



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

March 31, 2014

VIA EMAIL

Mr. Byron C. Marshall
Chief Administrative Officer, Office of the Mayor
City of Richmond
900 E. Broad St., Suite 201
Richmond, VA 23219

Re: Revitalize RVA Plan / Federal Mandates of the National Historic
Preservation Act

Dear Mr. Marshall:

I am writing on behalf of the National Trust for Historic Preservation regarding the City of Richmond's plan to construct a baseball stadium and mixed-use development in Shockoe Bottom, which is likely to adversely impact historic and archaeological resources that are listed or eligible for listing on the National Register of Historic Places.

We want to make the City aware of the mandates of the National Historic Preservation Act and offer our assistance to the City in understanding how the requirements of this federal law apply to the Revitalize RVA Plan.

The National Trust is a privately-funded nonprofit organization chartered by Congress in 1949. We work to save America's historic places to enrich our future. With headquarters in Washington, D.C., 13 field offices, 27 historic sites, 746,000 members and supporters and partner organizations in 50 states, territories, and the District of Columbia, the National Trust works to save America's historic places and advocates for historic preservation as a fundamental value in programs and policies at all levels of government.

The public-private Revitalize RVA Plan contemplates intensive construction and redevelopment within the Shockoe Bottom flood plain, including a stadium, hotel, grocery store, retail space, office buildings, apartment buildings, parking garages, highway off-ramp modifications, and storm water flood-control infrastructure.

Washington Field Office

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Section 106 of the National Historic Preservation Act

We understand from local preservationists that the City of Richmond may seek federal assistance and/or federal approvals for components of the Revitalize RVA project from several federal agencies, including potentially the U.S. Army Corps of Engineers, the Federal Highway Administration, the U.S. Department of Housing & Urban Development (including Community Development Block Grant funds), the Economic Development Administration at the U.S. Department of Commerce, and others.

Given its proposed location in the heart of Richmond's historic slave trading district, construction of the Revitalize RVA project certainly has the potential to directly and indirectly affect historic and archaeological resources listed or eligible for listing on the National Register of Historic Places, including those located within the Shockoe Valley & Tobacco Row Historic District (127-0344) and those identified in a multiple property listing entitled The Slave Trade as a Commercial Enterprise in Richmond, Virginia (127-6196). According to the latter document, "despite the physical alterations in the [Shockoe Bottom] landscape the potential for intact archeological deposits and features is high."

In fact, the damp conditions characteristic of the Shockoe Bottom area appear to have enhanced the preservation of organic materials such as wood and leather, while the accumulation of subsequent construction and debris layers has effectively sealed and protected the mid-nineteenth-century occupation level. [The Slave Trade as a Commercial Enterprise in Richmond, Virginia, Multiple Property Submission, Section H, 2008.]

The purpose of this letter is to notify the City that any federal agency considering a permit or funding that would relate to any component of the redevelopment must first complete a review and consultation process under Section 106 of the National Historic Preservation Act, 16 U.S.C. § 470f; 36 C.F.R. Part 800. More importantly, any destruction of historic and archaeological resources by the City, or any party under the City's control, prior to the initiation of Section 106 review, would jeopardize the receipt of any federal assistance or approvals sought later, based on the doctrine of "anticipatory demolition."

The goal of the Section 106 review and consultation process is to identify and avoid, minimize, or mitigate adverse effects to historic and archaeological resources. Federal regulations describe in detail the process by which federal agencies determine whether their undertakings may adversely impact historic properties, and if they will, how the agencies are to consult in order to meet the requirements of Section 106 to “take into account” the effects of federal undertakings on historic properties. The National Trust urges the City to contact the Virginia Department of Historic Resources and the federal Advisory Council on Historic Preservation regarding the specific requirements of Section 106. In the meantime, the Advisory Council provides an on-line “Section 106 Applicant Toolkit” which may be of interest.

The National Trust intends to request the opportunity to participate as a Consulting Party in connection with any Section 106 reviews that may be applicable to this redevelopment.

Anticipatory Demolition of Historic and Archaeological Resources and Section 110(k) of the National Historic Preservation Act

Local preservationists also have informed us that the City intends to break ground for the stadium project very soon. According to the Mayor’s Office webpage, “Construction is likely to start in the spring of 2014 so that the ballpark will be open in time for the 2016 baseball season in April.” There is no indication, however, that Section 106 review and consultation has been initiated by any federal agency for the Revitalize RVA project.

Instead, the “Loving RVA” website informs the public that: “Prior to future development, an historical assessment will be undertaken by a team of archaeologists to document the history of the site.” In addition, a March 27, 2014, press release from the Mayor’s Office describes a City-led process that would include “historical research, expert reviews, archaeological excavations, curation of found artifacts, public review and participation, and long-term sharing of historical information.” However, the City’s proposed historical assessment is no substitute for the federal Section 106 review and consultation process, which must be conducted by the relevant federal agency prior to approval of, or assistance to, the Revitalize RVA project--with the goal of avoiding, reducing, or mitigating harm to historic and archaeological resources.

Before the City initiates its historical assessment, it is critical to note that archaeological excavation is inherently destructive and is considered an adverse effect pursuant to Section 106.¹

Methods for recovering information from archeological sites, particularly large-scale excavation, are by their nature destructive. The site is destroyed as it is excavated. Therefore management of archeological sites should be conducted in a spirit of stewardship for future generations, with full recognition of their non-renewable nature and their potential multiple uses and public values. [*Recommended Approach for Consultation on Recovery of Significant Information from Archeological Sites*, Advisory Council on Historic Preservation, 1999 (emphasis added).]

Consequently, the City should be aware that Section 110(k) of the National Historic Preservation Act, 16 U.S.C. § 470-h-2(k); 36 C.F.R. § 800.9(c), is designed to discourage intentional advance destruction of historic and archaeological resources as a means to avoid Section 106 review and consultation. Section 110(k), referred to as the “anticipatory demolition” provision of the Act, establishes a penalty in order to deter such actions: Denial of federal assistance and approvals, including permits and grant funding, unless or until the federal agency goes through a special consultation process with the Advisory Council on Historic Preservation to determine whether circumstances justify granting the assistance at all, in light of the earlier destruction of historic properties. Section 110(k) provides that “a federal agency may not grant a permit to an applicant who has already adversely affected historic property.” *Committee to Save Cleveland’s Huletts v. U.S. Army Corps of Engineers*, 163 F. Supp. 2d 776, 792093 (N.D. Ohio 2001).²

¹ Physical destruction, damage, or removal of all or part of an archaeological resource from its historic location is an adverse effect. 36 CFR § 800.5(a)(2)(i), (iii). The federal Advisory Council on Historic Preservation has acknowledged “the reality that destruction of [an archaeological] site and recovery of its information and artifacts is adverse. It is intended that ... Federal agencies will be more inclined to pursue other forms of mitigation, including avoidance and preservation in place, to protect archeological sites.” 65 Fed. Reg. 77,698, 77,720 (Dec. 12, 2000)(emphasis added).

² The *Huletts* case is particularly relevant because the court held that the Army Corps of Engineers violated Section 106 by issuing a dredging permit to the Port Authority of Cleveland, where the Port Authority had already demolished and dismantled the historic Hulett iron ore unloaders, which were adjacent to the dredging area. The court ruled that the question of unlawful anticipatory demolition had to be deferred until a future permit application was filed. More than five years later, when the Port Authority sought a

In other words, destruction of historic or archaeological resources in Shockoe Bottom prior to the completion of Section 106 review and consultation for any federal permits or funding for the Revitalize RVA project would jeopardize the approval of that federal assistance for any element of the proposed stadium project. The National Trust strongly urges the City of Richmond and its development partners to avoid taking any action for the Revitalize RVA project that may disturb or harm historic and archaeological resources before the federal Section 106 review and consultation process is complete.

Thank you in advance for considering the views of the National Trust for Historic Preservation. I look forward to speaking with you, if the National Trust can be of assistance in this important matter.

Sincerely,



Rob Nieweg
Field Director & Attorney
Washington Field Office

cc: The Hon. Dwight C. Jones, Mayor, City of Richmond
The Hon. Charles R. Samuels, President, Richmond City Council
The Hon. Ellen F. Robertson, Vice Pres., Richmond City Council
The Hon. Jonathan T. Baliles, Richmond City Council
The Hon. Chris A. Hilbert, Richmond City Council
The Hon. Kathy C. Graziano, Richmond City Council
The Hon. Parker C. Agelasto, Richmond City Council
The Hon. Cynthia I. Newbille, Richmond City Council
The Hon. Reva M. Trammell, Richmond City Council
The Hon. Michelle R. Mosby, Richmond City Council
Julie Langan, Virginia Department of Historic Resources
Reid Nelson, Advisory Council on Historic Preservation
David Dutton, Dutton + Associates, LLC

subsequent dredging permit at the same location, the Army Corps itself concluded that unlawful anticipatory had occurred, back in 1999 and 2000. Indeed, the Port Authority still has not received the dredging permit because of the anticipatory actions the Port Authority took more than a decade ago.