

25 August 2016

Mrs. Charlene Dwin Vaughn, AICP
Advisory Council on Historic Preservation
Assistant Director
Office of Federal Agency Programs
Federal Permitting, Licensing, and Assistance Section
410 F. Street NW, Suite 308
Washington, DC 20001-2637



Re: National Historic Landmark – *Maple Leaf*; St. Johns River; Duval County, Florida

Dear Mrs. Vaughn,

On 19 August 2016, Tori K. White of the Jacksonville District, U.S. Army Corps of Engineers (District) responded to your 11 August 2016 letter relating to the *permitting* of two (2) submerged telecommunication cables installed by trenching through the National Historic Landmark – *Maple Leaf* site. In that regard, I have been requested by St. Johns Archaeological Expeditions, LLC (SJAE) to respond to Ms. White’s letter to you. Dr. Keith Holland, the Principal of SJAE discovered and subsequently permitted, and negotiated the rights to remove, conserve and distribute to various state and national museums – a multitude of Civil War artifacts found within the undisturbed hull of the *Maple Leaf* wreck. Our engineering firm was the Permit Agent for the proposed exploration activities. It is our finding that much of the information recently provided to you by the District is neither forthcoming, nor supported by evidence. Accordingly, please consider the following:

1. Permit SAJ-1990-2470 to Southern Bell (ATT) for a subaqueous cable issued on April 30, 1990.

The District is correct that this Permit was issued *before* the *Maple Leaf* was placed in the National Register of Historic places in June 1994 and subsequently declared a National Historic Landmark in October of 1994, by U.S. Department of Interior Secretary Bruce Babbitt. It was at the time one of only four historic shipwreck sites to achieve that status nationally.

What the District fails to acknowledge to you is that the *Maple Leaf* was physically located by SJAE in 1984, and after resolving an out-of-court Settlement in federal court between

SJAE and the U.S. Government in 1986, was allowed to perform a multi-year professional archaeological exploration of the ship's hull which was buried in the soft sediments of the St. Johns River and remained intact with its estimated 400 tons of troop cargo preserved in an anaerobic environment. Accordingly, at the outset the *Maple Leaf* wreck site received immediate notoriety nationally (and particularly in the City of Jacksonville) as a unique regional legacy from the past capable of serving as an invaluable resource for cultural Civil War History and maritime heritage.

More to the point, the Jacksonville District, USACOE and the Florida Department of Environmental Resources issued a Section 404 permit and a Water Quality Certification, respectively to SJAE, Inc. in 1987 and 1988 (several years *before* 1990). Those major permits were necessary to perform sediment removal and other subaqueous activities necessary to clear and access the hull which lay below the mudline of the St. Johns River (ref. DER161286232 and USACE 87IPP-20563). Each permit took approximately a year to achieve. Over the next several years the exploration of the *Maple Leaf* proceeded methodically with substantial local, state and national notoriety gained as various artifacts were revealed. All work was inter-coordinated with the Department of Army, Center of Military History and a large number of *Maple Leaf* artifacts now reside with the Center.

It is extremely disingenuous for the Jacksonville District Corps of Engineers to imply that they were in compliance with the terms and intent of Section 106 of the National Historic Preservation Act, by permitting the "trenching" of a subaqueous cable through the well documented and publicized site of the most significant cultural resource discovery in N.E. Florida. Had the District notified the State Historic Preservation Officer of Florida of their intent to permit that activity, objections as to the installation of the first subaqueous cable at that location in 1990 would have in all probability resulted in denial and a relocation of the cable route. Clearly the Jacksonville District was derelict in their professional duty as a delegated steward of cultural resource protection nationally, none-the-less in the State of Florida.

2. Permit SAJ-2013-01025 issued for a subaqueous cable on 16 April 2013 to T.W. Telecom.

With relative impunity, the District has recently stated to you in writing that, "*The Corps determined that the nature, scope, and magnitude of the work to be permitted was so limited in area or scope that there is little likelihood that a historic property or archaeological site existed or may be affected and made a no potential to cause effect determination*" (emphasis added).

Note – Corps records will show that this “determination” was made in the past few weeks and not in 2013 at the time of permit issuance.

Regardless, the obvious rhetorical question raised is that if the Jacksonville District had permitted the exploration and excavation of the historic cultural resource – *Maple Leaf* wreck site, and if the site had been for almost 10 years a National Historic Landmark, why would the State Historic Preservation Officer *not* have been notified of the proposed cable installation activity? Again, there is nothing in the COE files that would even intimate that they made the above stated “determination” at the time of permit issuance. Their assertion submitted to you to the contrary *is simply not factual*. Even if this had been an accurate portrayal of the District’s evaluation process, it is unclear as to how a 10-ft. deep, 8,500 ft. long subaqueous trench almost across the center of 1,200 ft. circular buffer around a nationally documented NHL site could result in a potential “no effect conclusion”. Such an assertion is absurd. After the completion of exploration by SJAE in the early 90’s, over 99% of the wreck’s contents remained in an undisturbed preserved condition. Again, the District was clearly derelict in their duty to notify the SHPO of Florida prior to permit issuance – the potential consequences of which they are attempting to avoid at this point in time.

3. The District states in their August 11th letter to you that they first became “aware” of potential adverse effects to the *Maple Leaf* in January 2016.

This is accurate, however the nexus for their “awareness” (including the *revelation* that a NHL existed at this location within their regulatory jurisdiction) was *only* due to an inquiry (see **Exhibit 1**) to them by our firm on behalf of SJAE, who through news accounts had become knowledgeable of a telecom cable being proposed across the St. Johns River. The location described appeared to be that of the NHL *Maple Leaf*. Until that time, SJAE had been unaware of the previous two (2) cable installations permitted by the District. Interestingly, at that time a pre-consultation between the Jacksonville District and Tower Cloud, the applicant for the pending third cable installation, was that it should be installed in relative proximity to the prior two (2) installations. Had Tower Cloud followed that advice, a third violation of Section 106 by the District would have occurred.

4. State Historic Preservation Office Finding of Fact:

A recent (22 August 2016) FOIA request of the Corps file for the T.W. Telecon 2013 permit included an email (see **Exhibit 2**) from Mr. Jason Aldridge of the SHPO to Mr. Jacob Hemingway of the Jacksonville District wherein Mr. Aldridge states that,

“The Corps is responsible for completing the damage assessment (and mitigation if necessary), because the Corps permits were issued in violation of Section 106.”

SJAE concurs with this conclusion of the State regarding the Corps’ violation of the National Historic Preservation Act and strongly recommends that both cables presently within the designated NHL *Maple Leaf* site be relocated outside the buffer zone formally codified by the U.S. Department of Interior. This should only occur *after* any required remediation to the *Maple Leaf* site – if such is determined by investigation to be warranted.

We appreciate your consideration of this information and can provide copies of any FOIA files, emails or documents cited at your request.

Thank you.

Sincerely,



Erik J. Olsen, P.E.
President

Enc/

cc: Congressman A. Crenshaw
K. Holland, SJAE
John Edins, ACHP
SHPO – FL
W. Lees, UWF

Erik Olsen

From: Erik Olsen <eolsen@olsen-associates.com>
Sent: Wednesday, January 20, 2016 10:10 AM
To: Wendy.Weaver@usace.army.mil
Cc: Keith Holland (kvholland@me.com); Kevin bodge
Subject: National Historic Landmark--Mapel Leaf Shipwreck Site -- Conflict With a Dedicated Cable Crossing--St Johns River
Attachments: ArmyCorpsEng001.pdf; 3617_001.pdf

Wendy In 1992 Our firm assisted Dr Keith Holland and his team of professionals to acquire permits,licenses,easements etc to develop entry into the Mapel Leaf Ship wreck site located off Mandarin Point .The site had been located and confirmed by Dr Holland after several years of investigation. The buried hull and contents of the wreck are intact and were ultimately found to be of significant historic value. At the time only a small amount(relative to the whole)of artifacts were professionally removed,conserved, catalogued ,archived and distributed to various museums. Accordingly there remains a significant volume of Civil War material still encased in the hull and basically preserved because of the anaerobic nature of the mud within which it lies. AS a result,in 1994 the wreck site was formally declared a National Historic Landmark(see attached documentation).

It recently came to our attention that a subaqueous Fiber Optic Cable is proposed to be installed on an alignment that intersects this Landmark. Communications with the Co. responsible,Tower Cloud, indicate that they intend to directionally drill below the river bed(into Limestone)and install a steel pipe which will function as a sleeve for fiber optic cables now and in the future. We are awaiting the details of their plan, geotechnical studies and permit applications which they have agreed to share with us.

More importantly, we have learned two things that are of immediate grave concern:

1. A dedicated Cable Crossing has been Permitted(we assume by the COE and State) across the Maple Leaf site...apparently after it was dedicated as a National Historic Landmark.The cable Crossing demarcation shows on Nautical Chart11492(Oct 98 edition) but does not show on the July 92 edition.—Copies are attached.
2. It appears that a Company called TW Telecom(now Level 3 Communications)in 2010 “trenched” a cable within the cable crossing area within which the historic wreck lies.Whether this action caused impact is not known...but if the trenching activity coincided with the location of the intact hull,damage is possible.

As a professional in the Jacksonville District dealing with project related archaeological matters, I am seeking your assistance and liaison with the Regulatory Branch and others in determining when ,by whom and HOW a cable crossing ZONE was permitted across this important National Historic Landmark—without apparent consideration of its existence or coordination with the professionals who had licensed and permitted its formal exploration with multiple State and Federal agencies, the State Historic Preservation Officer and the Dept of the Army-(which had initially claimed continuing ownership of the Civil War vessel).

Your consideration and that of the District in addressing this request is greatly appreciated. Thank you. ERIK OLSEN

Erik J. Olsen, P.E.
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Griffin, Dianne S SAJ

From: Aldridge, Jason H. <Jason.Aldridge@dos.myflorida.com>
Sent: Thursday, July 14, 2016 1:21 PM
To: Hemingway, Jacob L SAJ
Cc: Griffin, Dianne S SAJ
Subject: [EXTERNAL] RE: SHPO (UNCLASSIFIED)

Hi Jacob,

I apologize for the long response. I've tried to answer your question about the buffer as well as the questions raised in previous emails by the applicant and frame the situation as we currently understand it. If you have any questions please feel free to give me a call.

At this point the Corps' responsibility with regard to survey of the Maple Leaf has two parts: 1) damage assessment of the previous cable installation and 2) survey to identify potential effects to the Maple Leaf from future work and to guide avoidance measures (essentially ensure that future undertakings follow the Section 106 process).

The Corps is responsible for completing the damage assessment (and mitigation if necessary) because the Corps permits were issued in violation of Section 106. The damage assessment itself can be a focused survey on the path of the existing cables. This survey should follow underwater remote sensing standards and produce a report evaluating the effect to the Maple Leaf or other shipwrecks in the area. A buffer could be appropriate for the damage assessment if it's possible the Corps will require rerouting of the existing cable.

The Corps is also responsible for ensuring future undertakings in the area of the Maple Leaf follow the Section 106 process. This will require a survey of the APE for future cable installations. The buffer is intended to provide some cushion so that if the cable needs to be rerouted to avoid the Maple Leaf, or other shipwrecks, this can be done without the need for additional survey.

From our point of view it is more efficient for the corps to do one survey that accomplishes both the damage assessment and survey for future permitting. However, it is the Corps decision in terms of one survey or two, and whether the Corps, previous applicant, or current applicant completes the survey work. Our office's role is to review survey work for consistency with underwater remote sensing standards and Chapter 1A-46 and facilitate the Section 106 process.

If the Maple Leaf has been adversely effected we will work with the Corps, NPS, ACHP, and Army at that point to reach a resolution.

Sincerely,

Jason Aldridge
 Compliance Review Supervisor | Deputy State Historic Preservation Officer | Bureau of Historic Preservation | Division of Historical Resources | Florida Department of State | 500 South Bronough Street | Tallahassee, Florida 32399 | 850.245.6344 | 1.800.847.7278 | Fax: 850.245.6439 | Jason.Aldridge@DOS.MyFlorida.Com | dos.myflorida.com/historical

Original Message

From: hemingway, jacob l <mailto:jacob.l.hemingway@dos.myflorida.com>