



**National Trust for
Historic Preservation**
Save the past. Enrich the future.

April 6, 2017

Nathaniel J. Davis, Sr., Deputy Secretary
Federal Energy Regulatory Commission
888 First St. NE, Room 1A
Washington, DC 20426

Re: Atlantic Coast Pipeline
Comments on Draft Environmental Impact Statement
CP14-554-001

Dear Mr. Davis:

The National Trust for Historic Preservation has serious concerns about the Draft Environmental Impact Statement (DEIS) prepared for the Atlantic Coast Pipeline (ACP) project. Many of the issues raised by the review of this project reflect broader compliance problems applicable to the Federal Energy Regulatory Commission (FERC), and inconsistencies between FERC's review process and the regulations implementing Section 106 of the National Historic Preservation Act (NHPA), 36 C.F.R. Part 800.

- **Interests of the National Trust**

The National Trust for Historic Preservation is a private nonprofit organization chartered by Congress in 1949 to facilitate public participation in the preservation of our nation's heritage, and to further the historic preservation policy of the United States. *See* 54 U.S.C. §§ 312102(a), 320101. With more than 800,000 members and supporters around the country, the National Trust works to protect significant historic sites and to advocate historic preservation as a fundamental value in programs and policies at all levels of government. In addition, the National Trust is designated by Congress as a member of the Advisory Council on Historic Preservation (ACHP), *id.* § 304101(a)(8), which is responsible for overseeing agency compliance with Section 106. We have extensive experience in reviewing undertakings subject to federal licenses and permits, not only as a consulting party, but also by enforcing compliance with the NHPA through litigation, either as a plaintiff or a friend of the court.

The National Trust has been contacted by members of the interested public, as well as historic preservation and environmental organizations, concerned about this and other pipeline projects. We are hearing expressions of frustration from those attempting to ensure that FERC will engage in meaningful consultation under Section 106.

- **FERC has failed to respond to consulting party requests, or has improperly rejected consulting party requests, even from local governments.**

FERC's pattern of denying requests from stakeholders interested in participating as consulting parties is not consistent with the Section 106 regulations. Upon information and belief, FERC has excluded local governments from participating as consulting parties, even though the Section 106 regulations explicitly require that "a local government with jurisdiction over the area in which the effects of an undertaking may occur is *entitled to participate* as a consulting party." 36 C.F.R. § 800.2(c)(3) (emphasis added). When local governments request the right to participate in Section 106 consultation, FERC has no authority to decline those requests. Moreover, the National Trust understands that requests from local historical organizations to participate as consulting parties have also been declined. These types of local organizations often are some of the best sources of historic property identification information. Additionally, we understand from the DEIS that FERC has systematically declined requests for consulting party status made by cultural resource organizations, and has instead provided these organizations with copies of the cultural resource survey reports to review and comment on outside of the Section 106 review process. DEIS 4-434. This approach is confirmed by a letter dated February 11, 2016 from David Swearingen to the Augusta County Historical Society. This failure to include the Augusta County Historical Society, and similar organizations, as consulting parties, and instead requesting that they review survey information and submit comments outside of the defined Section 106 consultation is not supported by any federal law, and is arbitrary, capricious and an abuse of discretion.

- **FERC has failed to engage in proper "consultation."**

Consultation is defined in the Section 106 regulations as a "process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the section 106 process." 36 C.F.R. § 800.16(f). "Consultation is built upon the exchange of ideas, not simply providing information." 63 Fed. Reg. 20,496, 20,504 (Apr. 24, 1998) (Secretary of the Interior's Standards & Guidelines for Federal Agency Historic Preservation Programs Pursuant to the NHPA). This process of dialogue is simply not occurring as part of FERC's review process.

- **The DEIS fails to substantiate the purpose and need for the project.**

In September 2016, the Southern Environmental Law Center and Appalachian Mountain Advocates released a study by Synapse Energy Economics, Inc.,¹ which concludes that the Atlantic Coast Pipeline and the Mountain Valley Pipeline are *not needed*, because existing pipelines can supply sufficient power to the region through 2030. The DEIS fails to address this analysis.

¹ Synapse Energy Economics, Inc., *Are the Atlantic Coast Pipeline and the Mountain Valley Pipeline Necessary? An examination of the need for additional pipeline capacity into Virginia and Carolinas* (Sept. 12, 2016). The report can be accessed at: https://www.southernenvironment.org/uploads/words_docs/Synapse_Report_WV-VA_Proposed_Pipelines_FINAL_20160909.pdf?cachebuster:42.

- **FERC has failed to identify historic resources accurately and comprehensively.**

The National Trust has heard many concerns regarding the inadequacy of the cultural resource survey efforts made for the ACP. One example that has been raised is the complete omission of historic stone walls in eastern Augusta County. Several of these mortar-less walls, which were used to contain livestock by early Scottish settlers, are directly in the path of ACP. Despite this, the walls are not included in the DEIS. Other examples have been raised by groups such as the Augusta Historical Society and Preservation Virginia.

- **FERC has failed to address potential impacts to the Union Hill/Woods Corner Rural Historic District.**

One of the compressor stations for the ACP project is currently proposed to be sited in the Union Hill/Woods Corner Rural Historic District in Buckingham County, Virginia. The DEIS does not include any information about the Union Hill/Woods Corner Historic District, even though it is currently under review by the Virginia Department of Historic Resources. Additionally, Preservation Virginia listed this site on its list of “Most Endangered Historic Places” in May 2016. The project applicants and FERC should certainly be aware of the existence of this historic resource.

The Union Hill/Woods Corner Rural Historic District is a rural community that was established by African-Americans after Emancipation on former plantation land. Additional research and fieldwork is needed for the proposed compressor station site, including surveying extant buildings, archaeological sites, cemeteries, and viewsheds within the historic district. Moreover, the DEIS contains no consideration of the environmental justice concerns related to siting the only compressor station for the state of Virginia in this traditionally African-American community. The perfunctory discussion of environmental justice concerns included in the DEIS is not sufficient to satisfy federal legal obligations under Executive Order 12898, *Federal Action to Address Environmental Justice in Minority Populations and Low-Income Populations*. DEIS 4-411. The proposal to site the compressor station at this location should be thoroughly reevaluated, and alternative sites should be more closely explored.

- **The project route should avoid land held in conservation easements.**

Since its founding by the Virginia General Assembly in 1966, the Virginia Outdoor Foundation (VOF) has acquired conservation easements on more than 750,000 acres of land across the state. The founding legislation for VOF states its purpose as “to promote the preservation of open-space lands and to encourage private gifts of money, securities, land or other property to preserve the natural, scenic, historic, scientific, open-space and recreational areas of the Commonwealth.” Va. Code Ann. §10.1-1800. The proposed route for ACP would run through at least ten properties that are currently protected by conservation easements held by VOF. If this route is permitted, the ACP would constitute

the largest disturbance of conserved lands in the history of Virginia's conservation easement program.

The permit applicants for the ACP have proposed exchanging land to offset the ACP's impacts to conserved lands. Virginia state law establishes very narrow grounds for when such exchanges can be approved. The key questions are whether the proposed project is "in accordance with the official comprehensive plan for the locality" and "essential to the orderly development and growth of the locality." Va. Code Ann. §10.1-1704. Given that the ACP is intended to transport gas across the state, not deliver it to specific localities, it is impossible for the project to meet this state statutory standard.

The ACP would permanently damage the rural character of the conserved lands that it would cross, causing a direct harm to those lands and resources. Moreover, the harm to conserved lands generally will stretch beyond the direct impacts to the lands along the project route. The success of Virginia's conservation easement program relies on the public voluntarily donating easements to VOF with the knowledge that their land will be protected from development in perpetuity. If the ACP is permitted to cross conserved lands - in direct conflict with the state's conservation easement program laws - it will harm the conserved lands through which the pipeline passes and it will permanently damage the public trust in the effectiveness of this program. Approving the ACP to pass through conservation easements will also establish a precedent for future linear infrastructure projects to be routed through conserved lands, further undermining the effectiveness of the VOF easement program. These reasonably foreseeable negative cumulative impacts deserve close consideration in the DEIS.

- **FERC erroneously treats rural historic districts as discontinuous collections of architectural resources, without adequate consideration of the landscape and setting of the historic districts.**

The proposed pipeline and compressor stations would physically traverse several historic districts, including Union Hill/Woods Corner Rural Historic District, Yogaville Historic District, South Rockfish Valley Rural Historic District, Sunray Agricultural Historic District and Warminster Rural Historic District. FERC fails to adequately acknowledge the adverse effects of this direct, physical intrusion on so many historic districts.

NPS Bulletin # 30 states that the following changes to historic landscapes can threaten historic integrity: (1) changes in land use and management that alter vegetation; (2) changes in land use that flatten the contours of land; (3) introduction of non-historic land uses (public utilities, industrial development); and (4) loss of vegetation related to significant land uses. NPS, *Guidelines for Evaluating and Documenting Rural Historic Landscapes* (1999) (<https://www.nps.gov/nR/publications/bulletins/pdfs/nrb30.pdf>). If constructed, the ACP would introduce each of these types of changes, and would threaten the historic integrity of the affected landscapes.

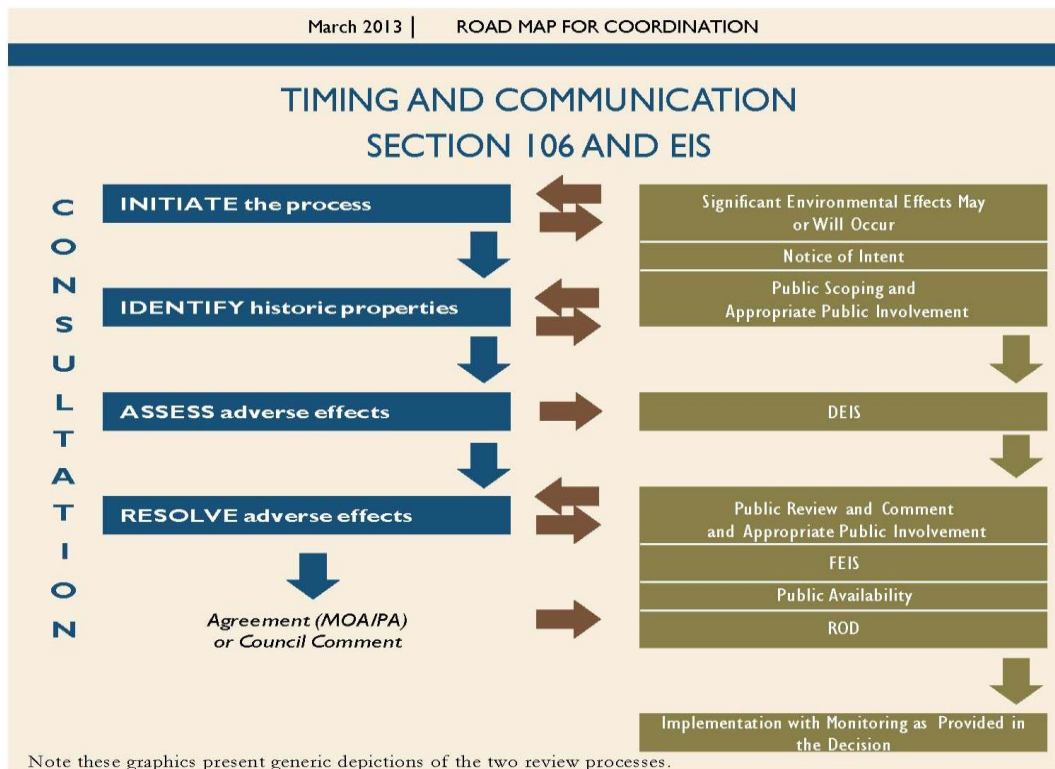
- **FERC has failed to coordinate NEPA and Section 106 review, and released the Draft EIS before completing the identification of historic properties or initial assessment of effects.**

It is clear in the DEIS that FERC has not completed the process of assessing adverse effects on historic properties (or even the process of *identifying* all historic properties that are potentially affected). DEIS at 4-415. Most of the sites that have been identified have not yet been evaluated for their potential National Register eligibility. *See generally* DEIS 4-420 - 4-424; 4-428-4-430. Additionally, even for those historic resources that *have* been identified and evaluated by the ACP contractors, the DEIS fails to include information adequate to understand why a property is recommended as eligible or not eligible for the National Register. There is also inadequate information provided, and often *no* information provided, to analyze the potential effects of the pipeline on any specific resources. *See, e.g.*, DEIS at 4-432 (the Borland Farm is recommended as not eligible, with no explanation as to why, and despite being recommended as not eligible, the treatment recommendation from ACP is “pending”).

These major gaps in the identification of historic properties and potential adverse effects make it impossible for the DEIS to perform its essential function of *disclosing*—to the public and to the agency—the potential impacts of the proposed action. “If the incomplete information relevant to reasonably foreseeable significant adverse impacts is essential to a reasoned choice among alternatives [which it is in this case,] and the overall costs of obtaining it are not exorbitant, the agency *shall include* the information in the [EIS].” 40 C.F.R. § 1502.22(a) (emphasis added).

The inadequacy of the evaluation of historic resources in the DEIS is further illustrated by guidance issued recently by the Council on Environmental Quality (CEQ) and the ACHP regarding the integration of NEPA and Section 106. The guidance states that proper coordination of the two review processes “ensures that determinations regarding which alternatives to advance for detailed analysis and which alternative is selected as the preferred alternative are made with an appropriate awareness of historic preservation concerns.” *Id.* at 27.

A chart included in the guidance describes the correct sequence of procedural steps. As the chart illustrates, to properly coordinate the timing of Section 106 review and preparation of an EIS, the agency should have completed the identification of historic properties prior to the issuance of the DEIS. The DEIS should also include an initial assessment of effects. Failure to include this information renders the DEIS ineffective in disclosing potential impacts of the project to the public.



CEQ and ACHP, *NEPA and NHPA: A Handbook for Integrating NEPA and Section 106*, at p.26 (Mar. 2013). (The *Handbook* can be accessed at: www.achp.gov/docs/NEPA_NHPA_Section_106_Handbook_Mar2013.pdf.)

- **FERC is unlawfully allowing identification of historic properties to be deferred until late in the review process.**

Section 106 of the NHPA requires agencies to take into account the effects of their decisions on historic properties “prior to” issuing any license. 54 U.S.C. § 306108. In cases where, for some reason, “effects on historic properties cannot be fully determined prior to approval of an undertaking,” 36 CF.R. § 800.14(b)(1)(ii), the appropriate approach is to develop a programmatic agreement pursuant to the Section 106 regulations.

The whole point of the Section 106 review process is to develop and evaluate alternatives and modifications to the project that would avoid, minimize, or mitigate harm to historic properties. *Id.* §§ 800.1(a), 800.6(a). This is why the agency is required to “ensure that the section 106 process is initiated early in the undertaking’s planning, so that a broad range of alternatives may be considered during the planning process.” *Id.* § 800.1(c). FERC’s approach of deferring Section 106 consultation until after key decisions have already been made severely limits the consideration of alternatives that could avoid, minimize or mitigate harm to historic resources. FERC’s approach also creates a serious risk of foreclosing altogether the ACHP’s opportunity to comment on the undertaking. *Id.* § 800.9(b).

The Atlantic Coast Pipeline is part of an unprecedented expansion of fracked-gas infrastructure projects across Virginia, West Virginia and North Carolina. The review process under NEPA and the NHPA is intended to ensure that, if this project moves forward, its negative impacts to natural and cultural resources would be avoided, minimized, and/or mitigated. The procedural issues identified in this correspondence cast real doubt on the effectiveness of FERC's review process. Without full compliance with NEPA and Section 106 of the NHPA, irreparable damage will occur to cultural resources along the route.

Thank you for considering these comments. We look forward to participating in the Section 106 consultation and helping FERC to resolve the issues identified in this letter.

Sincerely,



Sharee Williamson
Associate General Counsel

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