



*Preserving America's Heritage*

May 17, 2017

Mr. Marshall Tucker Smith  
Chief, Northern Section, Regulatory  
Corps of Engineers, Norfolk District  
Norfolk District Main Office  
803 Front Street  
Norfolk, Virginia 23510

Ref: Proposed Midwood Data Center Project  
Permit Application: NAO-2006-01343  
Haymarket, Prince William County, Virginia

Dear Mr. Smith:

The Advisory Council on Historic Preservation (ACHP) participated in a meeting via telephone on March 8, 2017, regarding the referenced undertaking, sponsored by the Corps of Engineers, Norfolk District (Corps) as part of its compliance with Section 106 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). As a follow up to the meeting, consulting parties again expressed concerns about the full nature of the undertaking subject to Section 106 review, and whether Section 110k of the NHPA may apply to ground preparation and construction carried out in the project location prior to completion of the Section 106 review. The ACHP, therefore, requests that the Corps address the issues summarized below.

The current Corps permit review focuses on the proposed construction of two buildings on a 38.5-acre parcel intended to be part of a three-building data center. The Corps has initiated Section 106 with the Virginia State Historic Preservation Officer (SHPO) and identified a number of consulting parties, including the National Trust on Historic Preservation (NTHP), to participate in the consultation. The project parcel is located within the core area of the Buckland Mills Battlefield. The Corps, in consultation with the Virginia SHPO, has determined that the undertaking will have an adverse effect to the battlefield, which has been determined eligible for inclusion on the National Register of Historic Places.

### **Undertaking Subject to Section 106 Review**

A number of consulting parties have questioned whether the Corps is considering the full range of activities that should be considered part of the undertaking subject to Section 106 review. Based on the information available to us, the originally intended project seems clear, the construction and operation of a three-building data center with necessary infrastructure, which appears also to require a power supply sufficient to allow the center to operate at full capacity. However, the timing of the development process, the components that will be necessary as part of the undertaking or of multiple, integrally linked undertakings, and the Corps' responsibility to comply with Section 106 for the multiple components that are necessary to make the project viable are unclear.

The regulatory review of the portion of the project focused on construction of the three-building data center was modified in a way that suggests to stakeholders that the undertaking was being inappropriately segmented. The Corps issued a jurisdictional determination for a 120-acre tract that encompasses the proposed data center site on March 9, 2011. In 2012, the project proponent (VADData) leased a structure on land next to the proposed data center project site, and 'built out' the existing, leased structure 'to meet the company's program requirements.' At the time, VADData also was seeking to acquire additional property nearby to expand its facilities. In 2013, a cultural resource survey was carried out for the 120-acre tract, which includes the proposed data center site. Apparently, VADData subsequently purchased a 62-acre sub-parcel of the larger tract that included the data center site. VADData's ownership of the data center site was recorded in Prince William County on September 11, 2015.

On September 28, 2015, representatives of VADData submitted a Joint Permit Application (JPA) to the Virginia Department of Environmental Quality (VDEQ) for a State Program General Permit (12-SPGP-01) from the Corps under Section 404 of the Clean Water Act and Title 62.1 of the Code of Virginia. The project submitted for permit review included construction of three warehouse type structures to be used for a data center. As we understand, following meetings and calls among VDEQ, the Corps, and representatives of the project proponent in early 2016, the original JPA was withdrawn on April 24, 2016. On June 27, 2016, the proponent submitted a new JPA focusing on construction of Buildings 2 and 3 of the three-building data center and associated infra-structure on a 38.5-acre sub-parcel of the larger 62-acre parcel.

Sometime after April 24, 2016, the project proponent began clearing and ground preparation for Building 1, and then proceeded with construction of this property on the southern part of the larger 62-acre parcel. Based on information provided by representatives of the project proponent at the March 8, 2017, meeting, Building 1 of the data center is now complete and 'operational.' As a result of this sequence of events, consulting parties have suggested that the original undertaking, construction of a three-building data center, has been segmented. If so, the Corps has not considered the effects of the construction of Building 1 on historic properties or consulted with the Virginia State Historic Preservation Officer to address the applicability of Section 106 to this portion of the undertaking.

Consulting parties are also concerned that the undertaking being reviewed by the Corps should include the construction of a new 230kV double circuit transmission line and substation that will be dedicated to serving the power needs of the data center. As we understand, the originally proposed three-building data center will need upwards of 97% of the power that can be supplied by a 230kV double circuit transmission line that Virginia Electric and Power Company (Dominion) intends to construct from Gainesville, Virginia, to Haymarket, Virginia. In addition, a 230-34.5 kV Haymarket Substation will be constructed on a portion of the land owned by VADData adjacent to the three building data center. On November 6, 2015, Dominion filed an application for a certificate of public convenience and necessity for the proposed transmission line and substation with the Virginia State Corporation Commission (SCC). The SCC issued an interim order approving the application with conditions on April 6, 2017.

As you know, the Section 106 regulations require a federal agency to take into account effects on historic properties in the Area of Potential Effect (APE) of undertakings they sponsor, authorize, or assist. Therefore, we request that the Corps clarify its rationale for considering a permit application focused only on construction of two out of the three buildings that are intended to comprise a three-building data center. We also ask the Corps to explain how it has considered the linkage between the permit application for construction of the two remaining buildings with the construction of the 230-34.5 kV substation at the data center site and the construction of the Gainesville to Haymarket 230kV double circuit transmission line by Dominion. During the SCC review of the Dominion transmission line, information was provided that the construction of the transmission line would likely have an adverse effect on four Civil War battlefields.

Has the Corps considered the effects of the construction of the new transmission line as it relates to the data center undertaking? How has the Corps' considered the long term and cumulative effects resulting from this undertaking that is directly and necessarily linked to the current permit review?

### **Applicability of Section 110(k) of NHPA**

During the consultation meeting on March 8, 2017, consulting parties discussed the clearing and ground preparation that has been underway at the proposed data center site. Representatives of VADData suggested that the clearing and ground preparation was required in staging for the construction of Building 1. However, to the extent that the construction of Building 1 was inappropriately segmented from the larger undertaking, the Corps may have to consider the applicability of Section 110(k) of the NHPA to the actions of the project proponent. Further, an aerial photograph of the proposed data center site made available to the ACHP shows that the clearing and ground preparation were carried out extensively across the entire site. This includes the proposed locations of Building 2, Building 3, and the 230-34.5 kV substation. Therefore, regardless of the status of Building 1 as part of the undertaking subject to review, the Corps will need to consider whether Section 110k applies to the clearing and ground preparation in other portions of the proposed data center site. That work was carried out prior to completion of the Section 106 review and would be considered an adverse effect to the Buckland Mills Battlefield in the same way the Corps concluded that the construction of data center Buildings 2 and 3 would result in an adverse effect.

We remind you that Section 110(k) is a statutory requirement in the NHPA that prohibits a Federal agency from granting a loan, loan guarantee, permit, license or other assistance to an applicant who, with intent to avoid the requirements of Section 106, has intentionally significantly adversely affected a historic property to which the grant would relate, or having legal power to prevent it, has allowed such significant adverse effect to occur. Even if the federal agency determines that Section 110(k) applies, it may, after consultation with the ACHP, determine that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant, pursuant to 36 C.F.R. § 800.9(c).

### **Next Steps**

Due to the procedural issues associated with the Section 106 review for this undertaking and the controversial nature of the project and associated transmission line for the community, the ACHP will formally enter this consultation. Our purpose will be to assist the Corps, the project proponent, the Virginia SHPO, and the consulting parties in sorting through these issues. We will notify the head of the agency and copy you as the agency official.

The ACHP looks forward to receiving the Corps' response to the questions and issues outlined in this letter, including the Corps' determination regarding the applicability of Section 110(k). Should you have any questions or wish to discuss this matter further, please contact John T. Eddins, PhD at 202-517-0211, or by e-mail at [jeddins@achp.gov](mailto:jeddins@achp.gov).

Sincerely,



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