Heritage, and Archeology. “This historic district forms a significant cultural landscape associated with both the American Indian inhabitants of the area and the later English settlers.” “This segment of CAJO is among the most historically significant portions of the overall National Historic Trail’s 3,000 plus miles of waterways.” Letter from the Keeper to W. T. Walker, USACE dated August 14, 2015.

As the federal agency, the Corps is required through the Section 106 review process and the public interest process to take into account historic properties during project planning, allow the ACHP a reasonable opportunity to comment, and to seek an appropriate balance between historic preservation interests and the need for the Federal undertaking (36 CFR § 800.1(a)). In this particular instance, the need for sufficient and reliable electricity to Peninsula residents, businesses, government agencies, and the Department of Defense, for public health and human safety, and national security is in the public's great interest.

d. The Process of Identifying Appropriate Mitigation that Also Creates Added Value

After the Corps' initial determination of adverse effects, which later was expanded based on comments from the SHPO, ACHP, the consulting parties, and the public, Dominion consulted first with the SHPO, and then the Corps, ACHP, and the consulting parties, on appropriate mitigation projects to address the identified adverse effects, and their scope. This was done by looking at projects and activities within the APE that could enhance the aspects of integrity found to be adversely affected, namely setting and feeling. Dominion considered projects or activities located outside of the APE that would have beneficial effects on the adversely affected aspects of integrity for the sites at issue. Dominion also recognized that there may be additional, not currently identified projects that could have beneficial effects.

Once the list of potential projects were developed, and due consideration was allowed for potential, future projects not currently identified, Dominion considered potential, conservative funding amounts to allow for the completion of such projects, while allowing for additional funds for projects and activities to add value beyond what is believed to be necessary to adequately mitigate the adverse effects. In so doing, Dominion did not assign a fixed amount to any one potential project. Instead, Dominion believed a more flexible approach was appropriate. Dominion determined a total funding amount for each category of project or activity set out in the current draft MOA (which were designated in the funds described above), and provided guidelines for the timing and use of money from those funds by qualified third-parties to effectuate the mitigation with oversight by the Corps, SHPO, ACHP, Dominion, and the consulting parties.

Working with the Corps and SHPO, Dominion has identified a suite of many different types and kinds of projects and activities that are designed to enhance qualitatively the integrity and values of the historic properties at issue, although each in different ways, to resolve the identified adverse effects, nearly all of which are visual effects. In so doing, the parties do not assign relative mitigatory values to individual activities and projects, because, consistent with accepted mitigation practices, those values ultimately are subjective, to experts as well as to visitors to historic properties; the parties find that the numerous types of mitigation that this MOA employs and contemplates (e.g., land acquisition, natural and cultural resource restoration or preservation, cultural interpretation, historical education, etc.) all create acceptable mitigatory value. As such, the parties also do not deem any one type or kind of mitigation, or any particular project or activity, as mandatory. Instead, to account for any subjective differences of opinion,

as well as the fact that some activities or projects expressly identified herein may, in the future, be unable to be implemented and alternatives thereto selected, the parties have created a flexible structure that will implement a diverse suite of mitigation at a level that is conservative and that, based on the parties' experience and expertise, will appropriately mitigate the Project's adverse effects and provide significant additional value to the historic properties and their greater landscape.

Under Stipulations II(d)(1)-(4), prior to construction in the James River, Dominion will ensure that managers of lands necessary to complete certain mitigation projects will collaborate to implement the projects. Under Stipulation II(d)(5), Dominion shall pursue the land acquisition and permissions referenced in Stipulations II(d)(1)-(4) diligently up and until the earlier of (A) Dominion's reasonable conclusion that the land cannot be acquired or that the permission sought will not be granted in a form consistent with the proposed mitigation, or (B) twelve months after the effective date of this MOA and the land acquisition or permission sought cannot reasonably be said to be obtainable within six months. Thereafter, Dominion promptly shall coordinate with the Corps, ACHP, SHPO, the concurring parties, and the third party (e.g., The Conservancy Fund) implementing the fund under which the proposed mitigation project that cannot be implemented is listed to determine an alternative mitigation project that, directly or indirectly, enhances the integrity and values of the adversely effected historic property(ies) in a manner that is consistent with the MOA. Stipulation II(d)(5) identifies parties involved in ensuring that mitigation projects are implemented.

e. Mitigation in Light of These General Considerations and the Nature of the Project

In light of the situation where there are individual and landscape scale historic properties that will be adversely affected by the Project, a proposed transmission line over open water, and as recognized by the NPS, assessing effects to historic properties from this Project is especially challenging given the nature of the project and the manner that reflects individual perceptions and interests. As noted in the Cultural Resource Effects Assessment ("CREA"), there are certain direct effects from the project that can be documented and mitigated in the traditional sense. However, direct, indirect, and cumulative effects to the cultural landscape and historic district, as well as some individual contributing elements to that district, are difficult to mitigate in a direct, traditional manner such as landscape screening, documentation, or data recovery.

As described in Section I, the Section 106 process has resulted in significant agreement among the parties regarding which properties are and are not adversely affected. The Corps, SHPO, ACHP, Dominion, NPS and consulting party experts could indefinitely debate the merits of various parties' arguments about the adversity and severity of effects to individual properties or the landscape as a whole. In light of this range of perceptions, mitigation of adverse effects to historic properties must be approached more broadly and in a manner that pursues a substantially larger range of more permanent resource documentation and preservation efforts. While the proposed mitigation recognizes that the Project will leave intact the characteristics for which the

historical properties have been determined to be eligible for listing, it reflects the effects to setting and feeling of the individual historic properties and the cultural landscape that will result from the Project. The remaining question is whether the current characterization of adversity of effects and the amount of proposed mitigation is sufficient to allow a determination that the proposed mitigation is appropriately targeted and more than adequate to resolve the adverse effects, in full compliance with the requirements 36 C.F.R. § 800.6.

f. Additional Information on the Proposed Mitigation

In the selection of the alternative and proposed Stipulations in the MOA, the adverse effects will be avoided and minimized to the greatest extent possible. Thereafter, the MOA defines a series of mitigation initiatives that in addition to enhancing the affected values and integrity of the historic properties and the cultural landscape, will strengthen the general public and visitor's understanding of and experience at significant places within and related to this landscape through enhanced heritage tourism opportunities including development of additional interpretive and orientation facilities. Proposed mitigation also seeks to ensure future permanent preservation of existing above-ground cultural landscape features, such as natural resources and systems, vegetation, landform and topography, land uses, circulation, buildings and structures, Native American settlements, views, and small-scale features through land acquisition, and acquisition of historic preservation and open space easements.

Mitigation to support water quality improvement of the James River watershed is also provided and will have direct benefits to waters within the APE, which will further enhance visitor experience and enjoyment of the district's cultural and natural features. Lastly, mitigation for shoreline protection at Jamestown Island, the Colonial Parkway, and Carter's Grove is intended to help address expected effects from erosion and sea level rise at these iconic resources, that, along with the Captain John Smith Chesapeake National Historic Trail and Hog Island, are the key character-defining elements of the eligible historic district. Other more traditional mitigation is proposed to address direct effects to archaeological site 44JC0662, as well as avoidance of effects to identified underwater cultural anomalies and terrestrial archaeological sites.

The proposed mitigation components are both specific to identified adversely affected resources and broad-based to recognize the landscape attributes of the historic property and the entire historic district. Landscape enhancement, shoreline protection and water quality improvement mitigation measures collectively recognize the individual significance and integrity of the segment of the Captain John Smith Chesapeake National Historic Trail, as well as its connection to the individual sites of Jamestown, the Colonial Parkway, Hog Island, and Carter's Grove. The proposed mitigation will also ensure that the visitor experience and understanding of Virginia's prehistory and colonial experience is enhanced beyond today's story with additional viewshed preservation of the Captain John Smith Chesapeake National Historic Trail on the York River and the permanent protection of Werowocomoco, the seat of Virginia Indian society, culture, and governance during the time of the English settlement at Jamestown. Preservation of this Native American settlement provides a mirror image of

the Jamestown site in which a more fulsome understanding of the confluence of cultures is reflected. Other mitigation alternatives within the APE involve Chippokes Plantation State Park in Surry, Virginia directly across the James River from Jamestown. Chippokes Plantation is the oldest, continuously farmed site in the Nation established in 1619. The site possesses archeology associated with the first wave of settlement for agricultural and other pursuits outside of James Fort. Also, mitigation activities may include scholarly exhibits and facilities at the Jamestown-Yorktown Settlement on the landscapes and watershed before, during and after the convergence of the three cultures in the area and their role in understanding the newly defined Jamestown Island-Hog Island-Captain John Smith Trail Historic District. In the event some of the mitigation activities cannot proceed, the parties to the MOA will work collaboratively to identify projects at Ft. Monroe which is linked to Virginia's pre-colonial period, Captain John Smith's journeys of exploration of the Chesapeake Bay, and the first landing place of Africans brought forcibly to the colony. The adverse effects are unavoidable, but the proposed mitigation will result in future long-term positive and expanded benefits to the historic district and related properties and visitor experience that are both substantial and meaningful.

3. How the Draft MOA Mitigates the Adverse Effects to the Historic Properties

The following provides a discussion about how the projects and activities committed to in the MOA are designed to mitigate fully the identified adverse effects on the above listed historic properties, and provide additional value. The Stipulations are first explained, followed by an explanation of how the adverse effects to each historic property are mitigated.

a. Effects to Historic Properties

When Dominion developed and proposed the Project, it incorporated project designs to avoid and minimize the visibility of the transmission line infrastructure, while still meeting state and federal requirements. Avoidance and minimization occurred through selection of the alternative and the specific route of the river crossing, given all of the constraints imposed by conservation easements, land use regulations, and military and aviation restrictions. This minimization helps reduce the unavoidable visual effects discussed above. Through the MOA, under Stipulation II(c), Dominion has agreed to reexamine all viable and feasible tower coatings and finishing materials and methods to determine if they can further minimize the visibility of the transmission line infrastructure, and if they can be applied such that they adhere initially and over the longer term and are consistent with federal and state law. If Dominion can identify suitable coatings and methods (e.g., that will adhere to the galvanized steel after it weathers sufficiently to accept the coating and that further minimize the visibility of the towers used in the river crossing), it will apply them when conditions allow effective application.

b. Additional Mitigation by the Enhancement of Heritage Tourism

According to the NTHP, heritage tourism is "traveling to experience the places, artifacts and activities that authentically represent the stories and people of the past," which can

include cultural, historic and natural resources.⁶ Heritage tourism has a symbiotic relationship with historic preservation. As NTHP states, “[h]eritage tourism helps make historic preservation economically viable by using historic structures and landscapes to attract and serve travelers. . . . [S]tudies have consistently shown that heritage travelers stay longer and spend more money than other kinds of travelers.”⁷ “As an added bonus,” NTHP states, “a good heritage tourism program improves the quality of life for residents as well as serving visitors.”⁸ Information from NPS regarding the number of heritage tourists over the years to certain historic properties in the APE and in the Historic Triangle generally demonstrates that the number of heritage tourists visiting this area varies seasonally throughout the year. It also demonstrates that the overall annual levels of tourism do not appear to be impacted by the construction of industrial facilities (e.g., the Surry Power Plant, BASF facility) nearby or within view of the historic properties or other heritage tourist destinations, as well as with the advent of modern developments and recreation nearby (e.g., Busch Gardens). Similarly, the information shows that heritage tourism levels also do not appear to be impacted significantly by heavily advertised events showcasing one or more historic properties (e.g., the 400th Anniversary at Jamestown). Nevertheless, the parties agree that heritage tourism would benefit from further study and targeted enhancement.

Through the MOA, the parties have agreed to take advantage of the symbiotic link between heritage tourism and historic preservation to enhance the integrity (namely, the setting and feeling) of the historic properties, as well as the visitor experience to those properties. Specifically, under Stipulation V, within 90 days of the effective date of this MOA, Dominion, in consultation with the Corps, SHPO, ACHP, and other consulting parties as appropriate, will undertake a heritage tourism and visitor experience study regarding such tourism within the Indirect APE. The purpose of the study is to evaluate current heritage tourism and visitor experience within the Indirect APE to allow for the development of a marketing and visitation program (program) to promote and enhance heritage tourism sites and visitor experiences within the Indirect APE. The study will be done in collaboration with the heritage tourism site stakeholders (e.g., historic property site operators and tourist amenity (e.g., hotels, theme park) owners/operators). When completed, the study will recommend a program to the Corps, SHPO, ACHP, and other consulting parties as appropriate for review and comment. Following review and comment, Dominion shall address any comments received, and submit the final study and program to the Corps and SHPO for concurrence. Upon receiving concurrence, Dominion will make a onetime contribution to fund the implementation of the program.⁹

⁶ NTHP, Heritage Tourism, at <http://www.preservationnation.org/information-center/economics-of-revitalization/heritage-tourism/> (last visited Mar. 14, 2016).

⁷ *Id.*

⁸ *Id.*

⁹ The mitigation of adverse effects to historic properties through the enhancement of heritage tourism also would act as mitigation for potential adverse effects to heritage tourism itself as a result of the Project. Based on available information regarding heritage tourism in the Historical Triangle area, specifically including the historic properties at issue here, it does not appear that the Project will have an affect on heritage tourism, adverse or otherwise. Instead, it appears that seasonal weather patterns, large storms and park closures may impact heritage tourism temporarily, while the construction and placement of

The results of the study will also be used to inform development of the various visitor experience and interpretation enhancement projects identified in the draft MOA and these stipulations are cross-referenced in the draft MOA accordingly.

c. Stipulations that Compensate for Visual and Physical Effects to Historic Properties (aside from Archeological site)

Stipulation II(a) contemplates that, prior to construction within the James River, Dominion will develop interpretative signage to inform visitors about the historic significance of the Jamestown Island-Hog Island-Captain John Smith Trail Historic District, and the process and results of the cultural resource investigations conducted as a part of the Project development process. Twenty signs will be developed in consultation with the Corps, ACHP, SHPO, and the concurring parties to the MOA, and will be located on publically accessible lands, including recreation and heritage tourism destinations. In addition to the mitigation discussed below, this project will enhance and improve the setting and feeling of the CAJO Trail within the historic district, the district itself, and all of the historic properties located therein by establishing and providing for education and recreation missions that focus on supporting the reasons the district was determined to be eligible for the National Register (*i.e.*, for its significance regarding Exploration/Settlement, Ethnic Heritage, and Archeology).

Stipulation II(b) contemplates that, prior to construction within the James River, Dominion will complete the necessary photography to complete a Historic American Landscapes (HALS) photo-document the Jamestown Island-Hog Island-Captain John Smith Trail Historic District, and all of the other adversely affected historic properties identified in Attachment C to the MOA in a manner consistent with NPS Heritage Documentation Program Standards and Guidelines. Dominion will complete the HALS Survey, in consultation with the Corps, SHPO, and other concurring parties to the MOA, prior to completing construction and shall submit the final HALS document to the NPS heritage Documentation Program for acceptance. In addition to the mitigation discussed below, this project will provide a permanent visual record of the historic district and its setting as it existed prior to construction of the project. This documentation will be placed in the Library of Congress and available to the general public in perpetuity. The documentation may also be used to inform preservation and education missions that focus on supporting the reasons the district and the properties were determined to be eligible for the National Register.

Stipulations II(e)(1) through II(e)(4) of the draft MOA contemplate that Dominion will establish four legally separate mitigation compensation funds. The four funds are titled and/or focus on effects related to: 1) Jamestown National Historic Site/Jamestown Island/Jamestown Island Historic District; 2) Hog Island Wildlife Management Area; 3) Water Quality Improvements; and 4) Landscape and Battlefield Conservation. These provision of these funds will all be enforceable as a permit term- Dominion will provide

modern intrusions, including, for example, the Surry Nuclear Power Plant, had no impact on tourism. Indeed, during the time the Surry plant was constructed and thereafter, the evidence shows that tourism numbers increased.

a total of \$85,000,000 in mitigation funds, to be distributed to the four funds as set forth in Stipulation II(e)(5). Generally, Stipulation II(e)(5) allocates \$52,700,000 to projects and activities at and related to Carter's Grove, Colonial National Historic Park/Colonial Parkway Historic District, Jamestown National Historic Site, and Jamestown National Historic Site/Jamestown Island/Jamestown Island Historic District including the contributing section of the CAJO Trail (with no less than \$25,000,000 for the projects related to the York River and the York River State Park as the gateway to visitor understanding of Werowocomoco) and alternative projects at Ft. Monroe, Chippokes Plantation and the Jamestown Settlement by the Jamestown-Yorktown Foundation, \$4,205,000 for enhancement and improvement projects at and related to Hog Island, \$15,595,000 in water quality improvement projects, and \$12,500,000 for landscape and battlefield improvement projects associated with the Battle of Yorktown, Fort Crafford, and the Jamestown National Historic Site/Jamestown Island/Jamestown Island Historic District.

While Dominion ultimately will be responsible for funding these projects and ensuring implementation of agreed upon mitigation, each fund sets out specific projects and activities, along with certain guidelines and requirements, about the allocation of these funds for those projects and activities. Each fund will be operated and administered by a third party along with independent subject matter experts. To ensure the funds are used to mitigate effects as they occur within the Project's life, the funds must be obligated within 10 years of the effective date of the MOA.

The projects and activities contemplated by the funds have been designed to directly enhance and improve the various aspects of integrity of the historic properties that have been identified as adversely affected, as discussed above, as well as otherwise enhance all aspects of the historic property and increase its value. As discussed above, the visual effects on the historic properties affect their setting and feeling. Physical effects can also affect location. Setting "is the physical environment of a historic property that illustrates the character of the place"; feeling "is the quality that a historic property has in evoking the aesthetic or historic sense of a past period of time. Although it is itself intangible, feeling is dependent upon the significant physical characteristics that convey historic qualities;" and association "is the direct link between a property and the event or person for which the property is significant." CREA § 1.4 (quoting NPS guidance). As the projects below demonstrate, they work to enhance the physical environment and characteristics of the historic properties, as well as their ability to evoke the historic sense of the past through a number of diverse projects, all of which have been recognized as important ways to mitigate unavoidable effects. See *supra* discussion in Section 2, General Considerations.

In light of the foregoing, below is a property-by-property list of the historic properties, along with the characteristics for which they are eligible for listing on the NRHP, how they will be adversely affected by the Project, and an identification of the projects and activities that enhance and improve those properties' values or otherwise mitigate for the unavoidable adverse effects. In reviewing this information, it is important to remember that each property is a contributing element of the historic district, therefore,

in reviewing the effects and mitigation, each effect on a property applies to the district and all mitigation for the district applies to each property and vice-versa.

1. Carter's Grove

- **Eligibility:** Carter's Grove was listed on the National Register in 1969 and specified as a National Historic Landmark in 1970 for its significance under Criterion C (architecture). Its well-preserved architectural features are indicative of its period of significance dating from the eighteenth century through the early twentieth century. Further, significant archaeological resources are located within the grounds of the property; thus, the property is also eligible for listing under Criterion D for information potential.
- **Effects:** The Project has avoided any direct effect on Carter's Grove because there will be no ground disturbing or physical effects to the resource's assets or character defining elements, which include the mansion, grounds, archaeological sites, and associated resources. Indirect effects to the property were determined to be visual. At its closest point, the property is approximately 3,000 feet from the Project's switching station, but it is not visible at Carter's Grove. The property is also in close proximity to the Project's river crossing. The photographic simulations indicate that the Project is visible some 1.76 miles from the manor house and 1.49 miles from the shore of the James River at Carter's Grove, which would detract from the resource's characteristics of setting and feeling.
- **Mitigation:** Stip. II(e)(1)(A)(i)– landscape enhancement and shoreline protection activities will be the focus of mitigation to ensure the ongoing preservation strategies and efforts and to physically protect the setting and feeling of the National Historic Landmark.

2. Colonial National Historical Park/Colonial Parkway Historic District

- **Eligibility:** The Colonial National Historical Park is comprised of the Colonial Parkway Historic District, the Jamestown National Historic Site/Jamestown Historic District, and Yorktown and Yorktown Battlefield, each of which are discussed specifically below. The Colonial Parkway Historic District was listed on the National Register in 1966 under Criterion A and C. The Parkway is eligible under criterion A for its association with the early twentieth-century trends of recreation and conservation with respect to the NPS's conservation ethic as applied to historic resources and as an intact example of an early twentieth-century recreational parkway constructed partially in response to the popularity of recreational "motoring" during the period of construction. The Parkway is eligible under Criterion C for landscape architecture as an intact example of Parkway Design and

for its architectural features, which reflect the Colonial Revival style utilized during the renovation of Colonial Williamsburg. The parkway exhibits integrity of setting, location, feeling, association, design, materials, and workmanship.

- Effects: The Project has an adverse visual effect on certain portions of the Parkway in the APE adjacent to the James River which area not blocked by vegetation. The Project will detract from the resource's characteristics and integrity qualifying it for listing on the National Register.
- Mitigation: Stip. II(e)(1)(A)(ii). – Funds shall be allocated for landscape enhancement and shoreline improvement to preserve setting and feeling of the Colonial Parkway in a manner consistent with NPS's Cultural Landscape Inventory (2008), and to physically protect the integrity of the property.
- Mitigation: Stip. II(e)(C)(i). – Funds shall be allocated for heritage tourism enhancement projects for the Colonial National Historic Park that include additional visitor interpretation and visitor engagement opportunities. These projects will enhance and improve the historic properties' setting and feeling and promote their preservation, educational, and recreational missions and strategies.

3. Jamestown National Historic Site

- Eligibility: Jamestown Island was listed on the National Register in 1966 under Criterion A as the first permanent English settlement and its association with the colonization of Virginia, and under Criterion D for its archaeological potential. This site is part of the larger Colonial National Historical Park. Character defining characteristics of Jamestown Island Historic District include its numerous archaeological resources and its significance in history. The site retains integrity with respect to association, location, setting, feeling, workmanship, materials, and design.
- Effects: The Project would have an adverse effect on Jamestown National Historic Site due to the visual effects from the transmission lines. While the transmission lines will not be visible from the Jamestown National Historic Site itself, visitors to Black Point, located about a mile down a trail toward the James River, will be able to see the transmission lines about 3.52 miles in the distance. This detracts from the site's characteristics and integrity qualifying it for listing on the National Register.
- Mitigation: Stip. II(e)(A)(iii). – Funds shall be allocated to rehabilitate or replace the seawall at Historic Jamestowne to physically protect the

setting and feeling of the larger island property from erosion and sea level rise.

- Mitigation: Stip. II(e)(A)(iii). – Funds shall be allocated to build a series of breakwaters, sills, and revetments to provide greater physical protection to the larger island property than provided by revetments installed in 2004, which will protect its setting and feeling.
- Mitigation: Stip. II(e)(A)(iii). – Funds shall be allocated to restore Back Creek at Historic Jamestowne to enhance and improve an important historic feature to this property, protecting and improving its location, setting, feeling, and association.
- Mitigation: Stip. II(e)(A)(iv). – The preservation of Werowocomoco with associated supporting facilities at York River State Park will allow visitors there to see the landscape as it existed in pre-colonial days.
- Mitigation: Stip. II(e)(C)(ii). – Funds shall be allocated for heritage tourism enhancement projects at the NPS visitor center on Jamestown Island that include additional visitor interpretation and visitor engagement opportunities. These projects will enhance and improve the historic properties' setting and feeling and promote their preservation, educational, and recreational missions and strategies.

4. Hog Island WMA

- Eligibility: The Hog Island WMA has been determined as potentially eligible for listing in the National Register under Criterion A for Broad Patterns in History as one of the earliest settlements outside of Jamestown and under Criterion D for its archaeological potential to yield important information in prehistory and history. Hog Island WMA exhibits integrity of association, setting, feeling, and location. The extant resources are not individually eligible or outstanding and therefore the aspects of the integrity including workmanship, materials, and design are not applicable.
- Effect: The Project would have an adverse effect on the Hog Island WMA as the visual effects from the transmission lines would detract from the site's characteristics and integrity qualifying it for listing on the National Register. The line-of-sight modeling indicates that the Project's transmission lines would be visible from the site.
- Mitigation: Stip. II(e)(2)(A). – Funds shall be allocated for natural resource enhancement and cultural resource identification and interpretation for the Hog Island WMA, including for: the enhancement of 1,100 acres of palustrine emergent marsh; shoreline restoration; acquisition of 400 acres of upland/emergent marsh adjacent to the

Chickahominy WMA, which is upriver of the Hog Island WMA, to improve water quality in the APE; creating a history and viewing interpretation facility on Hog Island that connects to the Jamestown National Historic Site/Jamestown Island/Jamestown Island Historic District including the contributing section of the CAJO Trail; and a comprehensive archeological identification survey of Hog Island. These projects will enhance and improve the physical location of Hog Island, as well as its setting and feeling as a historic property, as well as promote its preservation and education missions and strategies. It also will do the same for the historic district and the CAJO Trail.

5. Jamestown National Historic Site/Jamestown Island/Jamestown Island Historic District including the contributing section of the CAJO Trail

- Eligibility: Historic Jamestowne is the cultural heritage site that was the location of the 1607 James fort and the later 17th century city of Jamestown. The site was designated the Jamestown National Historic Site on December 18, 1940 and listed on the National Register in 1966 and the Virginia Landmarks Register in 1983. The island contains both above ground elements as well as archaeological sites related to the first permanent settlement in the New World. This resource is listed on the National Register for its significance as the first permanent English settlement in the New World, and also for its potential to yield significant information about the past related to both English and Native American settlement in the James River region. On August 14, 2015, the Keeper determined that the portion of the CAJO Trail located in the Indirect Area of Potential Effect is a contributing factor to the Eligible Historic District, which is eligible for listing in the National Register and coterminous with the limits of the Indirect Area of Potential Effect. The Eligible Historic District, which encompasses a portion of the CAJO Trail, is eligible for listing on the National Register under Criteria A, B, C, and D, in the areas of significance of Exploration/Settlement, Ethnic Heritage, and Archeology.
- Effect: The Project would have an adverse effect to the Jamestown National Historic Site/Jamestown Island/Jamestown Island Historic District, including the contributing section of the CAJO Trail, as the visual Effects from the Project's transmission lines would detract from the resource's integrity of feeling and would diminish the character defining elements qualifying the resource for listing on the National Register.
- Mitigation: Stip. II(e)(1)(A)(iv). – Funds shall be allocated to acquire land and create and develop visitor site interpretation and related facilities to create enhanced visitor experiences for the CAJO Trail. These projects will enhance and improve the setting and feeling of the

CAJO Trail within the historic district, as well as to further and continue its preservation, education, and recreation missions and strategies.

- Mitigation: Stip. II(e)(1)(A)(iv). – Funds shall be allocated for the archeological investigation and preservation of Werowocomoco, including natural and cultural values on the James River and on the north and south sides of the York River near Werowocomoco. Werowocomoco was the principle residence of Powhatan, who was the paramount chief of the Indian Tribes in Virginia’s coastal region at the time the colonists arrived in 1607 along what is now the CAJO Trail. Because of the temporal, physical, social, political, and economic relationships, among others, between Captain John Smith and the colonists and the native tribes, this work will preserve and provide visitors with an undisturbed landscape and vista that evokes the setting and feeling of the rivers during the period of Captain John Smith’s exploration. This will enhance and preserve the setting and feeling of the CAJO Trail, as well as further and continue its preservation, education, and recreation missions and strategies.
- Mitigation: Stip. II(e)(1)(B)(i). – Funds shall be allocated to support ongoing archeological investigations and identification around Memorial Church at Historic Jamestowne, which are focused on discovering the early churches that stood on the site of the 1617 church. This project will further and enhance ongoing preservation, investigation, and education missions and strategies at this property, as well as enhance and improve its setting, feeling, location, and workmanship.
- Mitigation: Stip. II(e)(1)(C)(ii) and II(f). – Funds shall be allocated for heritage tourism enhancement projects for the historic district and the CAJO Trail that include visitor interpretation and visitor engagement opportunities, including at the NPS’s visitor center on Jamestown Island. These projects will enhance and improve the historic properties’ setting and feeling and promote their preservation, education, and recreation missions and strategies.
- Mitigation: Stip. II(e)(3)(A). – Funds shall be allocated for riparian buffer creation and replacement, and erosion and sediment control projects in the James River watershed with priority given to projects located within the Indirect APE. These projects will protect and enhance the water quality of the James River, including within the historic district and CAJO Trail. The projects will further the preservation and recreation goals of the historic district and the CAJO Trail, as well as promote river health as a symbol of the center of the area’s economy and security, as it was during the colonial periods, and thus, enhance and improve the location, association, setting, and feeling of the historic district and CAJO Trail (as well as Jamestown Island).

- Mitigation: Stip. II(e)(4)(A)(ii). – Funds shall be allocated for landscape preservation including through land and easement acquisition to preserve river and shoreline landscapes, as well as to promote water quality and river health for the James River. These projects will enhance these properties' preservation, education, and recreation missions and strategies, as well as strengthen their setting and feeling. They also will provide mitigation for any temporary effects to water quality from the construction of the towers in the river, as well as help compensate for any loss of values from the permanent effects to the river bottom.
- Mitigation: See also projects and activities for the Hog Island WMA and Underwater Archeological Sites.

6. Battle of Yorktown and Fort Crafford

- Eligibility: The Yorktown Battlefield comprises an area of approximately 63,960 acres. Although portions of this battlefield have been surveyed independently for a variety of undertakings, very little comprehensive survey has been conducted. The site is eligible for listing on the National Register under Criterion A for its association with the Civil War as well as Criterion D for potentially significant archaeological resources that have the potential to yield significant information about the Civil War. Fort Crafford served as a line of defense for the mouth of the Warwick River and served as the extreme right flank of the Warwick Line of ground defenses working in conjunction with Fort Huger on the opposite bank of the James River. The site is listed in the National Register, and includes the Crafford House, under Criterion A for association with the Civil War and its strategic importance and Criterion D for the potential to yield significant information.
- Effect: While archaeological sites within the Battle of Yorktown battlefield and Fort Crafford will be avoided, the indirect visual effects associated with the Project would have an adverse effect because they would detract from the resources' overall integrity and diminish the character defining element qualifying the resources for listing on the National Register.
- Mitigation: Stip. II(e)(4)(A)(i) – funds shall be allocated for land conservation and preservation and open space easement projects on lands associated with the Battle of Yorktown and Fort Crafford to include preservation of landscapes associated with these properties. These projects will enhance these properties' preservation, education, and recreation missions and strategies, as well as strengthen their setting and feeling.

d. Stipulations that Mitigate for Effects to Archeological Site 44JC0662 and Avoid Potential Effects to the Potentially Eligible Underwater and Other Archeological Sites

1. Archeological Site 44JC0662

- **Eligibility:** Archeological Site 44JC0662 is a single dwelling dating from the 18th to the 19th centuries that is associated with the Bailey family, a low- to middle-income, slave-holding family in James City County. This site previously was subject to Phase I and Phase II investigation and data recovery work. This project would stand as a Phase III data recovery work that would record and preserve historic and archeological information related to the site and times, consistent with archeological preservation strategies, prior to any direct effects to the site. The site is eligible for listing on the NRHP under Criterion D for its potential to provide information regarding 18th and 19th century domestic occupation associated with middling farmers in James City County.
- **Effect:** The site would be directly affected by construction activities and the Project would have an adverse effect on the site as it would detract from the resource's characteristics and integrity qualifying it for listing on the National Register.
- **Mitigation:** Stip. I(a) – Dominion is required to fund, develop, and implement a Treatment Plan in consultation with the Corps, SHPO, and other consulting parties, consistent with Interior Department, SHPO, and ACHP guidelines for archeological investigations and documentations and data recovery, that specifies, among other things:
 - the areas where data recovery plans will be carried out;
 - 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;
 - any property, properties, or portions of properties that will be destroyed or altered without data recovery;
 - the research questions to be addressed through data recovery, with an explanation of their relevance and importance;
 - the methods to be used in analysis, data management, and dissemination of data, including a schedule;
 - the proposed disposition of recovered materials and records; and
 - 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

2. Underwater and Other Potentially Eligible Archeological Sites

- Eligibility: Seventy-six submerged anomalies were identified in the James River during remote sensing surveys of three transmission line alternatives in 2012 and 2013. These anomalies were judged to retain high potential for representing potentially significant submerged cultural resources and have been grouped into 23 buffer areas within the general vicinity of the project Area of Potential Effect. In addition to the 76 underwater anomalies, the Corps identified seventeen archeological sites that were either eligible for listing on the National Register, potentially eligible, or their status was undetermined and managed as unevaluated. For the 76 underwater anomalies and seventeen sites that were potentially eligible or undetermined, the parties agreed to take precautions to avoid effects thereto. Under this stipulation, Dominion agrees to develop and implement avoidance plans for historic resources that may be eligible for listing on the National Register. While it is not known whether the 76 underwater anomalies would be eligible for the National Register, they essentially have been treated as such out of an abundance of caution. Surveying and avoiding these underwater sites within 200 feet of a proposed tower or mooring location preserves and enhances the setting, feeling, and association of the Jamestown National Historic Site/Jamestown Island/Jamestown Island Historic District including the contributing section of the CAJO Trail. It also is consistent with those sites' preservation, education, and recreation missions and strategies.
- Effect: Defined buffers around each of the groups of anomalies will provide distance for attenuation of vibration associated with pile driving and, therefore, the Project will have no adverse effect on the submerged anomalies.
- Mitigation: Stip. I(b). – Prior to construction in the James River, Dominion shall fund and complete an underwater archeological survey sufficient to determine the nature and extent of any underwater anomalies within 200 feet of a proposed tower or mooring location. The results of this survey shall be used to develop an avoidance plan that includes the location of the 76 potentially cultural anomalies and National Register Eligible or listed archeological sites within the direct APE, the boundaries of the buffered anomalies, and detailed steps and construction protocols for ensuring the avoidance of buffered areas and the handling of unanticipated activities that might affect underwater anomalies. Avoiding potential historic properties and maintaining their integrity preserves and enhances the integrity of the historic properties at issue. Avoiding effects to the underwater anomalies preserves and enhances the setting and feeling of the Historic District and CAJO Trail.

e. Additional, Forward-Looking Stipulations Benefiting Historic Properties within the Direct and Indirect APE at the River Crossing

In Stipulation VI.a, Dominion agrees that from the date of construction until the towers are dismantled, it will coordinate all maintenance and repair operations that have the potential to result in ground or underwater disturbance with the SHPO and other relevant resource agencies to avoid and minimize any additional effects to historic properties. In Stipulation VI.b, Dominion agrees that from the date of construction until the towers are dismantled, it will not construct or place any new or additional transmission line infrastructure, or increase the height or scale of existing tower infrastructure. These covenants ensure that the nature and extent of the adverse effects of the Project on the historic properties will remain constant, and the determination that those effects are mitigated appropriately and effectively in the MOA remains correct.

In Stipulation VI.c., Dominion agrees that if, at the conclusion of the Project life span (believed to be 50 years), Dominion determines the river crossing is no longer needed, Dominion will remove the Project and return the area to pre-Project conditions. In Stipulation VI.d., Dominion agrees that if, at the conclusion of the Project life span, Dominion determines the Project remains necessary, it shall evaluate the viability and feasibility of a submerged river crossing, and if at that time such a crossing is accepted and available and approvals are received, Dominion will replace the overhead line with a submerged crossing. These covenants represent a commitment to continue to evaluate the need for the river crossing and to remove the effects to historic properties to the extent possible.

CONCLUSION

Dominion finds that the proposed stipulations set forth in the MOA will resolve those adverse effects consistent with 36 C.F.R. § 800.6.