



THE OHIO ARCHAEOLOGICAL COUNCIL
P.O. BOX 82012 · COLUMBUS, OHIO 43202

December 13, 2016

Lieutenant General Todd Semonite
Commanding General and Chief of Engineers
Headquarters
U.S. Army Corps of Engineers
441 G Street NW
Washington, DC 20314-1000

Dear General Semonite:

We the Board and Officers of the Ohio Archaeological Council would like to express our concern about the handling of the regulatory framework associated with the permitting of the Dakota Access Pipeline (DAPL). While we are concerned about the well-being of all the Water Protectors, and the apparent excessive force used against the demonstrators, our present comments on the project are limited to the regulatory framework and the application of the Section 106 process of the National Historic Preservation Act (NHPA). Specifically, we continue to be concerned about the use of “Appendix C” for undertakings overseen by the Corps of Engineers (Corps), and the use of Nationwide Permit 12 to circumvent full and proper review of potential effects on historic and cultural resources. In general, our comments reinforce and reaffirm the concerns and issues raised by the Society for American Archaeology and the American Cultural Resource Association.

As has been pointed out by the Society for American Archaeology (SAA; http://www.saa.org/Portals/0/SAA/GovernmentAffairs/DAPL_LETTER.pdf), American Cultural Resource Association (ACRA; <http://acra-crm.org/page-18082>), and the Advisory Council on History Preservation (ACHP; <http://www.achp.gov/docs/asadarcy.pdf>), the Corps’ use of 33 CR 325, Appendix C is in direct contradiction of the ACHP’s own regulations (36 CFR 800) on the execution of the Section 106 process. Particularly at issue in the case of DAPL is the artificial fracturing of a single project into narrow undertakings. The federal agency that is charged with carrying out the Section 106 process is directed to consider reasonably foreseeable direct and indirect effects on historic and cultural resources. The Corps’ practice of dividing a single undertaking into multiple narrow permits is a failure to fulfill the Corps’ responsibility as the lead federal agency under Section 106. This practice shortcuts the necessary assessment and consultations. This failure to fulfill the Corps’ responsibility under Section 106 is further compounded by the use of Nationwide Permit 12 (NWP 12). In effect, by using minimal permitting and multiple narrow undertakings the Corps has created hundreds of undertakings that are now considered by the Corps to be eligible for NWP 12 (i.e., a project that “will cause only minimal adverse environmental effects” 33 U.S.C §1344(e)(1)), the Corps considers its compliance with the National Environmental Protection Act (NEPA) and Section 106 complete. This results in no project-specific NEPA review. While we are in favor of expedited permitting, this must not come at the expense of adequate consideration of impacts and thorough consultation. We object to the apparent

misuse of NWP 12 in combination with narrow undertakings, and a failure to consider the full scope of direct and indirect impacts of the issuance of the permit for the undertaking.

The Corps' failure to properly fulfill its full responsibility under NEPA and Section 106 of the NHPA results in much avoidable harm to cultural and environmental resources, to local communities, to developers seeking permits, and to descendant communities. Given the risks to cultural resources associated with the DAPL and other Corps projects, we urge the Corps to consider the discontinuation of its use of Appendix C to avoid compliance with ACHP-approved regulations (36 CFR 800) in the execution of its responsibilities under federal law.

Sincerely,

A handwritten signature in cursive script, appearing to read "Anne B. Lee".

Anne B. Lee
President, Ohio Archaeological Council

cc:

Hon. Jo-Ellen Darcy, Assistant Secretary of the U.S. Army for Civil Works
John Fowler, Executive Director, Advisory Council on Historic Preservation
Jon Eagle, Tribal Historic Preservation Officer, Standing Rock Sioux Tribe