



Coalition for Smarter Growth  
DC • MD • VA



November 17, 2022

Ms. Regena Bronson  
U.S. Army Corps of Engineers  
1329 Alum Spring Road  
Suite 102  
Fredericksburg, VA 22401

Re: Route 15 Widening  
Corps Project No. 2020-00657  
DHR File No. 2022-4445

Dear Ms. Bronson,

Thank you for your email on November 4, 2022, in which you shared with the Southern Environmental Law Center (SELC) several documents related to the National Historic Preservation Act (NHPA) Section 106 review that the Army Corps of Engineers is conducting of Loudoun County’s proposal to widen Route 15 north of Leesburg, Virginia. At your request, SELC shared the set of documents with the other organizations that submitted the joint comment letter dated September 19, 2022, regarding the Corps’ review of this proposal. This comment letter is being jointly submitted by SELC, the Journey Through Hallowed Ground, the Piedmont Environmental Council, the Coalition for Smarter Growth, and the Catoctin Coalition. In addition, the National Trust for Historic Preservation is signing onto this letter as a supplement to its comment letter dated November 5, 2022. All six of our organizations appreciate the opportunity to serve as Section 106 consulting parties on this project and to offer these comments, and we look forward to further evaluation and consultation regarding the issues we have raised.

## **The Corps Must Reject the County’s Attempt to Impermissibly Segment the Route 15 Widening Project.**

We first wish to voice our ongoing objection to what appears to be the Corps’ isolated review of what is clearly only one of two interdependent segments of a larger, single project to widen Route 15 between Leesburg and Montresor Road. As we cautioned in our September 19, 2022 comment letter (which we attach and hereby incorporate into this letter), if the Corps allows the County to curtail the Corps’ review to only that portion of the project extending between Leesburg and Whites Ferry Road, we believe it would constitute illegal segmentation under the National Environmental Policy Act (NEPA) and violate the Corps’ duty to consider the impacts of the complete proposal under both the Clean Water Act (CWA) and the National Historic Preservation Act (NHPA).

To briefly summarize the relevant section of our September 19 comments, the County deliberately selected Montresor Road as the northern terminus for the project after first studying—and rejecting—widening Route 15 only as far north as Whites Ferry Road. Specifically, the County’s traffic study determined that terminating the widening at Whites Ferry Road would cause traffic to “spill back” from the Route 15/Whites Ferry Road intersection to such an extent that it would negatively impact intersection operations to the south, and that the widening instead needed to extend to Montresor Road to effectively handle the projected traffic demand through the year 2030. In other words, the County determined that Whites Ferry Road was not a logical terminus for the project, and that the widening needed to extend farther north to Montresor Road to satisfactorily address even near-term traffic projections for the highway.<sup>1</sup> Based on the study’s findings and County staff’s recommendation drawing from them, the County Board of Supervisors approved the “Route 15 North Widening: Battlefield Parkway to Montresor Road” project in September 2018.<sup>2</sup>

In 2020, after its consultants began working on the roadway design, environmental site assessments, and related survey work, the County realized that the portion of the project from Whites Ferry Road north to Montresor Road presented greater challenges in terms of right-of-way acquisition, utility relocation, and construction than the portion to its south.<sup>3</sup> As the County explained, the greater challenges on the segment between Whites Ferry Road and Montresor Road were due in significant part to the presence of more environmental resources within that

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<sup>1</sup> We wish to emphasize that we are highlighting here the County’s determinations—and not our own—regarding the necessity and effects of adding additional travel lanes to this portion of Route 15. As discussed in the report from Smart Mobility, Inc. labeled *Route 15 North of Leesburg: A Closer Look at the Effects of Widening* that we submitted to the County in September 2018, our organizations believe the safer and more responsible approach to the congestion problems on Route 15 is to intentionally manage traffic flow with traffic-calming improvements and roundabouts.

<sup>2</sup> See our September 19, 2022, comment letter at pp. 3-4.

<sup>3</sup> See Loudoun County staff report titled “*Phasing of Route 15 – Battlefield Parkway to Montresor Road Widening Project*,” presented for a May 12, 2020 meeting of the Board of Supervisors Finance/Government Operations and Economic Development Committee, at p. 3 (available at [https://loudoun.granicus.com/Viewer.php?view\\_id=77&clip\\_id=6326&meta\\_id=178192](https://loudoun.granicus.com/Viewer.php?view_id=77&clip_id=6326&meta_id=178192)).

portion of the project.<sup>4</sup> Given its desire to get at least a portion of the project under construction as soon as possible, the County then set about developing a “phasing scenario” for the project that would enable it “to accelerate the construction of a project segment prior to [Fiscal Year] 2026.”<sup>5</sup>

The phasing plan the County then developed involved proceeding to construction on “Phase I” (Battlefield Parkway to Whites Ferry Road) while it would still be preparing the more challenging construction specifications, acquiring the right-of-way, and relocating utilities for Phase II (Whites Ferry Road to Montresor Road). Notably, under the County’s phasing strategy, the construction of Phase II would still need to begin close on the heels of the completion of construction of Phase I.<sup>6</sup> This timing was important given the County’s earlier determination that the widening must extend north to Montresor Road for it to effectively address congestion even over the near-term, and that ending the widening at Whites Ferry Road would create traffic “spill back” problems to the south.

Significantly, the County made clear that “the overall scope of the project does not change under this phasing scenario.” The project would still be advanced as a coordinated whole; the County had simply developed a plan that it hoped would allow a smaller portion of the project “to progress quicker to construction than the entire project.”<sup>7</sup> The County specifically explained that “[b]y developing the plans of both phases at the same time, *the phases will be coordinated and approvals can be obtained from [the County] and VDOT for the entire project.*”<sup>8</sup>

However, despite this recognition of both phases as interdependent parts of a single project, and the County’s assertions regarding approvals being sought for the project as a whole, the County is clearly attempting to partition the Corps’ evaluation of the project’s impacts into two separate permitting reviews. And based on the documents the Corps shared with us on November 4, it appears that the Corps may still be considering allowing the County to do so, proceeding with Section 404 permitting and a Section 106 review of one segment of the project separate from the other.

As we have previously explained, an agency may not “divid[e] one project into multiple individual actions ‘each of which individually has an insignificant environmental impact, but which collectively have a substantial impact.’”<sup>9</sup> Applicants can be expected to look for ways to

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<sup>4</sup> *Id.* at p. 4. (“Although there is some floodplain along the Phase I corridor, much of the Phase II corridor is impacted by floodplain. A tributary of Limestone Branch runs parallel to Route 15 north of Whites Ferry Road just west of the roadway. Approximately one-half mile south of Montresor Road, this tributary ties into Limestone Branch and runs beneath Route 15 through a multi-cell box culvert. These environmental conditions and the need to modify the existing box culvert present greater challenges constructing Phase II of the project than Phase I.”)

<sup>5</sup> *Id.* at p. 3.

<sup>6</sup> *Id.* at pp. 5 and 6. (The table on p.5 labeled *Route 15 Widening – Battlefield Parkway to Montresor Road Estimated Schedule* shows construction of Phase I taking place from 2024 to 2026, and text on p. 6 explains that “[c]onstruction of the Phase II improvements will then be initiated in FY 2026.”)

<sup>7</sup> *Supra*, n.1, at p. 5.

<sup>8</sup> *Id.* at p. 3 (emphasis added).

<sup>9</sup> *Nat. Res. Def. Council, Inc. v. Hodel*, 865 F.2d 288, 297 (D.C. Cir. 1988) (quoting *Thomas v. Peterson*, 753 F.2d 754, 758 (9th Cir. 1985)).

minimize permitting reviews and accelerate construction of their projects, and this is why it is ultimately the Corps' responsibility to ensure that a project's potential impacts on environmental and historic resources are evaluated in the manner that the underlying statutes require. We strongly urge the Corps to require the County to apply for a Clean Water Act Section 404 permit that encompasses both segments of its Route 15 widening project so that the Corps can properly evaluate the project's environmental and historic resource impacts.

### **The Corps Should Reject the County's Attempt to Use the Statewide Programmatic General Permit.**

For similar reasons, we reiterate our opposition to the Corps' apparent processing of the Route 15 widening project under the Statewide Programmatic General Permit for Linear Transportation Projects, 22-SPGP-LT (SPGP). As discussed in our September 19, 2022 comments, projects must have no more than minimal individual and cumulative impacts to potentially be eligible to use the SPGP.<sup>10</sup> If the Corps allows the County to proceed as the County is attempting—namely, with an SPGP covering only the segment of the widening project extending to Whites Ferry Road—it would preclude consideration of the project's individual and cumulative impacts occurring within the segment between Whites Ferry Road and Montresor Road. This attempt to truncate the Corps' review is particularly troubling given the very real possibility that, due to the “environmental constraints” the County has identified north of Whites Ferry Road,<sup>11</sup> even just one individual impact to waters of the U.S. in that section may well exceed the 0.5-acre limit in the SPGP (precluding use of the SPGP for the project), and the cumulative impacts of the two segments together would almost certainly exceed the threshold of “minimal” beyond which the SPGP may not be used.

In other words, the impacts of “Phase II” must be considered alongside the impacts of “Phase I” in order to determine whether the SPGP is even appropriate for any part of the project, regardless of whether the impacts are viewed as cumulative effects<sup>12</sup> of two separate projects, or if they are instead viewed as the full suite of individual impacts occurring from two interconnected segments of a single project (which, as we explain above, we believe is clearly the case).<sup>13</sup> The fact that the Corps must assess the impacts of “Phase II” to validly determine if the SPGP can be used for any part of the Route 15 widening project is further reason why the Corps should require the County to submit a Clean Water Act Section 404 permit application that encompasses both segments of the project.

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<sup>10</sup> Section I.B of 22-SPGP-LT is clear that “projects must have no more than minimal individual and cumulative impacts” to potentially be eligible.

<sup>11</sup> *Supra*, n.1, at p. 5.

<sup>12</sup> The current NEPA regulations explicitly require the consideration of cumulative effects, 40 C.F.R. § 1508.1(g)(3), as do the Section 106 regulations, 36 C.F.R. § 800.5(a)(1).

<sup>13</sup> As previously explained in our September 19 comment letter, both segments of the County's Route 15 widening project will also impact historic properties that fall within the protections of the National Historic Preservation Act, and the cumulative effect of those impacts, if properly assessed, is likely to rise to a level that precludes the use of the SPGP.

## **The Area of Potential Effects Being Used to Assess Historic Resource Impacts is Inadequate.**

We are also disappointed to note from the documents you shared with us on November 4 that the Corps still appears to be using an unreasonably constrained area of potential effects (APE) for its Section 106 review of the project, focusing only on the project's immediate physical impacts to streams and wetlands. And while we appreciate that those documents include at least a cursory assessment of some of the project's potential visual effects, that visual impact assessment is of extremely limited value because it, too, appears to be restricted to the visual effects of just the project's immediate impacts to jurisdictional waters of the U.S.

As we urged in our prior comments and as the Virginia Department of Historic Resources recommended in its comment letter dated August 18, 2022, the APE should extend beyond the direct impacts on waters of the U.S. to cover the entire project area. The Corps' own regulations require that a project's effects "on historic properties both within *and beyond* waters of the U.S." be taken into account,<sup>14</sup> and the review must include consideration of the direct *and indirect* effects of the undertaking on historic resources both inside *and outside* of the permit area.<sup>15</sup> Limiting the APE to only those locations where jurisdictional waters would be impacted runs afoul of these regulatory requirements and precludes consideration of direct and indirect effects that expanding the highway will potentially have on the impressive array of historic resources located along this stretch of Route 15.

Our prior comment letter identified two Section 106 historic resources that, based on just our limited assessment of publicly available design plans for the project, would likely be negatively impacted by the clearing of roadside vegetation for the project. In addition to those direct impacts to the historic properties, there is also significant potential for the widened highway to generate increased noise to an extent that could negatively impact the adjacent historic resources, both from vehicles traveling at higher speeds and from the likely increase in truck traffic that the widening would cause.

Even setting aside the compelling need discussed above for the Corps to assess the impacts of the two segments of the project together, the extremely limited APE the Corps has used to date is precluding consideration of direct and indirect impacts to historic resources that overlap with the project's limits of disturbance. For that reason, we do not feel the APE can be fairly used to justify a finding of "No Adverse Effect." We therefore disagree with the Corps' proposed "No Adverse Effect" determination, and we repeat our strong recommendation to expand the APE to include the entire project area along Route 15—and to do so not just for the portion of the project extending to Whites Ferry Road, but for the full extent of the widening project north to Montresor Road.

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<sup>14</sup> 33 C.F.R. pt. 325, app. C, § 2(a) (emphasis added).

<sup>15</sup> *Id.* § 1(e). Specifically, the Corps "will consider the effects of undertakings on any *known* historic properties that may occur outside the permit area," *id.* § 5(f) (emphasis added). In this case, as DHR has noted, there are several known historic properties that extend or are located outside the permit area.

**Request for a Consultation Meeting**

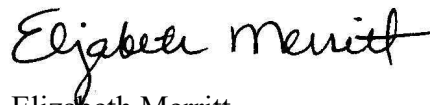
Finally, we would like to echo the recommendation for a consultation meeting that the National Trust for Historic Preservation offered in its comment letter dated November 5. We agree that gathering the Corps, the National Park Service, the State Historic Preservation Office, the affected property owners, and other consulting parties—either virtually or in person—would allow for an open discussion of the issues raised, greatly benefitting the consultation process and helping to ensure that both the letter and the spirit of Section 106 are met.

Thank you for your consideration of these comments. We look forward to your response and to further consultation with you and other consulting parties.

Sincerely,



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