



*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 24<sup>th</sup>.

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

Reid J. Nelson  
Director  
Office of Federal Agency Programs

Enclosure