



Preserving America's Heritage

October 20, 2008

Col. David C. Press
Commander
Corps of Engineers, Omaha District
1616 Capitol Avenue
Omaha NE 68102

Re: Army Corps Permit for Proposed Southern Montana Electric and Transmission
Cooperative, Inc. Highwood Generation Station
Great Falls, Montana

Dear Colonel Press:

We have recently received inquiries about the referenced project and the status of the Corps of Engineers, Omaha District (Corps) compliance with Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. § 470f, and its implementing regulations, "Protection of Historic Properties," 36 CFR part 800, for this undertaking. As we understand, the project proponent, Southern Montana Electric and Transmission Cooperative, Inc. (SME), has initiated construction activities at the project site apparently before the completion of the Section 106 process.

The Advisory Council on Historic Preservation (ACHP) formally entered into the consultation with the United States Department of Agriculture, Rural Utilities Service (RUS) in July 2006. In February 2008, the RUS informed SME that it would not be able to finance the Highwood Generation Station. Therefore, in June 2008, RUS notified the ACHP that it was discontinuing its Section 106 consultation for the proposed undertaking.

To our knowledge, the Corps had not been a consulting party for the Section 106 consultation during that period. The ACHP has no record of receiving documentation from the Corps indicating its compliance with Section 106. However, this week we were informed that in April 2008, the Corps issued a Nationwide permit to SME for the proposed undertaking with the condition that the Section 106 process be completed prior to the commencement of construction activities.

We wish to remind the Corps that Section 106 of the NHPA requires Federal agencies to take into account the effects of their undertakings on historic properties and afford the ACHP a reasonable opportunity to comment prior to issuing a permit. Moreover, the ACHP's opportunity to comment is further compromised when an agency official fails to complete the requirements of Section 106 prior to the undertaking's ground disturbing activities.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

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Likewise, the Corps is responsible for complying with the requirements of Section 110(k) of the NHPA when reviewing a permit application (16 U.S.C. § 470h-2(k); 36 CFR § 800.9(c)). This statutory requirement prohibits a Federal agency from issuing a permit to an applicant who, with intent to avoid Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, has allowed such significant adverse effect to occur, unless the agency, after consultation with the ACHP, determines that circumstances warrant issuing the permit despite the adverse effects.

We also note that in addition to the normal requirements of Section 106, when an National Historic Landmark (NHL) may be directly and adversely affected, Section 110(f) of the NHPA requires Federal agencies, to the maximum extent possible, to undertake such planning and actions as may be necessary to minimize harm to such an NHL (16 U.S.C. § 470h-2(f)). With regard to the proposed undertaking, the project site is located on and adjacent to land that includes the Great Falls Portage National Historic Landmark and the Lewis and Clark National Historic Trail (LECL), a unit of the National Trails System. During the RUS Section 106 review, it was determined that the Area of Potential Effects (APE) for the undertaking included the footprint of the proposed facility and a large portion of the NHL, and extended in an elongated rectangle, roughly two miles wide and approximately 8.5 miles long. Further, the RUS determined that the proposed undertaking would have an adverse effect on the NHL based primarily on the visual intrusion of the proposed facility in the relatively undeveloped setting that exists today surrounding the NHL.

In light of the above, we ask the Corps to indicate the current status of this project, what the Corps has done to comply with the requirements of Sections 106 and 110(f) of the NHPA, and the Corps' opinion on the applicability of Section 110(k) to the present circumstances. While these compliance issues are sorted out, we urge the Corps to take steps to ensure that such compliance is not compromised by further work on this undertaking.

We thank you in advance for your prompt attention to this matter. Should you have questions, please contact Dr. John T. Eddins at (202) 606-8553 or by email at jeddins@achp.gov.

Sincerely,



for
Charlene Dwin Vaughn, AICP
Assistant Director
Federal Permitting, Licensing, and Assistance Section
Office of Federal Agency Programs