

Preserving America's Heritage

**US Army Corps of  
Engineers  
Norfolk District  
Regulatory Office  
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March 2, 2016

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 additional 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 February 2, 2016, the Corps held a consultation meeting for the Section 106 consulting parties. The ACHP commends the Corps for a well conducted and productive meeting which enabled the consulting parties to engage more fully with the Corps and the project proponent and articulate their concerns about the effects of the undertaking and gaps in the Section 106 review. At the meeting, the Corps requested that consulting parties follow-up with correspondence regarding specifics about their concerns. The ACHP submits these comments for your consideration, and to clarify for the Corps additional steps required to conclude the Section 106 review.

### ***Alternatives Analysis***

The ACHP would like to reiterate the importance of addressing concerns expressed by the consulting parties regarding the adequacy of the Corps' analysis of alternatives to the preferred alternative, involving construction of a 500 kV transmission line across the James River at historic Jamestown, as proposed by the project proponent, Virginia Electric and Power Company, known as Dominion Virginia Power (Dominion). In our previous letter, dated January 29, 2016, we referenced the report developed by the National Parks Conservation Association (NPCA) and Princeton Energy Resources International (PERI), entitled *Dominion's Proposed "Surry-Skiffes Creek Project" – Issues and Alternatives* (NPCA/PERI Study), dated November 13, 2015, which challenged the assumptions and data used to make predictions about load growth, usage, and system reliability. In a letter dated February 17, 2016, NPCA clarifies that it provided an updated energy analysis further challenging central aspects of Dominion's purpose and need and had a follow up meeting with the Corps, Dominion, and PERI in January 2016.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

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As we understand, NPCA is still awaiting information promised by Dominion regarding the power flow analyses input assumptions and detailed technical results that served as the basis for its original energy needs assessment and an updated assessment in January 2016. We agree with NPCA that in order to have a transparent and complete record for consideration in the Section 106 review, Dominion should provide the Corps, the consulting parties, and the public the analysis on which it has based its preferred alternative. The Corps' justification for the purpose and need of the preferred alternative is of central importance given the uniqueness and significance of the historic properties that will be affected and the assertion by many that the adverse effects from the undertaking cannot be appropriately mitigated. In light of this information and the challenges to the justification for the preferred alternative, we urge the Corps to reconsider the criteria it used to make a 'preliminary' evaluation of 'feasible' alternatives in its *'White Paper on Alternatives.'* That will enable the Corps to realistically evaluate the feasibility of other, more appropriately scaled alternatives that would better serve the broader public interest. As suggested by Michael Caldwell, Regional Director of the Northeast Region of the National Park Service (NPS), in his letter to the Corps dated January 26, 2016, the Corps' consideration of alternatives should take into account the effects to the nationally significant and unique historic properties in the Area of Potential Effects (APE) and acknowledge the potential costs for resolution of effects that may be difficult or impossible to appropriately mitigate. The Corps analysis of alternatives should also be influenced by its obligation, under Section 110(f) of the NHPA (54 U.S.C. 306107), which requires a federal agency to minimize, to the maximum extent possible, harm to any National Historic Landmark (NHL) that may be directly and adversely affected by an undertaking.

### ***Section 106 Procedural Issues***

The four-step process outlined in 36 C.F.R. part 800 requires that each step be completed accurately and fully in order to inform the following step. However, in this Section 106 consultation, the Corps has overlapped many of the steps, with the result that consulting parties have had difficulty discerning how or even whether the Corps has completed each step of the Section 106 process. This problem has been particularly evident as the Corps moved to consult regarding resolution of adverse effects before fully completing previous steps. This has caused confusion and limited the ability of consulting parties to comment in a fully informed manner. The Corps also has been unclear about its own views regarding findings and determinations about eligibility and effects when documents generated by Dominion's consultants were shared. As a result, consulting parties have been unsure whether the conclusions presented in the documentation represented the Corps' formal findings and determinations or just the professional recommendations of the proponent's consultants. It is important for a federal agency to carry out, and to conclude properly, each of the steps of the Section 106 review, in a way that clearly indicates the agency's formal findings and determinations. Such coordination signals the opportunity for formal response by consulting parties. The Corps' administrative record should clearly demonstrate its compliance with the procedures set forth in the Section 106 regulations.

Although the Corps has formally determined that the undertaking will have an adverse effect on historic properties, it should clarify and complete its own consideration of the adverse effects in a way that addresses the concerns expressed by the consulting parties. The Corps should provide a final list of historic properties that it has determined are adversely affected, and clarify the nature and severity of the adverse effect to those properties and the encompassing historic district. The consulting parties continue to stress that there are flaws in the visual effects assessment provided by Dominion and relied on by the Corps. In consultation meetings and correspondence, consulting parties have repeatedly suggested that the Corps should require photographs and simulations from an adequate range of viewpoints within the historic district and along the Captain John Smith Chesapeake National Historic Trail (CAJO) to illustrate the extent and magnitude of the effects in the APE.



The Corps' consideration of cumulative effects has also been inadequate, focused on visual effects to properties already identified in the APE, during a limited time frame. We recommend that the Corps acknowledge and explore the potential for reasonably foreseeable effects that may result during the life of the project that could further diminish the characteristics that make the properties in the APE eligible. As noted by the NPS in its January 26, 2016, letter, it is particularly important that the Corps assess visual effects in a manner that is sensitive to the ways in which the undertaking may modify the characteristics that contribute to the eligibility of many of the most significant historic properties in the APE. This includes Carter's Grove, an NHL that was originally designed and landscaped to achieve a calculated view across its holdings to the river and present an intentional appearance to travelers on the James River, the major highway of the period.

We recognize that the Corps and Dominion have begun to address the importance of the setting and a landscape perspective in considering the adverse effects and proposed resolution of effects. However, the Corps still does not adequately acknowledge and address how the alterations to setting and context may alter the visitor experience at historic properties of foundational national significance to the American people. The proposed changes to the setting and context of these nationally significant historic properties may alter the characteristics that make those properties eligible, and diminish the ability of those properties to communicate their significance to those who ascribe significance to them. In essence, the undertaking could dramatically alter the visitor experience at these historic properties in a way that challenges their eligibility for inclusion on the National Register. The consulting parties, therefore, have repeatedly raised concerns about the effects of the undertaking on the visitor experience and heritage tourism. As suggested by the NPS in its letter of January 26, 2016, and echoed throughout the consultation by other consulting parties, Jamestown and its surrounding landscapes are at the heart of the nation's beginning and Congress has recognized the James River as "America's Founding River." The national and local governments, philanthropists, preservationists, and the American public have invested in a century-long conservation effort to preserve and celebrate this location, involving:

... huge investments on a landscape scale throughout the region in land conservation, tourism, resource documentation, archaeology, cultural landscape designations, numerous National Register of Historic Places listings, the establishment of three historical units in the National Park system, and the pursuit of a World Heritage Site designation for Jamestown (NPS 1/26/2016).

The proposed undertaking creates effects that directly contravene the hard won results of that extensive conservation effort and challenge the potential for future investment to preserve the historic properties and enhance visitor experience. The proposed undertaking also potentially challenges the success of the nomination of Jamestown for World Heritage Site designation, which has not been fully considered in coordinating the Section 106 review.

The recent development of CAJO has been a part of this conservation effort. The NPS and other consulting parties have stressed the need for the Corps to explicitly recognize and consider the effects of the undertaking to the CAJO itself, as well as to CAJO as a part of the historic district. The portion of CAJO located in the APE is the keystone section of the water trail. It is intended to facilitate the visitor experience of these foundational historic properties and their setting from the water. As consulting parties have reiterated, construction of the transmission line across the James River would result in the loss of a major character-defining feature and would diminish the overall integrity of the resource. It would also compromise its function as an enhancement to and facilitation of the visitor experience.

We would like to restate that in considering the nature of the adverse effects, the Corps has yet to demonstrate that it has complied with Section 110(f) of the NHPA regarding Carter's Grove, an NHL. Section 110(f) is a statutory requirement that instructs federal agencies to take steps to minimize, to the maximum extent, harm to NHLs from undertakings they sponsor, authorize, or assist. Direct physical effects and indirect effects such as visual effects can all *directly* result from an undertaking and trigger federal agency responsibility to comply with Section 110(f). The use of the term "directly" in Section 110(f) of the NHPA and 36 C.F.R. § 800.10(a) refers to causation and not physicality. Thus, visual effects can be a direct consequence of an undertaking, and trigger the federal agency's responsibility to comply with Section 110(f). Accordingly, the Corps should document how Section 110(f) has been considered in this undertaking.

### *EIS*

The Section 106 regulations address coordination of the Section 106 review with a federal agency's review of a project under the National Environmental Policy Act (NEPA), and do not dictate selection of an Environmental Assessment (EA) or Environmental Impact Statement (EIS). The Corps has indicated that the scale, intensity, and nature of effects from an undertaking inform the Corps' decision about the level of NEPA review it will engage in. As we noted in our letter of January 29, 2016, development of an EIS requires a more comprehensive analysis, and requires that the federal agency engage more fully with the public, stakeholders, and consulting parties. The challenge to the purpose and need of the undertaking articulated in the NPAC/PERI Study, as well as the nature of the adverse effect from the preferred alternative on the significant historic properties in the APE, are sufficient justification for the Corps to consider developing an EIS. Such a holistic review would go beyond evaluation of the information already gathered, and provide for greater public participation, and a meaningful analysis of other alternatives which seriously considers the effects to unique and nationally significant historic properties and other issues.

### *Conclusion*

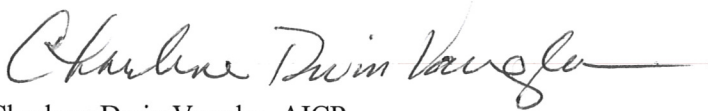
In conducting its permit review, the Corps engages in a public interest review. The Corps should keep in mind that the larger public interest should not be measured only in terms of the costs and environmental effects of insuring a reliable energy supply, but also in terms of the value of historic assets and how they contribute to the quality of life. We understand the pressure the Corps is under to make its decision. However, the analysis provided by NPCA strongly suggests that the actual potential for failures in electrical service is not as great as has been suggested. We agree with NPCA that the Corps should engage in a more robust analysis of alternatives that are appropriately scaled to address updated load projections in light of improvements in technology and reductions in cost.

The mitigation measures proposed by Dominion in the draft Memorandum of Agreement (MOA) may be worthy of review. However, they may not adequately address the fundamental and pervasive nature of the effects, which the consulting parties have agreed is unmitigable. The December 11, 2015 letter from the Director of the NPS, John Jarvis, to Lt. General Bostick, reminds the Corps that the recent Presidential Memorandum on *Mitigating Impacts on Natural Resources from Development* advises federal agencies that, "When a resource's value is determined to be irreplaceable, the preferred means of achieving [the mitigation goal] is through avoidance, consistent with applicable legal authorities." In this case, with such significant adverse effects to unique, extremely important, and irreplaceable historic properties of national significance, it may not be appropriate to attempt to resolve adverse effects by resorting to alternative mitigation. Further, we believe that the consideration of mitigation is premature until the Corps carries out

an analysis of reasonable alternatives in good faith, based on current and verifiable information, and addresses the gaps in the Section 106 review in consultation with consulting parties.

We look forward to receiving from the Corps its proposed next steps to advance the Section 106 consultation for the proposed Dominion Power Surry-Skiffes Ck-Whealton Transmission Line Project. If you have any questions, please contact me at 202-517-0207 ([cvaughn@achp.gov](mailto:cvaughn@achp.gov)), or Dr. John Eddins at 202-517-0211 ([jeddins@achp.gov](mailto:jeddins@achp.gov)).

Sincerely,

A handwritten signature in cursive script, reading "Charlene Dwin Vaughn", followed by a horizontal line.

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