



United States Department of the Interior

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**US Army Corps of
Engineers
Norfolk District
Regulatory Office
Received by: RLS
Date: Feb 11, 2016**

William T. (Tom) Walker
Chief, Regulatory Branch
USACE, Norfolk District
803 Front Street
Norfolk, VA 23510

Dear Mr. Walker:

The February 2, 2016, consulting party meeting resulted in substantial discussion on several topics. We appreciate the Army Corps of Engineers (the Corps) response that there remains work to be done on several outstanding issues that have been repeatedly stated by the consulting parties and we concur with the Advisory Council on Historic Preservation (the Council) comments regarding the status of the Section 106 process for the project.

While the National Park Service (NPS) found much of the meeting discussion productive we are concerned with the Corps description that they are a “neutral broker” in this process. As the federal agency responsible for meeting the requirements of the National Historic Preservation Act, the National Environmental Policy Act and other laws and regulations pertinent to the Dominion proposal, the Corps is the lead federal agency for meeting these requirements. Information, analysis and conclusions put forth as the result of the Section 106 process must be Corps products (whether produced by Dominion or not) and represent the Corps conclusions. For example, the NPS and other consulting parties continue to disagree with Dominion’s assessment of effect. Despite extensive correspondence and dialogue on the topic, the Corps has not yet produced a version of an effects assessment that represents the agencies finding. Assisting the Corps in its deliberations for the permit proposal will not be successful without the lead agency “owning” the process and being very clear to all parties the stance the Corps takes on all draft products and materials being shared.

The NPS and other consulting parties continue to have concerns regarding a sufficient completion of the assessment of effect. As we have stated multiple times, Step 3 of the Section 106 process, Assessment of Effects, must be thoroughly completed before any valuable discussion regarding a mitigation strategy (Step 4: Resolution of Effects) can initiate. The progress of the Section 106 process for this project would greatly benefit, and requires, a clear description and understanding of the six adverse effects that have been identified. A clear description of each individual adverse effect *and* the severity of each effect, while not required by the Advisory Council on Historic Preservation (the Council) regulations (36 CFR 800), would help the Corps to gain a consensus with the consulting parties on understanding the effects so that the Corps can move on to the resolution of adverse effects step. The NPS and other consulting parties have requested this information multiple times during the process without any response other than “the regulations do not require it.” The fact that regulations do not specifically require a description of the

adverse effects does not mean that one is not sometimes necessary. The undisputed significance and iconic value of the resources being adversely affected here require a clear understanding of the adverse effects each would experience as a result of the proposed project. Furthermore, the fact that disagreement regarding the nature and severity of the adverse effects leads us to the conclusion that the adverse effects are not clearly understood by all parties. In that case, clearly describing the adverse effects will help all parties to come to agreement on the specific nature of each adverse effect. This information will also be a further step for the Corps to be able to eventually move into the resolution of effects step of the 106 process.

The Council was very clear at the Feb. 2, 2016, meeting that the assessment of effects is not yet complete, and that it must be completed before the Corps moves to resolution of effects. The Council asked that the Corps complete the assessment of effect step and provide it to the consulting parties for review and for SHPO concurrence. Resolution of adverse effects can only be undertaken when Step 3 is completed, including consulting party comment and SHPO concurrence. Dominion's desire to move into mitigation discussions is well known which is why it remains unclear why, after repeated requests, Dominion or the Corps have not made any effort to sufficiently complete the assessment of effects.

As discussed in the Feb. 2, 2016, meeting, Dominion's visual analysis and photo simulations remain unsatisfactory. We also discussed that consulting party comments (from November) on the assessment of cumulative effects have yet to be addressed. The NPS reiterated our concerns in our Jan. 29, 2016, letter. Adequate visual analysis, including accurate photo simulations, and proper analysis of cumulative effects are critical to finalizing the assessment of effects.

Dominion, in their response to consulting party CREA comments stated that "...the Corps will consult further during the mitigation process to determine the final list of adversely affected properties." (Dec. 18, 2015 Dominion Response to Comments). Furthermore, the Corps stated on Feb. 2, 2016, there is "work to be done" on the assessment of effect, information gaps exist, and discussion on "avoidance and minimization" of effects has not yet occurred. The NPS looks forward to consulting further on the assessment of effects to finalize this critical step.

We appreciate the Corps offer to meet with us next week and would like to talk with you about several topics including the question posed by the Corps during the meeting:

is there sufficient information now to make a permit decision, or is there more information that can be learned through further assessment (such as an Environmental Impact Statement) that would influence the decision?

We are confident there is already sufficient information to demonstrate the proposed project would have a significant adverse impact on multiple resources and values and that the permit should be denied. However, we are also confident that additional analyses such as those mentioned in the consulting parties meeting and in written correspondence would further illustrate the magnitude and scope of effects. As the NPS has stated numerous times in the past, the impacts of the proposed project are clearly significant and continuing to pursue the current Dominion proposal unquestionably requires an Environmental Impact Statement (EIS). A Finding of No Significant Impact via an Environmental Assessment is simply not reasonable.

While the Section 106 process should result in a thorough evaluation of the effects to historic properties, an EIS will allow the Corps to demonstrate impacts under many other topics such as tourism, visitor experience, natural resources etc. Furthermore, undertaking an EIS would allow for the impacts to historic properties to be evaluated in context with other impact topics, providing the Corps with a complete picture of the broader range of impacts that will result. Moreover, if those analyses were in the context of an EIS which is considering a full range of alternatives we expect more viable and less impactful alternatives would be discerned.

We look forward to meeting with the Corps on Feb. 18, 2016, to discuss these outstanding issues including completion of the assessment of effects and specific approaches and scopes for any additional analyses.



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