



Preserving America's Heritage

**US Army Corps of
Engineers
Norfolk District
Regulatory Office
Received by: RLS
Date: June 19, 2015**

June 19, 2015

Ms. Lynette R. Rhodes
Chief, Southern Virginia Regulatory Section
US Army Corps of Engineers
803 Front Street
Norfolk, VA 23510-1096

Ref: Proposed Dominion Power Surry-Skiffes Ck-Wheaton Transmission Line Project
Corps Permit Application NAO-2012-00080 / 13-V0408 (James River)
James City County, Virginia

Dear Ms. Rhodes:

The Advisory Council on Historic Preservation (ACHP) has received expressions of concern regarding the determination, made by the Corps of Engineers, Norfolk District (Corps) on May 7, 2015, that the portion of the Captain John Smith Chesapeake National Historic Trail (CAJO) in the Area of Potential Effects (APE) for the referenced undertaking is not eligible for inclusion on the National Register of Historic Places (National Register). The determination was made as part of the Corps' review of the referenced undertaking in compliance with Section 106 (54 U.S.C. § 306108) of the National Historic Preservation Act (NHPA) (54 U.S.C. § 300101 et seq.) and its implementing regulations, "Protection of Historic Properties" (36 C.F.R. Part 800). Due to the level of concern expressed by numerous consulting parties regarding the eligibility of CAJO, its proximity to the referenced undertaking, and the broader public interest associated with the purpose and need of the undertaking, the ACHP requests that the Corps obtain a formal determination of eligibility from the Keeper of the National Register (Keeper) pursuant to 36 C.F.R. § 800.4(c)(2).

In a document dated May 7, 2015, the Corps presented a summary and update of its eligibility determinations for historic resources within the APE for the proposed undertaking. The Corps determined that the portion of CAJO located in the APE was not eligible for listing in the National Register because: (1) CAJO is a natural water body, a type of property which, according to the Keeper, is usually excluded from listing; (2) the only trail-related properties that might be eligible for the National Register are located at Jamestown, and not throughout the rest of the trail in the APE; and (3) the areas in the APE characterized as evocative landscapes, which comprise the largest area of trail-related resources in the APE, are not specifically associated with any significant historic events associated with the voyages of Captain John Smith apart from being along the route of the voyages.

As you know, the Corps has also identified a cultural landscape referenced as the Jamestown Island-Hog Island Cultural Landscape, which it has determined eligible for inclusion on the National Register under Criteria A and D. This cultural landscape encompasses the core area of maritime uses and explorations during the initial settlement and establishment of Jamestown as an English colony. In a letter dated May 11, 2015, the Virginia State Historic Preservation Office (SHPO) concurred with the Corps' determinations regarding CAJO and the Jamestown Island-Hog Island Cultural Landscape.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

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By letter of June 1, 2015, Stephanie K. Meeks, President of the National Trust on Historic Preservation (NTHP), requested that the ACHP ask the Corps to obtain a determination of eligibility for CAJO from the Keeper. In an earlier letter, dated May 28, 2015, a coalition of consulting parties including the NTHP, the Chesapeake Conservancy, the Conservation Fund, the National Parks Conservation Association, and Preservation Virginia, asked Jon Jarvis, Director of the National Park Service (NPS), as representative of the Secretary of Interior (Secretary), to exercise his option to request that the Corps obtain a determination of eligibility for CAJO from the Keeper. Similarly, by letter of June 9, 2015, the Acting Associate Regional Director of the Northeast Region of the NPS, objected to the Corps' determination that CAJO was not eligible. All of these letters from consulting parties underscore the need for a formal determination from the Keeper.

The consulting parties that have requested a referral to the Keeper have indicated that Congress's purpose in designating trails under the National Trails System Act (16 U.S.C. § 1241)(NTSA), was to "...promote the preservation of, public access to, travel within, and enjoyment and appreciation of the open-air, outdoor areas and historic resources of the Nation..." The consulting parties believe that the portion of CAJO extending through the undertaking's APE is eligible for the National Register and includes land-based sites and landscape features that may contribute to that eligibility. Further, they believe that the visible shoreline, primarily composed of wetland and forest vegetation, is generally "evocative" of the seventeenth century in that it encompasses stretches where the shoreline is relatively free from intrusion by modern development. The consulting parties also believe that the river, associated creeks and wetlands, and other natural features, may constitute components of "indigenous cultural landscapes" that contribute to the significance and eligibility of CAJO.

According to NPS Chesapeake, CAJO includes the river portion of the trail route extending from shoreline to shoreline; the trail corridor encompassing the land and water within the viewshed of the trail route; trail-related resources within the corridor; and other trail-related resources beyond, but contiguous to the viewshed. The consulting parties believe that these resources, including evocative landscapes, indigenous cultural landscapes, and archaeological sites and districts, contribute to the national significance of CAJO, and define the character of the landscape that shapes the visitor experience. The consulting parties also believe that these elements of the CAJO should be considered contributing elements of the proposed Jamestown Island-Hog Island Cultural Landscape and that the Corps should consider extending the boundaries of the landscape.

The ACHP is sympathetic to the concerns of consulting parties that the Corps' eligibility determination for the portion of CAJO in the APE for the undertaking may serve as a de facto determination of non-eligibility for the entire trail if it is not elevated for review by the Keeper. There are further issues that also warrant the Keeper's review. By letter of February 13, 2015, to the Federal Highway Administration in a review of the eligibility of CAJO, the Deputy Keeper noted that the congressional designation of CAJO and the related historic significance studies and documentation did not automatically make the trail eligible for listing in the National Register (enclosed). The Deputy Keeper also noted that inclusion of "natural waterways or bodies of water in the definition of sites per se would mean that the National Register would have to include large numbers of rivers, bays, lakes, and bayous, etc., that were important in the exploration and development of a major portion of this country." He concluded that this would not be a practical use of the National Register and would have the potential to overwhelm the evaluation and nomination activities of states, federal agencies, and tribes.

Accordingly, we recognize that determining the eligibility of the entire CAJO, or even attempting to identify all individual elements that may warrant listing, is a complex matter beyond the scope of this undertaking. Nonetheless, we agree with the consulting parties that the Corps would benefit from the Keeper's views regarding the eligibility of those portions of the CAJO within the subject APE, including whether that segment of CAJO and/or the resources which are referenced, highlighted, and interpreted by CAJO are eligible for inclusion in the National Register. It will also clarify whether or not they should be recognized as contributing to the eligibility of the Jamestown Island-Hog Island Cultural Landscape.

Therefore, as provided for at 36 C.F.R. § 800.4(c)(2) of the Section 106 regulations, the ACHP requests that the Corps obtain a determination of eligibility from the Keeper acting for the Secretary pursuant to 36 C.F.R. part 63. This information will assist the Corps in completing the identification and evaluation step of the four-step Section 106 review process. The Corps will have to consider any decision rendered by the Keeper regarding the eligibility of CAJO in finalizing its assessment of the effects of the undertaking on historic properties. As we move forward in the Section 106 consultation process, and the consulting parties consider the findings of effect proposed by the Corps in its May 12, 2015, communication, it also would be helpful for all parties to have the Corps' formal response to our requests for clarification in the letter to the Corps dated April 17, 2015, regarding the consideration of alternatives, the adequacy of the visual effect simulations and analysis, and long term and cumulative effects of the undertaking. The Corps' views on these issues are critical if we are to have a productive meeting on June 24th.

If you have any questions, please contact Dr. John Eddins at 202-517-0211, or via e-mail at jeddins@achp.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Reid J. Nelson", written in a cursive style.

Reid J. Nelson
Director
Office of Federal Agency Programs

Enclosure



United States Department of the Interior

NATIONAL PARK SERVICE

1849 C Street, N.W.
Washington, D.C. 20240

IN REPLY REFER TO:

H32(2280)

February 13, 2015

Ms. Renee Sigel
Pennsylvania Division Administrator
Federal Highway Administration
U.S. Department of Transportation
228 Walnut Street, Room 508
Harrisburg, PA 17101-1720

Dear Ms. Sigel:

Thank you for your letter of December 22, 2014, concerning the Central Susquehanna Valley Transportation Project (CSVT), which involves a proposal to build a new bridge across the West Branch of the Susquehanna River in central Pennsylvania. This portion of the West Branch of the Susquehanna River includes a portion of the Congressionally designated Captain John Smith Chesapeake National Historic Trail (CAJO) as expanded by order of the Secretary of the Interior in 2012.

In your letter, you have requested the Keeper of the National Register of Historic Places (Keeper) to provide your agency with a determination as to whether CAJO “can be, in and of itself, a historic property type.” By this, we assume that you are asking if CAJO is a property type that can be found to meet the National Register Criteria for Evaluation. You have also indicated that, if CAJO is found to be a property type that can be listed in, or determined eligible for listing in, the National Register, you are further requesting that: a) a formal determination of eligibility as to whether CAJO as a whole is eligible for the National Register be provided in accordance with the provisions of 36 CFR, Part 63, or b) if CAJO in its entirety is determined not to be eligible, if the portion of CAJO encompassed by the CSVT Area of Project Effect (APE) is eligible for listing in the National Register in accordance with these same provisions.

The core of CAJO was established by Congress in 2006, following the completion of a feasibility study by the National Park Service (NPS) 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 Chesapeake Bay and the tributaries of 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 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.

CAJO was not automatically listed in or determined eligible for listing in the National Register of Historic Places upon its statutory designation, nor were the connecting trails added later by the Secretary of the Interior automatically listed or determined eligible for listing. CAJO is not a historic unit or area of the National Park System. To date, it has not been nominated, in whole or in part, for listing in the National Register by an appropriate nominating authority. Likewise, there has been no determination made on the National Register eligibility of CAJO by the Keeper, either in whole or part, under the authority of Federal Regulations 36 CFR, Part 63. However, based on our experience with other national historic trails, we note there are likely to be districts, sites, buildings, structures or objects associated with CAJO or portions of CAJO that are eligible for listing in the National Register.

The National Register of Historic Places has a longstanding policy that generally (emphasis mine) excludes natural waterways or bodies of water that were avenues of exploration or important as determinants in the location of communities or that were significant in the locality's subsequent economic development from the definition of "sites" (which along with districts, buildings, structures and objects comprise the five statutory property types that can be listed in the National Register). To include natural waterways or bodies of water in the definition of sites *per se* would mean that the National Register would have to include large numbers of rivers, bays, lakes, and bayous, etc., that were important in the exploration and development of major portion of this country. This would not be a practical use of the National Register and would have the potential to overwhelm the evaluation and nomination activities of states, Federal agencies, and tribes.

Natural landscape features (including waterways such as bays, creeks, rivers, lakes, wetlands, etc.) are, however, often included within the boundary of districts and sites listed in, or eligible for listing in the National Register. Everything located within a National Register property boundary is listed or eligible for listing in the National Register. Landscapes included within the boundary may be considered contributing to the significance and integrity of a district or other National Register property type if they are described and justified as such in the documentation.

While recognizing the important role that many natural waterways have played in our country's history, the properties considered most appropriate to document the significance of these waterways are usually: a) districts, buildings, structures, or objects built or used in association with the waterways, or b) sites that are significant for important historic events related to the waterways or that provide important information about a property's defined areas of significance. In its 2011 *Comprehensive Management Plan and Environmental Assessment* for CAJO the National Park Service identified seven types of CAJO-related historic resources: 1) Smith Voyage Stops; 2)

Evocative Landscapes within View of the Trail; 3) Indigenous Cultural Landscapes; 4) 17th Century American Indian Archeological Sites; 5) Historic American Indian Town Sites; 6) Landscape Features and Cultural Sites of Significance to Modern American Indian Tribes; and, 7) Smith Cross Sites. At least some of these resources, as well as specific portions of the trail itself, may prove eligible for listing in the National Register, either individually or as integral, character-defining features of a larger district or site.

Your letter identifies two properties--a railroad segment and a pre-contact archeological site within the CSVT APE--that your agency considers individually eligible for listing in the National Register. We note that no documentation has been provided to the Keeper in support of these agency opinions. Your letter also includes links to some information on historic resources related to the specific bridge project and that project's APE and its immediate environs. However, no substantive documentation was provided to the Keeper by your agency with respect to historic properties associated with CAJO as a whole or for any other portions thereof.

The National Park Service's (NPS) Chesapeake Bay Office provided additional documentation to the Keeper related to archeological resources in the areas including and adjacent to the APE. In combination with the documentation made available by your agency for the APE and these adjacent areas, as well as an onsite review of these areas by the Keeper's staff, it appears that there may be an as-yet-not-fully defined National Register-eligible archeological district along this portion of the West Bank of the Susquehanna River. If further documentation confirms National Register eligibility, it seems likely that the district would include inundated archeological sites as well as a portion of the river and its banks, one or more river islands, and possibly portions of adjacent river terraces. At this time, however, we concur with the NPS's Chesapeake Bay Office that currently available survey information for the area is still not adequate for the Keeper to determine National Register eligibility.

Taking all of the above into account, we conclude that the documentation made available to date is insufficient for the Keeper to evaluate the historic significance and integrity of CAJO, either in whole or part. As a result, it is not possible for the Keeper to issue a determination of eligibility for listing CAJO in the National Register, in whole or in part, at this time.

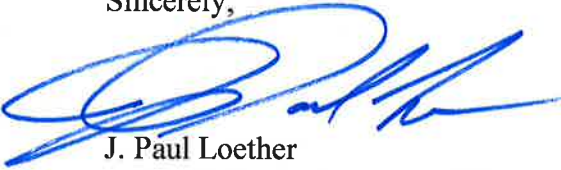
In order for the Keeper to make a determination of National Register eligibility for properties located in the CSVT APE as requested in your letter of December 22, 2014, the Federal Highway Administration will need to provide additional documentation. Documentation for a proposed National Register eligibility determination in the APE should be prepared based on comprehensive historical and archeological survey data, and provided to the Keeper in a manner consistent with the guidelines provided in *National Register Bulletin: How to Apply the National Register Criteria for Evaluation*, as well as the "National Register of Historic Places Publication Guidelines for Level of Documentation to Accompany Requests for Determinations of Eligibility for Inclusion in the National Register."

Similarly, documentation for a Keeper's determination of National Register eligibility request for CAJO in its entirety should be prepared based on comprehensive historical and archeological

survey data associated with the trail as a whole, and provided to the Keeper in a manner consistent with the guidelines provided in *National Register Bulletin: How to Apply the National Register Criteria for Evaluation*, as well as the “National Register of Historic Places Publication Guidelines for Level of Documentation to Accompany Requests for Determinations of Eligibility for Inclusion in the National Register.”

Additional documentation as described above should be forwarded to our office’s senior historian, Patrick Andrus for processing and review. If you need further assistance or have any additional questions in this regard, please contact Mr. Andrus at 202-354-2218 or patrick_andrus@nps.gov.

Sincerely,



J. Paul Loether
Chief, National Register of Historic Places and National Historic Landmarks and
Deputy Keeper of the National Register

cc: Mary Ann Naber, Federal Preservation Officer, Federal Highway Administration
Charles Hunt, Superintendent, Chesapeake Bay Office, National Park Service
Charlene Dwin Vaughan, Advisory Council on Historic Preservation
Serena Bellew, Deputy State Historic Preservation Officer, PA
Stephanie Williams, Deputy State Historic Preservation Officer, VA
Elizabeth Hughes, Deputy State Historic Preservation Officer, MD
Timothy Slavin, State Historic Preservation Officer, DE
David Maloney, State Historic Preservation Officer, DC
Sharee Williamson, Associate General Counsel, National Trust for Historic Preservation
Ms. Ruth L. Pierpont, Deputy State Historic Preservation Officer,
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