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Preserving America's Heritage

June 2, 2016

The Honorable Jo-Ellen Darcy
Assistant Secretary of the Army (Civil Works)
108 Army Pentagon
Washington, DC 20310-0108

Ref: Dakota Access Pipeline Project

Dear Ms. Darcy:

On May 19, 2016, the Advisory Council on Historic Preservation (ACHP) sent a letter to Lieutenant General Thomas P. Bostick, Commanding General and Chief of Engineers for the Corps of Engineers, regarding our objection to effect determinations made by the Corps for the referenced undertaking pursuant to 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). I wanted to share a copy of the enclosed letter with you.

Subsequent to conveying our letter to Lieutenant General Bostick, the ACHP met with Energy Transfer, the project proponent, at their request on May 25, 2016, to discuss their involvement in the Dakota Access Pipeline Project (DAPL). We advised Energy Transfer of our desire for the Corps to participate in this meeting, but, unfortunately, no Corps representatives attended.

Energy Transfer representatives shared with ACHP staff an overview of the company, the purpose and need for DAPL, and the efforts it had undertaken to identify historic properties and contact federally recognized Indian tribes interested in areas along the anticipated project corridor. We understand that planning for DAPL dates to 2012. Energy Transfer indicated it spent extensive time and resources to identify historic properties, particularly archaeological sites. This information was provided to Indian tribes in 2014 and 2015 so they could share any concerns and make known their interest in investigating areas along the right-of-way. We were advised that consultants for the company had surveyed approximately 95 percent of the project right-of-way for the presence of historic properties, including the portions of the project outside of Corps and U.S. Fish and Wildlife (FWS) jurisdiction.

We appreciated receiving this information, however, it does not change the conclusions outlined in our letters regarding shortcomings in the Section 106 review carried out by the Corps and FWS. We continue to disagree with the Corps' findings regarding effects on historic properties and believe a comprehensive Programmatic Agreement (PA), as we recommended to Lieutenant General Bostick, be developed. The Corps should consider how the information gathered by Energy Transfer, as well as the information submitted to the Corps by the Indian tribes, could be used to support the PA. Such a PA could address multiple procedural issues including the following:

ADVISORY COUNCIL ON HISTORIC PRESERVATION

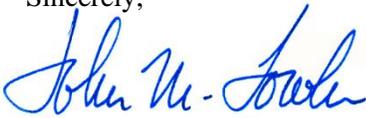
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- Recognition of varying jurisdiction and authority over components of the DAPL Project;
- Completion of an appropriate identification effort and analysis of effects;
- Phasing of the Section 106 reviews to facilitate tribal assistance in identification of properties of concern to the tribes; and
- Consideration of effects to historic properties in portions of the undertaking outside the Corps' jurisdiction.

We look forward to assisting the Corps in this endeavor should it choose to resolve our objection by developing such an agreement. However, we recognize that, per 36 CFR § 800.5(c)(3) of our regulations, the final decision regarding the effects on historic properties is the responsibility of the Corps.

Should you have any questions or wish to discuss this matter further, please contact Reid Nelson at (202) 517-0206, or by e-mail at rmelson@achp.gov.

Sincerely,



John M. Fowler
Executive Director

Enclosure