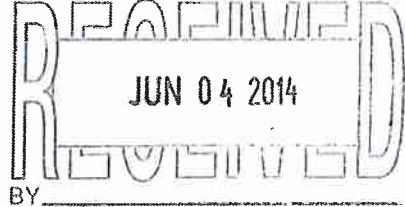


Preserving America's Heritage

June 3, 2014

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

U.S. ARMY CORPS OF ENGINEERS



Ref: *Proposed Dominion Power Transmission Line Surry-Skiffes Creek Whealton Project
James City County, Virginia*

Dear Ms. Rhodes:

On May 13, 2014, the Advisory Council on Historic Preservation (ACHP) received your letter and accompanying documentation, dated May 8, 2014, notifying us that the Corps of Engineers, Norfolk District (Corps) had made a determination of Adverse Effects for the referenced undertaking in compliance with Section 106 of the National Historic Preservation Act (NHPA) and its implementing regulations, "Protection of Historic Properties" (36 CFR Part 800). The Corps requested our response within 15 days from our receipt of the letter. We understand the Corps sent a similar letter, which included extensive background documentation regarding the identification of historic properties and a determination of adverse effects to other consulting parties in the Section 106 consultation with a request for comments within the same time frame. Although the Corps subsequently extended the response time for all consulting parties until June 12, 2014, the ACHP is concerned about the compression of the first three steps of the Section 106 review, and resulting limitations on the ability of consulting parties to provide the Corps with informed comments and concerns regarding the identification of historic properties and the assessment of effects of the proposed Dominion Power Transmission Line (Surry-Skiffes Ck-Whealton) project.

The ACHP is aware that the proposed undertaking has gone through a state-level review in the Commonwealth of Virginia for approval of the project by the Virginia State Corporation Commission. The Virginia State Historic Preservation Officer (SHPO) participated in that process as appropriate to state law. However, the Corps and the consulting parties in the Section 106 review for this undertaking were not part of that review process. The federal Section 106 process is separate and has its own requirements as set forth in Sections 800.3 through 800.6 of 36 CFR Part 800. Although the Corps can make use of the studies carried out for the state review process regarding the presence of historic properties and the effects of the project on such properties, it still must comply with the requirements of the Section 106 review in consultation with all consulting parties.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

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Based on our knowledge of the Corps' review of the project, there does not appear to have been any substantial consultation with consulting parties under Section 106 until the transmittal of the May 8, 2014 letter. This letter includes a massive amount of material, with a finalized APE, the identification of historic properties, and a determination of adverse effects. Regrettably, these findings and determinations were not informed by the knowledge and concerns of the consulting parties, as required by Section 106.

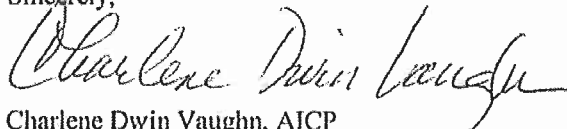
Given the controversial nature of the undertaking, the confusion about how the Section 106 review is being coordinated, and the compressed nature of the steps of the Section 106 consultation, the ACHP formally requests that the Corps suspend the June 12, 2014 deadline for comments. Instead, the Corps should convene a meeting to discuss the historic preservation concerns related to the first 3 steps of the Section 106 review. Further, in order to document a meaningful and good faith consultation regarding this project, such a meeting hosted by the Corps will demonstrate that critical decisions were not made in a vacuum, but informed by those who will be directly and indirectly affected by the proposed undertaking. The Corps also can use such a meeting to clarify the project schedule and milestones, its public outreach strategy, and how the consulting parties will be engaged during the resolution of adverse effects.

Finally, the ACHP would like to remind the Corps that the Section 106 regulations require that the Section 106 review be completed prior to the agency authorizing the initiation of any part of the undertaking, including archaeological data recovery proposed as part of the resolution of adverse effects. We have been copied on a letter from the National Trust on Historic Preservation (NTHP) to the Corps, dated May 23, 2014, which cites a request from a consultant for the project proponent for permission to carry out data recovery excavations on archaeological site 44JC0662 prior to completion of the Section 106 review process for this undertaking. The timing requirement in the Section 106 regulations is intended to ensure that a federal agency and consulting parties have the ability to consider a range of alternatives to an undertaking that may avoid, minimize, or mitigate the adverse effects. If data recovery excavations are allowed to proceed prior to the completion of the Section 106 review, such action would curtail the consideration of alternatives. As the NTHP letter rightly suggests, Section 110(k) of the NHPA may apply in such a situation.

Since the concerns expressed by consulting parties present procedural and policy issues, the ACHP intends to formally enter the Section 106 consultation for this undertaking. We will send our formal notification to the head of your agency under separate cover and copy the Corps District. In the meantime, we look forward to helping the Corps facilitate a Section 106 review that is inclusive and transparent, and that fully considers the effects on historic properties.

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

Sincerely,



Charlene Dwin Vaughn, AICP
Assistant Director
Federal Permitting, Licensing, and Assistance Section
Office of Federal Agency Programs