

WIND RAP

HISTORIC RESOURCES WORK SESSION

TUESDAY, DECEMBER 15, 2009

Dominion Technical Center, Glen Allen

9:40 a.m. – 12:15 p.m.

RAP MEMBERS IN ATTENDANCE: John Daniel (Troutman Sanders); Julie Langan (VDHR)

RAP INTERESTED PARTIES IN ATTENDANCE: Don Giecek (Invenergy), RAP alternate; Robert Hare (Dominion); Roger Kirchen (VDHR), RAP alternate

WORK SESSION FACILITATOR: Carol Wampler, DEQ

WORK SESSION SUPPORT STAFF: Bill Norris, DEQ

WORK SESSION NOTES:

Carol Wampler welcomed the work session attendees and noted that since there was not a quorum of members present that the meeting would be conducted as a work session. The purpose of today's work session is to refine language that was developed by the subcommittee efforts and as modified by discussion during the plenary session and as modified following meetings with other agencies regarding how historic resources should be addressed in this regulatory action to develop this permit by rule. It was noted that the review conducted today was very important since the language being proposed has not been the subject of detailed discussions.

It was also noted that under a Permit-By-Rule that it is important to get all of the information upfront. The language being proposed today is an effort to clarify what historic resources information is needed and how that information is to be obtained and provided. It was noted that there are also a number of suggested language pieces for inclusion in guidance rather than in the regulation. The intent is to put in regulations only those things that DEQ should fully enforce and to place those things that are subject to change or could be changed into guidance.

Working from the December 8, 2009, working draft of the DHR recommendations for the Wind Energy Regulatory Advisory Panel's Draft Regulations, the Work Session participants discussed the following items:

- Section 1 B: Definition of "Historic resource": The definition now refers to the Virginia Landmarks Register (VLR) instead of the National Landmarks Register. DHR staff noted that the two lists are very similar (if not the same) in most instances. The process followed for registration on each list is very similar and well known by the qualified professionals working on these projects. It was noted that properties could be listed on one list rather than the other. This is dependent on how far in the process that the applicant wants to go. In fact an applicant can

bypass the VLR and seek registration on the National List. The listing on the VLR would normally occur first due to the length of the review time. Virginia's Landmarks Register actually predates the establishment of the National Landmarks Register by a couple of months. It was noted that given that this is a Virginia Regulation that reference to the VLR is appropriate and therefore this definition is also appropriate. All attendees agreed with this definition of historic resources.

ACTION ITEM: DHR staff should confer with their legal counsel regarding the use of the suggested definition of "historic resources," making sure it does not conflict inappropriately with another definition of historic resources.

- Section 3 B: The proposal is to include a specific reference to the Secretary of Interior's Professional Qualifications Standards (36 CFR Part 61) to clarify what professional qualifications are needed to fulfill the needed requirements. It was noted that there is a lot of precedent for including this type of reference, so its inclusion is appropriate.
- Section 3 B 1: Compilation of Known Historic Resources: This is basically a desktop (5 Mile) view of the project area. The concept of "publicly-available" was discussed by the group. It was suggested that this phrase should be deleted from the regulation but should be addressed through guidance. It was suggested that the requirement for information on known historic resources should be addressed in guidance with the statement: "The applicant may gather information on known historic resources through consultation with DHR, the Virginia Council on Indians, affected local and state governments, and countywide and citywide local historic societies." It was noted that an applicant should identify any potential issues as early as possible in the process and that in some cases that might include issues involving other states. In those instances it is likely that there will be local advocacy groups involved that will bring any "other state" issues to the attention of the applicant. It was noted that the proposed language for guidance that creates an exclusion for those "Areas and properties that can be demonstrated through topographic or similar analysis to have no view to the project" is an appropriate and relevant exception. The work group discussed the concept of the use of a "tiered approach" but no reduced requirements for smaller projects have yet been put forward. DHR, however, stated that they would not expect smaller projects to perform all of the tasks in their suggested draft. DHR suggests these tasks and standards for the large projects (like Highland County or larger). The group concluded that a complete exemption for the very small projects (community-sized) would have to come from the General Assembly through new legislation.
- Section 3 B 2: Architectural Survey: This is field survey of the project area. The use of the 50 year timeframe was briefly discussed but was noted to be appropriate and consistent with other programs. The wording suggested for use in guidance regarding reference to the DHR guidelines was deemed appropriate.
- Section 3 B 3: Archaeological Survey: This deals with physically disturbed areas. The use of the term "comprehensive" was discussed. It was suggested by the group that the section be reworded to clarify the requirement. The requirement should read: "The applicant shall conduct an archaeological field survey of the entire disturbance zone and evaluate the eligibility of any

identified archaeological site for listing in the VLR.” The reference to the DHR guidelines in guidance was deemed appropriate.

- Section 3 B 4: Anticipated Impacts to Historic Resources: This is the action step that is to be taken if anything is identified in the previous 3 steps. The workgroup discussed the concept of “impacts” and that there could be “impacts that are not adverse.” The idea is to provide a requirement so that “adverse impacts” are mitigated. It was also noted that the conclusion of the evaluations conducted in the previous three steps could be that there are “no” impacts. It was suggested that even if there is no potential for impacts that the applicant would still need to provide evidence of the analysis to support that finding. This should be addressed through guidance. The work group participants suggested that the section be reworded as follows: “The applicant shall assess and describe the expected impacts, if any, of the proposed project on historic resources identified in Sections 3 B 1; 3 B 2; and 3 B 3.” DHR staff noted that their guidance had not been adopted yet so that it could still be tweaked to provide the needed clarification regarding the type of analysis and the evidence of that analysis that should be provided.

ACTION ITEM: Don Giecek will get with DHR representatives to review and discuss the DHR guidance regarding the requirements included for “providing evidence of the analysis” performed for a project to determine if any revisions are needed.

- Section 4 B: The work group discussed the use of the term “substantially” and the use of the qualifier for the term “integrity.” It was suggested that the term “significantly” had already been used in the regulation and would be more appropriate. It was suggested that the meaning of the term “integrity” would normally be what an applicant’s consultant said it was and that the reference to 17VAC5-30-50 would be more appropriate in guidance. A question was raised as to how DEQ would arrive at the determination that there are “significant adverse impacts.” It was noted that there is a statutory requirement that DEQ confer and consult with its sister agencies in these instances and that it is likely that the applicant would come in early to discuss potential issues and concerns with DEQ as well as the other affected agencies. It was noted that this section language was taken straight out of the statute.
- Section 5 A: DHR had proposed the insertion of the phrase “a description of the anticipated efficacy of the proposed actions” in this section. The work group noted that this section was more general in nature and suggested that this phrase not be included here.
- Section 5 B: The work group discussed the use of the term “VLR-eligible” in this section. It was suggested that areas that were “VLR-listed” should also be included in all of the subdivisions of this section.
- Section 5 B 1: The workgroup suggested the inclusion of “VLR-listed” sites in addition to “VLR-eligible” sites.
- Section 5 B 2: The workgroup suggested the inclusion of “VLR-listed” sites in addition to “VLR-eligible” sites. The use of the phrase “to all practicable extents” was discussed. It was suggested that the more common phrase “to the extent practicable” should be used.

- Section 5 B 3: The workgroup suggested the inclusion of “VLR-listed” sites in addition to “VLR-eligible” sites. The workgroup discussed the wording of this subdivision and proposed that an alternate wording be used. The following revised worded was proposed: “For significant adverse impacts to VLR-eligible or VLR-listed architectural resources that cannot be avoided or minimized so that impacts are no longer significantly adverse, the applicant shall develop a reasonable and proportionate mitigation plan that offsets the significantly adverse impacts and has a demonstrated public benefit and benefit for the affected or similar resource.”
- Section 6 B: DHR had suggested the inclusion of “historic resources” as one of the requirements for the required context map. It was noted that this section was going to be discussed in an upcoming meeting. DHR noted that this seemed the logical place to include reference to this mapping requirement. It was noted that the issue is how much information can you include on a map and still have it be useful? It was suggested that there should be multiple maps or layers to provide the needed information.
- Language proposed for guidance: The work group had no issues with the language proposed for inclusion in guidance.

All attendees agreed with the DHR proposals, as amended in accordance with the language referenced above.