



Preserving America's Heritage

**US Army Corps of
Engineers
Norfolk District
Regulatory Office
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July 26, 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) has reviewed the revised draft Memorandum of Agreement (MOA) provided by the Corps of Engineers, Norfolk District (Corps) on June 13, 2016. The revised draft MOA, which has been developed by the Corps and the project proponent, Virginia Electric and Power Company / Dominion Virginia Power (Dominion), is submitted as part of the Corps' 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). This letter is intended to provide a summary of major areas of concern to the ACHP regarding the revised draft MOA. We intend to provide more detailed comments after all comments have been reviewed by the Corps, and shared with the ACHP.

Ongoing Concerns about the Consideration of Alternatives

The ACHP acknowledges that the preferred alternative, the Surry-Skiffes Creek-Wheaton Transmission Line, is the result of Dominion's long term planning process. The preferred alternative is proposed to meet current and future electricity demands in North Hampton Roads Load Area (NHRLA) consistent with the North American Electric Reliability Corporation (NERC) reliability standards, following closure of coal burning power units at the Yorktown Power Station in compliance with the Environmental Protection Agency's (EPA) Mercury Air Toxic Standards (MATS) rule. Dominion also has asserted that the proposed undertaking is preferable in terms of cost considerations, technological feasibility, and siting / land use restrictions. The preferred alternative also was approved during the state-level review process conducted by the Commonwealth of Virginia State Corporation Commission (Virginia SCC) in 2013.

While the mitigation package has been clarified in the revised draft MOA, many consulting parties continue to have concerns about an overhead crossing because they believe that the proposed mitigation does not adequately resolve visual effects that will alter the context, setting, and feeling of the Historic District along the James River. Research developed by the National Parks Conservation Association ("NPCA") and Princeton Energy Resources International ("PERI") and a technical review by the National Park Service (NPS) has challenged the accuracy of Dominion's predictions about levels of growth in demand and conclusions about rolling blackouts. We also were advised that Dominion has the capability

ADVISORY COUNCIL ON HISTORIC PRESERVATION

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to use natural gas instead of coal at Units 1 and 3 of Yorktown Power Station, suggesting that the timing constraints for permitting and construction of this project to achieve compliance with the EPA MATS directive might have more flexibility than has been assumed. Further, there is a concern that the proposed 500kV transmission line, which Dominion feels is technically too difficult to bury under the river, is double the capacity needed to meet the demand predictions.

The ACHP is not convinced that Dominion has adequately answered those challenges, notwithstanding the responses provided by Dominion, the Corps, and PJM Interconnection (PJM), the regional transmission organization that coordinates the movement of wholesale electricity in the region. NPCA asserts that the proposed 500kV capacity transmission line is not needed, and that Dominion could bury a 250 kV transmission line under the river that could meet appropriately revised and updated demand predictions. As we have noted in previous correspondence, the ACHP does not have the expertise to conclusively assess Dominion's justification for this preferred alternative or the challenges that have been presented by consulting parties and other stakeholders. Ultimately, it is the Corps' responsibility to carry out a good faith and thorough analysis of the justification for this alternative, taking into account the effects on significant historic properties. We believe the Corps should clearly articulate its consideration of this alternative, and share the information regarding its feasibility with the consulting parties and the public before the ACHP and Corps make a decision regarding the adequacy of Dominion's proposed mitigation package.

Effects to a National Historic Landmark and the Applicability of Section 110(f) of NHPA

It is the ACHP's opinion that the requirements of Section 110(f) of the NHPA apply to the effects of the undertaking on Carter's Grove, a National Historic Landmark (NHL). The distinction that the Corps is making between direct and indirect effects is not supported by an appropriate interpretation of the statute. As it stands, the mitigation proposed may not meet the standard specified in Section 110(f) which requires that a federal agency ". . . to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to any NHL that may be directly and adversely affected by an undertaking." Furthermore, the Section 110(f) standard must be applied to the consideration of alternatives. For example, if the transmission line can be buried under water as suggested above, this alternative should be further evaluated, as it would demonstrate the additional planning undertaken by the Corps to minimize harm to the NHL by avoiding the major effects of the proposed undertaking on the setting and view shed of Carter's Grove.

Long Term and Cumulative Effects

In our letter of March 2, 2016, we stated that the Corps' consideration of long term and cumulative effects had been inadequate. We recommended that the Corps more fully explore the potential for reasonably foreseeable effects resulting during the life of this undertaking that could further diminish the characteristics that make the historic properties in the APE eligible for listing in the National Register. The NPS suggested that the Corps consider the existing character of the James River and its shoreline and the low-scale of effects of the limited existing modern development on the Historic District and how the preferred alternative will dramatically alter that character. Many consulting parties are still concerned that the resulting industrial presence in the Historic District will negatively affect the continuum of conservation efforts that have preserved the Historic District up to this time. The analysis provided by Dominion has not discounted this. Many consulting parties fear, as suggested by the Virginia State Historic Preservation Officer (SHPO), that "the addition of an overhead power line to this largely undeveloped section of river will irreparably alter the character of the area, solidifying its status as an industrial/commercial corridor and opening the door to subsequent development and associated cumulative effects."

The adverse effects need to be weighed in the consideration of alternatives and also in the development of mitigation measures. The revised draft MOA attempts to provide a framework for addressing aspects of some of the long term and cumulative effects of the undertaking on historic properties. However, it fails to clarify how Dominion will partner with the consulting parties to ensure that long-term and cumulative effects are avoided, when possible.

Revised Agreement Document

The MOA provides \$85 million committed to preservation initiatives to mitigate the adverse effects of the undertaking. The mitigation package in the revised MOA reorganizes and contextualizes the projects and project categories proposed in the original draft. The projects that Dominion has proposed to fund are, for the most part, focused on preservation of cultural landscape features through land acquisition and easements, water quality improvements and shoreline protection, and enhanced heritage tourism opportunities within the Historic District and the broader setting of the project. Throughout the consultation, the ACHP and many of the other consulting parties have expressed concerns that the historic properties affected by the undertaking are of great historic significance because of their association with the founding of our nation. Many of the consulting parties have suggested that the adverse effects of the undertaking are not mitigable.

We acknowledge that Dominion, in making revisions to the draft MOA and in providing an MOA context document, entitled “*Surry-Skiffes Creek-Wheaton Transmission Line, NOA -2012-00080/13V0408 Basis for Proposed Memorandum of Agreement to Resolve Adverse Effects to Historic Properties*” (MOA Context), dated June 8, 2016, has tried to clarify how it has focused on this concern. Nevertheless, the adequacy of the proposed mitigation to address adverse effects to a unique concentration of highly significant and thematically related properties in the Area of Potential Effects (APE) of the undertaking is still unclear.

Thus, while the mitigation package is substantial, there remain serious concerns that the adverse effects on unique historic properties of outstanding significance can be mitigated if the project proceeds as proposed. This highlights the question of the adequacy of the alternatives analysis, as discussed above. Further, the degree to which the proposed mitigation projects can actually approach some level of appropriate mitigation for the adverse effects to the concentration of highly significant historic properties will depend on the details of the projects as they are fleshed out in consultation with consulting parties and other stakeholders during post agreement negotiations.

Question of Appropriate Section 106 Agreement Document

The ACHP previously advised the Corps and Dominion that the Section 106 agreement document appropriate for this undertaking should be a Programmatic Agreement (PA), not an MOA. An MOA is appropriate when the federal agency has identified all historic properties, assessed all adverse effects, and determined the specifics of the resolution of adverse effects. However, a PA is used when some or all of those issues are not finalized and protocols for additional review and consultation must be included. Since the mitigation proposed in the revised draft MOA consists of projects and categories of projects that are only generally described, additional details are needed. Dominion, not the Corps, proposes to fund and sponsor a range of projects, many of which will ultimately be designed and carried out by, or with, other consulting parties and stakeholders. Section 800.14(b) (1) of our regulations clarifies that a PA is the appropriate form of agreement document when non-federal parties are delegated decision making responsibilities.

Additional General Comments about the PA

The Section 106 agreement must be executed before work can start on this undertaking. The stipulations regarding timing, development of post-agreement documents, review, approval, and implementation of mitigation projects need to be more clearly articulated. Ideally, a review group comprised of consulting parties should be established to work with Dominion on the details of proposed mitigation measures. In addition, a provision that requires regular reporting to signatories and consulting parties should be included in the draft Section 106 agreement. Having this review group in place will allow the Corps and Dominion to have access to a group of consulting parties who can assist them in finalizing stipulations that are now conceptual.

Next Steps

We believe it is imperative for the Corps to resolve outstanding issues referenced above regarding alternatives to the project as proposed. When that is sufficiently done, the revised draft MOA and its specific terms can be addressed, and the Corps can move forward with the Section 106 process.

We look forward to reviewing the written comments the Corps receives on the draft MOA. We will follow up with the Corps to discuss the most effective way to address the comments. If you have any questions, please contact me at 202-517-0206 or via email at rnelson@achp.gov or Charlene Dwin Vaughn, AICP, at 202-517-0207, or cvaughn@achp.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Reid Nelson', with a long horizontal flourish extending to the right.

Reid Nelson
Director
Office of Federal Agency Programs