

Network for Success

# Local Programs Workshop



**BREAKOUT SESSION – GROUP 4**  
**Track B – Environmental Partnering**  
**Thursday, September 26, 2013**  
**1:00pm – 2:30pm**

Network for Success

# Local Programs Workshop



## **RESOLVING COMPLEX SECTION 106 CHALLENGES**

September 26, 2013

Antony F. Opperman

Cultural Resources Program

Manager Environmental Division

# SECTION 106 BASICS

## National Historic Preservation Act of 1966

- Federal agencies “take into account” the effects of “undertakings” on “historic properties”.
- Afford the Advisory Council on Historic Preservation (ACHP) a “reasonable opportunity to comment”.
- “Undertakings” – include the use of Federal funds or permits (“licenses”).

## Process governed by 36 CFR 800 (regulation administered by ACHP)

- Requirements are consultative, outcomes are not prescribed.
- Focused on “historic properties” – buildings, structures, districts, objects, and sites listed in, or eligible for listing in the National Register of Historic Places.
- Typical process steps involve ...
  - Initiation of Section 106
  - Identification of Historic Properties
  - Assessment of Effect(s) on Historic Properties
  - Resolution of Adverse Effects (typically by avoidance, minimization, or mitigation)

# PARTICIPANTS

- **Federal Funding Agencies**
  - Federal Highway Administration (FHWA)
  - Federal Emergency Management Agency (FEMA)
- **Federal Permitting Agencies**
  - U.S. Army Corps of Engineers (Corps)
  - Tennessee Valley Authority (TVA)
- **Virginia State Historic Preservation Officer (SHPO)**
- **Advisory Council on Historic Preservation (ACHP)**
- **Virginia Department of Transportation (VDOT)**
- **Local Governments**
- **Tribes (Federally-recognized)**
  - Delaware Nation (Oklahoma)
  - Eastern Shawnee Tribe of Oklahoma
  - United Keetoowah Band of Cherokee Indians in Oklahoma
- **Other “Consulting Parties”**

# TYPICAL SECTION 106 CHALLENGES

- *Most projects have no Section 106 challenges.*
- Identification of historic properties can take time and be costly.
- Opinions on Historic Properties can be a moving target.
- Agency opinions can be a moving target.
- Consultation over resolving adverse effects always takes considerably more time and be more complex than consultation involving “no effect” or “no adverse effect” determinations.
- Consulting parties sometimes have interests other than historic preservation.
- Native American consultation can take time.
- Projects involving major new highways are often challenged by environmental advocacy organizations, often through Section 106.

# WHEN WILL IT BE DONE?



# CONTACT INFORMATION

**Antony F. Opperman**  
**Cultural Resources Program Manager**  
**Virginia Department of Transportation**  
**Environmental Division**  
**1401 East Broad Street**  
**Richmond, Virginia 23219**  
**Voice: 804-371-6749**  
**E-Mail: [a.opperman@vdot.virginia.gov](mailto:a.opperman@vdot.virginia.gov)**

Network for Success

# Local Programs Workshop



## Resolving Complex Section 106 Challenges

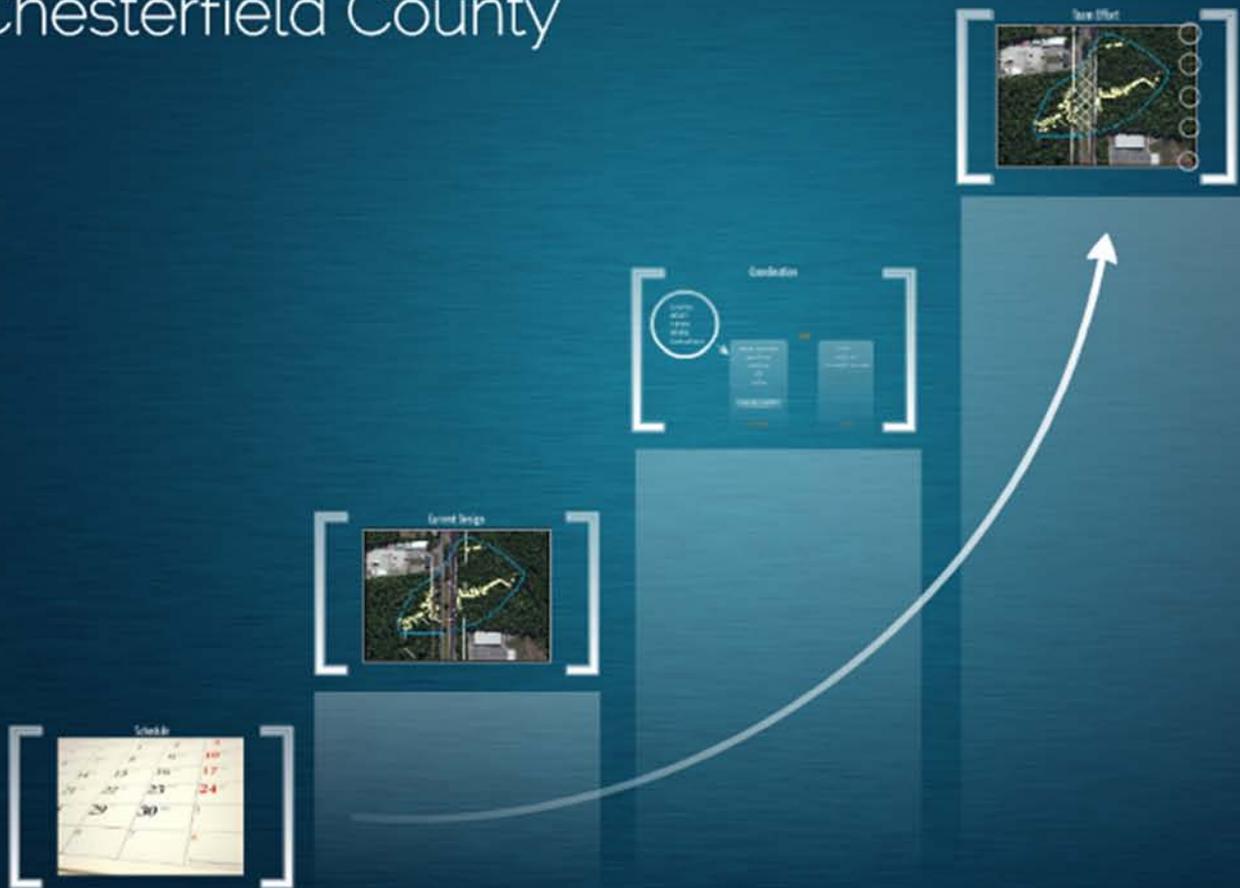
**September 26, 2013**

**Brennan Collier**

**Associate**

**McCormick Taylor, Inc.**

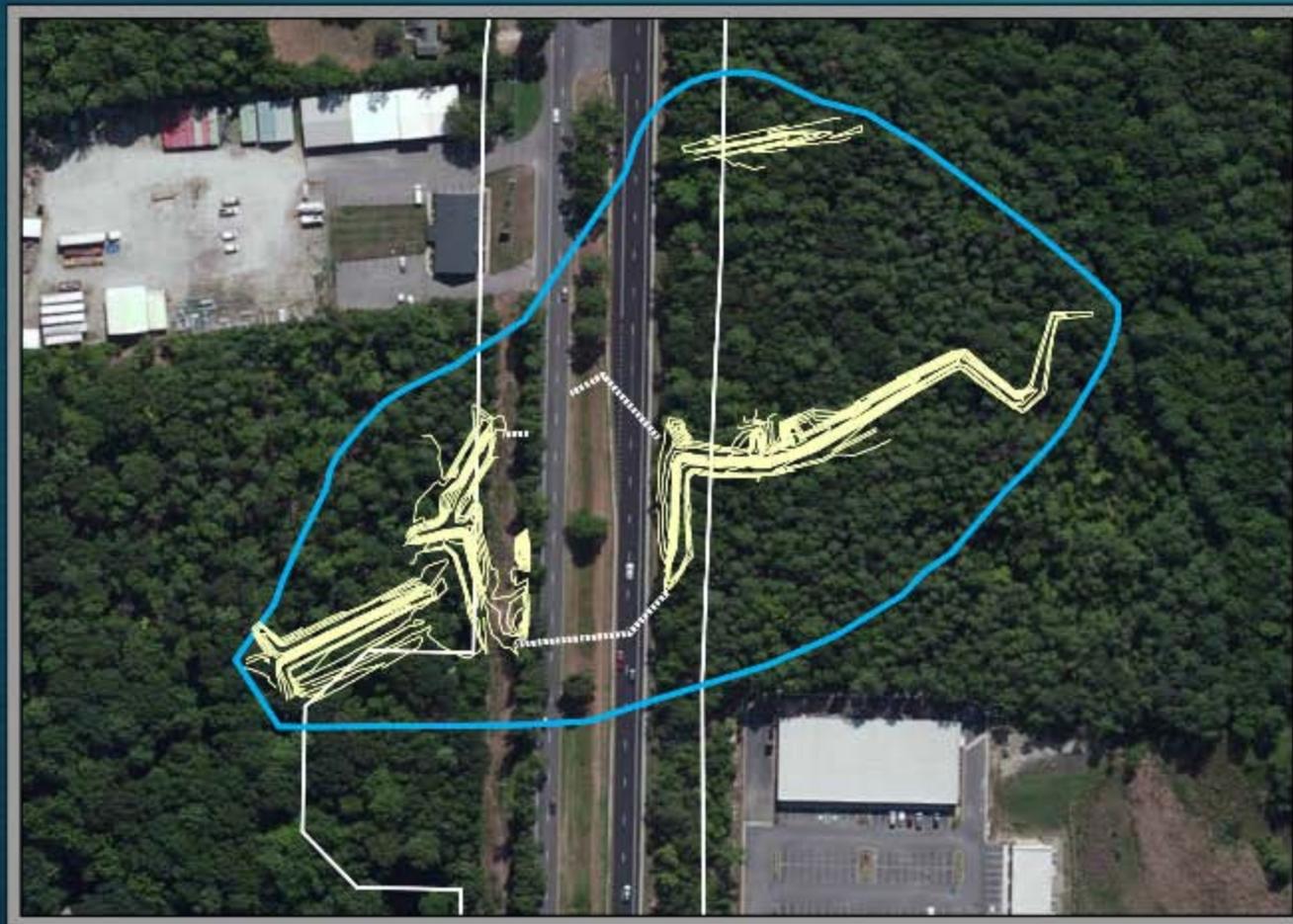
# Route 10 Widening Chesterfield County



# Schedule



# Current Design



# Coordination

County  
VDOT  
FHWA  
VDHR  
Consultant

Maintain Current Design

↓  
Impact the Fort

↓  
Adverse Effect

↓  
MOA

↓  
Mitigation

1. Acquisition for preservation
2. Phase III Data Recovery

12-18 Months

OR

Redesign

↓  
Avoid the Fort

↓  
(Conditional) No Adverse Effect

2 Months

Maintain Current Design

↓  
Impact the Fort

↓  
Adverse Effect

↓  
MOA

↓  
Mitigation

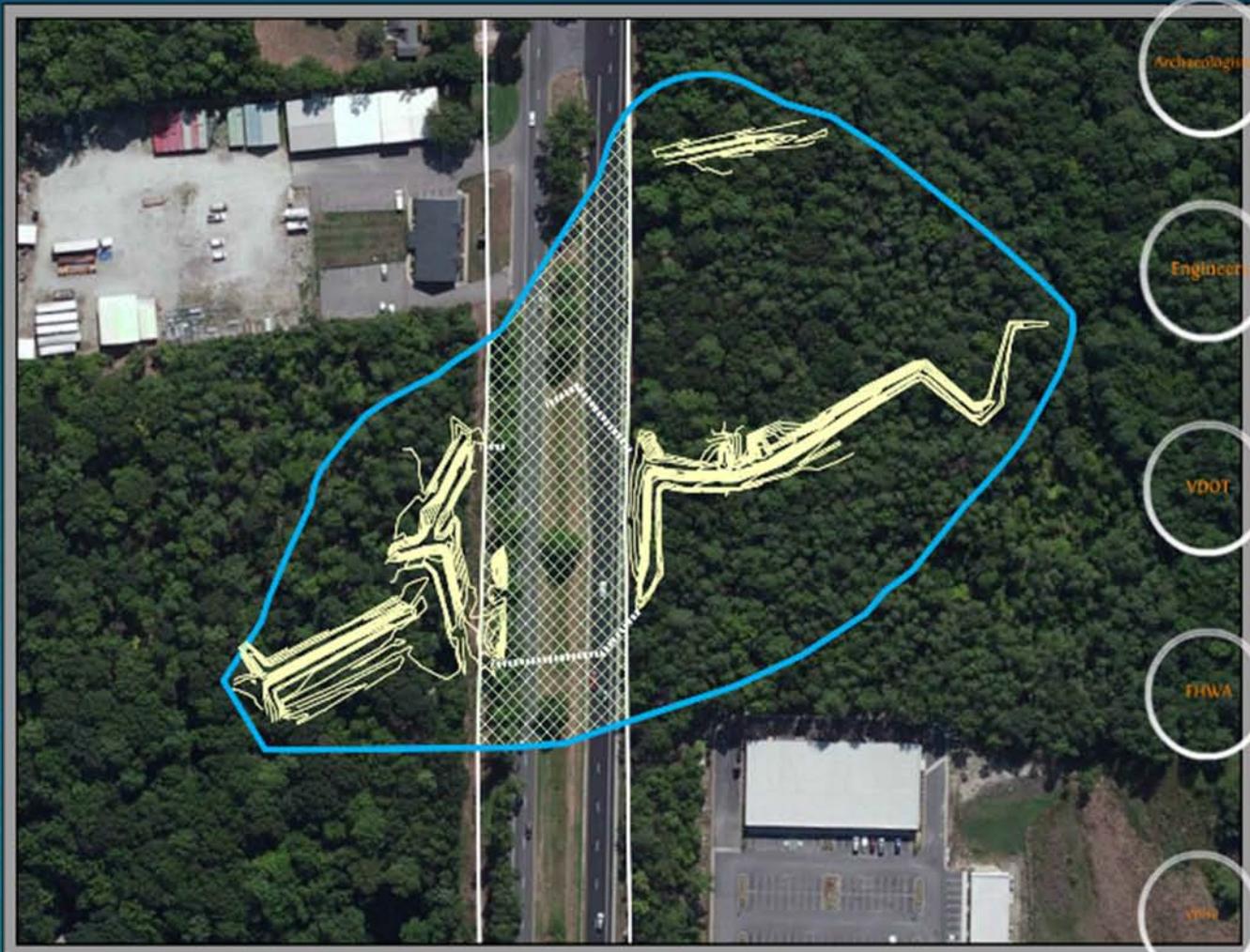
1. Acquisition for preservation
2. Phase III Data Recovery

**12-18 Months**

Redesign  
↓  
Avoid the Fort  
↓  
(Conditional) No Adverse Effect

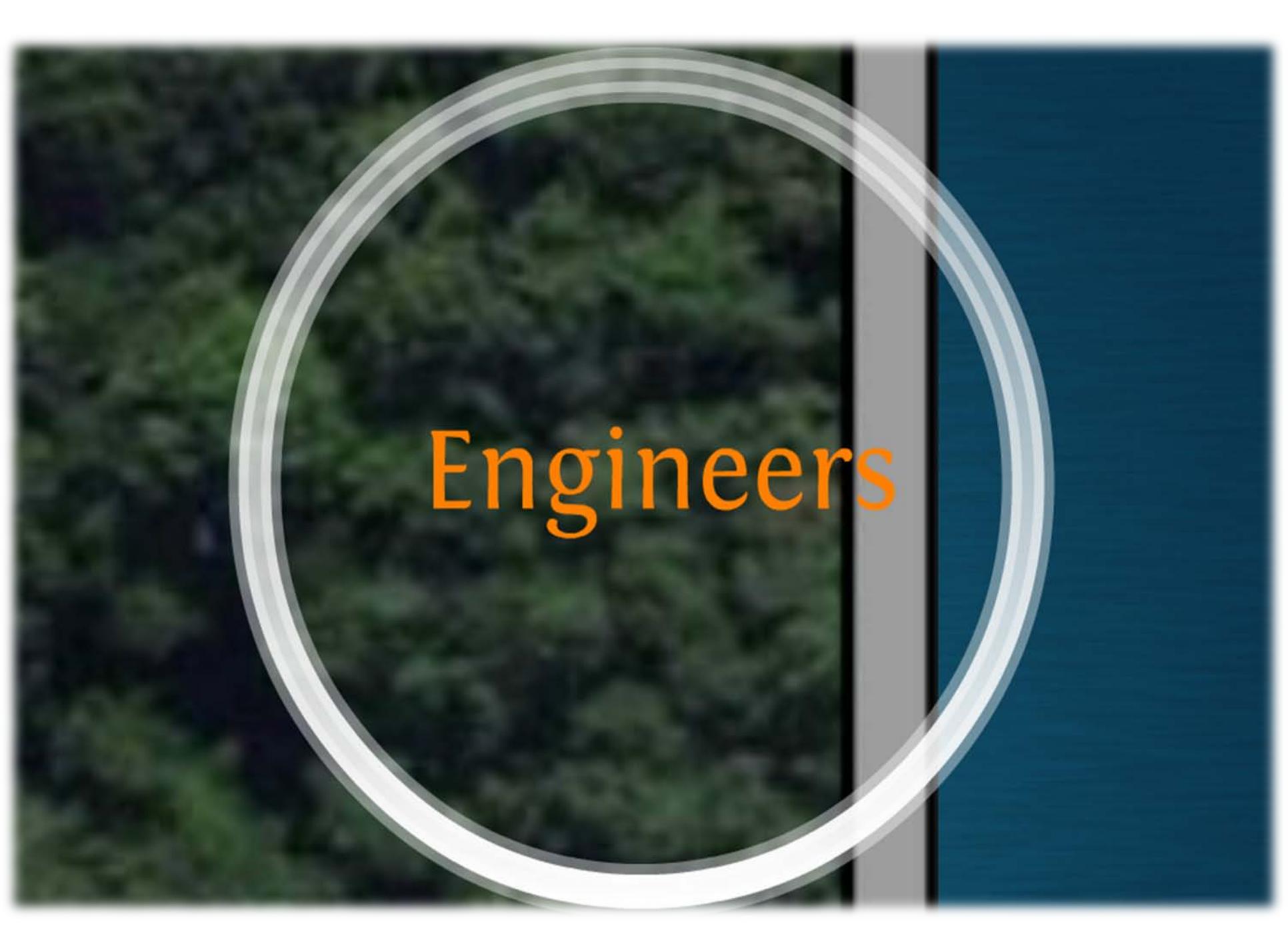
**2 Months**

# Team Effort

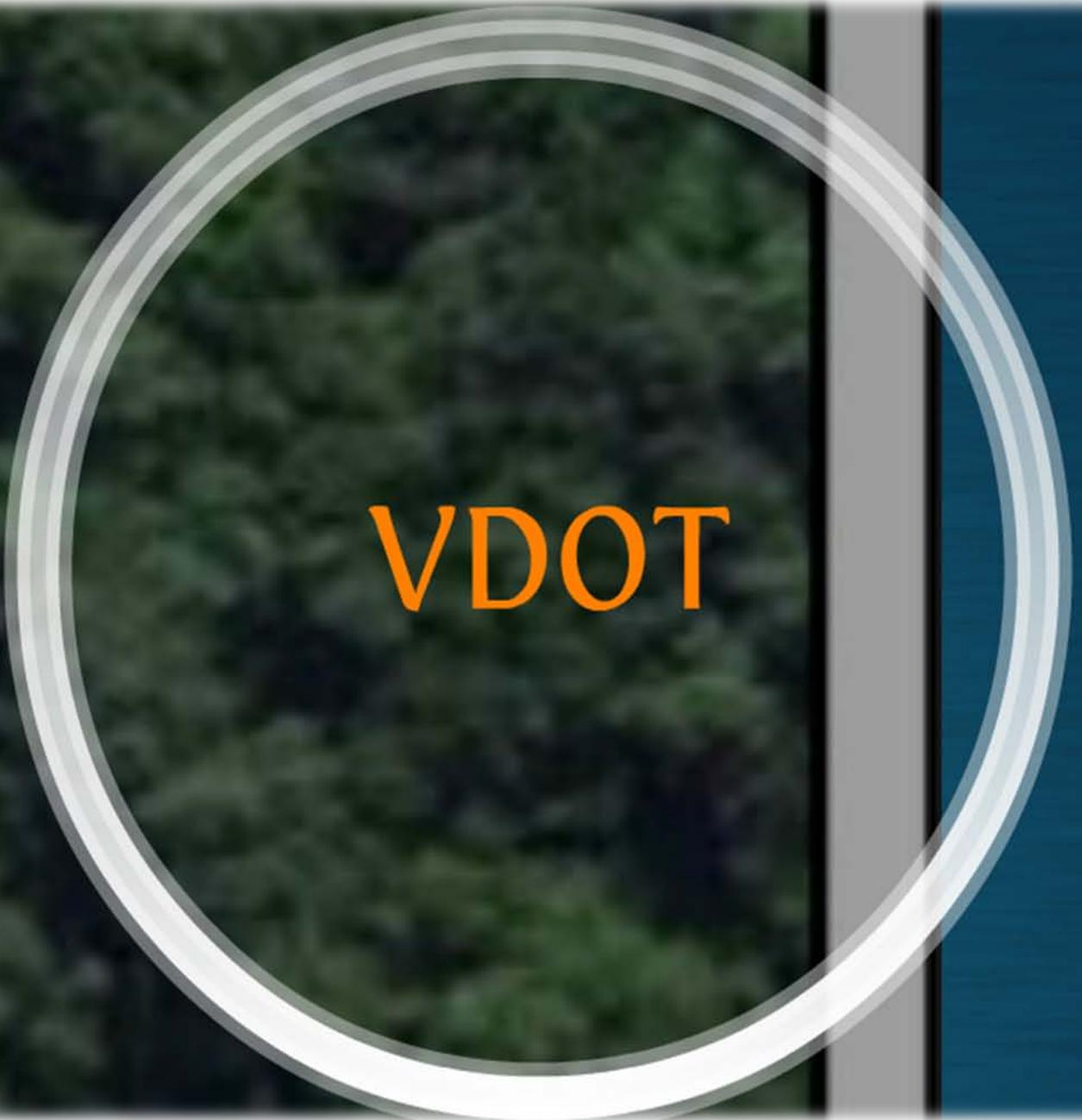




Archaeologists



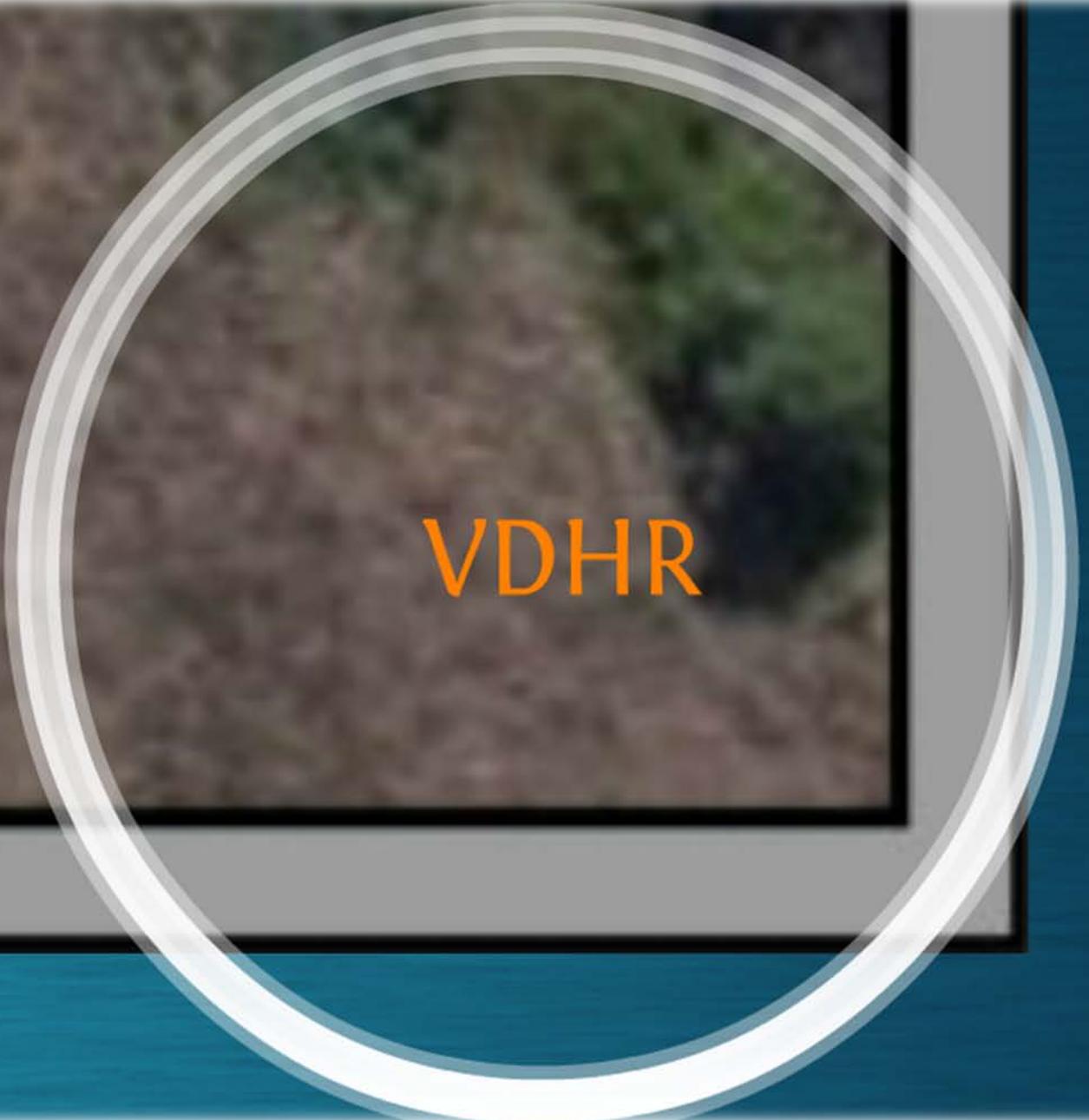
Engineers

The logo features a large, double-lined white circle. The left side of the circle is set against a blurred background of green trees. The right side of the circle is split into two vertical sections: a light gray section and a dark blue section. The text 'VDOT' is centered within the circle, overlapping the tree background and the gray section.

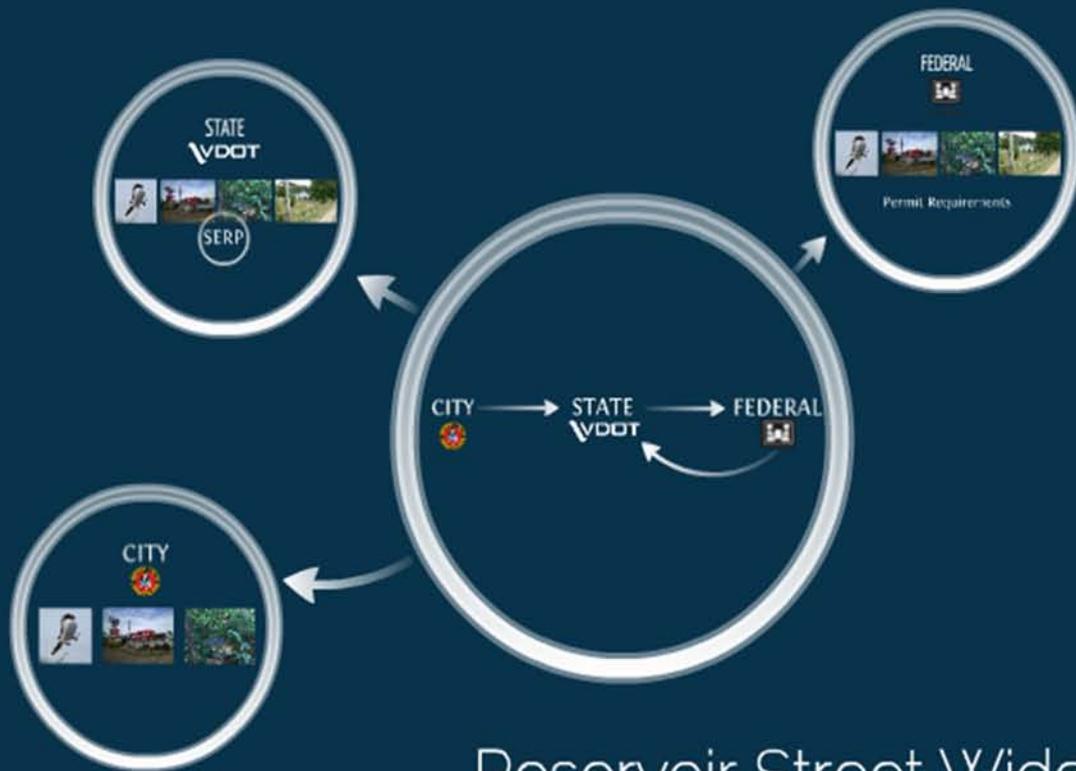
VDOT

The image features a large, stylized circular graphic composed of multiple concentric rings in shades of white and light blue. The background is split into three vertical sections: a dark green textured area on the left, a solid grey vertical bar in the center, and a solid dark blue area on the right. The text 'FHWA' is centered within the circular graphic.

**FHWA**



VDHR



## Reservoir Street Widening City of Harrisonburg

CITY



STATE  
VDOT



FEDERAL



# CITY



STATE  
VDOT



SERP



# FEDERAL



U.S. ARMY  
CORPS OF ENGINEERS



## Permit Requirements

STATE  
VDOT



SERP

DHR Coordination



# Thank You

Brennan S. Collier, McCormick Taylor  
[bscollier@mccormicktaylor.com](mailto:bscollier@mccormicktaylor.com)

McCormick  
Engineers & Planners  
Since 1946  
Taylor



Network for Success

# Local Programs Workshop



## **THE COLONIAL HEIGHTS BOULEVARD MODERNIZATION PROJECT**

**September 26, 2013**

**David Dutton**

**Dutton + Associates, LLC**

# Presentation Outline

- **Define the Project**
- **Identify Legal Requirements**
- **Identify Regulatory Review Participants**
- **Develop Consultation Strategy**
- **Identify, evaluate, and assess effects to historic properties**
- **Consult to resolve effects**
- **Document consultation outcomes**
- **Best Practices**

# Define the Project

## Project Description and Scope

- Include the whole project, not just specific segments
- Understand and articulate the various components that make up the project
- Know funding and permitting sources
- Identify special program participation



# Legal Requirements

## Understand Regulatory Requirements

- **Identify applicable laws and regulations  
(Section 106 of the National Historic Preservation Act,  
Section 4f, NEPA)**
- **Review and analyze applicable regulatory requirements  
and how they interact**
- **Have sufficient financial resources allocated to comply  
with applicable regulations**

# Identify Regulatory Review Participants

## Identify Participants

- Identify required participants in federal, state, and local review processes (i.e. agencies, local governments, affected property owners, etc.)
- Identify lead agency or entity for compliance purposes
- Identify potential Native American interests and participants if present
- Identify potential interested parties and stakeholders (e.g. neighborhood groups, local historical societies, special interest groups, etc.)

# Consultation Strategy

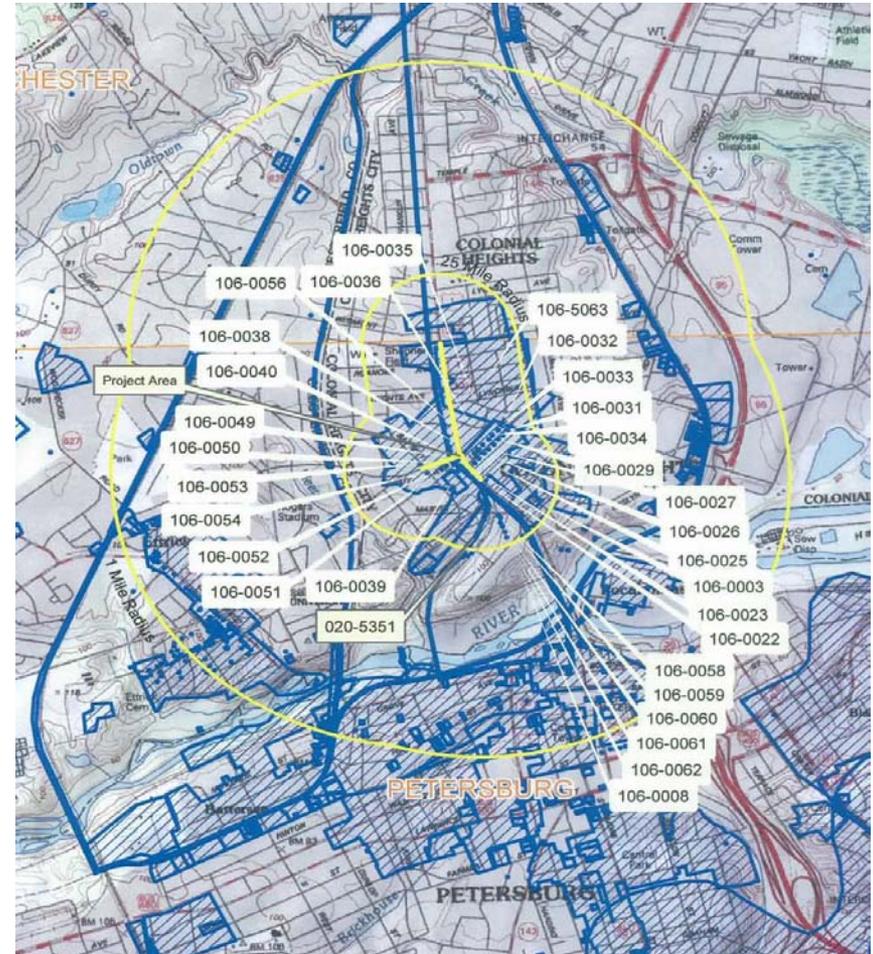
## Develop a Regulatory Strategy

- Establish compliance timeline
- Complete an historic property impact analysis
- Identify historic property treatment options (Do you have alternatives?)
- Outline public participation plan
- Include face-to-face introductory meeting with review agencies
- Include meetings with stakeholders to review project scope, regulatory requirements, and role of stakeholders
- Keep lead agency officials informed of agency and stakeholder contacts and any concerns or issues raised.

# Resource Inventory

## Identify & Evaluate Historic Properties

- Make sure you define and document the project's area of potential effects and that it is understood by all participants
- In addition to traditional archival and historic property inventories seek out and review historic aerial and ground photographs



# Resource Inventory

## Assessing Effects to Historic Property

- Consider all types of effects - direct and indirect
- Know what qualities and characteristics make the identified historic property(ies) significant
- Remember to consider effects not only to property listed in the National Register but also those eligible for listing
- Understand the what effects the project will have on historic property and be able to clearly document and communicate them to agencies and stakeholders.

# Consultation

## Consulting to Resolve Effects

- Provide complete project documentation that can serve as a starting point for consultation
- The lead agency should take charge of the consultation process and drive the schedule
- Consider cost factors and project requirements when negotiating treatment of historic property(ies)
- Manage the conversation. Not everyone has to agree or will agree but make sure everyone stays informed about decision-making
- Document in writing what has been agreed to

# Documenting Outcomes

## Documenting Agreements

- Agreement documents should be clearly and concisely written
- Remember, individuals implementing the terms of an agreement are typically not the ones who negotiated it
- Agreed upon mitigation should be relevant and have a public benefit

# Conclusion

## Best Practices

- **Comply with the law early in the project planning process**
- **Know what is required under federal, state, and local laws and regulations**
- **Understand participants, their responsibilities, and interests prior to consultation**
- **Know where historic properties are located and any special considerations or opportunities that may be applicable**
- **Have a plan to lead the consultation process and avoid surprises and delays**