



Preserving America's Heritage

**US Army Corps of
Engineers
Norfolk District
Regulatory Office
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December 10, 2015

Colonel Jason E. Kelly
Commander
U.S. Army Corps of Engineers, Norfolk District
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 Colonel Kelly:

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). On October 15, 2015, the Corps held a consultation meeting for the Section 106 consulting parties. This was followed by a public meeting on October 30, 2015, during which local residents and stakeholders shared their comments with the Corps. Subsequent to these meetings, a number of consulting parties provided written comments to the Corps. Although we were copied on consulting party comments, to date, we have not received a summary of the public meeting comments, or the Corps' analysis of appropriate actions in response to comments.

On December 3, 2015, the ACHP met with the primary signatories to a Section 106 agreement: the Corps, the Virginia State Historic Preservation Officer (SHPO), the Secretary of Natural Resources for the Commonwealth of Virginia, and representatives of Dominion Power, the project proponent. The purpose of this meeting was to discuss the status of the Corps' Section 106 review, and to clarify the process, as set forth in the Section 106 regulations, for the consultation to move forward. In addition, we discussed gaps in the Section 106 documentation as well as outstanding concerns expressed by the consulting parties. This letter, therefore, follows up on our recommendations regarding the next steps that the Corps must take as it prepares to distribute a draft Section 106 agreement document to initiate the consultation to resolve adverse effects.

The Corps made a finding of Adverse Effect for the undertaking on May 21, 2015. Since that time, the Corps has taken steps to address a number of issues summarized in the ACHP letters of April 7, 2015, and June 19, 2015. Following a request from the Corps for a formal determination, the Keeper of the National Register of Historic Places (National Register) determined on August 14, 2015 that the portion of the Captain John Smith Water Trail (CAJO) located within the Area of Potential Effects (APE) for this undertaking is eligible for inclusion on the National Register. The Corps also worked with Dominion and its consultant to address consulting party concerns about the lack of specificity of the Adverse Effect determination.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

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On October 1, 2015, the Corps provided the consulting parties with a Consolidated Effects Report that lists the rationale for characterizing the effects of the undertaking for the historic properties identified in the APE.

On October 2, 2015, the Corps also provided a report presenting its preliminary conclusion that of all the alternatives considered during the Commonwealth of Virginia State Corporation Commission's review, only the preferred alternative on the James River and an additional alternative crossing the Chickahominy River meet the project purpose and reasonably comply with what is considered appropriate evaluation criteria: project cost, timing, and technical feasibility.

At the consulting party meeting on October 15, 2015, the Corps attempted to engage the consulting parties in a discussion of possible steps to resolve the adverse effects of the undertaking. However, during the meeting and in subsequent correspondence, the consulting parties indicated that it was premature to consider discussion of the resolution of adverse effects before there is consensus on the full nature of the adverse effects. Consulting parties continue to have differences with the Corps regarding the nature of the effects to a number of the historic properties. Further, there is concern that the Corps has yet to adequately consider the indirect and cumulative effects of the undertaking. The major concerns regarding specific historic properties include:

- The eligibility of, and effects of the undertaking on, the Washington-Rochambeau Trail;
- The consideration of CAJO as a distinct historic property that is not subsumed in the Jamestown-Hog Island cultural landscape;
- Consideration of effects on Lee Hall and its relation to the Lee Hall Village Historic District;
- The nature of effects to Fort Huger, Fort Crafford, and the Battle of Yorktown, as referenced in a letter from the National Park Service (NPS) to the Corps dated October 22, 2015.

Consulting parties have reiterated that they do not believe the Corps' alternatives analysis includes consideration of the adverse effects to the nationally significant historic properties in the APE and consideration of the real costs of the preferred alternative taking into account: the value of the affected historic properties as public assets; the costs to resolve the adverse effects to those properties; and the question of whether such effects to these unique and significant properties can actually be appropriately mitigated. Further, there are questions regarding the propriety of using Dominion's forecast data given recent changes in the project area that no longer result in the need for the same level and type of energy improvements. We would like to encourage the Corps to consider carefully the analysis provided by the NPS in its letter, dated November 12, 2015, which clearly articulates a central issue that consulting parties continue to express about the importance of the landscape, as the context and setting of many of the most significant historic properties affected by this undertaking. In its letter, the NPS provides a convincing argument for the importance of the surrounding landscape as central to the experience of setting, feeling, and association for the American public and other visitors who ascribe significance to these historic properties. The undertaking may alter the context in a way that reduces the ability of these properties to continue to communicate their significance. As such, the Corps' assessment of visual effects needs to be sensitive to the ways in which the undertaking may modify characteristics that contribute to the eligibility of many of the most significant historic properties in the APE.

The Corps should be prepared at Step 4 of the four-step Section 106 review process to provide to consulting parties the required background documentation along with a draft Section 106 agreement to facilitate consultation. As noted during the meeting on December 3, 2015, we believe it may be difficult for the Corps to reach consensus with consulting parties regarding the resolution of adverse effects given the ongoing disagreements among consulting parties about the nature and full extent of the adverse effects. Accordingly, we recommend that the Corps address all outstanding issues, to the fullest extent.

We understand that the Corps intends to provide responses to consulting parties in the very near future. Following receipt of this additional information, including clarification from the project proponent, consulting parties can focus on proposed avoidance, minimization, and mitigation measures. We urge the Corps to further explore the potential for indirect and cumulative effects from the undertaking, keeping in mind the comments of the NPS, the National Trust on Historic Preservation (NTHP), and other consulting parties.

We also request that the Corps further explore and clarify the true nature of the time constraints on the Section 106 consultation related to the Mercury Air Toxics Standard (MATS) ruling promulgated by the Environmental Protection Agency (EPA), and consider how the Corps and the EPA could cooperate to provide for appropriate time to complete the Section 106 review process. Finally, the Corps should consider ways that it could ensure that its consideration of alternatives takes into account the effects to highly significant historic properties, and includes acknowledgement of the potential costs for resolution of adverse effects to nationally significant historic resources that may be difficult to appropriately mitigate. As the NPS noted in its letter of October 22, 2015, “the multiplicity of effects to so many unique resources and the region, combined with the sheer magnitude and complexity of any mitigation needs to address these effects” all need to be considered.

At the December 3, 2015 meeting, an outline was shared for a series of mitigation measures to resolve adverse effects of the undertaking. We indicated at the meeting that this proposed set of mitigation measures projects will need to be fleshed out with more detail and incorporated into a Section 106 agreement document that will be shared with the consulting parties for their review and comment. The Corps and Dominion must truly consider the views of consulting parties rather than debating them about the merits of the proposed mitigation plan, and be open to negotiating stipulations. Ultimately, as we noted in our letter of April 7, 2015, the Corps must decide if issuance of a permit for the undertaking as proposed will be detrimental and contrary to the public interest. Likewise, the Corps must keep in mind that the adverse effects resulting from this undertaking, including alteration of the setting of and long-term cumulative effects on nationally significant historic properties, may make it challenging to achieve a reasonable balance between the project goals and historic preservation values.

If you have any questions, please contact me at 202-517-0207, or via e-mail at cvaughn@achp.gov. Dr. John Eddins can be reached at 202-517-0211, or via e-mail at jeddins@achp.gov.

Sincerely,



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