



January 10, 2022

Ms. Kerri Barile, President  
Dovetail Cultural Resources Group  
11905 Bowman Drive, Suite 502,  
Fredericksburg, Virginia 22408

Dear Ms. Barile,

As an official consulting party to the National Historic Preservation Act (“NHPA”) Section 106 review of the Richmond, Virginia (“DC2RVA”), Southeast High Speed Rail project – Department of Historic Resources (“DHR”) Project No. 2014-0666 – The Cultural Landscape Foundation (“TCLF”) offers the following comments about the proposed Second Amendment to the Memorandum of Agreement (“MOA”), with emphasis on the Shockoe Hill African Burying Ground.

Although we fully recognize that this process has been ongoing for several years and we are a more recent addition as an official consulting party, based on what we know today about the site’s significance and its cultural affiliations **we strongly urge that identifying alternative routes be the first and highest priority.**

The importance of the Shockoe Hill African Burying Ground is widely acknowledged by many including Lenora McQueen and members of the descendant community, Richmond’s African American community, the National Trust for Historic Preservation, Historic Richmond, the Sacred Ground Historical Reclamation Project, RVA Archaeology, and others.

Moreover, in May 2021, Preservation Virginia included Shockoe Hill African Burying Ground on the listing of [Virginia's Most Endangered Historic Places](#). The listing, according to Preservation Virginia, is intended to raise awareness of the threats to what remains of this sacred place and to highlight the opportunity for solutions to reclaim this history and this resting place after decades of desecration and disrespect. In December 2021, TCLF included the Shockoe Hill African Burying Ground among thirteen sites featured in [Landslide 2021: Race and Space](#), a report and online exhibition about nationally significant cultural landscapes associated with African Americans, Hispanic Americans, and Native peoples that are threatened and at-risk. The detailed entry about the site includes a [six-minute video documentary](#) with voiceover narration by Ms. McQueen.

Further, TCLF believes: [a] consultation should not be deferred; [b] a “Cultural Affiliation Study” should be undertaken; [c] the assessment of effects (“AOE”) must include cumulative effects; [d] the MOA should not undermine the rights of consulting parties to disagree with determinations of no adverse effect and refer those issues to the Advisory Council on Historic Preservation (“ACHP”); and, [e] the impacts to the site requires compliance with Section 4(f) of the Department of Transportation Act.

[a] Given the importance of the cultural landscape and the seriousness of threats to it, the draft Second Amendment to the MOA (Stipulation III.A.1.a., at p.6) should be revised to require the immediate initiation of consultation regarding the Shockoe Hill African Burying Ground. The current draft of the MOA proposes that consultation will not even begin until “project funding is identified for that segment of the Project containing the Shockoe Hill Burying Ground,” which could be many years away. The identification of historic resources, including the boundaries and associated

eligibility questions, is currently incomplete. All historic resources potentially impacted by this project should be identified as soon as possible, using non-destructive, non-invasive means, to ensure that further consultation can focus on alternatives and modifications to the project to avoid, minimize, and mitigate the adverse effects.

Indeed, for clarity, please include scaled maps in the revised MOA showing the approved boundaries of the Shockoe Hill Burying Ground Historic District (127-7231) and the associated Shockoe Hill African Burying Ground (44HE1203) as depicted in the draft National Register of Historic Places nomination (“NHRP”) form and/or make reference to the boundaries of these sites as currently defined in DHR’s V-CRIS database of historic resources in Virginia. The draft NRHP nomination submitted to DHR [includes copies](#) of Figure 2 (Historic District boundary map) and Figure 12 (Shockoe Hill African Burying Ground).

[b] In an effort to evaluate the adverse effects of the current project, we strongly urge that a “Cultural Affiliation Study” be undertaken as defined by the [National Park Service’s NPS-28: Cultural Resource Management Guideline](#): “Using anthropological, archeological, ethnohistoric, historic, and other evidence, this study satisfies the need to identify cultural ties among past and present groups that used and may still use or relate to park resources and park natural and cultural resources, including museum objects.” Moreover, given the significance of this site, we strongly urge an “exhaustive investigation” level of study.

[c] It will be important to ensure that the assessment of effects includes a review of cumulative impacts to the Shockoe Hill African Burying Ground and the Shockoe Hill Burying Ground Historic District. Consideration of cumulative effects is required by both the National Environmental Policy Act and by the Section 106 regulations, 36 C.F.R. § 800.5(a)(1).

[d] The Section 106 regulations entitle consulting parties to raise disagreements with proposed findings of No Adverse Effect, and in response to those disagreements, the agency is required to consult to resolve the disagreement or to refer the disagreement to the ACHP. 36 C.F.R. § 800.5(c)(2)(i). However, the Draft MOA Amendment, in Stipulations III.C.2.a. and III.C.2.b. (pp. 7-8), would leave this right solely in the hands of the SHPO. Although the No Adverse Effect determinations are to be distributed to all parties for review and comment, including consulting parties, if the SHPO concurs in the agency’s determination, the proposed MOA language contains no requirement to address any disagreements by consulting parties, but instead, states “no further consultation for that portion of the Project is required and that portion may move forward to construction.” This language needs to be revised to be consistent with the Section 106 regulations. Perhaps the provision could read: “Upon concurrence by the SHPO and consulting parties with this finding, no further consultation for that portion of the project is required.”

[e] Finally, the project also requires compliance with Section 4(f) of the Department of Transportation Act, which prohibits the “use” of historic properties for transportation projects unless there is “no prudent and feasible alternative,” and the project includes “all possible planning to minimize harm.” 49 U.S.C. § 303(c); 23 C.F.R Part 774. The DOT needs to initiate this process now to ensure meaningful evaluation of feasible and prudent alternatives that would avoid and minimize the use of the Shockoe Hill African Burying Ground and the Shockoe Hill Burying Ground Historic District.

In conclusion, while the [Cultural Resources](#) section of the DC2RVA website concludes “evidence of this cemetery is no longer visible on the landscape,” visible evidence is only one marker for determining the significance of a cultural landscape. We believe that given what we now know about the importance of the Shockoe Hill African Burying Ground priority should be given to identifying alternatives that would not further disrupt and disturb the sanctity of this nationally significant cultural landscape.

Sincerely,

A handwritten signature in dark ink, consisting of a large, stylized 'C' followed by a smaller 'B' and a long horizontal line extending to the right.

Charles A. Birnbaum, FASLA, FAAR  
President and CEO

cc: Jamie Loichinger, Advisory Council for Historic Preservation; Collen Vaughn, Federal Preservation Officer, U.S. Department of Transportation; Kathleen Zeringue, Federal Preservation Officer, Federal Railroad Administration; Julie Langan, SHPO, Department of Historic Resources; Marc Holma, Department of Historic Resources; Lenora McQueen; Rob Nieweg, the National Trust for Historic Preservation; Cyane Crump, Historic Richmond; Ellen Chapman, RVA Archaeology; Ana Edwards, Sacred Ground Historical Reclamation Project; Elizabeth Kostelny, Preservation Virginia.