

Interim Standard Operating Procedures 12-SPGP-01

Purpose of the 12-SPGP-01

1. 12-SPGP-01 authorizes the discharge of dredged or fill material in nontidal waters of the United States, including wetlands, associated with certain residential, commercial, and institutional developments and linear transportation projects within the geographical limits of the Commonwealth of Virginia and under the regulatory jurisdiction of the US Army Corps of Engineers - Norfolk District (Corps). These projects must have minimal individual and cumulative impacts and meet the terms and conditions outlined herein.
2. The use of 12-SPGP-01 shall be restricted to those projects that have avoided and minimized impacts to waters of the United States, including wetlands, to the maximum extent practicable. The Clean Water Act (CWA) Section 404(b)(1) guidelines state that no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge that would have less adverse effect on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences.

Initial Review of All 12-SPGP-01 Projects

1. **Confirmation of delineations:** The Corps and/or the Environmental Protection Agency (EPA) will be the lead agency on the confirmation of delineations. After receipt of a request for a delineation confirmation, the Corps will assign the project an ORM identification number.
 - a. Prior to the submission of a permit application for 12-SPGP-01, and any subsequent modifications, a proponent must obtain a confirmed delineation of all Federal waters and wetlands on the property.
 - b. If the Corps project manager (PM) and/or EPA knows in advance that a site visit will serve as a pre-application meeting (with discussion of project details, avoidance and minimization efforts, etc.), then the PM will invite the VDEQ to attend the site visit once the meeting has been scheduled.
 - c. The Corps and/or EPA will confirm the limits of waters of the United States, including wetlands, on properties. In addition, the Corps will confirm delineations of isolated wetlands on properties under most circumstances or notify the project proponent/agent and the VDEQ if it is unable to do so.
 - d. The Corps and/or EPA will send the project proponent/applicant a delineation confirmation letter after performing the site visit. With this letter, the Corps will attach:
 1. A “Supplemental Pre-application Information” form which should include:
 - a. Information regarding the presence of any Federally proposed/listed threatened or endangered species or proposed/designated critical habitat in the vicinity of the project site

- b. Information regarding any previously-identified historic properties located on or near the project site
 - c. Any recommendations for site-specific avoidance and minimization of impacts to regulated aquatic resources.
 - 2. A Corps administrative appeal form (if applicable)
 - 3. A printout from the Virginia Department of Historic Resources (VDHR) Data Sharing System (DSS) if historic properties are located on or adjacent to the project site.
 - e. The Corps and/or EPA will send a copy of the delineation confirmation letter and associated material to the appropriate VDEQ regional office.
2. **Preapplication Consultation:** The Corps will be the lead on pre-application consultations. Upon the receipt of a pre-application request the Corps will assign the project an ORM identification number if one has not previously been assigned.
- a. When the Corps PM schedules a pre-application meeting with the project proponent/agent the Corps will invite the VDEQ to attend. The Corps will provide the VDEQ with the following pertinent data (if available):
 - Corps PM name
 - Date and time of the pre-application meeting
 - Location of the pre-application meeting (locality name, meeting point, etc.)
 - Any available information regarding work proposed to be performed on the site in the future
 - The ORM reference number
 - b. Individual Corps offices should coordinate pre-application meetings with the designated Point of Contact (POC) for the appropriate VDEQ Regional Office(s).
 - c. Corps PM should advise the VDEQ of cancellations or rescheduling of any pre-application meetings to which the VDEQ has been invited.
3. **Application:** A project proponent must complete and submit the most recent version of the Joint Permit Application (JPA) to the Virginia Marine Resources Commission (VMRC) along with a confirmed delineation. The Virginia Department of Transportation (VDOT) may continue to use the Interagency JPA.
- a. All applications for SPGP projects must be clearly marked “SPGP” by the applicant prior to submission.
 - b. If an application contains oversized drawings in conjunction with the required letter-sized drawings, the applicant must provide 2 hard copies and 1 electronic copy of the oversized drawings to the VMRC for distribution to the VDEQ.
 - c. If an application contains colored drawings that need to be reproduced in color to maintain legibility, they must provide 2 hard copies of each color drawing and 1 electronic copy.
 - d. Processing of applications will not commence until projects have been issued a VMRC identification number and the appropriate VDEQ offices have received a complete application.
 - e. The VDEQ is responsible for ensuring the application meets the informational and technical requirements of the 12-SPGP-01.

4. **If an incomplete application is submitted:** the VDEQ will send a letter to the applicant indicating all of the information lacking in the application package. Virginia Water Protection Permit (VWPP) regulations at 9 VAC 25-210-80, 9 VAC 25-660-50, 9 VAC 25-670-50, 9 VAC 25-680-50, and 9 VAC 25-690-50 indicates the requirements for complete VWPP applications. To render an application complete for 12-SPGP-01, all projects must contain a confirmed delineation.

5. **VDEQ/Corps Coordination Procedures:**

- a. The VDEQ will send the required information as explained in subsections b-c below. The Corps 15 calendar day project review timeframe begins when the Corps receives all required information for the project. Coordination may be sent via one of 3 sources:
 - Via email: Corps' 15 calendar day review begins on the date the coordination email is sent.
 - Via FTP website: Corps' 15 calendar day review begins on the date the coordination email is sent.
 - Via postal mail: Corps' 15 calendar day review begins three days after the post mark date.
- b. For projects with permanent impacts less than or equal to ½ acre of wetlands or open waters and less than or equal to 300 linear feet of stream channel AND when Section 106 or formal Section 7 consultation IS NOT required by the Corps, no additional coordination is required and the VDEQ will issue the 12-SPGP-01 authorization.
- c. For projects with permanent impacts less than or equal to ½ acre of wetlands or open waters and less than or equal to 300 linear feet of stream channel AND when Section 106 or formal Section 7 consultation IS required by the Corps the VDEQ will provide the Corps with the following information with a 15 calendar day suspense date:
 - A map of the project site with the boundaries clearly marked.
 - A copy of the development plan.
 - A copy of the SPGP Initial Cultural Resources Screening Form if the VDEQ Cultural Resource Specialist (VDEQ-CRS) determines a Corps Section 106 determination is required in accordance with the SPGP Programmatic Agreement (PA).
 - A copy of the Information, Planning and Conservation System (IPAC) report, Species Conclusion Table (SCT), and all Threatened/Endangered (T/E) species surveys that have been performed, if formal Section 7 consultation is required
 - A brief description of the project purpose and proposed impacts.
4. For projects with permanent impacts that exceed ½ acre of wetlands or open waters AND/OR exceed 300 linear feet of stream channel the VDEQ will provide the Corps with the following information:
 - A copy of the JPA.
 - A copy of any additional information requests that the VDEQ has forwarded to the applicant.

- A copy of the SPGP Initial Cultural Resources Screening Form if the VDEQ-CRS determines a Corps Section 106 determination is required in accordance with the SPGP PA.
 - A copy of the IPAC report, SCT and T/E surveys if formal Section 7 consultation is required.
- 5. For **ALL** projects with any impacts to **TIDAL** waters, including wetlands, the VDEQ will provide the Corps with the following information with a 15 calendar day suspense date:
 - A copy of the JPA.
 - A copy of any additional information requests that the VDEQ has forwarded to the applicant.
 - A copy of the SPGP Initial Cultural Resources Screening Form if the VDEQ-CRS determines a Corps Section 106 determination is required in accordance with the SPGP PA.
 - A copy of the IPAC report, SCT and T/E surveys if formal Section 7 consultation is required.
- 6. For projects with permanent impacts that exceed ½ acre of wetlands or open waters AND/OR exceed 300 linear feet of stream channel the Corps will provide the VDEQ with the following information:
 - Notification, in writing, that the Section 106 process has been fulfilled. This should occur only if the VDEQ-CRS has forwarded the project on for further coordination with the Corps.
 - Notification that formal Section 7 consultation has been completed (if applicable).
 - Any comments or objections regarding the project and compensation (if the VDEQ does not receive comments within the 15-day review period they can assume the Corps has no comments).
 - If the VDEQ does not agree with the Corps' comments the VDEQ and Corps will enter into the Dispute Resolution Process.
 - Disagreements regarding avoidance and minimization will not delay the VDEQ's authorization of either the VWP permit or 12-SPGP-01.
 - A signed Special Conditions Form when applicable (i.e. Section 106 MOA, Section 7 MOA, financial assurances).
- 7. Before the VDEQ can authorize the SPGP the VDEQ must receive the following information:
 - Notification, in writing, from the VDEQ-CRS or the Corps that the Section 106 process has been completed (regardless of the 15-day suspense date).
 - Notification that the formal Section 7 consultation has been completed (if applicable).

6. Environmental Protection Agency (EPA) and US Fish and Wildlife Service (FWS) Federal Review: The following procedures apply to projects involving:

Residential, commercial and institutional development activities with total permanent impacts that exceed ½ acre of wetlands or open waters and/or exceed 300 linear feet of stream channel.

AND

All linear transportation activities involving permanent impacts that:

- Exceed 300 linear feet of stream channel at any single impact area

OR

- Contains multiple single and complete impacts on the same project that additively exceed 1/3 acre of permanent impact to waters, including wetlands, and/or exceed 300 linear feet of stream channel (lateral or crossing impact)

a. The VDEQ shall forward a copy of the JPA and drawings to the EPA and the FWS. These agencies shall have 15 calendar days from the receipt of the information package to review the project and provide any project-specific objections or concerns to the VDEQ, providing courtesy copies of their letters to the Corps.

b. If the EPA or FWS respond within the 15 calendar day timeframe and submit project-specific objections due to the proposed impacts. The VDEQ will request that the applicant address the federally agency(ies) concerns. The VDEQ will provide the applicant with a 30 day comment period. The VDEQ will coordinate the applicant's response with the commenting agency for a 15 day comment period.

- i. If the applicant addresses the objections to the satisfaction of the EPA and/or FWS the VDEQ will resume processing of the 12-SPGP-01 application.
- ii. If the applicant does not respond within the 30 day comment period processing of the 12-SPGP-01 application will be withdrawn. Processing may recommence once the applicant submits a response to agency comments.
- iii. If the applicant chooses not to address the agency(ies) objections OR the federal agency is not satisfied with the response received from the applicant the VDEQ will not authorize the 12-SPGP-01 and will notify the Corps, in writing, to advise them of the situation.
- iv. Once the Corps has been advised of the situation, the Corps will coordinate with the appropriate agency(ies) and determine whether:
 - a. The VDEQ may continue with processing of the 12-SPGP-01.

OR

- b. The Corps may exert discretionary authority.
- v. The Corps will notify the VDEQ, in writing, of their final decision.

c. If EPA and/or FWS respond with no comments or do not respond within the 15 calendar day timeframe, the VDEQ will assume those agencies have no objections and will continue processing of the application.

7. **Section 7 - Endangered Species Act (ESA) screening and coordination:**

- The VDEQ will determine whether federally proposed/listed species or federally proposed/designated critical habitat may occur in the project's action area. The action area is defined by regulation (50 C.F.R. § 402.02) as all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action.
- The VDEQ will perform informal Section 7 coordination in accordance with the "NAO ESA Project Review Process" located in Appendix B of this document.

8. **Historic Properties:**

a. A programmatic agreement (PA) has been executed between the Corps, the VDEQ, the VDHR, and the Advisory Council for Historic Preservation (ACHP) regarding implementation of the Corps SPGP and Section 106 of the National Historic Preservation Act (NHPA) coordination process. The VDEQ CRS responsibilities are described in the PA as follows (*italicized language indicates exact language from PA*):

I. VDEQ INITIAL SCREENING OF SPGP-01 APPLICATIONS

- a. *Joint Permit Application: Applicants must submit a joint permit application for authorizations under the SPGP-01. The Joint Permit Application will include questions for permit applicants regarding their knowledge of the presence of historic sites (known historic properties (listed or eligible for listing on the National Register) or potentially eligible properties (properties that may be eligible but that have not been evaluated) on or near the project site. In addition, the JPA will advise applicants of Section 110(k) of the NHPA which addresses actions involving anticipatory demolition of historic sites.*
- b. *Initial Screening and SOP: Applications for SPGP-01 permits or permit modifications will be submitted to the VDEQ for initial screening for potential effects to historic properties. The VDEQ and the Corps will follow the Standard Operating Procedures for SPGP-01, included as Appendix 5 of this PA.*
- c. *VDEQ-Cultural Resource Specialist (VDEQ-CRS) Review: The VDEQ-CRS will review information supplied with the permit application, preapplication correspondence from the Corps and the information available on the SHPO DSS for every SPGP-01 permit application to determine if any known historic properties (listed or eligible for listing on the National Register) or potentially eligible properties including archeological sites, historic structures, battlefields, historic districts, cultural landscapes and other types of historic properties are documented or likely to occur within or near the project site.*
- d. *VDEQ-CRS and NPS Coordination: The VDEQ-CRS will coordinate with the appropriate NPS office to determine if the proposed undertakings will have effects on historic site(s) located within the legislative boundaries of parks (including battlefields, historical parks, or other park units); if proposed undertakings may*

affect historic sites outside of park boundaries that are of interest to the NPS for resource protection; or if proposed undertakings impact views to or from historic sites within the park. If the NPS determines that the project may affect historic sites meeting any of these criteria, the VDEQ will refer the project to the Corps for further review.

- e. Projects in Spotsylvania County: For all projects located in Spotsylvania County, the VDEQ-CRS will coordinate with the Corps, as per the “Memorandum of Understanding Among the Norfolk District Corps of Engineers, the Fredericksburg/Spotsylvania National Military Park, the Virginia State Preservation Office, and the County of Spotsylvania Regarding Procedures for Consideration of Effects on Historic Properties in Spotsylvania County” (Appendix 6). Many of these Civil-War related resources may be found in the “Civil War Battlefield Sites Related to the Fredericksburg and Spotsylvania National Military Park” database (Related Lands Database) published by the National Park Service.*

II. VDEQ-CRS EVALUATION AND FILE DOCUMENTATION

- a. VDEQ-CRS “no historic properties affected” determinations: When the VDEQ-CRS has completed Stipulation I. and determines that All the following criteria apply, additional historic properties review is not required by the VDEQ:*
 - i. The DSS and permit application information indicates that there are no known historic resources or properties that might be eligible for the National Register within the project site; or the DSS indicates that there are recorded cultural resources within the project site but the Archaeological and/or Architectural Reports on file at VDHR indicate that these resources have been found ineligible for the NRHP by VDHR within the past ten (10) years, or the resource no longer exists.*
 - ii. The area within the project site does not have a High Probability for archaeological properties. A High Probability determination is made by the VDEQ-CRS based on applicable local and regional site predictive models and/or evaluation of site predictive criteria including landform, soil drainage, proximity to surface water, historic map and other document information, and location with respect to known historic properties and/or archaeological site complexes.*
 - iii. The DSS and permit application information indicates that the project site is not located in the vicinity of known historic properties that may be directly or indirectly affected; and*
 - iv. VDEQ-CRS, in consultation with the VDEQ project manager, determines the project site is less than 20 acres.*

The VDEQ-CRS will ensure that the determination of no historic properties affected is provided to the VDEQ project manager. Further coordination with the Corps and VDHR is not required.

- b. VDEQ Coordination with Corps: If any of the criteria in IIa. are not met, the VDEQ-CRS will coordinate with the appropriate Corps office to determine if Section 106 consultation is required.*

- c. *File documentation. The VDEQ will maintain the Cultural Resources Initial Screening Form and DSS printout and inventory forms in the project files for at least 3 years to document “no historic properties affected” determinations (Code of Virginia §§ 42.1-86.1 Virginia Public Records Act).*
- b. The VDEQ regional office staff will strive to forward the VDEQ-CRS necessary project specific information, including the Cultural Resources Initial Screening Form, within seven (7) calendar days of receipt of an application for 12-SPGP-01.
1. The VDEQ-CRS will review the project application in accordance with the PA.
 2. The VDEQ-CRS will inform the VDEQ PM of the results of the screening within seven (7) calendar days of receipt of the Cultural Resources Initial Screening Form. If the VDEQ-CRS must coordinate with the National Park Service (NPS), then the VDEQ-CRS will inform the VDEQ PM that additional coordination time will be needed to allow for NPS comments.
 3. The VDEQ-CRS will coordinate with the appropriate NPS office to determine if the proposed undertakings will have an effect on a historic site(s) located within the legislative boundaries of parks (including battlefields, historical parks, or other park units); if proposed undertakings may affect historic sites outside of park boundaries that are of interest to the NPS for resource protection; or if proposed undertakings impact views to or from historic sites within the park. The VDEQ will allow the NPS fifteen (15) calendar days (with an additional ten (10) calendar day time extension, if requested) to comment on the project. If no comment is received after the fifteen (15) calendar days (or twenty five (25) calendar days if there is an extension), then VDEQ will assume the NPS has no comment on the project. If the NPS determines that the project may affect historic sites meeting any of these criteria, the VDEQ will refer the project to the Corps for further review.
 4. Within the fifteen (15) calendar day review period, if the VDEQ-CRS determines there is no need for additional cultural resources coordination, based on the terms of the PA, the VDEQ PM will document the project file and continue processing the SPGP permit application, providing all requirements have been met. The fifteen (15) calendar day review period consists of seven (7) calendar days for the VDEQ regional office completeness review, seven (7) calendar days for the VDEQ-CRS review and one additional day for file documentation or request for Corps consultation.
 5. Within the fifteen (15) calendar day review period, if it is determined that there is need for additional cultural resources coordination, based on the terms of the PA, the VDEQ-CRS will inform the Corps and the VDEQ project managers of this finding and the VDEQ project manager will forward the application and associated materials to the

Corps via postal service, email or FTP site. The VDEQ PM may also request that the applicant suspend processing of their VWP application.

6. All coordination materials should be forwarded together in one coordination package from the VDEQ PM to the Corps PM.
7. Within twenty (20) calendar days of receipt of the VDEQ PM's coordination package, unless a time extension is requested by the Corps project manager, the Corps will advise the VDEQ PM and the VDEQ-CRS whether or not additional Section 106 coordination is necessary. The Corps will base the decision upon the June 2007 SOP with VDHR.
 - a. If Section 106 coordination is not required the Corps will notify the VDEQ PM and the VDEQ-CRS. The VDEQ PM will document the project file and move forward with processing of the 12-SPGP-01 permit application, providing all requirements have been met.
 - b. If Section 106 coordination is required then the Corps will begin the coordination process with VDHR per Stipulation III of the PA.
 - c. The VDEQ will move forward with issuance of the SPGP only upon receipt of written notification that Section 106 has been fulfilled.
8. By copy of the Corps/VDHR coordination form, the Corps will invite the VDEQ-CRS to attend all meetings, site visits, and conference calls related to the historic properties consultation and resolution of the Section 106 process.
9. Upon completion of the Section 106 coordination process the Corps will notify the VDEQ PM and advise them of any project specific conditions necessary to ensure Section 106 compliance (i.e. landscape buffers, consulting party coordination, required compliance with Memoranda of Agreement, etc.) via the SPGP-01 Special Conditions Form. The VDEQ PM will include the SPGP-01 Special Conditions Form with the permit authorization package.
10. The VDEQ PM will document the file with the following information:
 - a. A map of the project site from the VDHR Data Sharing System (DSS).
 - b. Copy of the determination finding, either from the VDEQ-CRS or Corps.
 - c. VDHR concurrence, if applicable.
 - d. Other applicable information including, but not limited to: surveys, DSS printouts, DSS aerial, MOA's, etc.

9. **Wild and Scenic Rivers Federal Coordination:** The following coordination procedure applies to all 12-SPGP-01 projects that occur directly adjacent to the New River.

- a. The VDEQ will coordinate with the US Army Corps of Engineers –Huntington District’s New River Navigator (NRN). The VDEQ will provide the NRN with the following information:
 1. The project name and number
 2. A brief description of the proposed project
 3. A copy of the project vicinity map with the project boundaries clearly marked.
 4. A 15 calendar day suspense date for comments.
- b. If no comments are received within the 15 day comment period or if the NRN responds with no concerns the VDEQ may move forward with processing the SPGP application.
- c. If comments are received within the 15 day comment period the VDEQ will coordinate the comments with the appropriate Corps POC (Norfolk District) to determine:
 - Can the 12-SPGP-01 be issued as proposed?
 - Is a special condition form required?
 - Is discretionary authority required?

10. **Deed Restrictions:** The VDEQ staff and the Virginia Attorney General’s office, when necessary, will review and approve deed restriction language. If mitigation credit is given for deed-restricted land, the applicant must use the Corps-approved deed restriction template. If the applicant proposes deed restriction language that substantially deviates from the template, the Corps Office of Counsel must be provided the opportunity to review and approve the proposed language.

11. **Special Conditions Form:** If the Corps determines that special conditions are necessary to ensure compliance with Section 106 of the NHPA, Section 7 of the ESA, or for financial assurances, the Corps PM will send the VDEQ project manager the 12-SPGP-01 Special Conditions Form to attach to the VDEQ authorization package. These special conditions will be considered enforceable conditions of the 12-SPGP-01 authorization.

12. **Permit Decisions:**

- a. Permit Issuance:
 - i. The VDEQ will determine, through the processes outlined above, whether the work proposed satisfies the terms and conditions of 12-SPGP-01. All VDEQ VWP permit authorization letters issued concurrent with the 12-SPGP-01 authorization shall include the following language:
 “The work authorized by this permit satisfies the terms and conditions contained in the Norfolk District, Corps of Engineers’ State Program General Permit (12- SPGP-01) and the special conditions, if any, attached to 12-SPGP-01. No additional authorization from the Corps is required. Your 12-SPGP-01 authorization is effective as of the date on this letter and remains effective until May 31, 2017.”
 - ii. The VDEQ PM will attach a 12-SPGP-01 Special Conditions Form to the front of the copy of 12-SPGP-01 and include it with the VDEQ

authorization package. The VDEQ shall then provide a copy of the authorization to the Corps.

b. Denial:

The VDEQ PM should advise the Corps if the project does not qualify for a VWP permit, informal resolution, letter of agreement, executive compliance agreement or consent order from the VDEQ and/or SPGP permit. If a project does not qualify for a VWP permit, informal resolution, letter of agreement, executive compliance agreement or consent order from the VDEQ then it does not meet the terms and conditions of 12-SPGP-01. In these situations, the Corps PM should send a letter to the applicant allowing them to either:

- i. Revise their proposal so that it qualifies for a VWP permit, informal resolution, letter of agreement, executive compliance agreement or consent order from the VDEQ and/or SPGP
- OR
- ii. Go through the Corps individual permit process (in which case they would still need to obtain a separate § 401 certification from the VDEQ).

13. Permit Extensions and Modifications of the SPGP-01 (old SPGP): The following should apply to any of the **old SPGP** projects where the applicant is requesting extensions in order to complete impacts or mitigation, and/or when they are requesting a modification to reduce impacts. It does not apply to permits where the applicant is modifying the authorized activities to include additional impacts or parcels of land. If the SPGP has already expired, an extension cannot be granted, and the applicant must apply for authorization under the 12-SPGP-01.

1. For all projects where SPGP authorization was not issued by the VDEQ, the VDEQ PM will look in the file for the old Corps SPGP authorization to see if there were any **project specific** special conditions.

- A. If the VDEQ has a copy of the Corps authorization and there are no project specific special conditions, the VDEQ PM should not coordinate the extension with the Corps PM and should move forward with issuance.
- B. If the VDEQ has a copy of the Corps authorization and there are **project specific** special conditions listed, the VDEQ PM will place those conditions on a 12-SPGP-01 "Special Conditions Form" and send the "Special Conditions Form" to the Corps PM for signature. If there are no project specific conditions regarding historic resources, federally threatened and endangered species, or financial assurances and the Corps does not respond within 15 calendar days, the VDEQ PM will issue the 12-SPGP-01 with no project specific special conditions. If there are project specific conditions regarding historic resources, federally threatened and endangered species, or financial assurances a signed special conditions form is required prior to authorization of a modification and/or extension and the VDEQ PM will include the form with the permit extension approval letter.
- C. If the VDEQ PM cannot locate the Corps SPGP authorization in the file, the VDEQ PM will send an e-mail to the Corps PM. The e-mail should include a

subject line of PERMIT EXTENSION REQUEST PROJECT NUMBER XXXX, a 15 calendar day review deadline and a request for the following information:

- i. the issue date of the original SPGP with a brief description of the project,
- ii. a list of special conditions applicable to the project

If the Corps does not respond within 15 calendar days, the VDEQ will issue the 12-SPGP-01 with no project specific special conditions.

2. All VDEQ VWP modification authorization letters issued shall include the following language: "The work authorized by this permit and/or permit modification satisfies the terms and conditions contained in the Norfolk District, Corps of Engineers' State Program General Permit (12- SPGP-01) and the special conditions, if any, attached to 12-SPGP-01. No additional authorization from the Corps is required. Your 12-SPGP-01 authorization is effective as of the date on this letter and remains effective until May 31, 2017."

3. The VDEQ should send the Corps a copy of the extended VWP permit and new 12-SPGP-01 with any "Special Conditions Form" for their files.

*** The new SPGP authorization date will be the date of the permit extension approval letter.**

***The VDEQ PM will include a copy of the 12-SPGP-01 with all permit extension approval letters.**

***A Corps contact should be listed on all "Special Conditions Forms". The original PM or the new PM that has taken over the territory should be listed as the Corps contact.**

***Any new 12-SPGP-01 authorization can only be authorized until May 31, 2017, which is the expiration date of the 12-SPGP-01 permit.**

14. Permit Modifications for projects authorized under 07-SPGP-01 and 12-SPGP-01: The following should apply to all modification requests for **07-SPGP-01 and 12-SPGP-01 projects** that were issued by the VDEQ.

- a. In accordance with 9 VAC 25-(660, 670, 680, 690)-80. VWP Notice of Planned Changes. if the modification request falls into one or more of the following categories the 07-SPGP-01/12-SPGP-01 may be modified by the VDEQ **without** Corps coordination:
 - Correction of clerical errors.
 - The total of the additional impacts does not exceed ¼ acre of wetlands or open waters or 100 linear feet of stream channel. The additional impacts must be associated with previously authorized activities in authorized locations within the same project area.
 - Change in use of one bank to another bank.

- Change in plan that does not result in the increase of permanent impacts.
 - Transfer of ownership.
 - Decrease in permanent and/or temporary impacts.
 - All additional impacts are temporary.
- b. In cases where the total original impacts were less than/equal to ½ acre of wetlands or open waters or less than/equal to 300 linear feet of stream channel, and the additional impacts result in these limits being exceeded, the modification must be coordinated for federal review with the EPA, FWS and Corps.
- c. In cases where the total original impacts were less than/equal to 1 acre of wetlands or open waters or less than/equal to 2000 linear feet of stream channel, and the additional impacts result in these limits being exceeded, the project no longer qualifies for an 12-SPGP-01 and must be forwarded to the Corps to be processed as an Individual permit.
- d. When a modification request does not qualify for a Notice of Planned Change per VDEQ regulation 9 VAC 25-(660, 670, 680, 690)-80., a new VWP permit will be required, subsequently a new 12-SPGP-01 will be required. Coordination of the new 12-SPGP-01 will be performed in accordance with the VDEQ/Corps coordination procedures listed in Section 5 of this SOP.
- e. **EXCEPTIONS:** All projects that have associated special conditions or an MOA regarding Section 106 of the NHPA and/or Section 7 of the ESA must be coordinated with the Corps regardless of their impact totals.
- f. All VDEQ VWP modification authorization letters issued shall include the following language: “The work authorized by this permit and/or permit modification satisfies the terms and conditions contained in the Norfolk District, Corps of Engineers’ State Program General Permit (12- SPGP-01) and the special conditions, if any, attached to 12-SPGP-01. No additional authorization from the Corps is required. Your 12-SPGP-01 authorization is effective as of the date on this letter and remains effective until May 31, 2017.”
- g. The VDEQ will provide the Corps with a copy of all final permit modification authorizations.

15. **Compliance and Resolution of Non-compliance for projects authorized by the 12-SPGP-01:** The VDEQ will generally maintain the primary responsibility for performing compliance inspections and resolution of non-compliance for residential, commercial, and institutional developments or linear transportation projects authorized under the 07-SPGP-01 or 12-SPGP-01. However, this does not prevent the Corps from inspecting these project sites independently or from exerting enforcement authority.

The following should apply to all non-compliance activities for **SPGP projects** where a compliance inspection was performed by the VDEQ:

- A. In cases where the project, and any required mitigation, is found to be in compliance the VDEQ will document their findings and copy the Corps on the results of their inspection.
- B. In accordance with 9 VAC 25-(660, 670, 680, 690)-80. VWP Notice of Planned Changes if the non-compliance finding falls into one or more of the

following categories the non-compliance may be resolved and the 12-SPGP-01 may be modified by the VDEQ **without** Corps coordination:

- Correction of clerical errors.
 - The total of the additional impacts does not exceed ¼ acre of wetlands or open waters or 100 linear feet of stream channel. The additional impacts must be associated with previously authorized activities in authorized locations within the same project area.
 - Change in use of one bank to another bank.
 - Change in plan that does not result in the increase of permanent impacts.
 - Transfer of ownership.
 - Decrease in permanent and/or temporary impacts.
 - All additional impacts are temporary.
- C. In cases where the total original impacts were less than/equal to ½ acre of wetlands or open waters or less than/equal to 300 linear feet of stream channel, and the non-compliance findings remain within these limits the non-compliance may be resolved and the 12-SPGP-01 may be modified by the VDEQ without Corps coordination.
- D. In cases where the total original impacts were less than/equal to ½ acre of wetlands or open waters or less than/equal to 300 linear feet of stream channel, and the non-compliance findings result in these limits being exceeded, the entire project must be coordinated for federal review with the EPA, FWS and Corps in accordance with Sections 5 and 6 of this SOP.
- E. In cases where the total original impacts were less than/equal to 1 acre of wetlands or open waters or less than/equal to 2000 linear feet of stream channel, and the non-compliance findings result in these limits being exceeded, the project no longer qualifies for an 12-SPGP-01 and must be forwarded to the Corps for resolution under a separate review process.
- F. **EXCEPTIONS:** All projects that have associated special conditions or an MOA regarding Section 106 of the NHPA and/or Section 7 of the ESA must be coordinated with the Corps regardless of their impact totals.
- G. The VDEQ will provide the Corps with a copy of all final permit modification authorizations and/or documents regarding the resolution of the non-compliance.
- H. **FOR ALL NON-COMPLIANCE RESOLVED BY the VDEQ:** The following statement will be placed in the resolution document/email “The work authorized by this (VWP general permit, informal resolution, letter of agreement, executive compliance agreement, or consent order) also resolves the non-compliance of your 07-SPGP-01/12-SPGP-01 authorization. You must adhere to all general and project specific conditions of your original authorization. No additional authorization from the Corps is required”

The following should apply to all non-compliance findings for **SPGP projects** where a compliance inspection was performed by the Corps:

- A. In cases where the project, and any required mitigation, is found to be in compliance the Corps will send the VDEQ a completed compliance inspection form. The VDEQ will document the compliance inspection in the file.
- B. In cases where the project is found to be in non-compliance of their permit requirements AND the impacts remain within the 12-SPGP-01 thresholds the Corps will send the VDEQ a completed compliance inspection form requesting that the VDEQ resolve the non-compliance **AND** notifying the VDEQ whether the Corps will/will not participate in resolution of the non-compliance activities.
 - The Corps PM must participate in the resolution of all non-compliance activities that require Section 106 or Section 7 review.
- C. In cases where the project is found to be in non-compliance of their permit requirements AND the impacts DO NOT remain within the 12-SPGP-01 thresholds the Corps will send the VDEQ a completed compliance inspection form. The inspection form will notify the VDEQ as to how the Corps chooses to move forward with resolution of the non-compliance activities. Coordination between the two agencies should occur throughout the resolution process.

Resolution of Enforcement for projects of that do not have 12-SPGP-01

authorization: Violations found by either the VDEQ or the Corps may be resolved by issuance of an after-the-fact 12-SPGP-01 authorization if:

- 1. The project meets the all criteria and conditions of the 12-SPGP-01
- 2. The project impacts are determined to be minimal

The VDEQ or Corps must request that the applicant submit a joint permit application for authorization under the 12-SPGP-01. The VDEQ must:

- 1. Process the application in accordance with the processes listed in this SOP.
- 2. Issue a VWP permit, informal resolution, letter of agreement, executive compliance agreement or a letter of consent.
- 3. The VDEQ must place the following statement in all resolution documents: “The work authorized by this (VWP general permit, informal resolution, letter of agreement, executive compliance agreement, or consent order) also resolves the Section404/Section10 violation on your property. You must adhere to all general and project specific conditions of your 12-SPGP-01 authorization. No additional authorization from the Corps is required”
- 4. The VDEQ must copy the Corps on the final 12-SPGP-01 and resolution document.

16. Dispute Resolution Process:

Tier I: Quarterly Meetings

1. Joint Corps/VDEQ meetings will be held on a quarterly basis each year; for the purposes of discussing potential conflicts between the agencies. Projects and issues may only be presented at the meetings with the approval of the immediate supervisor of both the Corps and VDEQ PMs. VDEQ and Corps staff must make every effort to discuss the projects and issues with their peers prior to making the decision to present a project at the

meeting. Additional meetings may be scheduled if there are large numbers of projects to be presented.

2. Responsibility for the meeting organization and agenda shall alternate between the Corps and the VDEQ.
3. When applicable, the COE/VDEQ will invite any objecting/commenting agency(ies) to attend the meeting.
4. For each project to be discussed at the meeting, the Corps and the VDEQ PMs will create a document that includes a brief, joint statement identifying the specific points of conflict and the positions of each PM . The document must be submitted to the person responsible for developing the agenda no later than 7 calendar days prior to the meeting. If no agenda items are received at least 7 days prior to the scheduled meeting, the meeting may be canceled.
5. The affected PMs shall be in attendance at the meeting. If the affected PMs cannot attend the meeting due to illness, vacation, etc., they will be responsible for finding a colleague or supervisor to represent them at the meeting. At least one VWP Regional Program Manager and Corps Section Chief shall be in attendance at each meeting. The Manager/Chief can ask a peer from another region or section to represent him or her at the meeting.
6. The Corps and the VDEQ PMs shall jointly develop their presentations (in other words, the PMs must thoroughly discuss the disagreements beforehand so that there are no surprises at the meeting).
7. A decision, even if it is to elevate the issue to the next Tier, must be made at the meeting; the discussion cannot be deferred to the next monthly meeting unless extenuating circumstances exist. The decision should be documented in the Agenda Item document for that project. The Agenda Item should be put into each agency's respective file for the project. If the decision is made that a resolution cannot be reached through informal discussion or the meeting, the parties should proceed to Tier II, below.

Tier II: Director of Office of Wetland and Water Protection / Regulatory Office Chief Review

In such cases where agreement cannot be reached informally or through the meeting, the Agenda Item document shall be forwarded within 1 calendar day of the meeting to the VDEQ Director of Office of Wetland and Water Protection and the Corps Regulatory Office Chief. The VDEQ Water Division Director may delegate his/her responsibilities to the VDEQ Director of the Office of Wetlands and Water Protection. The Office Chief and Division Director (or their designee) shall review the document, gather all information necessary from their respective staffs, and discuss the issue with each other. Resolution of the issue or a decision to elevate the project shall be made no later than seven calendar days after their receipt of the Agenda Item. If resolution cannot be obtained, the Agenda Item shall be documented as such, and the parties should proceed to

Tier III, below. If the VDEQ Director of Office of Wetland and Water Protection and the Corps Regulatory Office Chief both attend the monthly meeting where agreement was not reached, Tier II should be bypassed entirely.

Tier III: Norfolk District Water Resource Division Chief / Water Division Director,
Virginia VDEQ

In such cases where agreement cannot be reached through Tier II coordination, the Agenda Item document shall be forwarded no later than 8 calendar days after the monthly meeting to the Corps Norfolk District Water Resource Division (WRD) Chief and the VDEQ Water Division Director. The WRD Chief and Water Division Director shall review the document, gather all information necessary from their respective staffs, and discuss the issue with each other. Resolution of the issue shall occur no later than 14 calendar days after their receipt of the Agenda Item.

If conflicts cannot be resolved through this process, or if conflicts in regulatory programs are not appropriate for this process, the Corps District Commander may confer with the Director of the VDEQ and/or exert his/her discretionary authority to require the project to be processed as an individual permit.

17. SPGP Annual Report Requirements:

On an annual basis, the VDEQ will provide the Corps a report to assess the effectiveness of 12-SPGP-01 and evaluate the extent of its cumulative impacts. Generally, the reports will be for the period of September 1 through August 31 of every year. The reports will include the following information:

- Average number of calendar days between initial receipt of application and final approval
- Average number of calendar days between receipt of complete application and final approval
- Total acres of wetland impacts requested
- Total acres of wetland impacts authorized
- Total acres of wetland mitigation required, broken out into the following categories:
 - o Acres of wetland preservation performed by the permittee
 - o Acres of wetland creation/restoration performed by the permittee
 - o Acres of wetland mitigation performed through the purchase of mitigation banks bank credits
 - o Acres of wetland mitigation performed through contributions to the VA Aquatic Resources Trust Fund (including total dollar amount)
- Linear feet of stream impacts requested
- Linear feet of stream impacts authorized
- Linear feet of stream mitigation required, broken out into the following categories:
 - o Linear feet of stream preservation performed by the permittee
 - o Linear feet of stream enhancement/restoration performed by the permittee

- o Linear feet of stream mitigation performed at mitigation banks
- o Linear feet of stream mitigation performed through contributions to the VA Aquatic Resources Trust Fund (including total dollar amount)
- Total number of projects authorized, organized by 8-digit hydrologic unit code (HUC) (HUC reviewable at <http://cfpub.epa.gov/surf/locate/index.cfm>)
- Total wetland impact acres authorized, organized by 8-digit hydrologic unit code (HUC)
- Total linear feet of stream impact authorized, organized by 8-digit hydrologic unit code (HUC)
- Total number of SPGP permit modifications and/or permit extensions performed within the reporting period
- Total number of Compliance Checks performed, broken out into the following categories:
 - o Number of projects found to be in compliance with permit conditions
 - o Number of projects found to be in non-compliance with permit conditions
 - o Number of non-compliance activities resolved within reporting period
- Total number of 12-SPGP-01 historic resource screenings performed by the VDEQ CRS, broken out into the following categories:
 - o Totals by VDEQ Region
 - o Average acreage of projects reviewed
 - o Total number of *No Historic Properties Effected* determinations made by the VDEQ CRS
 - o Total number of projects referred to the Corps for official Section 106 Determination
 - o Total number of projects forwarded to the NPS for official comments

To summarize, the report will provide data on the type, number and acreage of wetland and linear feet of stream impacts requested and authorized, the mitigation required, and the geographic distribution of the authorized impacts. This report will be advertised by public notice to provide an opportunity for the public, agencies, and interested organizations to submit comments.

Appendix Index

Appendix A: Acronym list for all acronyms used in the 11-SPGP-01 permit language and SOP language.

Appendix B: Supplemental Pre-application Form – this form will be used during the jurisdictional determination and/or pre-application process. This form will provide the applicant with information regarding Section 106 and Section 7 resources.

Appendix C: NAO ESA Review Process – This document should be followed to evaluate what ESA species could be directly and indirectly affected by a project as well as how to coordinate that project with the USFWS and Corps.

Appendix D: SPGP Section 106 coordination form – This form is used for all Section 106 coordination.

Appendix E: Special Conditions Form – This form will be signed by the Corps and included with 11-SPGP-01 authorizations when special conditions are required regarding Section 106, Section 7 and/or financial assurances.

Appendix F: Compliance Inspection Form – This form will be used to coordinate findings between the VDEQ and the Corps during a compliance inspection for SPGP projects.

Appendix G: The New River Navigator Contact Information.

Appendix A

12-SPGP-01 ACRONYMS

ACHP – The Advisory Council on Historic Preservation
CRS – The Virginia Department of Environmental Quality - Cultural Resource Specialist
CWA – Clean Water Act
DCR – The Virginia Department of Conservation and Recreation
DGIF – The Virginia Department of Game and Inland Fisheries
DHR /VDHR – The Virginia Department of Historic Resources
DNH – Department of Natural Heritage
DSS – Data Sharing System
EPA – The Environmental Protection Agency
ESA – The Endangered Species Act
FWS – The US Fish and Wildlife Service
HUC – Hydrologic Unit Code
JPA – Joint permit application
MOA – Memorandum of Agreement
NHPA – National Historic Preservation Act
NPS – The National Park Service
NRHP – National Register of Historic Places
NRN - US Army Corps of Engineers - Huntington District's New River Navigator
PA – Programmatic agreement
PM – Project manager
POC – Point of Contact
SHPO - State Historic Preservation Office (in Virginia this is the same as the VDHR)
SPGP – State General Programmatic Permit
T & E Form – Federally threatened or endangered species coordination form
VDEQ – The Virginia Department of Environmental Quality
VDOT – The Virginia Department of Transportation
VMRC – The Virginia Marine Resource Commission
VWPP – Virginia Water Protection Permit

Appendix B



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
NORFOLK DISTRICT CORPS OF ENGINEERS
FORT NORFOLK 803 FRONT STREET
NORFOLK VIRGINIA 23510-109

APRIL XX, 2010

Supplemental Preapplication Information

Project Number: NAO-2010-XXXX

Applicant:

Project Location:

1. A search of the Virginia Department of Historic Resources data revealed the following:

- ☐ No known historic properties are located on the property.
- ☐ The following known architectural resources are located on the property:
- ☐ The following known archaeological resources are located on the property:
- ☐ The following known historic resources are located in the vicinity of the property (potential for effects to these resources from future development):

NOTE:

- 1) *The information above is for planning purposes only. In most cases, the property has not been surveyed for historic resources. Undiscovered historic resources may be located on the subject property or adjacent properties and this supplemental information is not intended to satisfy the Corps' requirements under Section 106 of the National Historic Preservation Act (NHPA).*
 - 2) *Prospective permittees should be aware that Section 110k of the NHPA (16 U.S.C. 470h-2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant.*
2. A search of the data supplied by the Virginia Department of Conservation and Recreation and the Virginia Department of Game and Inland Fisheries revealed the following:
- ☐ No known populations of threatened or endangered species are located on the property or within a one to two mile radius.
 - ☐ The following federally-listed species are known to be within a one to two mile radius of the property:
 - ☐ The following state-listed (or other) species are known to be within a one to two mile radius of the property:

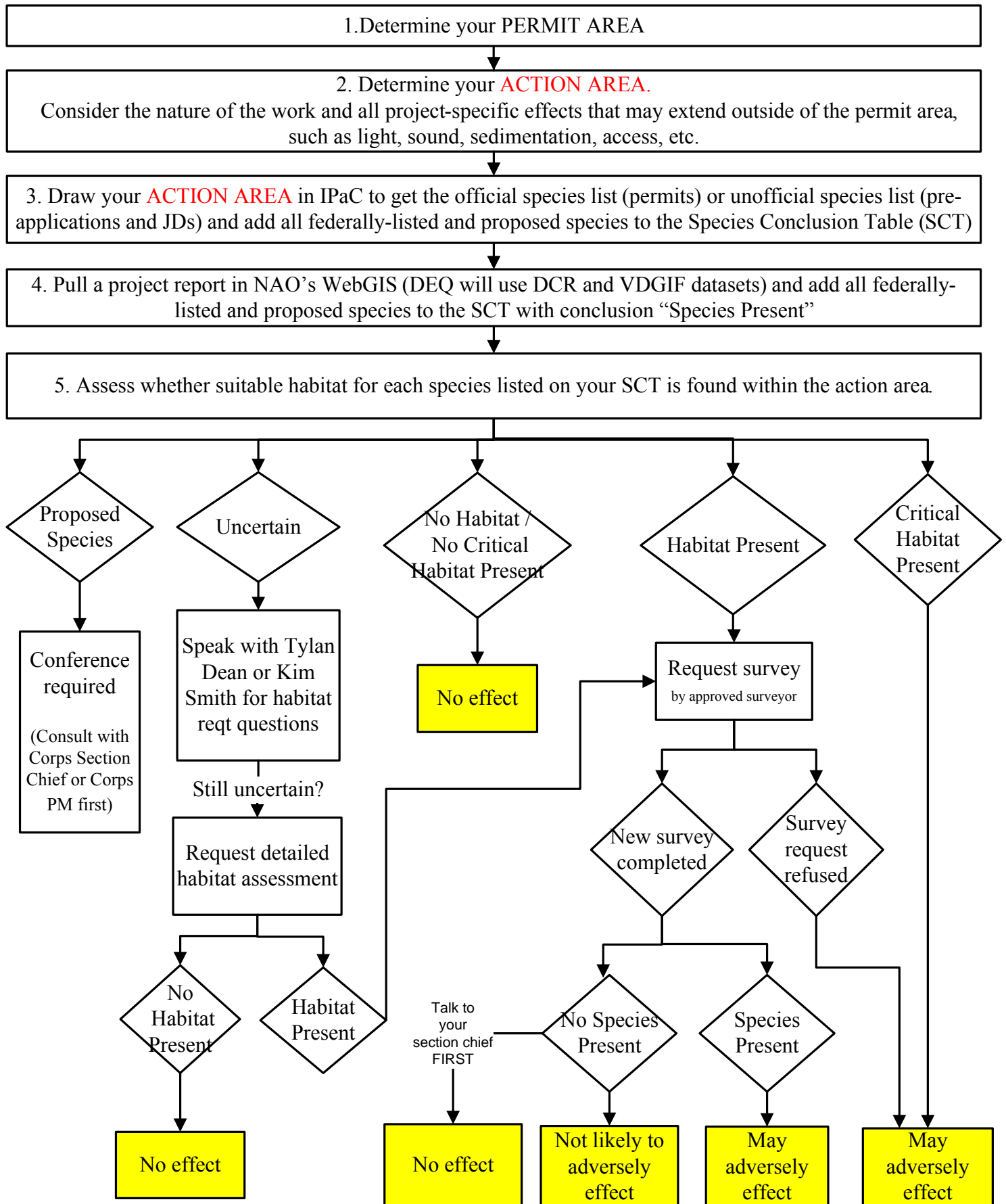
Please note this information is being provided to you based on the preliminary data you submitted to the Corps relative to project boundaries and project plans. Consequently, these findings and recommendations are subject to change if the project scope changes or new information becomes available and the accuracy of the data.

Appendix C

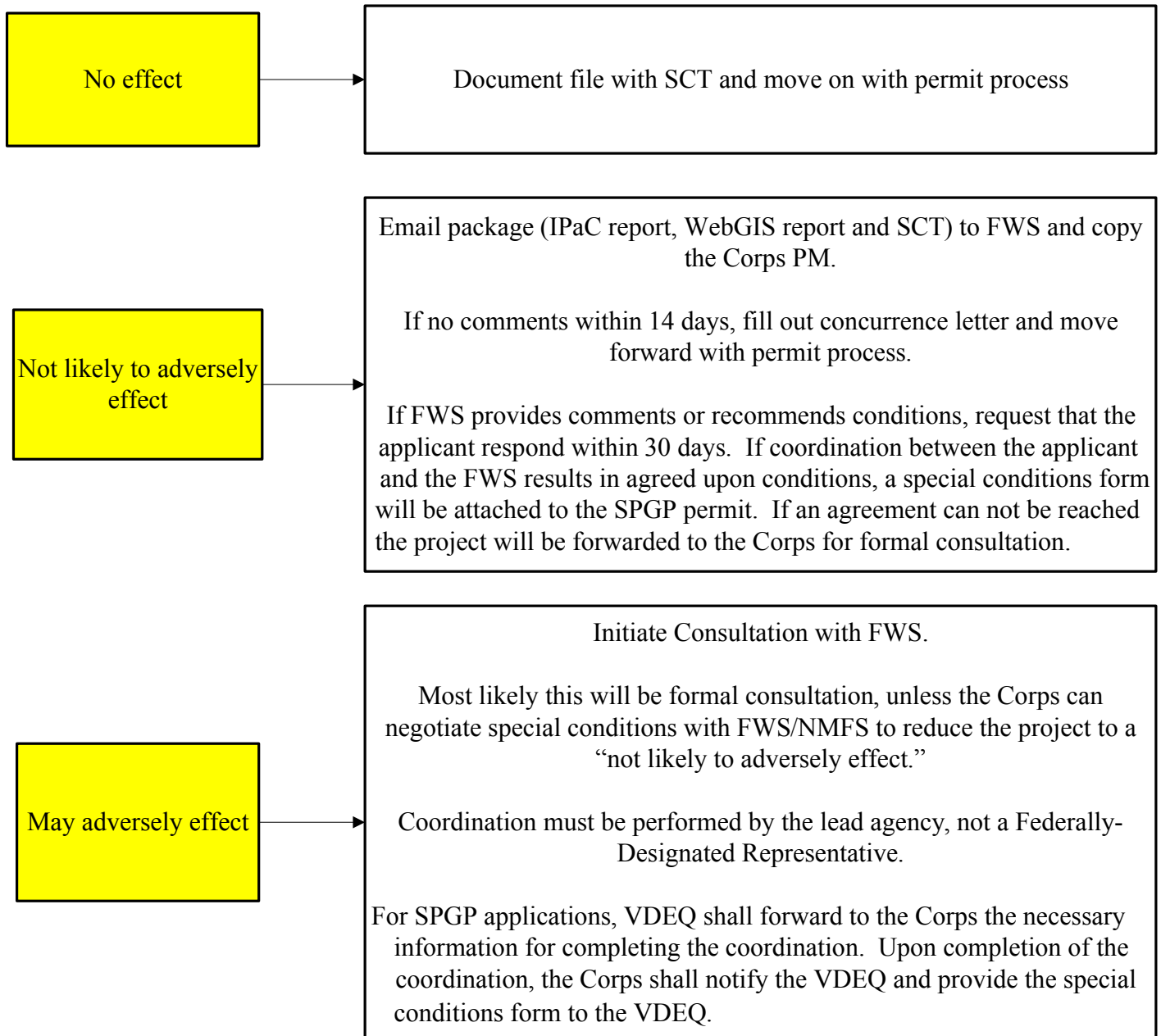
NAO ESA Project Review Process

For use by Corps projects managers and their non-federal representatives (VDEQ and VDOT)

This is a streamlined version of FWS's Online Review Process.



ESA Agency Coordination Procedures



IPAC: <http://ecos.fws.gov/ipac/>

Online Review Process:

http://www.fws.gov/northeast/virginiafield/endspecies/project_reviews.html

NAO WebGIS (Corps only):

<http://nao-fs-im16/Regulatory/default.aspx>

NAO Fish and Wildlife Coordination Act Project Review Process

In addition to federally-listed species, the following species must also be considered:

<u>If you get a hit for:</u>	<u>Coordinate with:</u>
Bald Eagles (nests, concentration areas or buffer)	No coordination - Applicant must obtain permit. Add special condition to permit: “Please note that you should either obtain a U.S. Fish and Wildlife Service (FWS) bald eagle take permit or a letter of concurrence from FWS indicating that a permit is not necessary prior to initiating construction activities. You should contact FWS concerning this matter at U.S. Fish and Wildlife Service, Virginia Field Office, ATTN: Kim Smith, 6669 Short Lane, Gloucester, Virginia 23061.”
Anadromous Fish	NOAA Fisheries Unless NWP/RP (use TOY restriction)
EFH	NOAA Fisheries Unless NWP/RP (general concurrence)
SAV	NOAA Fisheries
Cold Water Stream Trout	VDGIF
Migratory Birds	Add special condition to permit: “The USFWS has asked that we inform you of their authority under the Migratory Bird Treaty Act (16 USC 703). Please contact the USFWS, Virginia Field Office, ATTN Kim Smith, 6669 Short Lane, Gloucester, Virginia 23061, to determine if any restrictions apply to your project.”

Appendix D



**U.S. Army Corps of Engineers
Norfolk District**

**State Program General Permits
Section 106 Coordination Form**

To be completed by: VWPP PM

To: VWPP Program Cultural Resources Specialist

From:

Regional Office

() - (phone)

() - (fax)

@deq.virginia.gov

Project Name:

DEQ Project Number:

Date Received by DEQRO:

Date Sent to CRS:

CRS Deadline:

Site Address/location:

Brief Project Description (include land use & current site conditions, and proposed impacts):

Locality:

USGS Quadrangle:

Latitude/Longitude:

Waterway/Watershed:

Total Project Area (in acres):

Applicant's Name/Address/Phone Number:

Consultant's Name/Address/Phone Number:

To be completed by: VWPP Cultural Resources Specialist

The project as proposed will have no effect on historical properties.

The proposed project has been forwarded to the COE for official Permit Area/APE and Section 106 determination.

CRS's overall assessment and comments regarding the project area:



Known Cultural Resources (if any):

- ☐ Historic structures (greater than 50 years)
- ☐ Structure ruins or foundations
- ☐ Cemetery or possible grave sites
- ☐ Artifacts seen/reported/recovered from surface
- ☐ Civil War fortifications/camps/features
- ☐ Dam and or possible mill features
- ☐ Other (specify)

Enclosures:

- ☐ Project Vicinity Map or 7.5 Quad Sheet (mark location)
- ☐ Plan view drawings with permit area marked
- ☐ Printout from VDHR Data Sharing System (DSS)
- ☐ DSS inventory form for known historic properties
- ☐ Photos of structures (if available)
- ☐ Copies of previous correspondence from VDHR
- ☐ Other (specify):

--	--

	 U.S. Army Corps of Engineers Norfolk District
<p align="center">State Program General Permits Section 106 Coordination Form</p>	
<p align="center"><i>To be Completed by: USACE Project Manager</i></p>	
COE Project Manager & Contact Information:	COE Project Number: DEQ Project Number: Project Name: Date Sent to VDHR: Suspense Date for Comments:
Permit Area/Area of Potential Effect:	Additional Information Enclosures:
Known Historical Properties – Archaeological:	Known Historical properties – Architectural:
<p>CORPS EFFECT DETERMINATION:</p> <p><input type="checkbox"/> Initial Coordination Only (effect unknown)</p> <p><input type="checkbox"/> No Effect</p> <p><input type="checkbox"/> No Adverse Effect</p> <p><input type="checkbox"/> Adverse Effect</p> <p>Comments:</p>	

Appendix E



US Army Corps of Engineers ®

Norfolk District

Regulatory Office

12-SPGP-01 Special Conditions

Permit number:

Date:

In addition to all general conditions of 12-SPGP-01 and conditions required of your Virginia Water Protection Permit authorization, you will be required to comply with the following special condition(s) of your 12-SPGP-01 authorization:

Failure to comply with all terms and conditions, including special conditions, of your 12-SPGP-01 authorization, may result in the Corps of Engineers taking enforcement action against you and/or your contractor.

If you have any questions about these requirements, please contact the Corps project manager listed below.

USACE – Norfolk District
XXXXXXX XXXXXX
XXX-XXX-XXXX
XXXXXXX Field Office

XXXXXXXXXXXXXXXXXX
Chief, XXXXXX Virginia
Regulatory Section

Appendix F

SPGP COMPLIANCE/NON-COMPLIANCE INSPECTION FORM

Corps PM:

Contact information:

Project name:

Project number:

Project location:

Date of inspection:

Date finding sent to VDEQ:

☐ No further coordination with the Corps required

☐ Corps requests to participate in resolution of the non-compliance

Description of Findings:

Appendix G

NEW RIVER NAVIGATOR

USACE – Huntington District
Chief of Water Management
Attn: Tim Curran
502 Eighth Street
Huntington, West Virginia 25701-2070

304-399-5666