



*Preserving America's Heritage*

May 6, 2013

Mr. Edward S. Sundra  
Director of Program Development  
Federal Highway Administration  
Virginia Division  
400 North 8<sup>th</sup> Street, Room 750  
Richmond, VA 23219

Ref: *Sammons-Ferguson Cemetery and J.S. Sammons House*  
*Route 29 Bypass Project*  
*Abemarle County, Virginia*

Dear Mr. Sundra:

The Advisory Council on Historic Preservation (ACHP) has received a number of letters and email messages from concerned citizens, public officials, and preservation professionals objecting to the Virginia Department of Transportation's (VDOT's) determination of eligibility for the Sammons Cemetery (DHR Survey No. 002-5203) and the Sammons House (DHR Survey No. 002-5193). (Copies of this correspondence are enclosed.) The Sammons Cemetery was first identified by VDOT Cultural Resources Staff in late 2012 as a potential resource within the right-of-way of the proposed Route 29 Bypass. It is our understanding that the Sammons Cemetery had not been previously evaluated for National Register eligibility, and that the J.S. Sammons House was only considered under Criterion C for architectural significance.

VDOT provided us with a courtesy copy of its March 25, 2013 submission to the Virginia State Historic Preservation Officer (SHPO) regarding the National Register eligibility of these resources. VDOT's letter and supporting documentation concluded that the two referenced properties are not eligible for inclusion in the National Register, and thus not subject to consideration under Section 106 of the National Historic Preservation Act (16 USC 470f).

We have spoken with the Virginia SHPO, who has requested and received additional information regarding these resources. The Virginia SHPO recognizes that the ACHP does not play a role in the evaluation of historic properties, but has concurred that our involvement would be helpful and appropriate given the widespread public interest in this matter, as well as the need for us to be responsive to the many requests submitted to the ACHP. We respect the Virginia SHPO's advice and appreciate the leadership it has exhibited in advising federal agencies on matters regarding the historical significance of properties in the Commonwealth. In this particular circumstance, we agree that a formal evaluation by the Keeper of the National Register of Historic Places (Keeper) would be helpful in that it would provide a definitive and final word on National Register eligibility. As you know, Section 36 CFR 800.4(c) (2) of our

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regulations, "Protection of Historic Properties" (36 CFR Part 800), provides for the Secretary to resolve eligibility issues and states that *"If the agency official and SHPO/THPO do not agree, or if the Council or Secretary so request, the agency official shall obtain a determination of eligibility from the Secretary pursuant to 36 CFR Part 63."* A referral to the Keeper, therefore, is consistent with the intent and spirit of the regulations. In matters regarding National Register eligibility, the Secretary of the Interior is that ranking official and is represented by the Keeper.


Accordingly, the ACHP requests that the Federal Highway Administration (FHWA) obtain a formal determination of eligibility from the Keeper for the Sammons-Ferguson Cemetery and J.S. Sammons House, both as individual resources and as a part of a single property. In making this request to FHWA, the ACHP does so without independent judgment or a predisposition about the potential eligibility of the Sammons-Ferguson Cemetery and Sammons House. Further, we want to clarify that we do not make any assertions that VDOT or its contractors lack the appropriate professional qualifications to have made an evaluation of the properties. Rather, we believe that a review of the documentation by the Keeper will assist all interested parties, including those that have requested consulting party status, in understanding how all the information provided, to date, factors into an evaluation for National Register eligibility. More importantly, it will allow FHWA and VDOT to move forward on decision making and appropriate next steps in the event it becomes necessary to reopen the Section 106 review.

While FHWA awaits the opinion of the Keeper, the ACHP also requests that FHWA convene a meeting of all interested parties since a number of stakeholders have recently expressed an interest in better understanding the effects of the Route 29 Bypass on properties within the project's area of potential effects. During this meeting, FHWA and VDOT can clarify the status of this project and discuss the details of the proposal to avoid effects to the Sammons-Ferguson Cemetery, regardless of its eligibility. In addition, the interested parties can discuss historic preservation issues, including the applicability of Section 800.13(b) of our regulations to this matter. Clarification of the next steps in a post agreement discovery by FHWA is particularly important given that there are different actions required of FHWA depending on the outcome of the eligibility determination.

In closing, the ACHP would like to be clear that we intend to participate in the meeting that FHWA convenes. Participation in a discussion to explain the roles and responsibilities, the National Register evaluation process, the timing of reviews, and how historic properties have, and will be, taken into account for this project would be productive. Moreover, we think that the Virginia SHPO and the ACHP can assist FHWA in transitioning from a contentious Section 106 review, to one that is focused on the relevant issues.

If you have any questions or require further assistance regarding our requests, feel free to contact me at 202-606-8533 or via email at [cvaughn@achp.gov](mailto:cvaughn@achp.gov).

Sincerely,



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

Enclosures