



Preserving America's Heritage

September 28, 2018

Mr. Joe DaVia
Chief, Maryland Section Northern
Regulatory Branch (CENAB-OP-R)
U.S. Army Corps of Engineers
Baltimore District
2 Hopkins Plaza
Baltimore, MD 21201

Re: *Proposed Ellicott City Flood Mitigation Project*
Ellicott City, Howard County, Maryland
ACHPConnect #13239

Dear Mr. DaVia:

The Advisory Council on Historic Preservation (ACHP) recently received inquiries from a concerned citizen about the referenced undertaking and the status of the Corps of Engineers, Baltimore District (Corps) compliance with Section 106 of the National Historic Preservation Act (NHPA) [54 U.S.C. 306108] and its implementing regulations, "Protection of Historic Properties" (36 C.F.R. Part 800).

As the ACHP has no record of notifications about this undertaking or determinations of adverse effect to historic properties, we would appreciate you apprising us of the current status of this project, including steps the Corps has taken to comply with the requirements of Section 106, so that we may respond to the citizen.

We also have been informed that the project proponent, the Howard County Council, is considering approval of demolition of a number of structures in the project area that are eligible for or listed on the National Register of Historic Places and are contributing elements to an historic district. As you know, the Section 106 regulations require that a federal agency complete its Section 106 review before the initiation of an undertaking. When this requirement is not adhered to, the ability of the agency to comply with the Section 106 mandate to take into account the effects of undertakings on historic properties by following the four-step Section 106 review process is compromised.

As such, Section 110(k) [54 U.S.C. 306113] of the NHPA referencing anticipatory demolition specifies that a federal agency will not grant a loan, loan guarantee, permit, license, or other authorization or assistance to an applicant who, with intent to avoid the requirements of Section 106, has intentionally significantly adversely affected an historic property to which the grant would relate, or having legal power to prevent it, has allowed such significant adverse effect to occur. A federal agency may determine, in consultation with the ACHP, that there are mitigating circumstances that justify continuing its review and granting such authorization or assistance despite the adverse effect created or permitted by the applicant. However, that is not a certainty. Further, such a decision may leave the Section 106 review subject to challenge by stakeholders.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

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Therefore, the ACHP recommends that the Corps take steps to insure that it provides appropriate guidance to the applicant regarding its obligations to comply with Section 106 prior to activities that may trigger the applicability of Section 110(k).

We thank you in advance for your prompt attention to this matter. Should you have questions, please contact John T. Eddins PhD at (202) 517-0211 or by email at jeddins@achp.gov.

Sincerely,

A handwritten signature in blue ink that reads "Jaime Loichinger". The signature is written in a cursive style and is positioned above a horizontal line.

Jaime Loichinger
Acting Assistant Director
Federal Permitting, Licensing, and Assistance Section
Office of Federal Agency Programs