

Congress of the United States
Washington, DC 20515

February 14, 2014

Major General John W. Peabody
Deputy Commanding General for
Civil and Emergency Operations
U.S. Army Corps of Engineers
441 G Street NW
Washington, DC 20314-1000

Dear Major General Peabody:

We write regarding the Commonwealth Crossing Business Centre (CCBC) site in Henry County and other economic development sites in Virginia which are seeking permits from the Corps under Clean Water Act Section 404 guidelines.

We are encouraged by reports of progress in identifying one or multiple potential end user companies willing to provide site plans that would allow a permit to move forward for CCBC. However, we remain concerned by the potential for a last-minute fallback to the end-user issue with which we have grappled from the beginning, since neither the statute nor guidelines prohibit the Corps from granting permits for projects when there is no specified end-user. We are also cognizant of the growing budgetary resources that Henry County is committing in good faith in order to secure this permit.

We acknowledge the often subjective nature of the permitting process and USACE's duty to follow congressional intent. To that end, we would like to draw your attention to an area of the recently enacted Consolidated Appropriations Act (P.L. 113-76) that expressly clarifies congressional intent in this area. The House Energy and Water appropriations bill contained the following report language, which by absence of contradiction is deemed included in the Joint Explanatory Statement of the conference report:

“The Committee is aware of at least two recent instances in which local economic development organizations have applied for permits to prepare sites to attract new economic activity, but the Corps has denied or otherwise frustrated those efforts. Although the local organizations have established precedent by providing several examples of where similar applications were approved, the Corps now claims its regulations require the identification of a specified end user of a proposed development so it can review final design plans and other exact specifications of the proposed development in order to issue a permit. The Committee strongly rejects this new interpretation of Clean Water Act requirements. The Corps is not a local land-use planning agency, and the Clean Water Act provides neither the directive nor the authority for the Corps to assume such responsibilities. The Committee encourages the Corps to work with these permit applicants, and any others with similar applications, to reach a better balance between allowing desperately-needed economic development while still safeguarding important environmental resources.”

In light of this clear statement of congressional intent, we ask that you provide our offices with an update, no later than February 28, 2014, detailing how the Corps will factor in this

additional clarity in interpretation of the statute with respect to CCBC and other economic development sites.

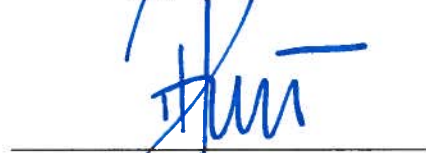
We appreciate the work of Corps district commanders who are diligent in their goals to minimize environmental impacts in their regions. However, Congress has expressed that there is a way to gain an accurate understanding of site usage needs without requiring a company to commit to a site before permits for the site can be approved – a conundrum we regard as a “Catch-22.” We also wish to emphasize the urgent need for jobs in these areas and suggest that this new congressional intent clarifies the parameters of the balance between facilitating economic development and protecting natural resources.

Thank you for your attention to this important issue, and we look forward to hearing from you how the Corps will respond to Congress on the progress of the CCBC permit application.

Sincerely,



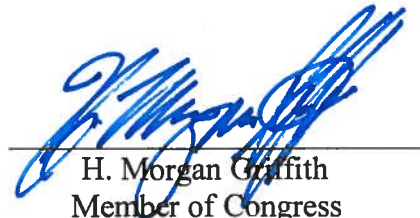
Mark Warner
United States Senator



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Member of Congress



Tim Kaine
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