

JAMES RIVER CASE STUDY

Matthew Adams

November 19, 2020



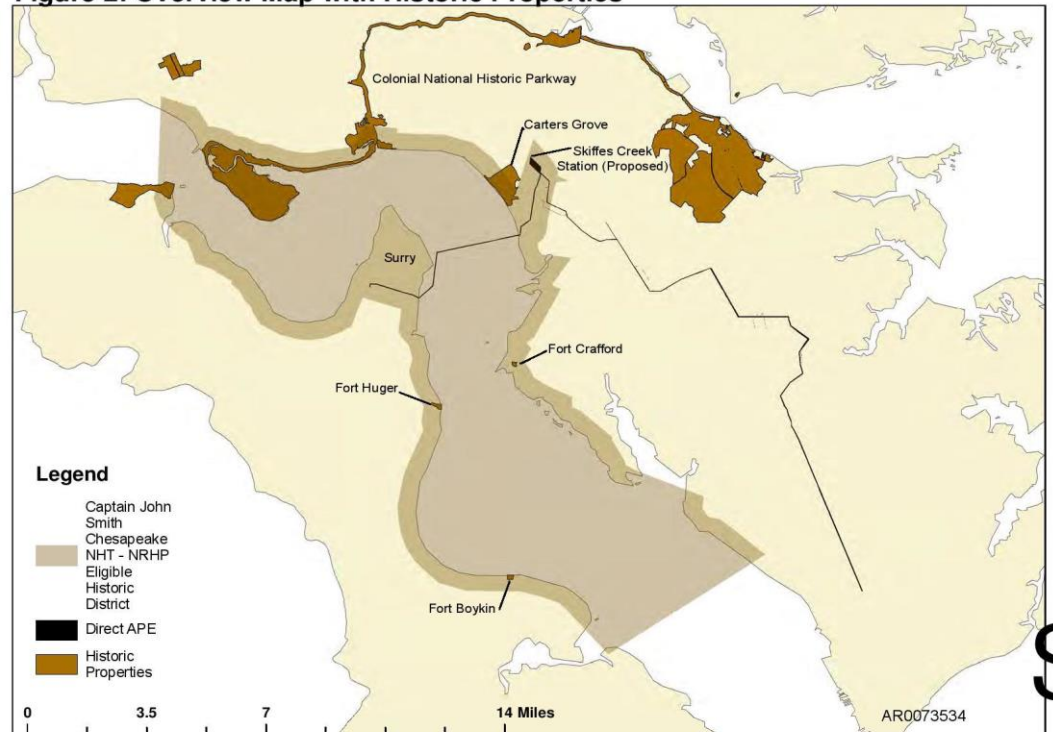
KAPLAN KIRSCH ROCKWELL

The Project

- Purpose: Increase reliability with coal retirements
- Transmission lines (approx. 27 total miles)
- Switching station (approx. 20 acres)
- 4-mile crossing of the James River

- >Jamestown Island
- >Colonial NHP
- >Colonial Pkwy
- >John Smith trail
- >Carter's Grove
- >JR-HI-JS district

Figure 2: Overview Map with Historic Properties



The Permitting Process

- Lead agencies:
 - >VA SCC (2010-13): Cert. of public convenience and necessity
 - >Corps (2013-17): CWA 404, RHA 10, NEPA, NHPA
- Key issues:
 - >Significance of impacts (EA vs. EIS)
 - >Alternatives
 - >110(f)?
 - >Conflict re: agency/proponent roles and responsibilities
- Results:
 - >106 MOA documenting extensive adverse effects
 - >EA/FONSI, no EIS
 - >No 110(f)

The Litigation

- Claims
 - >Failure to prepare EIS
 - >Arbitrary/capricious alternatives analysis
 - >Failure to comply with 110(f)
- DC District Court
 - >Upheld Corps' analyses
- DC Circuit
 - >Invalidated FONSI, ordered EIS
 - >110(f) compliance required
 - >Resolution of alternatives claims not required

NEPA: A Preview of the New Regulatory Regime?

- Changes to the significance determination
- Agency jurisdiction as a limitation on scope
 - >Environmental analysis
 - >Alternatives
- Lead agency role / responsibilities
- Project proponent role / responsibilities
- Purposes of NEPA / NEPA review



NHPA: Common Sense Makes a Comeback?

- NEPA/106 Coordination: Common sense as a limit on silo-ed review
- 110(f): Common sense as guide to applying the statutory requirement

Thank You

Matthew Adams

Kaplan Kirsch & Rockwell

595 Pacific, 4th Floor

San Francisco, CA 94133

(415) 572-0895

madams@kaplankirsch.com



KAPLAN KIRSCH ROCKWELL

projects that keep life moving.®