

*Preserving America's Heritage*

**US Army Corps of  
Engineers  
Norfolk District  
Regulatory Office  
Received by: RLS  
Date: May 3, 2016**

May 3, 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 acknowledge receipt of your letter dated April 5, 2016, which responded to our letter of March 2, 2016, regarding the status of the consultation being carried out by the Corps of Engineers, Norfolk District (Corps) in order to comply 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) for the referenced undertaking. We appreciate the effort the Corps put into clarifying the measures it has taken for Steps 1 to 3 of the Section 106 consultation process. However, there are still gaps in the Corps' response following the issues and concerns expressed by consulting parties during the February 2, 2016, consulting parties meeting in Williamsburg, Virginia. Subsequent to the Corps' issuance of a draft Memorandum of Agreement (MOA) in late December 2015 and supplementary information in January 2016, developed by the project proponent, Virginia Electric and Power Company, known as Dominion Virginia Power (Dominion), consulting parties clarified that it was premature to comment on the resolution of adverse effects. While the Corps letter of April 5, 2016, does not fully address all the issues that were raised, we believe that at this juncture, we should proceed to review the latest version of the draft MOA prepared by Dominion. Accordingly, we request that you share the MOA with consulting parties and schedule another consultation meeting during which the Corps and Dominion will be prepared to discuss the following issues which must be resolved in order for there to be meaningful discussions regarding mitigation.

### **Alternatives Analysis**

The Corps response to the request for a more thorough analysis of alternatives was disappointing. The Corps' response focuses on perceived limitations on its authority to consider alternatives based on the protocols it has developed to comply with the Clean Water Act, Section 404(b) (1) Guidelines (Guidelines), and the Public Interest Review (PIR). As you note in your letter, "... the Guidelines and PIR provide the substantive criteria" for the Corps' decision making process and the basis for deciding how rigorously alternatives should be investigated. You acknowledge that the National Environmental Policy

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Act (NEPA) implementing regulations call for evaluating a full range of reasonable alternatives, but suggest that consideration of alternatives in the Corps' permit review is more limited. Based on the Corps' summary, it appears that the Guidelines are central to the Corps' protocols for alternative analysis and are centered on selection of the least environmentally damaging practicable alternative (LEDPA). This suggests that the Corps can only consider effects to aquatic resources as a sufficient basis for requiring an alternative to a project proponent's preferred alternative. The Corps appears to divide up its consideration of the permit review, focusing on selection of the LEDPA based ultimately only on comparison of effects to fractions of acres of wetlands, which are replaceable, and other aquatic resources that may be impacted without due consideration of effects to historic properties of major national significance and other related issues. The PIR only focuses on the alternative available as a result of the LEDPA analysis, thereby. This appears to eliminate the ability to consider other essential problems with the preferred alternative, including effects of the preferred alternative on historic properties.

We would like to remind the Corps that regardless of the protocols developed to provide a step-by-step process for Corps permit review staff, under the Section 106 regulations, the Corps is required to consider alternatives in a way that takes into account effects on historic properties. As noted in our letter of March 2, 2016, 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. Further, this review addresses the assertion by many consulting parties that the adverse effects from the undertaking cannot be appropriately mitigated. We would like to reaffirm that the Corps has a responsibility to realistically evaluate the feasibility of other, more appropriately scaled alternatives that also consider effects on historic properties and would better serve the broader public interest.

### **Ongoing Concerns of Consulting Parties**

ACHP understands that in its letter dated February 17, 2016, the Virginia State Historic Preservation Officer (SHPO) reaffirmed its earlier concurrence with the adverse effect finding for the undertaking as a whole. Likewise, it concurred with the Corps' effect determinations for individual historic properties referenced in a revised list provided by the Corps on January 29, 2016. The SHPO also recognized the ongoing concerns of consulting parties about clarifying the full range and severity of effects to historic properties.

Following the Corps' revision of its adverse effect determination and issuance of the draft MOA describing a proposed mitigation package, the Corps met with consulting parties on February 2, 2016. During this meeting and in follow-up correspondence, consulting parties articulated ongoing concerns about the analysis of alternatives and gaps in the Section 106 process. The gaps that the Corps agreed to evaluate prior to adjourning the meeting included the following topics:

- Methods and adequacy of visual effects analysis;
- Long-term and cumulative effects;
- Visitor and tourism experience;
- Sufficiency of focus on the Captain John Smith Chesapeake National Historic Trail (CAJO);
- Concerns about potential submerged resources;
- The Washington–Rochambeau revolutionary route National Historic Trail (NHT);
- Socio-economic analysis focusing on impacts to preservation efforts and tourism in the APE;
- Corps compliance with Section 110(f) of the NHPA for effects to Carters Grove, a National Historic Landmark (NHL).



As we understand, National Park Service (NPS) staff have met with the Corps to discuss examples, suggestions, and expectations about a revised analysis of visual effects, and based on that meeting have expectations about additional information from the Corps. In the broader perspective, consulting parties continue to express concern about the lack of socio-economic analysis focusing on impacts to preservation efforts and tourism in the APE, and resultant changes in visitor experience. As we noted in our letter of March 2, 2016, 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 historic properties may alter the characteristics that make them 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 may compromise their eligibility for inclusion on the National Register.

These concerns have prompted consulting parties and other stakeholders to continue to request that the Corps have Dominion develop an Environmental Impact Statement (EIS) rather than an Environmental Assessment (EA) to comply with NEPA for an undertaking of this scope and magnitude. We agree that a more comprehensive study would facilitate consideration of a full range of reasonable alternatives, a socio-economic analysis, and review of other environmental impacts that would fully consider impacts to historic preservation efforts and the visitor experience.

### **Conclusion and Next Steps**

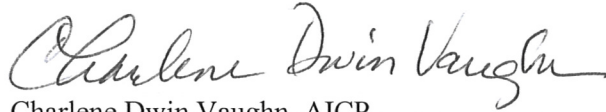
It is our understanding that Corps will be meeting with National Parks Conservation Association (NPCA) on May 9th to discuss the gaps in Dominion's background documentation regarding predictions about load growth, usage, and system reliability. We also understand that NPS energy specialists are drafting a report that will evaluate Dominion's assumptions and the data that informed the basis for the purpose and need for the preferred alternative. We are hopeful that the proposed meeting and the NPS study will facilitate a more in-depth discussion with the Corps regarding alternatives analysis and the effects the preferred alternative will have on nationally significant historic properties.

The draft MOA and mitigation package which was circulated to consulting parties on December 30, 2015, acknowledges the importance of the context of the historic properties affected, through the projects proposed for funding. However, the resolution of adverse effects that Dominion proposed focuses almost exclusively on mitigation. Considering the significance of the historic properties affected, and the nature of the effects, we encouraged Dominion that it should also address avoidance and minimization of the primary effects sufficiently. Since we have not received a revised version of the MOA, we do not know if our recommendation was addressed. If it has been, and a new version of the MOA is available, we recommend that it be distributed to consulting parties prior to scheduling another consulting parties meeting.

As we move forward, we recommend that the Corps circulate the current version of the revised MOA, schedule a consulting party meeting, and provide any additional updates related to the Corps' meetings with consulting parties. While this meeting may be challenging, because of the unresolved concerns of the consulting parties, we trust that it will provide a forum to evaluate whether or not the adverse effects to the historic properties in the APE are mitigable and whether or not Dominion's proposed mitigation plan sufficiently addresses the prominence of the nationally significant historic properties which will be adversely affected. More importantly, the revised MOA should provide a framework for resolving reasonably foreseeable long term and cumulative effects on historic properties in the future.

We look forward to receiving the Corps response and assisting the Corps and consulting parties in further consideration of these issues as we proceed in 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 or Dr. John Eddins at 202-517-0211/ jeddins@achp.gov.

Sincerely,

A handwritten signature in cursive script, reading "Charlene Dwin Vaughn". The signature is written in dark ink and is positioned above the printed name and title.

Charlene Dwin Vaughn, AICP

Assistant Director

Federal Permitting, Licensing, and Assistance Section

Office of Federal Agency Programs