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Regulatory Office  
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**JUL 05 2016**

William T. (Tom) Walker  
Chief, Regulatory Branch  
USACE, Norfolk District  
803 Front Street  
Norfolk, VA 23510

Dear Mr. Walker:

As part of the continuing Section 106 consultations for the Dominion Virginia Power (Dominion) Surry-Skiffes Creek-Wheaton aerial transmission line proposal, the National Park Service (NPS) and the US Army Corps of Engineers (Corps) agreed during our February 18, 2016, meeting that there are specific aspects of the Section 106 process for the Dominion proposal that required additional work. This included sufficient visual analysis of the proposed overhead line and towers across the river and a better understanding of the nature and severity of the identified adverse effects to historic properties, including a more robust analysis of the cumulative effects. The NPS provided comments to the Corps on March 25, 2016, providing specific details on the deficiencies of the visual analysis for this project. The NPS repeats our offer to meet with you to discuss why the visual analysis is deficient. Without better visual analysis and complete assessment of effects, it is impossible to have effective discussions regarding the resolution of adverse effects to historic properties.

It is important to remember that prior to the February meetings, the Virginia Department of Historic Resources (VA SHPO) stated "...we cannot support Stantec's assessment of cumulative effects." Among other specifics, they state "The addition of an overhead power line to this largely undeveloped section of river will irreparably alter the character of the area, solidifying its status as an industrial/commercial corridor and opening the door to subsequent development and associated cumulative effects." The VA SHPO went on, stating "Our concurrence with the Corps' finding of adverse effect does not preclude the need for additional discussions regarding the full range and severity of effects." (VA SHPO to Corps Nov 13, 2015)

In addition, the Advisory Council on Historic Preservation (ACHP) stated that it is "...premature to consider discussion of the resolution of adverse effects before there is consensus on the full nature of the adverse effects" and that the Corps should "...further explore the potential for indirect and cumulative effects from the undertaking..." (ACHP to Corps Dec 10, 2015)

VA SHPO confirmed their agreement with the need for further detail on the nature and severity of the adverse effects stating "The February 2, 2016, consulting parties meeting drew valuable input regarding studies that may be implemented to understand the full range and severity of effects." (VA SHPO to Corps Feb 17, 2016)

The ACHP stated again in March of this year "The Corp's consideration of cumulative effects has also been inadequate..." (ACHP to Corps Mar 2, 2016) and repeated their concerns again in May, stating long-term and cumulative effects analysis was one of the several "...gaps in the Section 106 process" that the Corps agreed to further evaluate. (ACHP to Corps May 3, 2016)

By receipt of an email from the Corps (Randy Steffey to consulting parties, June 13, 2016) including a revised draft Memorandum of Agreement (MOA) as an attachment, it would seem that the Corps has instead chosen to concentrate solely on the development of a Memorandum of Agreement despite not yet having a full understanding of the adverse effects. The June 7, 2016, draft MOA goes so far as to state the "Corps and Dominion have fully identified cumulative effects," and it also states that the assessment of effects step of the Section 106 process was completed on May 21, 2015.

The NPS was disappointed to receive the Corps recent email (Randy Steffey to consulting parties, June 20, 2016) stating that, despite advice from the SHPO and ACHP, Dominion's contractors' visual effects analysis and consideration and assessment of cumulative effects is "sufficient," once again dismissing guidance from the SHPO and ACHP.

It appears that the Corps has dismissed the comments provided by the NPS, VA SHPO, ACHP and other consulting parties regarding both understanding the nature and severity of the individual adverse effects and the completion of a sufficient analysis of cumulative effects. Despite the Corps findings, the NPS believes that an adequate assessment of the cumulative effects of the proposed project upon these important properties has yet to occur.

Please find below comments and the supplemental analysis of the project's cumulative effects to historic properties, that the NPS offered to provide the Corps at our February discussion.

### **Cumulative Effects Analysis**

There is no question that resources such as Jamestown Island, the Colonial Parkway and the Captain John Smith Chesapeake National Historic Trail have tremendous and iconic historic significance on their own. But even more than that, the collection of these incredible resources within and around this small portion of the James River makes them even more significant as an historic epicenter of this nation's birth. For this reason, and because this section of the James retains a character evocative of the 17<sup>th</sup>-century, the Keeper of the National Register concluded a Determination of Eligibility for the Historic District contained within the Area of Potential Effect (APE), with the national historic trail extending directly through the District. As we have stated repeatedly through this process, major adverse effects such as those caused by the Dominion proposal would be a significant adverse effect to the historic integrity of these resources and to the larger Historic District they exist within.

Assessing the effects of a proposal to construct a major industrial intrusion within the Historic District, defined by the existence of a collection of such iconic historic resources, is a serious and

complex task. A determination that adverse effects would occur from the proposal is obvious, and the Corps has come to that conclusion.

However, understanding the extent of those effects and whether or not they can be mitigated is not so simple. The continuing lack of sufficient visual simulations and analysis is a major flaw and will continue to impact the Section 106 process, preventing the completion of satisfactory assessment of the individual and cumulative adverse effects and negating the ability to move on the resolution of adverse effects step.

At this stage, it seems there is little point in revisiting disagreements with the conclusions in the Cultural Resources Effects Assessment (CREA) or our disagreements with Dominion's "Response to Comments Submitted by the Consulting Parties" that followed. However, in regards to analyzing cumulative effects, we must point out one major error in the methodology used in the above documents. Page 30 of the Response to Comments states:

"Under the NHPA Section 106 process, the consideration of cumulative effects is used to determine whether there are adverse effects on the historic properties previously identified in the process as potentially affected by the action at issue. 36 CFR 800.5"

The above language is not found within existing Section 106 regulations or related NEPA guidance. As the methodology used by Dominion's consultants for the CREA, the above statement misrepresents the very nature of analyzing or understanding cumulative effects. While the analysis of cumulative effects within the CREA is based on much solid information and analysis, it falls short in a few key areas. The analysis concentrated on known, existing adverse effects and impacts within the project APE such as existing development, and it rightfully included beneficial factors such as the vast amount of land conservation efforts. However, what the analysis did not do is base its analysis on an appropriate consideration of the existing character of the James River and its shoreline. We believe the analysis exaggerates the visual effects of the limited modern development on the shores of the James. Furthermore, and of critical importance, the analysis did not recognize the negative impact the project would have on the continuum of conservation efforts that have preserved the Historic District. It also did not recognize the impacts to future preservation being considered for the individual resources within the Historic District. These topics are covered in detail below.

Guidance on cumulative effects analysis comes from a combination of sources including the ACHP Section 106 regulations (36 CFR 800), CEQ NEPA regulations (40 CFR 1508.7), and joint CEQ/ACHP guide *NEPA and NHPA: A Handbook for Integrating NEPA and Section 106*.

ACHP Section 106 regulations state:

Adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance, or be cumulative. [36 CFR 800.5(a)(1)]

CEQ NEPA Regulations state:

The impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertaking such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time. [40 CFR 1508.7]

While the Section 106 regulations do not define “cumulative effects,” the CEQ regulation definition of “cumulative impact” is analogous and instructive. An individual action may not have much effect, but it may be part of a pattern of actions whose combined effects on a resource are significant (NEPA and NHPA: A Handbook for Integrating NEPA and Section 106).

In this case, cumulative effects analysis would begin with understanding the individual adverse effects to each historic property, including those to the Historic District, and combining those adverse effects with the effects of past, present, and reasonably foreseeable future actions. After much consultation and deliberation, the Corps provided a determination of effects table (Corps to VA SHPO Feb. 17, 2016) that clarified their assessment of the project’s adverse effects to eight “architectural” resources and one “archaeological” resource.

Each adverse effect must be recognized to evaluate how each would diminish the integrity of the individual resources being affected. Despite supplemental analysis provided by the NPS on January 29, 2016, there is still no clear and agreed-upon description of the nature and severity of the adverse effects to each of the historic properties being affected. While this fact impedes a proper cumulative effects analysis there are some overarching cumulative effects that can be identified.

Integral to understanding the individual adverse effects as well as the cumulative effects of the project is an accurate assessment of the character of the James River and its shoreline. The NPS recognizes that there is modern development along the James within the District (and the project APE). However, we continue to assert that this development is not highly concentrated and is quite muted by the shoreline vegetation in many cases. This results in a landscape, that retains a character evocative of the 17<sup>th</sup>-century, as evidenced by the Historic District’s 2015 Determination of Eligibility for the National Register of Historic Places. The existence of these modern developments (pointed out in the CREA) does diminish the integrity of the District, but not to the extent that it seriously damages the overall character. We further point out that while existing modern development does exist, its low-scale effects on the Historic District are not at all comparable in scale to the effect the proposed project would have on the District. However, the combination of the effect of the project and the minor existing effects of the modern development result in a major effect to the District.

Throughout the cumulative effects analysis, it is vital to remember the fact that the Historic District is a group of historic properties that collectively represent the beginnings of the nation and also the most significant portion of the national historic trail. It is the very collection of these resources in a concentration that makes this section of the James River such an important historic resource. Each

of these historic properties exists within the larger Historic District and most of them have historical significance that is thematically related, and the historical integrity of each contributes to integrity of the Historic District as a whole. Thus, the cumulative effect to the District and each resource is compounded by the fact all of the key historic properties that make up the District experience diminished integrity through the adverse effects to each individual property, a point that was not recognized by CREA or the response that followed.

The concentration and relationship of these historic properties within the Historic District (and the APE) adds not only to the unique historical integrity of the Historic District but also to the historical significance of one another. If each existed alone in a vacuum they would of course still be historically significant, but the thematically-related collection within the Historic District increases their ability to tell the story for which they are significant. Diminished integrity of any one or more historic property diminishes the integrity of the Historic District and therefore of each individual historic property as well. As an example, explained in more detail below, diminished integrity of the Colonial Parkway would result in a diminished integrity of the District, and also of Jamestown itself.

The NPS provides the following supplemental analysis of cumulative effects to the Colonial Parkway, Jamestown and the Captain John Smith Chesapeake National Historic Trail to the Corps. Along with some overarching cumulative effects topics which are also included, we hope this analysis will assist the Corps in completing an appropriate assessment of cumulative effects.

### **Colonial Parkway**

As we have stated, the specific nature and severity of adverse effects the project will have on the Colonial Parkway have not yet been clarified by the Corps, other than an agreement that the power line and towers will be visible from the Parkway. The Parkway was intentionally designed to provide visitors with an experience that would transform their sense of time and place from the modern day back to the Colonial period as they traveled between Jamestown, Williamsburg and Yorktown. This was accomplished through the specific manner in which the Parkway was designed, including its materials, layout, vegetation and, specifically, the views. Along the Parkway within the APE, the experience and the views were carefully controlled to allow visitors specific and expansive views of the undeveloped James River. Very little modern development currently affects the views along this section of the Parkway. Please refer to NPS letter of January 29, 2016, for a description of the "major" adverse effect (using Stantec's terminology) the project will have on the Parkway. As stated in that letter, the project will damage major character-defining features of the Parkway and alter the experience the Parkway was intended to provide.

Construction of the proposed project will completely alter that experience with the addition of a major modern intrusion within the Parkway's viewshed, especially along the various pull-offs as visitors approach Jamestown. The minor existing modern intrusions to those views will be compounded by the addition of the project, resulting in a cumulative effect that tremendously

damages the views. This creates a scenario where the views from the Parkway are no longer evocative of the 17<sup>th</sup> century.

It must be recognized that the adverse effects to the Colonial Parkway caused by the project will also have a cumulative effect on Jamestown and the Historic District. Since the 1930s, the visitor experience and interpretation of Jamestown has been a collective effort, dependent on the progression of visitors experiencing Yorktown and Williamsburg followed by their approach to Jamestown along the Parkway, completing their "transformation" as best possible for a sense of Colonial-era character before they reach Jamestown itself. By diminishing the intended experience of the Colonial Parkway, visitors will be denied the Colonial-era character meant to shift their sense of place back in time. A diminished experience travelling the Colonial Parkway would result in a lessened visitor experience at Jamestown as well. Visitors would instead arrive at Jamestown without already beginning to get the sense of the Colonial era.

Cumulative effects analysis must also consider both the NPS' regular vegetation management as well as long-term management plans for the Parkway. The NPS manages the existing views along the Parkway by controlling vegetation growth on a regular basis as funding and resources allow but also through longer-term management plans that include restoration of views that have become obscured. While the project would certainly be highly visible along this section of the Parkway under current conditions, the project would become more detrimental to the intended experience as the NPS carries out longer-term viewshed management along the Parkway. Complete restoration of this section of the Parkway as it was designed would result in a James River view that would be more about viewing a modern intrusion than it would a landscape evocative of the 17<sup>th</sup> century.

### **Jamestown**

Much of the same discussion also applies to the adverse effects on Jamestown. Again we refer to our January 29, 2016, letter for a description of the "major" adverse effect the project will have on the character-defining features of Jamestown. The discussion above clarifies how the diminished integrity of the Parkway will have cumulative adverse effects to Jamestown.

Another important consideration in the assessment of cumulative effects is, again, the future management plans for Jamestown. While preservation efforts directly within Jamestown settlement may not be affected by the project, future, longer-term management plans would be. The NPS continues to consider improving the visitor experience through potential efforts that could include additional visitor services or landscape rehabilitation efforts that reach Black Point. While views of the project are not likely to be prominent from the settlement, the project would be clearly visible from Black Point. Black Point is a key viewing and interpretation point for the James River from which the project will be front and center in the viewshed. As a location that has tremendous potential for interpretation of the American Indian heritage of the area and the later European settlement including Captain John Smith's voyages and Jamestown settlement, future efforts at Black Point would be greatly inhibited by having a major, modern intrusion in its viewshed.

Another cumulative effect consideration is how the project will jeopardize the NPS efforts to have Jamestown considered a UNESCO World Heritage Site. A UNESCO designation will recognize the incredible historical significance of Jamestown and would have beneficial effects to the region's tourism and economy. Such a serious adverse effect to Jamestown's setting could preclude the designation and negate the potential benefits.

### **Captain John Smith Chesapeake National Historic Trail (CAJO)**

Many of the historic properties that define the District also contribute to the significance of CAJO. As clarified by the National Register DOE and within the CREA, the section of CAJO that extends through the project APE has been described as the "Keystone" portion of the trail and its most historically significant section. Construction of the power line and 17 towers across the James within this section will have a tremendous impact on the character of CAJO and the District. Our January 29, 2016, letter provides a description of the "major" adverse effect the project will have on the trail.

The CREA states that "the project will be visible from portions of the Eligible Historic District." As we have pointed out previously, that conclusion misrepresents the severity of the effects the project would have on the District and CAJO. In the case of CAJO, the power line and towers would directly cross CAJO in its most significant section. The result would completely alter the character of CAJO in this area and change how the trail is experienced from the shore and most certainly from the water – as visitors would be travelling underneath the line and next to the towers. This latter point is particularly applicable to consideration of the effects to the nation's first historic water trail.

While it is likely that the project would not be visible along CAJO from the northern portion of APE, the central and southern portion of the trail within the APE would be significantly affected. The power line and towers would be directly within the landscape that forms this section of CAJO (and the District). This not only changes the nature of the landscape and obstructs views, but would completely alter the way visitors would experience the water trail. Currently views can be managed to some extent and directed away from current modern development. Existence of the power line and towers directly over the trail in the center of the District would result in views that could not be managed in any effective manner. The project would always be visible and visitors along the water trail would have an up close and personal experience as they would have to cross under the line and adjacent to the towers.

Effects from the modern, industrial character of the power line and towers and size of the structures dwarf the effects caused by the existing modern development. The combination of the effects greatly alters the character of CAJO within the Historic District. The addition of the proposed project will create a scenario for visitors to the trail where no matter which direction they look or travel within the District, there would now always be a modern intrusion in the view. It is the cumulative effects analysis that sharply illuminates the resultant destruction of the landscape evocative of the 17<sup>th</sup> century – a point most evident in an analysis of effects to CAJO.

While less predictable, the project will also affect future development of the area as it will provide additional, more economical power to the Hampton peninsula. Dominion has stated many times they have no current plans for any other proposals to cross the James in this area. However, Dominion does admit the project would result in the increased and cheaper power supply. It is reasonable to assume that the availability of increased, economical power could lead to an increase in development to the area, a consideration that needs to be included when determining potential cumulative effects for all of the historic properties within the District.

### **Land Conservation**

It has become clear through the Section 106 process for the Dominion proposal that there have been many efforts by numerous parties to recognize both the natural and historical significance of this section of the James River and the volume of historic resources on its shores and contained within the Historic District. As mentioned within the CREA, the area has benefited from land conservation efforts protecting a portion of the James River shoreline within the District, and the existence of several historic sites and National Park units add to that protection.

While the land conservation efforts in place are certainly excellent protective measures, the CREA uses those accomplishments to justify why other projects could not be proposed within the District. This thought process is a contradiction to the purpose and success of the conservation efforts if a proposal such as Dominion's Surry-Skiffes transmission line could be constructed directly through the center of the District.

### **Precedent of Permit**

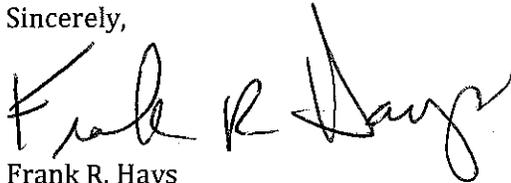
The heart of the Section 106 process here is the actual approval of the Corps permit. Granting the permit is the federal undertaking (as defined by 36 CFR 800) subject to review. At this point, we all recognize the fact that construction of the overhead line and towers across the James will result in a major adverse impact to several irreplaceable resources and the Historic District. What is not yet being recognized is the potential future effects of granting that permit. As the VA SHPO stated so clearly (VA SHPO to Corps Nov 13, 2015), "The addition of an overhead power line to this largely undeveloped section of river will irreparably alter the character of the area, solidifying its status as an industrial/commercial corridor and opening the door to subsequent development and associated cumulative effects." The NPS and other consulting parties have repeatedly said that permitting an overhead modern structure such as this will set the stage for just about any other intrusion that is proposed. Once a major modern structure such as the Dominion proposal is permitted, what grounds would remain for protecting this iconic historic landscape from other modern intrusions? If the setting of Jamestown can be sacrificed, how can any other historic setting be protected?

Based on considerable input from the NPS and other consulting parties, and specific guidance from the ACHP and VA SHPO, the Corps agreed that additional effort was appropriate to complete the

assessment of effects step of the Section 106 process. As we agreed, the NPS provides the comments and analysis above to assist the Corps in completing a sufficient cumulative effects analysis. This information needs to be combined with the existing analysis in the CREA and similar cumulative effects analysis is still be needed for the remaining historic properties such as Carter's Grove, Hog Island, the Historic District and others. Improved visual analysis and further description of the nature and severity of the adverse effects to individual historic properties are the other two areas the Corps agreed needed further effort. We hope the information we have provided here helps the Corps reach the goal of completing an appropriate assessment of effects. Without that clear understanding of effects, the resolution of effects step will not be successful.

As the Section 106 process proceeds, we are confident the Corps will come to realize the tremendous adverse effect the project will have on this incredibly important historic setting. Jamestown, and the associated historic properties that make up the District, represent what is likely the only one of this nation's founding settlements that still retains its historic setting. Centuries of preservation efforts have allowed this setting to remain intact for 400 years. Construction of the proposed power line and towers through this iconic landscape will significantly impact the ability of these historic resources to commemorate the views of the James River, views that are integral to their historic integrity and define their setting. Combined with an appropriate understanding of the adverse effects to each individual historic property, analyzing the cumulative effects of constructing an overhead power line and 17 towers directly through this particular Historic District is critical to understanding why the adverse effects are insurmountable. The NPS looks forward to continued cooperation with the Corps and other consulting parties to reach an agreeable outcome.

Sincerely,

A handwritten signature in black ink, appearing to read "Frank R. Hays". The signature is fluid and cursive, with the first name "Frank" being the most prominent.

Frank R. Hays  
Associate Regional Director  
Resource Stewardship and Science  
Northeast Region

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