



Preserving America's Heritage

October 12, 2011

Joseph C. Lawson
Division Administrator
Federal Highway Administration
District of Columbia Division
1990 K Street, NW, Suite 510
Washington, DC 20006

Ref: *CSX's Proposed Reconstruction of the Virginia Avenue Tunnel in SE District of Columbia.*

Dear Mr. Lawson:

We recently received a copy of FHWA's letter to Ms. Elizabeth Purcell of the Capitol Hill Restoration Society, dated July 7, 2011, regarding CSX's proposed reconstruction of the Virginia Avenue Tunnel. In response to Ms. Purcell's request for consulting party status under Section 106 of the National Historic Preservation Act (16 USC 470f), your letter states: *"To date, there has been no formal determination regarding the effects of the proposed CSX Virginia Avenue Tunnel project on historic resources; however, if FHWA-DC in consultation with the District of Columbia Historic Preservation Office, determines the referenced project has an adverse effect on historic resources within the area of potential effects, all requirements concerning Section 106 of the Historic Preservation Act will be followed."* While we appreciate that FHWA is still in the early stages of project planning, your reply indicates a basic misunderstanding about the role of consulting parties in the Section 106 review process.

The ACHP encourages Federal agency officials to coordinate the Section 106 process with National Environmental Policy Act (NEPA) compliance by notifying, at their earliest convenience, the appropriate State Historic Preservation Officer (SHPO) and other consulting parties pursuant to our regulations, "Protection of Historic Properties" (36 CFR Part 800). In addition, FHWA is required to consider all written requests of individuals and organizations to participate as consulting parties and, in consultation with the SHPO, determine which should be consulting parties (36 CFR 800.3[f][3]). While additional parties may be identified later in the process, FHWA should not delay involving consulting parties in Section 106 review when a request to participate is received during the earlier stages of the review process. Through early consultation, your agency will be able to determine the appropriate strategy to ensure Section 106 compliance is completed in a timely manner for this undertaking. We note that the flier for the recent public scoping meeting for this project was titled: *"Virginia Avenue Tunnel Environmental Assessment (EA) and Section 106 Compliance."* This suggests that the agencies are inviting comments related to Section 106 compliance as part of scoping under NEPA, which is consistent with the ACHP's recommended approach for coordinating Section 106 and NEPA. Any concerns expressed at the public meeting regarding the effects of the proposed project on historic properties, including adjacent historic

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districts eligible or listed in the National Register of Historic Places, should inform the Section 106 review process. Further, this outreach may also help FHWA identify other individuals and organizations that should be invited to participate as consulting parties.

FHWA and DDOT should continue consultation with the SHPO and other consulting parties to identify and evaluate historic properties and to assess any potential adverse effects on those historic properties. If FHWA determines through consultation that the undertaking will adversely affect historic properties, or that the development of a programmatic agreement is necessary, FHWA must also notify the ACHP and provide the documentation detailed at 36 CFR §800.11(e).

We would be happy to meet with you to further discuss the involvement of consulting parties in the Section 106 review and the coordination of Section 106 and NEPA for this undertaking. Please note that although FHWA ultimately decides who will be considered a consulting party, we believe that the Capitol Hill Restoration Society has a role in the review of this undertaking and should participate in all phases of Section 106 review. If you have any questions or wish to set up a meeting, please feel free to contact Carol Legard, our liaison to FHWA, by telephone at (202) 606-8522 or by e-mail at clegard@achp.gov.

Sincerely,



Charlene Dwin Vaughn, AICP
Assistant Director, FPLAS
Office of Federal Agency Programs