

Preserving America's Heritage

April 17, 2015

Lynette R. Rhodes  
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Norfolk, VA 23510-1096

US Army Corps of  
Engineers  
Norfolk District Regulatory  
Office  
Received by: RLS  
Date: April 17, 2015

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) would like to provide comments regarding the status of the consultation being carried out by the Corps of Engineers, Norfolk District (Corps) for 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). In comments shared during consultation meetings and in written correspondence in September and December 2014, consulting parties have expressed concerns about effects to a number of historic properties in the Area of Potential Effects (APE) for the undertaking that are of great historical significance for Americans. Based on our review of the consultation, thus far, and the concerns expressed by the consulting parties, the ACHP would like to recommend to the Corps issues it should consider as it proceeds with the Section 106 review.

The proposed undertaking will deliver power from the Surry Nuclear Power Plant in Surry County to the North Hampton Roads Load Area (NHRLA) following the retirement of two coal-powered units at the Yorktown Power Station necessitated by the Mercury Air Toxics Standard (MATS) ruling promulgated by the Environmental Protection Agency (EPA). The transmission line will be constructed in the Historic Triangle, encompassing Jamestown Island, Williamsburg, and Yorktown. This area is the setting for the first enduring English occupation in North America, the development of the Virginia Colony, plantation sites from the 18<sup>th</sup> and 19<sup>th</sup> centuries, military activity associated with the Civil War, and thousands of years of indigenous Native American occupation prior to European settlement. The project includes construction of an overhead transmission line across the James River near Jamestown Island and other important historic sites including: Carter's Grove, Hog Island, Colonial National Park, Colonial Parkway, Yorktown Battlefield, Kingsmill Plantation, and Governor's Land Archaeological District, among others. Throughout the Section 106 consultation thus far, consulting parties have urged the Corps to consider completing the following tasks:

- conducting a thorough evaluation of alternatives that consider impacts to significant historic properties;
- preparing a comprehensive analysis of visual effects that provides consulting parties the opportunity to judge for themselves the nature of effects to the context and viewshed of historic properties;
- consideration of the adverse effect to an National Historic Landmark (NHL);

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- clarification of the Corps' position regarding the status of the Captain John Smith Chesapeake National Historic Trail (CJST) as an historic property and the potential effects of the undertaking to the portion of the trail located within the APE for this undertaking.

## **PROJECT ALTERNATIVES**

The Section 106 regulations require that a federal agency consider alternatives to an undertaking in a manner that takes into account effects on historic properties. Dominion has asserted that the project, as proposed, is the only viable alternative that can be operational in the time frame mandated and in compliance with MATS and North American Electric Reliability Corporation ("NERC") standards. Further, the company suggests that failure to initiate construction and operationalize the project by April 2016, will result in dire consequences for the region, including rolling blackouts with severe economic and quality of life ramifications. Dominion notes that the preferred alternative was justified by its Integrated Resource Plans and concurred in by its Regional Transmission Operator and independent reviewers. The project was approved by the Virginia State Corporation Commission ("SCC") in 2012. However, opponents have suggested that there are legitimate challenges to the information provided to the SCC for review. The ACHP acknowledges that the Corps, as a permitting agency, often does not have the same ability to influence early project planning for an undertaking like a federal agency that is the project proponent. Nevertheless, we agree with the consulting parties that it is important for the Corps to utilize its internal expertise to thoroughly consider the justification for the preferred alternative and the flexibility in schedules for compliance with MATS. The Corps has indicated that its technical specialists are reviewing the undertaking and its justifications. The Corps has also contacted the EPA regarding the need for additional time extensions for compliance with this project. The Corps should share with the consulting parties the outcome of these investigations.

## **VISUAL EFFECTS**

Consultants for Dominion have produced a visual effects assessment for the undertaking which relies mostly on computer line-of-sight modeling and view shed photographic studies, supplemented with limited viewshed simulation studies for a small number of the properties that might be affected. The consultant suggested that for most of the properties where the towers could be seen, the effect would not be adverse. The consulting parties have objected to the consultant's recommendations, and questioned the sufficiency of the visual effects assessment. They assert they cannot independently evaluate the consultant's conclusions without sufficient visual simulations from multiple locations at the properties that may be affected. They have suggested that sight lines and the unobstructed views of land, water, and sky are integral to the experience of the historic landscape which is the setting for the historic properties, many of which were intentionally sited to take advantage of such views. The Corps has asked consulting parties to clarify how the visibility of transmission line towers from an historic property rises to the level of an adverse effect. The ACHP reminds the Corps that the 36 C.F.R. § 800.5(a) discusses the application of the criteria of adverse effect, and considers how an undertaking may cause direct or indirect alteration of the characteristics of an historic property that qualify it for inclusion in the National Register of Historic Places (NRHP), in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. National Register Bulletin 15, "How to Apply the National Register Criteria for Evaluation," includes definitions of many of the terms used. The National Park Service (NPS) and other federal agencies have developed a range of guidance regarding visual effects which we encourage the Corps to review to better understand adverse visual effects. Ultimately, the Corps must consider whether the undertaking will introduce visual elements that are out of character with the historic properties in a way that will change the character of the historic properties' setting if the latter contributes to their historic significance.

## **NHL**

NHLs are designated by the Secretary of the Interior (Secretary) under the authority of the Historic Sites Act of 1935, authorizing the Secretary to identify historic and archaeological sites, buildings, and objects which "possess exceptional value as commemorating or illustrating the history of the United States." Section 110(f) of the NHPA states that federal agencies must, "to the maximum extent possible...minimize harm" to NHLs that may be directly and adversely affected by an undertaking they sponsor, assist, authorize, or approve. In such



cases, the agency should consider all prudent and feasible alternatives to avoid an adverse effect on the NHL. The Corps has already indicated that it will make a determination of adverse effect due to the visual effects on Carter's Grove. The Carter's Grove residence and associated dependencies were intentionally oriented to face the river across landscaped gardens and agricultural fields. Thus, the viewshed from the residence is integrally important to the character and setting of this NHL. The Corps must keep this in mind, and the requirement to minimize harm to the maximum extent, when considering how to appropriately resolve the adverse effect of the undertaking on this historic property.

### **CJST**

The NPS and other consulting parties have expressed the opinion that the CJST should be considered eligible for inclusion on the NRHP, and the Corps should consider the potential for adverse effects to the trail in the APE. As noted by the Virginia SHPO, in its letter to the Corps dated March 11, 2015, the Deputy Keeper of the NRHP has commented on the potential eligibility of CJST in terms of an unrelated undertaking, in a letter dated February 13, 2015. The Keeper notes that the trail was not determined eligible in its founding legislation and suggests that at this time, there is no framework for adequately evaluating the resource and potential effects to it. However, the Keeper recognizes that there may be districts, sites, buildings, structures or objects associated with the trail or parts of it that are eligible for listing, and the trail, as a natural landscape feature, might be included within the boundary of eligible or listed districts and sites within the APE, and considered as contributing to the significance and integrity of such a property if described and justified as such in the documentation. In the 2011 Comprehensive Management Plan and Environmental Assessment for the trail, the NPS lists seven types of trail-related historic resources, and the Keeper suggests that some of these historic resource types may be eligible for listing in the NRHP. As such, the trail may contribute to these as a character-defining feature. The ACHP agrees with SHPO that the Corps should take into consideration the comments of the Keeper outlined in its February 13, 2015 letter.

### **NEXT STEPS**

At this time, the Virginia SHPO has commented on supplementary survey reports filed by Dominion, and the Corps is finalizing its determinations of eligibility for properties in the APE. The Corps has made preliminary effect determinations and a number of consulting parties have commented. Before moving forward, the Corps should seriously consider the comments of consulting parties concerning the adequacy of the visual effects assessments and the reasonableness of requiring additional visual simulation studies. The Corps should also consider whether it has adequately complied with the requirements of Section 110(f) of the NHPA relative to Carter's Grove, an NHL. In moving forward in the Section 106 process, the Corps should follow-up on its expressed intention to utilize its internal expertise to thoroughly consider the justification for the preferred alternative, the unsuitability of other alternatives, and the flexibility of time constraints for compliance with MATS.

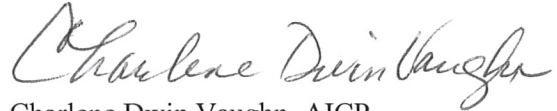
As noted, the Corps should share its findings with the consulting parties. The Corps still must make final determinations of eligibility for some properties and formal determinations of effect and share these with all consulting parties for comment. The Section 106 regulations also require that federal agencies consider long term and cumulative effects of the undertaking. Consulting parties have expressed concern that construction of the transmission line across the James River will facilitate additional industrial development based on the argument that the area, now relatively free from modern development, has been compromised. Thus, the Corps must consider the potential for such a cumulative effect from this undertaking. Consulting parties also have requested that the Corps schedule a public meeting to ensure that the public is fully aware of the potential for adverse effects to significant properties in the Historic Triangle and provided an opportunity to comment. The ACHP believes these requests are reasonable.

During the consultation meetings, the Corps has asked for preliminary suggestions on how adverse effects might be resolved. Consulting parties have suggested that such recommendations are premature because there is no consensus regarding the entire range of adverse effects from the undertaking. The ACHP agrees. The cumulative nature of the adverse effects caused by this undertaking should serve as a context for resolving adverse effects

on individual historic properties. Once the Corps has finalized the adverse effect determination for this undertaking, it can appropriately engage the consulting parties to consider steps to resolve adverse effects. Ultimately, in its public interest review, the Corps must decide if issuance of a permit for the undertaking as proposed will be detrimental to and ultimately contrary to public interest. In doing so, it must keep in mind the adverse effects of the undertaking, the cumulative nature of the effects on historic properties in the APE, the significance of the historic properties affected, and the views of the consulting parties and the public regarding the resolution of adverse effects.

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

Sincerely,

A handwritten signature in cursive script that reads "Charlene Dwin Vaughn". The signature is written in dark ink and is positioned above the typed name and title.

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