

**PROGRAMMATIC AGREEMENT AMONG  
U.S. ARMY CORPS OF ENGINEERS  
NORFOLK DISTRICT REGULATORY OFFICE,  
ADVISORY COUNCIL ON HISTORIC PRESERVATION,  
VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY AND  
VIRGINIA STATE HISTORIC PRESERVATION OFFICE  
REGARDING IMPLEMENTATION OF THE NORFOLK DISTRICT  
CORPS OF ENGINEERS STATE PROGRAM GENERAL PERMIT  
AND SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION  
ACT**

**WHEREAS**, the U.S. Army Corps of Engineers Norfolk District Regulatory Office (Corps) administers the Corps' Regulatory Permit Program authorized by Section 404 of the Clean Water Act of 1973, Section 10 of the Rivers and Harbors Act of 1899, and Section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972; and

**WHEREAS**, the Virginia Department of Environmental Quality (VDEQ) administers the Virginia Water Protection Permit Program under the authority of §§ 62.1-44.15 and 62.1-44.15:5 of the Code of Virginia; and

**WHEREAS**, the Corps' State Program General Permit, 12-SPGP-01 and any subsequently reissued versions, hereinafter referred to as SPGP-01, attached as Appendix 1, provides Corps regulatory authorization for certain kinds of work in nontidal waters and wetlands in Virginia for residential, commercial, and institutional developments impacting up to one (1) acre of nontidal wetlands and non-linear waters (such as ponds) and up to 2,000 linear feet of streambed and also for linear transportation projects impacting up to 1/3 acre of nontidal waters and wetlands; and

**WHEREAS**, pursuant to 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act of 1966 (NHPA), as amended, 16 U.S.C. 470f, and 33 CFR Part 325, Appendix C, "*Processing of Department of the Army Permits: Procedures for Protection of Historic Places*", and "*Revised Interim Guidance for Implementing Appendix C of 33 Part 325 with the Revised Advisory Council on Historic Preservation Regulations at 36 CFR Part 80*" dated April 25, 2005, and any revised regulations or procedures, the Corps is required to take into account the effects of undertakings authorized by SPGP-01 on properties included in or eligible for inclusion in the National Register of Historic Places (NRHP) prior to the issuance of permits for the undertaking and to consult with the Virginia State Historic Preservation Office (SHPO), Federally recognized Indian Tribes, representatives of local government, permit applicants, and other consulting parties; and

**WHEREAS**, the Corps has generally determined that projects authorized under the SPGP-01 may have an adverse effect upon properties included in or eligible for inclusion in the NRHP and has consulted with the Advisory Council on Historic Preservation (ACHP) and the SHPO pursuant to Section 800.14(b) of the regulations (36 CFR Part 800) implementing

Section 106 of the National Historic Preservation Act (16 U.S.C. 470f), and Section 110(f) of the same Act (16 U.S.C. 470h-2(f)); and

**WHEREAS**, in accordance with the stipulations of this Programmatic Agreement (PA) the Corps authorizes the VDEQ to conduct the initial review of existing information on historic properties for permit applications submitted under the SPGP-01 included, but not limited to, the information available in the Virginia Department of Historic Resources online database maintained by the SHPO (which is described in Appendix 2) and information referenced in Stipulation I; and

**WHEREAS**, the Corps, the ACHP, and the SHPO have also executed an agreement titled, “*Programmatic Agreement Among U.S. Army Corps of Engineers Norfolk District Regulatory Branch, The ACHP, and the Virginia State Historic Preservation Office Regarding Implementation of the Norfolk District Regulatory Program*”, dated February 5, 1996, attached as Appendix 3, which will also apply to this PA unless amended or superseded by execution of a new PA; and

**WHEREAS**, the Corps and the SHPO follow standard operating procedures titled “*Norfolk District Standard Operating Procedures for Section 106 Coordination with the Virginia Department of Historic Resources*” dated June, 2007, and attached as Appendix 4 unless amended or superseded by execution of a new SOP; and

**WHEREAS**, the National Park Service (NPS), the ACHP and the National Conference of State Historic Preservation Officers have an agreement titled, “*Programmatic Agreement Among the National Park Service (U.S. Dept. of the Interior), the ACHP, and the National Conference of State Historic Preservation Officers*” dated 2008 unless amended or superseded by execution of a new PA; and

**WHEREAS**, the Virginia Department of Transportation (VDOT), the Corps, the SHPO, the ACHP, and the Federal Highway Administration (FHWA) are presently developing a programmatic agreement for administration of the Federal Aid Highway Program in Virginia and issuance of Department of the Army permits to VDOT that are subject to Section 106 of the NHPA(16 U.S.C. 470f); and

**WHEREAS**, the Corps issued public notices on December 15, 2006 and June 22, 2011 that announced the proposed changes to the SPGP-01, including the proposal to develop an agreement with the VDEQ to delegate certain responsibilities for screening for historic properties in association with SPGP-01 applications, and solicited interest of agencies, organizations and the public; and

**WHEREAS**, the Corps contacted 27 federally recognized tribes by letter signed by Colonel Dionysios Anninos on May 30, 2008 inviting their participation in development of this programmatic agreement as a consulting party. The Tribes contacted included the Poarch Band of Creek Indians, Mashantucket Pequot Tribe, Mohegan Indian Tribe, Seminole Tribe of Florida, Chitimacha Tribe, Coshatta Tribe of Louisiana, Jena Band of Choctaw Indians, Tunica-Biloxi Indian Tribe of Louisiana, Aroostook Band of Micmacs, Houlton Band of Maliseet Indians, Passamaquoddy Tribe - Indian Township Reservation, Passamaquoddy Tribe - Pleasant Point Reservation, Wampanoag Tribe of Gay Head / Aquinnah, Mississippi

Band of Choctaw Indians, Cayuga Nation, Oneida Indian Nation, Onondaga Indian Nation, Seneca Nation of New York, St. Regis Band of Mohawk Indians, Tonawanda Band of Seneca, Tuscarora Nation, Eastern Band of Cherokee Indians, Narragansett Indian Tribe, Catawba Indian Nation, Alabama-Coushatta Tribes of Texas, United Keetoowah Band of Cherokee Indians, and the Absentee-Shawnee Tribe of Indians of Oklahoma; no requests for participation in the agreement were received by the Corps; and

**WHEREAS**, the Corps issued a public notice on July 3, 2008 soliciting comments from the public, the 27 Tribes listed above, the Virginia state recognized Tribes and the Virginia Council on Indians on the SPGP PA and requested comments on proposed amendments in another public notice dated June 22, 2011 and received no comments on the notice; and

**WHEREAS**, the NPS, the VDOT, and the National Trust for Historic Preservation, have requested consulting party status and have been invited to concur in this PA; and

**WHEREAS**, the Federal Highway Administration has been invited to concur in this PA; and

**WHEREAS**, pursuant to 800.14(b), the Corps has invited the participation of the ACHP in this consultation, and the ACHP has elected to participate in the development of this PA; and

**NOW, THEREFORE**, the Corps, the VDEQ, the ACHP, and the SHPO agree that processing of the SPGP-01 shall be administered in accordance with the following stipulations in order to satisfy Section 106 responsibilities of the Corps with respect to authorizations under SPGP-01.

### **STIPULATIONS**

The Corps in coordination with VDEQ will ensure that the following stipulations are carried out:

#### **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 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 (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 online database 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 SHPO’s online database 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 SHPO’s online database indicates that there are recorded cultural resources within the project site but the Archaeological and/or Architectural Reports on file at the SHPO indicate that these resources have been found ineligible for the NRHP by the SHPO 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 SHPO's online database 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 DEQ 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 the SHPO 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 printout from the SHPO's online database 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).

### III. CORPS SECTION 106 CONSULTATION

- a. For projects that do not meet all the criteria of Stipulation II above and are referred by VDEQ to the Corps for Section 106 review, the Corps consultation will be conducted in a manner consistent with the following documents or subsequent revisions thereof:
  - 36 CFR Part 800 the implementing regulations for Section 106 of NHPA as revised, entitled "*Protection of Historic Properties*";
  - 33 CFR Part 325, Appendix C entitled "*Processing of Department of the Army Permits: Procedures for the Protection of Historic Properties*";
  - "*Revised Interim Guidance for Implementing Appendix C of 33 Part 325 with the Revised ACHP Regulations at 36 CFR Part 800*" dated April 25, 2005;
  - "*Programmatic Agreement Among U.S. Army Corps of Engineers Norfolk District Regulatory Branch, The ACHP, and the Virginia State Historic Preservation Office Regarding Implementation of the Norfolk District Regulatory Program*" dated February 5, 1996;
  - "*Norfolk District Standard Operating Procedures for Section 106 Coordination with the Virginia Department of Historic Resources (VDHR)*" dated June, 2007;
  - or any current and applicable regulations, procedures or executed PA's.
- b. Per the SPGP-01 Standard Operating Procedures, the Corps will advise VDEQ whether or not additional Section 106 coordination is necessary. The Corps will base the decision upon the June 2007 SOP with the SHPO. Should additional Section 106 consultation be required, the Corps will invite the VDEQ CRS to

participate in the consultation with the SHPO, but the Corps will conduct the actual consultation.

- c. Upon completion of Section 106 consultation, the Corps will advise the VDEQ-CRS of the final resolution. The Corps will include any permit conditions required to avoid, minimize or mitigate adverse effects to historic properties or any Section 106 agreement documents (Memoranda of Agreement or Programmatic Agreements) in the SPGP-01 Special Conditions Form, which will be provided to VDEQ. The SPGP-01 Special Conditions Form and/or Section 106 agreement documents will be included in VDEQ's permit authorization.
- d. The VDEQ will be a signatory to any project-specific Memorandum of Agreement or Programmatic Agreement where VDEQ is assigned duties under the stipulations of an agreement.

#### **IV. VDOT PROJECTS**

The following stipulations are applicable to SPGP-01 permits associated with VDOT projects:

- a. VDOT may continue to coordinate with the SHPO, and VDEQ will utilize any appropriate information from VDOT in processing SPGP-01 authorizations for such projects.
- b. For federal aid highway projects in Virginia that require the SPGP-01, the Corps will designate, for each individual project, FHWA to act as the lead federal agency to fulfill both agencies responsibilities under Section 106 of the NHPA (16 U.S.C. 470f).
- c. The Corps accepts the findings on the NRHP-eligibility of bridges owned by the VDOT made by the SHPO and the VDOT pursuant to the "Memorandum of Agreement Between the Virginia Department of Transportation and the Virginia Department of Historic Resources Concerning the Eligibility of Bridges for Listing in the Virginia Landmarks Register and the NRHP" or any subsequent amendments or replacements to this agreement.
- d. In accordance with Section 106 of the NHPA (16 U.S. C. 470f), upon execution of a PA by the VDOT, the Corps, the SHPO, the ACHP, and the FHWA to address the administration of the Federal Aid Highway Program in Virginia and Department of the Army permits issued to VDOT, the Section 106 process for VDOT projects requiring a SPGP-01, shall be concluded through the procedures set forth in that PA.

#### **V. CURATION**

- a. The Corps shall ensure that all field and research notes and records, maps, drawings and photographic records collected pursuant to actions arising from this PA will be

permanently curated in a repository approved by the SHPO and in accordance with the requirements in 36 CFR 79, *Curation of Federally Owned and Administered Archaeological Collections*.

- b. The Corps will encourage the curation of all archaeological materials collected from private lands pursuant to actions arising from this PA (with the exception of human skeletal remains and funerary objects, which will be handled as outlined in Stipulation VII below) to be cared for in a repository approved by the SHPO and in accordance with the requirements in 36 CFR 79, *Curation of Federally Owned and Administered Archaeological Collections*.

## **VI. POST-REVIEW DISCOVERIES**

- a. In the event that previously unidentified archaeological resources are discovered during the undertaking authorized by the SPGP-01, general permit condition number seven of SPGP-01 requires the permittee to immediately halt all construction work involving subsurface disturbance in the area of the resource and in the surrounding area where further subsurface resources can reasonably be expected to occur and immediately notify the Corps and VDEQ of the discovery. Consultation with the SHPO will commence and the permittee will subsequently be advised when he/she may recommence work.
- b. The Corps, VDEQ and/or the SHPO, or an archaeologist approved by all parties, will immediately inspect the work site and determine the area and nature of the affected archaeological resource. Construction work may continue in the area outside the boundaries of the archaeological resource as defined by the Corps or VDEQ and the SHPO, or their designated representative, only after the permittee has received written notification of such from the Corps or the VDEQ that work may proceed.
- c. Within five working days of the original notification of discovery, the Corps, in consultation with the SHPO, will evaluate the NRHP eligibility of the resource.
- d. If the property is determined eligible for the NRHP, the permittee shall prepare a plan for its avoidance, protection, or recovery of information to mitigate the adverse effect of the activity associated with the SPGP-01 permit, as directed by the Corps. The permittee will submit the plan to the Corps and the SHPO for review and approval prior to implementation. The permittee shall notify the Corps, VDEQ, and the SHPO when all work is completed.
- e. Work in the affected area shall not proceed until either:
  - i. The development and implementation of appropriate data recovery or other approved mitigation procedures, or
  - ii. The permittee is notified in writing that a determination has been made that the located resources are not eligible for inclusion on the NRHP.
- f. Any disputes over the evaluation or treatment of previously unidentified resources will be resolved as provided in the section of this PA entitled Dispute Resolution.

## **VII. HUMAN REMAINS**

- a. Human skeletal remains and associated funerary objects encountered during the course of actions taken as a result of this PA shall be treated in accordance with the Regulations Governing Permits for the Archaeological Removal of Human Remains (Virginia Register 390-01-02) found in the *Code of Virginia* (§10.1-2305, *et seq.*, Virginia Antiquities Act). Permits shall be obtained from the SHPO for the removal of human remains in accordance with these regulations.
- b. In the event that any human remains encountered are likely to be of Native American origin, whether prehistoric or historic, the Corps will immediately notify the appropriate federal and state tribal leaders. The treatment of Native American human remains and associated funerary objects will be determined in consultation with the appropriate tribal leaders. All reasonable efforts will be made to avoid disturbing Native American gravesites and associated artifacts. To the extent possible, the signatories shall ensure that the general public is excluded from viewing any Native American gravesites and associated artifacts. No signatory to this PA will release photographs of any Native American human remains and/or funerary objects to the press or to the general public to the extent authorized under the law.
- c. In reviewing a permit request involving removal of Native American human remains, the SHPO will notify and consult with the appropriate tribal leaders as required by the state regulations stated above.

## **VIII. CONSULTATION WITH FEDERALLY RECOGNIZED INDIAN TRIBES**

Should any federally recognized tribes express an interest in consulting on any undertaking arising from this Agreement, or should the Corps determine, or VDEQ or the SHPO request, that a Tribe should be offered the opportunity to consult, the Corps will extend an invitation to consult to those tribes.

## IX. ANNUAL REPORTING AND TRAINING STANDARDS

On or before November 30 of each year, commencing in 2012, the Corps shall invite the signatories to this PA and consulting parties concurring in this PA, to a meeting to facilitate review of the PA, the performance of VDEQ and the Corps in executing their responsibilities set forth in this PA, and to discuss any programmatic or policy issues encountered in the implementation of its stipulations. VDEQ will summarize the SPGP-01 permits issued over the previous year (September 1- August 31) and make available the Cultural Resources Initial Screening Forms for review. During each annual review, the Corps will verify that:

- a. The VDEQ has staffed the position(s) for CRS personnel to carry out its responsibilities under this PA. The personnel in the CRS position(s) shall have adequate expertise to carry out the responsibilities under this PA consistent with the professional qualifications standards found in the "Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (48 FR 44738-9).
- b. The VDEQ has effective mechanisms for carrying out the responsibilities assigned to it under this PA.
- c. The Corps, VDEQ, and SHPO agree to participate in joint training in Section 106, VDEQ use of the SHPO's online database and initial screening for historic properties, and basic Corps procedures on an annual basis with respect to authorizations under SPGP-01.
- d. The public has an opportunity to comment on the SPGP-01 and this PA when the SPGP-01 reports are advertised by public notice by the DEQ and/or Corps on an annual basis, in October of each year.

## X. TECHNICAL REPORTS AND CONTRACTOR QUALIFICATIONS

- a. All technical reports prepared pursuant to this PA will be consistent with the federal standards entitled *Archeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines for Archaeological Documentation (48 FR 4434-37)*, and *the SHPO's Guidelines for Conducting Historic Resources Survey in Virginia (October 2011)* or subsequent revisions or replacements to these documents, and shall take into account the ACHP's publications, *Recommended Approach for Consultation on Recovery of Significant Information from Archeological Sites (1999)* and *Section 106 Archaeology Guidance (June 2007)*.
- b. All architectural and landscape studies resulting from this PA shall be consistent with pertinent standards and guidelines of the Secretary of the Interior, including as applicable the Secretary's *Standards and Guidelines for Historical Documentation (48 FR 44728-30)* and for *Architectural and Engineering Documentation (48 FR 44730-34)*, and the SHPO's *Guidelines for Conducting Historic Resources Survey in Virginia (October 2011)* or subsequent revisions or replacements to these documents.

## **XI. DISPUTE RESOLUTION**

- a. Should any consulting party to this PA object in writing to the Corps regarding any action carried out or proposed with respect to any undertakings covered by this PA or to implementation of this PA, the Corps will consult with the objecting party to resolve the objection. The VDEQ-CRS will be involved in these discussions, as appropriate. If the objection is resolved, the consultation process will proceed as outlined in the PA.
- b. If after initiating such consultation, the Corps determines that the objection cannot be resolved through consultation, the Corps shall forward all documentation relevant to the objection to the ACHP, including the proposed response to the objection.
- c. Within thirty (30) days after receipt of all pertinent documentation, the ACHP shall exercise one of the following options:
  - i. Advise the Corps that the ACHP concurs with the Corps' proposed response to the objection, whereupon the Corps will respond to the objection accordingly; or
  - ii. Provide the Corps with recommendations, which the Corps shall take into account in reaching a final decision regarding its response to the objection; or
  - iii. Notify the Corps that the objection will be referred for comment pursuant to 36 CFR 800.7(a)(4), and proceed to refer the objection for comment. The Corps shall take the resulting comment into account in accordance with 36 CFR 800.7(c)(4) and Section 110(l) of the NHPA.
- d. Should the ACHP not exercise one of the above options within thirty (30) days after receipt of all pertinent documentation regarding the dispute, the Corps may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the Corps shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the PA, and provide them and the ACHP with a copy of such written response..
- e. The Corps shall take into account any ACHP recommendation or comment provided in accordance with this stipulation with reference only to the subject of the objection; the Corps' responsibility to carry out all the actions under this PA that are not the subjects of the objections shall remain unchanged.
- f. At any time during implementation of the measures stipulated in this PA, should an objection pertaining to this PA be raised by a member of the public, the Corps shall notify the parties to this PA and take the objection into account, consulting with the objector and, should the objector so request, with any of the parties to this PA to resolve the objection.

## **XII. AMENDMENTS AND TERMINATION**

- a. Any signatory to this PA may propose to the Corps that the PA be amended, whereupon the Corps will consult with the other signatories and concurring parties to

this PA to consider such an amendment. All signatories to this PA must agree in writing to the proposed amendment in accordance with 36 CFR 800.6(c)(7).

- b. If the VDEQ determines that the terms of this PA cannot be implemented, or if the VDEQ, Corps or SHPO determines that the PA is not being properly implemented, the VDEQ, the Corps, or the SHPO may propose to the other parties to this PA that it be amended or terminated.
- c. This PA may be terminated by the Corps, VDEQ, SHPO or ACHP in accordance with the procedures described in 36 CFR 800.6(c)(8). If the Corps is unable to execute another PA following termination, the Corps may choose to modify, suspend, or revoke the SPGP-01 as provided by 33 CFR 325.7 and the Corps shall be responsible for complying with the requirements of Section 106 on a case- by- case basis in the event that this PA is terminated or until another PA is executed for the administration of SPGP-01.
- d. If future amendments are made to the SPGP-01 or the SPGP SOP which relate to Section 106 and affect this PA, the Corps will consult with the other signatories to this PA to determine if amendments to this agreement are necessary. Amendments to the SPGP-01 or SPGP SOP which do not affect Section 106 or this agreement will not require consultation or amendment of this PA.

### **XIII. DURATION OF PA**

This PA will continue in full force and effect until five years after the date of the last signature on this amendment. At any time in the six-month period prior to the expiration date, the Corps may request the signatory parties to consider an extension or modification of this PA. No extension or modification will be effective unless the Corps, VDEQ, SHPO and ACHP have agreed with it in writing, and an amendment is executed in accordance with Stipulation XI.a.

### **XIV. FAILURE TO CARRY OUT THE TERMS OF THE AGREEMENT**

In the event that the terms of this PA are not carried out, the Corps shall comply with 36 C.F.R. § 800 with regard to actions covered by this PA.

Execution of this PA by the Corps and the SHPO and its acceptance by the ACHP in accordance with 36 CFR 800.6(b)(1)(iv), shall, pursuant to 36 CFR 800.6(c), be considered to be an agreement with the ACHP for the purposes of Section 110(l) of NHPA. Execution and submission of this PA, and implementation of its terms, evidence that the Corps has afforded the ACHP an opportunity to comment on the proposed undertakings covered under this PA and their effect on historic properties, and that the Corps has taken into account the effect of the undertakings on historic properties.

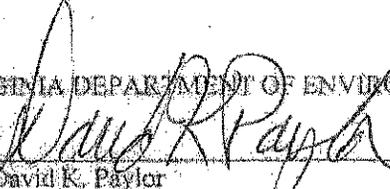
SIGNATURES:

NORFOLK DISTRICT, U. S. ARMY CORPS OF ENGINEERS

By:   
Mr. William T. Walker  
Chief, Regulatory Branch

Date: 9/14/2012

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

By:   
Mr. David K. Paylor  
Director, Virginia Department of Environmental Quality

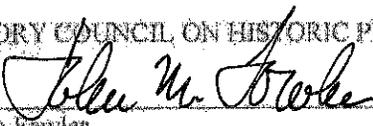
Date: 9/7/2012

VIRGINIA HISTORIC PRESERVATION OFFICER

By:   
Ms. Kathleen S. Kilpatrick  
Director, Virginia Department of Historic Resources

Date: 9/27/12

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By:   
Mr. John Fowler  
Executive Director

Date: 10/23/12

CONCUR:

NORTHEAST REGION, NATIONAL PARK SERVICE

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Dennis Reidenbach  
Regional Director

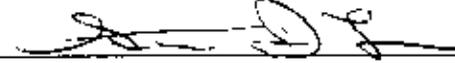
NATIONAL CAPITAL REGION, NATIONAL PARK SERVICE

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Steve Whitesell  
Regional Director

SOUTHEAST REGION, NATIONAL PARK SERVICE

By: \_\_\_\_\_ Date: \_\_\_\_\_  
David Vela  
Regional Director

THE VIRGINIA DEPARTMENT OF TRANSPORTATION

By:  \_\_\_\_\_ Date: 12/13/12  
Mr. Stephen Long  
State Environmental Administrator

THE NATIONAL TRUST FOR HISTORIC PRESERVATION

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Ms. Elizabeth Merritt  
Deputy General Counsel

FEDERAL HIGHWAY ADMINISTRATION

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Ms. Irene Rico  
Division Administrator

APPENDICES:

Appendix 1- 12-SPGP-01

Appendix 2- SHPO's Online Database Information

Appendix 3- 1996 PA with Corps, SHPO & ACHP

Appendix 4- 2007 SOP with Corps & VDHR; 2012 Programmatic Exclusions

Appendix 5- SOP for SPGP-01

Appendix 6- "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"



**DEPARTMENT OF THE ARMY  
NORFOLK DISTRICT CORPS OF ENGINEERS  
FORT NORFOLK 803 FRONT STREET  
NORFOLK, VIRGINIA 23510-1096**

**CENAO-WRR**

**REGIONAL PROGRAMATIC GENERAL PERMIT  
12-SPGP-01**

**Effective Date: May 31, 2012**

**Expiration Date: May 31, 2017**

**I. AUTHORITIES:** 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 U.S. Army Corps of Engineers, Norfolk District (Corps or Norfolk District). These projects must have no more than minimal individual and cumulative impacts and must meet all the terms and conditions outlined herein. The use of 12-SPGP-01 is restricted to those projects that have avoided and minimized impacts to waters of the U.S., including wetlands, to the maximum extent practicable.

The people of the Commonwealth of Virginia (Virginia or “the Commonwealth”) are hereby authorized by the Secretary of the Army and the Chief of Engineers, pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 403) and Section 404 of the CWA (33 U.S.C. § 1344), to perform the aforementioned work in nontidal waters and wetlands of the Commonwealth as described herein. The Corps’ authority and guidance to develop general permits is contained in 33 U.S.C. § 1344(e) and 33 C.F.R. § 325.2(e)(2), 33 C.F.R. § 325.3(b), and Corps Regulatory Guidance Letter 83-7.

**II. PROCEDURES:**

**A. Delineation Confirmations:** Prior to the submission of an application for any Residential, Commercial, or Institutional Development Activity or Linear Transportation Activity covered by 12-SPGP-01, a proponent must first obtain a confirmed delineation of all waters of the U.S., including wetlands, and Virginia state surface waters on the property. The applicant will contact the Corps to obtain a delineation confirmation. A confirmed delineation is not required for Virginia Department of Transportation (VDOT) linear transportation projects (these projects must adhere to separate, but similar, procedures). When appropriate a delineation confirmation may also be required from the Environmental Protection Agency (EPA).

**B. Application:** Applicants must use the newest version of Joint Permit Applications (JPAs) and submit these applications to the Virginia Marine Resources Commission (VMRC). The applicable Virginia Water Protection (VWP) permit regulations define the information required for a complete VWP permit application (see 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). This information, plus a confirmed

delineation from the Corps with associated map(s) and data sheets, will be required to render an application complete for 12-SPGP-01 purposes. VDOT will submit the Inter-Agency Coordination Meeting JPA or the VDOT Reporting Only Spreadsheet. A joint permit application may be obtained through the following link:

[http://www.nao.usace.army.mil/Regulatory\\_Branch/JPA.asp](http://www.nao.usace.army.mil/Regulatory_Branch/JPA.asp)

**C. State Approvals:** In order for 12-SPGP-01 to be valid, permittees must obtain the following state approvals prior to commencement of work in waters of the U.S.:

1. Virginia Department of Environmental Quality (VDEQ) VWP permit and
2. VMRC permit, when required

For the purpose of resolving non-compliance and/or enforcement actions the 12-SPGP-01 may be issued or modified in conjunction with a VDEQ informal resolution, letter of agreement, executive compliance agreement or consent order. Authorizations under 12-SPGP-01 also require that permittees ensure that their projects are designed and constructed in a manner consistent with all state and local requirements pursuant to the Chesapeake Bay Preservation Act (Virginia Code 10.1-2100 *et seq.*) and the Chesapeake Bay Preservation Area Designation and Management Regulations (9 VAC 10-20-10 *et seq.*), the Virginia Erosion and Sediment Control Regulations (4 VAC 30-50-10 *et seq.*), and the Virginia Stormwater Management Program (VSMP) Permit Regulation (4 VAC 50-60-10 *et seq.*). Authorizations under 12-SPGP-01 do not supersede state or local government authority or responsibilities pursuant to the Act.

**D. Definitions:**

a. For purposes of 12-SPGP-01, “loss” of waters of the U.S., including wetlands, shall be defined as filling (including placement of pipes or other water conveyances in waters) and other permanent adverse effects, including mechanized landclearing, permanent conversion, excavation (including channelization), flooding, draining, etc. The acreage/linear footage of loss of waters of the U.S. is the threshold measurement of the impact to existing waters, including wetlands, for determining whether a project may qualify for 12-SPGP-01; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and values.

b. For purposes of 12-SPGP-01, “natural stream design” means that the channel should mimic the dimension, pattern, and profile of a representative reference stream reach.

c. For purposes of 12-SPGP-01, VDEQ is the state agency responsible for ensuring permit applications meet the informational and technical requirements of the 12-SPGP-01 and for issuance of 12-SPGP-01 authorizations for qualifying Residential, Commercial, Institutional and Linear Transportation projects.

d. For purposes of 12-SPGP-01, the “permittee” will be the responsible party in receipt of the 12-SPGP-01 authorization from the VDEQ. The permittee will be the responsible party for complying with all 12-SPGP-01 general conditions as well as any additional special conditions required of each project.

e. For purposes of 12-SPGP-01, “lateral encroachment” is when a road, utility or other project encroaches into waters of the U.S., including wetlands, but does not cross the resource perpendicularly or diagonally.

### **III. AUTHORIZED ACTIVITIES**

#### **A. Residential, Commercial, and Institutional Development Activities:**

##### **a. Eligibility Criteria:**

- i. Activities are subject to Corps jurisdiction;
- ii. Activity involves the discharge of dredged or fill material associated with residential, commercial, and institutional projects causing the permanent loss of not more than one acre of nontidal wetlands or open waters or the permanent loss of not more than 2,000 linear feet of stream channel, unless otherwise excluded by 12-SPGP-01;
- iii. Activity meets the general conditions of 12-SPGP-01 listed on pages 7-14 and any special conditions required of each project-specific authorization;
- iv. Compensatory mitigation is provided in accordance with the mitigation standards and general conditions on pages 10 -11; and
- v. Discharges associated with residential, commercial, and institutional development activities include those outlined in the VDEQ’s General Permits (see 9 VAC 25-660 *et seq.*, 9 VAC 25-670 *et seq.*, 9 VAC 25-680 *et seq.*, and 9 VAC 25-690 *et seq.*) and are associated with the construction or expansion of residential, commercial, or institutional building foundations, building pads, and attendant features that are necessary for the use and maintenance of the structures. Attendant features may include, but are not limited to, roads, parking lots, garages, yards, utility lines, stormwater management facilities, and recreational facilities such as playgrounds, playing fields, and golf courses (provided the golf course is an integral part of the residential development). Residential developments include multiple and single unit developments. Commercial developments include retail stores, industrial facilities, restaurants, business parks, and shopping centers. Institutional developments include schools, fire stations, government office buildings, judicial buildings, public works buildings, libraries, hospitals, and places of worship. For residential, commercial, and institutional developments, the aggregate permanent loss of waters of the U.S. cannot exceed one acre of nontidal wetlands or open water; or 2,000 linear feet of stream.
- vi. Residential, commercial, or institutional developments are consistent with the Corps’ subdivision guidance dated March 15, 1993 and June 2, 1999, the Corps’ and VDEQs’ joint subdivision guidance dated June, 2007 and/or any subsequent guidance that supersedes or supplements those documents.

##### **b. Federal Screening Procedures:**

i. All residential, commercial, and institutional development activities that will cause or result in impacts to tidal waters, including wetlands, and/or permanent impacts that exceed ½ acre of non-tidal wetlands or open waters and/or exceed 300 linear feet of stream channel will be coordinated with the Corps, the U.S. Environmental Protection Agency (EPA), and the U.S. Fish and Wildlife Service (FWS) for federal review.

ii. If EPA or FWS determines that there are project-specific concerns regarding avoidance and/or minimization of impacts to the aquatic environment or concerns regarding the amount and/or type of compensatory mitigation being proposed, the applicant will be required to address those concerns. If the concerns are not addressed to the satisfaction of the objecting agency(ies), the Corps District Commander may exert his/her discretionary authority to require the project to be processed under the Corps' individual permit process.

iii. Any Corps' concerns shall be relayed to the VDEQ and addressed during the VDEQ permitting process. If concerns are not satisfied through that process, the Corps District Commander may exert his/her discretionary authority to require the project to be processed under an alternate Corps permitting process, possibly as an individual permit.

#### **B. Linear Transportation Activities:**

##### **a. Eligibility Criteria:**

i. Activities are subject to Corps jurisdiction;

ii. Activities involve the discharge of dredged or fill material associated with the construction, expansion, modification, or improvement of linear transportation projects not causing the permanent loss of more than 1/3 acre of waters of the U.S., including wetlands, at any single impact site with independent utility, unless otherwise excluded by 12-SPGP-01;

iii. Activity meets all general conditions of 12-SPGP-01 listed on pages 7-14 and any special conditions required of each project-specific authorization;

iv. Compensatory mitigation is provided for all unavoidable impacts to wetlands;

v. Compensatory mitigation is provided for all unavoidable stream impacts where total permanent impacts exceed 300 linear feet of stream channel (or mitigation for any lower level of impact if it is determined that it is necessary to ensure that a project's impacts are minimal in nature) in accordance with the mitigation standards general condition on pages 10-11. Stream relocation using natural stream design may be considered self-mitigating, as determined on a case-by-case basis;

vi. Lateral encroachments may be authorized by the 12-SPGP-01 if the project meets the following criteria:

1. Impacts due to all project lateral encroachments, including stream relocations, do not exceed 1/3 acre of waters of the United States or 2,000 linear feet of stream channel;

2. Total project lateral encroachments do not cause the permanent loss of more than 300 linear feet of stream channel due to the installation of piping, riprap, concrete, etc;

3. All project lateral encroachments exceeding 300 linear feet of stream channel are performed using natural stream design (unless waived in writing); and

4. Impacts due to lateral encroachment(s), new alignment projects and/or projects that impact the same aquatic resources multiple times will be considered cumulative for the entire project regardless of whether segments of that project may have independent utility;

vii. Discharges associated with linear transportation projects include the construction, expansion, modification, or improvement of highways, roads, railways, trails, and airport runways and taxiways. Construction and/or relocation of utility lines within the right-of-way/easements of the project and performed in direct relation with the project are covered under this activity, with impacts counting toward permit thresholds.

**b. Federal Screening Procedures:**

i. All linear transportation activities involving permanent impacts that exceed 300 linear feet of stream channel at any single impact area OR containing multiple single and complete impact areas on the same project that additively exceed 1/3 acre of impact to waters of the United States, including wetlands and/or exceed 300 linear feet of stream channel (lateral or crossing impact) will be reviewed by the Corps, the EPA, and the FWS.

ii. If EPA or FWS determines that there are project specific concerns regarding avoidance and/or minimization of impacts to the aquatic environment or the amount and/or type of compensatory mitigation being proposed, the applicant will be required to address those concerns. If the concerns are not addressed to the satisfaction of the objecting agency(ies), the Corps District Commander may exert his/her discretionary authority to require the project to be processed under the Corps' individual permit process.

iii. Any Corps' concerns shall be relayed to the VDEQ and addressed during the VDEQ permitting process. If concerns are not satisfied through that process, the Corps District Commander may exert his/her discretionary authority to require the project to be processed under an alternate Corps permitting process.

**c. VDOT Reporting-Only Procedures:** VDOT may report by spreadsheet on a monthly basis to the VDEQ those VDOT projects meeting the following eligibility criteria:

i. Permanent impacts do not exceed 1/10 acre of waters of the United States, including wetlands; the definition of independent utility must be applied when determining permanent impact totals;

ii. Section 7 – Endangered Species Act Review has been completed, includes FWS concurrence with findings, if needed;

iii. Section 106 finding of “No Effect” has been reviewed and approved by the VDEQ-Cultural Resource Specialist; and

iv. For projects with cumulative impacts exceeding 300 linear feet of stream channel, a pre-coordination email will be sent to the Corps with a project description, impacts, topographic quadrangle and photos. The VDEQ and VDOT Central Office will be copied on the email. If the Corps **concurs** that project can be included on the spreadsheet, VDOT will include the Corps concurrence email with the spreadsheet submittal. No additional Norfolk District review will be required. If the Corps **does not concur** that project can be included on the spreadsheet, VDOT will submit a JPA through its interagency coordination meeting and will include the Corps' response email in the application.

**C. Exclusions from Coverage:** The following activities and resources areas are excluded from coverage by 12-SPGP-01 and require different types of Corps permits:

a. Conversion of waters and/or wetlands for agricultural production and agriculture-related activities (crop fields or pasture); farm buildings; grain storage facilities; grassed waterways; low water crossings; impoundments for irrigation, livestock watering, and fire prevention purposes; animal feeding operations; waste storage facilities; and farm access roads;

b. Wetland areas composed of 10% or more of the following species (singly or in combination) in any stratum: Atlantic white cedar (*Chamaecyparis thyoides*), bald cypress (*Taxodium distichum*), water tupelo (*Nyssa aquatica*), or overcup oak (*Quercus lyrata*) (Percentages may be based on stem counts, basal area, or percent aerial cover);

c. Wetland areas underlain by histosols (Histosols are organic soils that are often called mucks, peats, or mucky peats. The list of histosols includes, but is not limited to, the following soil series: Back Bay, Belhaven, Dorovan, Lanexa, Mattamuskeet, Mattan, Palms, Pamlico, Pungo, Pocaty, and Rappahannock;

d. Placement of septic tanks (does not include alternate onsite sewer systems);

e. Residential gardening, lawn maintenance and landscaping;

f. Construction of extended-detention basins and enhanced extended-detention basins designed, constructed, and maintained to function in accordance with the current Virginia Department of Conservation and Recreation (DCR) standards for such facilities or local standards that, at a minimum meet the DCR standards, unless the following requirements are met:

i. The area within the entire basin and back-flooding limits are considered as permanent impacts. For the purposes of the 12-SPGP-01, back-flooding limits are defined as

back-flooding that will not be released within 24 hours if the activity is east of I-95, or back-flooding that will not be released within 48 hours if the activity is west of I-95.

ii. The proposed basins are attendant features associated with a “single and complete” residential, commercial, institutional or linear transportation project;

g. Construction or maintenance of farm or stock ponds that do not fall under the authority of the Virginia Soil and Water Conservation Board pursuant to Article 2 (§10.1-604 *et seq.*) of Chapter 6 pursuant to normal agricultural or silvicultural activities; and

h. Discharges of dredged or fill material associated with residential, commercial, and institutional activities causing the permanent loss of more than one acre of nontidal wetlands or open waters or waters or over 2,000 linear feet of stream channel.

**IV. GENERAL CONDITIONS:** The following conditions apply to all activities authorized under 12-SPGP-01. Work that does not meet one or more of the terms and general conditions of 12-SPGP-01, including work that has been determined to be more than minimal in nature (at any impact level), will require consideration under a different type of Corps permit.

1. **Other permits.** Authorization does not obviate the need to obtain other Federal, state, or local authorizations required by law or to comply with all Federal, state, or local laws.

2. **Minimal effects.** Projects authorized shall have no more than minimal individual or cumulative adverse environmental impacts, as determined by the Corps.

3. **Discretionary authority.** The Corps District Commander retains discretionary authority to require processing of an individual permit based on concerns for the aquatic environment or for any other factor of the public interest (33 C.F.R. § 320.4(a)). This authority is exercised on a case-by-case basis.

4. **Single and complete projects.** 12-SPGP-01 shall only be applied to single and complete projects. For purposes of 12-SPGP-01, a single and complete project means the total project proposed or accomplished by one owner/developer or partnership and which has independent utility. For linear transportation projects with multiple crossings or encroachments a determination of “single and complete” will typically apply to each crossing of waters that occurs (i.e., single waterbody and/or wetlands) at separate and distinct locations and with independent utility. However, in cases where there are many crossings in close proximity, numerous crossings of the same waterbody, multiple crossings, or multiple encroachments that otherwise may have more than minimal individual or cumulative impacts; the Corps has the discretion to consider all the crossings cumulatively as one single and complete project.

5. **Independent utility.** A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as a separate, single and complete project with independent utility. For a linear transportation project,

separate impact areas on a new location roadway are not considered to have independent utility thus impacts would be considered cumulatively and eligible for a single 12-SPGP-01 authorization. However, separate impact areas on a roadway that is being widened or where pipes are being replaced at multiple crossings are considered to have independent utility, and each crossing would be considered eligible for a separate 12-SPGP-01 authorization (impacts are not considered cumulatively for permitting, but are considered cumulatively when assessing the need for federal review).

**6. Multiple general permit authorizations.** The 12-SPGP-01 may be combined with other Corps general permits (including Nationwide, Regional or Letters of Permission) as long as the impacts are considered cumulatively and do not exceed the acreage limit or linear foot limits of the 12-SPGP-01. Two separate activities (e.g., Activity A and B), within 12-SPGP-01, may be combined as long as they do not exceed the acreage or linear footage threshold of the activity with the highest specified acreage or linear footage threshold.

**7. Permit on-site.** The permittee shall ensure that a copy of 12-SPGP-01 and the accompanying authorization letter are at the work site at all times. These copies must be made available to any regulatory representative upon request. Although the permittee may assign various aspects of the work to different contractors or sub-contractors, all contractors and sub-contractors shall be expected to comply with all conditions of any 12-SPGP-01 authorization.

**General Conditions Related to other federal laws or programs:**

**8. Historic Properties.** Any activity authorized shall comply with Section 106 of the National Historic Preservation Act. If the permittee, during construction or work authorized herein, encounters a previously unidentified archaeological or other cultural resource, he/she must immediately stop work and notify the Corps and the VDEQ of what has been found. Coordination with the Virginia Department of Historic Resources will commence and the permittee will subsequently be advised when he/she may recommence work.

**9. Tribal Rights.** No activity authorized may impair reserved tribal rights, including, but not limited to, reserved water rights, treaty fishing and hunting rights.

**10. Federal Lands.** Authorized activities shall not impinge upon the value of any National Wildlife Refuge, National Forest, National Park, or any other area administered by the FWS, U.S. Forest Service, or National Park Service unless approval from the applicable land management agency is provided with the permit application.

**11. Endangered Species.** No activity is authorized under this 12-SPGP-01 which may affect a proposed/listed threatened or endangered species or proposed/listed critical habitat (as identified under the Federal Endangered Species Act (ESA)), is likely to jeopardize the continued existence of such species or which will destroy or adversely modify the critical habitat of such species unless Section 7 consultation addressing the effects of the proposed activity has been completed.

a. Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the VDEQ and Corps with the appropriate documentation to demonstrate compliance with those requirements.

b. Non-federal permittees shall notify the VDEQ and Corps if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, and shall not begin work on the activity until notified by the VDEQ or Corps that the requirements of the ESA have been satisfied and that the activity is authorized. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the USFWS at:

[http://www.fws.gov/northeast/virginiafield/endspecies/Project\\_Reviews.html](http://www.fws.gov/northeast/virginiafield/endspecies/Project_Reviews.html) and/or NOAA Fisheries Habitat Conservation Division, P.O. Box 1346, 7580 Spencer Road, Gloucester Point, VA 23062.

c. Section 7 coordination will be performed in accordance with the NAO ESA Review Process. The applicant may not begin work until the VDEQ or Corps has notified them that the Section 7 consultation has been completed.

d. As a result of formal or informal consultation with the FWS or NOAA Fisheries the Corps District Commander may add species-specific regional endangered species conditions to the 12-SPGP-01.

e. Authorization of an activity by 12-SPGP-01 does not authorize the “take” of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with “incidental take” provisions, etc.) from the FWS or the NOAA Fisheries, both lethal and non-lethal “takes” of protected species are in violation of the ESA.

**12. Bald and Golden Eagle Protection Act.** The bald eagle (*Haliaeetus leucocephalus*) is no longer a federally listed threatened or endangered species; therefore, the Endangered Species Act provisions are not applicable to this species. The Bald and Golden Eagle Protection Act (BGEPA) does not require that a federal agency involved in permitting the proposed action conduct coordination. The coordination under the BGEPA is the responsibility of the applicant. The applicant should either obtain a 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, VA 23061. Information on active bald eagle nests in the project area can be obtained via The Center for Conservation Biology (CCB) Virginia Eagles Nest Locator: <http://www.ccb-wm.org/virginiaeagles/index.htm>.

**13. Wild and Scenic Rivers.** Currently, there are no designated Wild and Scenic Rivers in the Commonwealth of Virginia; however, the portion of the Upper New River from Glen Lyn, Virginia to the West Virginia/Virginia state line was designated a “study river” by Congress on October 26, 1992. No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system, while the river is in an official study status, unless the appropriate Federal agency

with direct management responsibility for such river has determined, in writing, that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service). Impacts that occur in these resource areas will require coordination with the appropriate Federal agency.

**14. Department of Defense (DOD) Siting Clearinghouse Coordination.** For all commercial and institutional development projects that include the construction of wind energy generating structures, solar towers, or overhead powerlines the VDEQ must coordinate the project with the DOD Clearinghouse. The VDEQ will send a copy of the joint permit application and SPGP authorization to the following address: Department of Defense Clearinghouse, Attn: Mr. Marshal Williams and Mr. Davis Blalock, 101 Marietta St., NW, Suite 3120, Atlanta, Georgia 30303 or via email to: [Frederick.m.williams28.civ@mail.mil](mailto:Frederick.m.williams28.civ@mail.mil) and [David.c.blalock2.civ@mail.mil](mailto:David.c.blalock2.civ@mail.mil).

**15. Federal navigation projects.** Authorized activities may not interfere with any existing or proposed Federal navigation projects.

**16. Navigation.** (a) No authorized activity may cause more than a minimal adverse effect on navigation. (b) The permittee understands and agrees that if future operations by the United States require the removal, relocation, or other alteration of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his/her authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

**17. Floodplains.** All practicable efforts shall be made to conduct the work authorized by 12-SPGP-01 in a manner so as to avoid any adverse impact on the Federal Emergency Management Agency (FEMA) designated 100-year floodplain.

**18. Real estate.** Activities authorized under 12-SPGP-01 do not grant any Corps or Federal real estate rights. If real estate rights are needed from the Corps, you must contact the Corps Real Estate Office at (757) 201-7735 or at the address listed on the front page of this permit.

**19. Environmental justice.** Activities authorized under 12-SPGP-01 must comply with Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations".

**20. Federal liability.** In issuing 12-SPGP-01, the Federal government does not assume any liability for the following: (a) damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes; (b) damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest; (c) damages to persons, property, or to other permitted or

unpermitted activities or structures caused by the activity authorized by 12-SPGP-01; (d) design or construction deficiencies associated with the permitted work; (e) damage claims associated with any future modification, suspension, or revocation of this permit.

**General Conditions Related to Minimizing Environmental Impacts:**

**21. Avoidance and minimization.** Except as provided under section 404(b)(2), no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences.(40 CFR 230.10(a) Section 404 (b)(1) Guidelines).

**22. Mitigation standards.**

**a. Wetland mitigation** will generally be required for all residential, commercial, and institutional development projects where the total permanent impacts exceed 1/10 acre **AND** for all impacts on linear transportation projects. Generally, the minimum required wetland mitigation ratios will be as follows: 2:1 for forested wetlands, 1.5:1 for scrub-shrub wetlands, 1:1 for herbaceous emergent wetlands, and 1:1 for conversion of forested wetlands to herbaceous emergent wetlands. Mitigation for open waters impacts will be determined by the project manager on a case-by-case basis. All wetland mitigation will comply with the Corps-EPA Compensatory Mitigation for Losses of Aquatic Resources dated April 10, 2008 (33 CFR 325 and 332/40 CFR 230).

**b. Stream mitigation** will generally be required for all residential, commercial, institutional developments **AND** linear transportation projects where the total permanent stream channel impacts exceed 300 linear feet. Minimum stream mitigation requirements will be determined using the current Corps and the VDEQ endorsed assessment methodology. All stream mitigation will comply with Corps-EPA Compensatory Mitigation for Losses of Aquatic Resources dated April 10, 2008 (33 CFR 325 and 332; 40 CFR 230).

**c.** For the purposes of the 12-SPGP-01, definitions for enhancement, establishment (creation), preservation, and re-establishment will be consistent with the definitions listed in the Corps-EPA Compensatory Mitigation for Losses of Aquatic Resources dated April 10, 2008 (33 CFR 325 and 332; 40 CFR 230).

**d.** Where local zoning ordinances provide for riparian and floodplain protection pursuant to the Chesapeake Bay Preservation Act (Virginia Code 10.1-2100 *et seq.*) and the Chesapeake Bay Preservation Area Designation and Management Regulations(9 VAC 1-20 *et seq.*), the use of buffers as a form of compensatory mitigation shall be allowed only (a) where the extent of the buffer exceeds the lateral extent already required by local ordinances pursuant to the Act and the regulations or (b) where the quality of the existing protected buffer *area* is enhanced to provide greater water quality protection benefits.

**23.** Heavy equipment working in wetlands must be placed on mats, or other measures must be taken to minimize soil disturbance.

**24. Temporary fills.** All temporarily disturbed waters and wetlands must be restored to their pre-construction contours within 6 months of commencing the temporary impact's construction. Impacts that will not be restored within 6 months (calculated from the start of the temporary impacts construction) will be considered permanent unless otherwise approved by the 12-SPGP-01. Once restored to their natural contours, soil in these areas must be mechanically loosened to a depth of 12 inches and wetland areas must be seeded or sprigged with appropriate native vegetation.

**25. Sedimentation and erosion control.** Appropriate erosion and sediment controls must be employed and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark, must be permanently stabilized at the earliest practicable date.

**26. Aquatic life movements.** Following consultation with the Virginia Department of Game and Inland Fisheries (DGIF), the Norfolk District has determined that fish and other aquatic organisms are most likely present in any stream being crossed, in the absence of site-specific evidence to the contrary. Although prospective permittees have the option of providing such evidence, extensive efforts to collect such information is not encouraged, since countersinking will in most cases be required with some exceptions as outlined below:

a. Pipes should be adequately sized to allow for the passage of ordinary high water with the countersinking and invert restrictions taken into account.

b. All pipes and culverts placed in streams will be countersunk at both the inlet and outlet ends, unless indicated otherwise by the Norfolk District on a case-by-case basis (see below). Pipes that are 24" or less in diameter shall be countersunk 3" below the natural stream bottom. Pipes that are greater than 24" in diameter shall be countersunk 6" below the natural stream bottom. The countersinking requirement does not apply to bottomless pipes/culverts or pipe arches. All single pipes or culverts (with bottoms) shall be depressed (countersunk) below the natural streambed at both the inlet and outlet of the structure. In sets of multiple pipes or culverts (with bottoms) at least one pipe or culvert shall be depressed (countersunk) at both the inlet and outlet to convey low flows.

c. Extensions and certain maintenance: The requirement to countersink does not apply to extensions of existing pipes or culverts that are not countersunk, or to maintenance to pipes/culverts that does not involve replacing the pipe/culvert (such as repairing cracks, adding material to prevent/correct scour, etc.).

d. Floodplain pipes: The requirement to countersink does not apply to pipes or culverts that are being placed above ordinary high water, such as those placed to allow for floodplain flows. The placement of pipes above ordinary high water is not jurisdictional (provided no fill is discharged into wetlands).

e. Pipes on bedrock or above existing utility lines: Different procedures will be followed for pipes or culverts to be placed on bedrock or above existing buried utility lines where it is not

practicable to relocate the lines, depending on whether the work is for replacement of an existing pipe/culvert or a new pipe/culvert:

**i.** Replacement of an existing pipe/culvert: Countersinking is not required provided the elevations of the inlet and outlet ends of the replacement pipe/culvert are no higher above the stream bottom than those of the existing pipe/culvert. Documentation (photographic or other evidence) must be maintained in the permittee's records showing the bedrock condition and the existing inlet and outlet elevations. That documentation will be available to the Norfolk District upon request, but notification or coordination with the Norfolk District is not otherwise required.

**ii.** Replacement in a new location: If the prospective permittee determines that bedrock or an existing buried utility line that is not practicable to relocate prevents countersinking, he/she should evaluate the use of a bottomless pipe/culvert, bottomless utility vault, span (bridge) or other bottomless structure to cross the waterway, and also evaluate alternative locations for the new pipe/culvert that will allow for countersinking. If the prospective permittee determines that neither a bottomless structure nor an alternative location is practicable, then he/she must submit a pre-construction notification (PCN) to the Norfolk District in accordance with General Condition 31 of the NWP. In addition to the information required by General Condition 31, the prospective permittee must provide documentation of measures evaluated to minimize disruption of the movement of aquatic life as well as documentation of the cost, engineering factors, and site conditions that prohibit countersinking the pipe/culvert. Options that must be considered include partial countersinking (such as less than 3" of countersinking, or countersinking of one end of the pipe), and constructing stone step pools, low rock weirs downstream, or other measures to provide for the movement of aquatic organisms. The PCN must also include photographs documenting site conditions. The prospective permittee may find it helpful to contact his/her regional fishery biologist for the Virginia Department of Game and Inland Fisheries (VDGIF), for recommendations about the measures to be taken to allow for fish movements. When seeking advice from VDGIF, the prospective permittee should provide the VDGIF biologist with all available information such as location, flow rates, stream bottom features, description of proposed pipe(s), slopes, etc. Any recommendations from VDGIF should be included in the PCN. The Norfolk District will notify the prospective permittee whether the proposed work qualifies for the nationwide permit within 45 days of receipt of a complete PCN. NOTE: Blasting of stream bottoms through the use of explosives is not acceptable as a means of providing for countersinking of pipes on bedrock.

**f.** Pipes on steep terrain: Pipes being placed on steep terrain (slope of 5% or greater) must be countersunk in accordance with the conditions above and will in most cases be non-reporting. It is recommended that on slopes greater than 5%, a larger pipe than required be installed to allow for the passage of ordinary high water in order to increase the likelihood that natural velocities can be maintained. There may be situations where countersinking both the inlet and outlet may result in a slope in the pipe that results in flow velocities that cause excessive scour at the outlet and/or prohibit some fish movement. This type of situation could occur on the side of a mountain where falls and drop pools occur along a stream. Should this be the case, or should the prospective permittee not want to countersink the pipe/culvert for other reasons, he/she must submit a Pre-Construction Notification to the Norfolk District in accordance with General Condition 31 of the Nationwide Permits. In addition to the information required by General

Condition 31, the prospective permittee must provide documentation of measures evaluated to minimize disruption of the movement of aquatic life as well as documentation of the cost, engineering factors, and site conditions that prohibit countersinking the pipe/culvert. The prospective permittee should design the pipe to be placed at a slope as steep as stream characteristics allow, countersink the inlet 3-6", and implement measures to minimize any disruption of fish movement. These measures can include constructing a stone step/pool structure, preferably using river rock/native stone rather than riprap, constructing low rock weirs to create a pool or pools, or other structures to allow for fish movements in both directions. Stone structures should be designed with sufficient-sized stone to prevent erosion or washout and should include keying-in as appropriate. These structures should be designed both to allow for fish passage and to minimize scour at the outlet. The quantities of fill discharged below ordinary high water necessary to comply with these requirements (i.e., the cubic yards of stone, riprap or other fill placed below the plane of ordinary high water) must be included in project totals. The prospective permittee may find it helpful to contact his/her regional fishery biologist for the Virginia Department of Game and Inland Fisheries (DGIF), for recommendations about the measures to be taken to allow for fish movements. When seeking advice from DGIF, the prospective permittee should provide the DGIF biologist with all available information such as location, flow rates, stream bottom features, description of proposed pipe(s), slopes, etc. Any recommendations from DGIF should be included in the PCN. The Norfolk District will notify the prospective permittee whether the proposed work qualifies for the nationwide permit within 45 days of receipt of a complete PCN.

**g.** Problems encountered during construction: When a pipe/culvert is being replaced, and the design calls for countersinking at both ends of the pipe/culvert, and during construction it is found that the streambed/banks are on bedrock, then the permittee must stop work and contact the Norfolk District (contact by telephone and/or email is acceptable). The permittee must provide the Norfolk District with specific information concerning site conditions and limitations on countersinking. The Norfolk District will work with the permittee to determine an acceptable plan, taking into consideration the information provided by the permittee, but the permittee should recognize that the Norfolk District could determine that the work will not qualify for a nationwide permit.

**h.** Emergency pipe replacements: In the case of an emergency situation, such as when a pipe/culvert washes out during a flood, a permittee is encouraged to countersink the replacement pipe at the time of replacement, in accordance with the conditions above. However, if conditions or timeframes do not allow for countersinking, then the pipe can be replaced as it was before the washout, but the permittee will have to come back and replace the pipe/culvert and countersink it in accordance with the guidance above. In other words, the replacement of the washed out pipe is viewed as a temporary repair, and a countersunk replacement should be made at the earliest possible date. The Norfolk District must be notified of all pipes/culverts that are replaced without countersinking at the time that it occurs, even if it is an otherwise non-reporting activity, and must provide the permittee's planned schedule for installing a countersunk replacement (it is acceptable to submit such notification by email). The permittee should anticipate whether bedrock or steep terrain will limit countersinking, and if so, should follow the procedures outlined in (f) and/or (g) above.

**27. Discharge of pollutants.** All authorized activities involving any discharge of pollutants into waters of the United States shall be consistent with applicable water quality standards, effluent limitations, standards of performance, prohibitions, and pretreatment standards and management practices established pursuant to the CWA (33 U.S.C. § 1251 *et seq.*) and applicable state and local laws. No discharge of dredged or fill material in association with this authorization may consist of unsuitable material such as trash, debris, car bodies, asphalt, etc.

**28. Obstruction of high flows.** Discharges of dredged or fill material must not permanently restrict or impede the passage of normal or expected high flows.

**29. Waterbird breeding areas.** Discharges of dredged or fill material into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.

**30. Native trout and anadromous fishes.** Authorizations for discharges of dredged or fill material into native trout waters or anadromous fish spawning areas are conditioned to limit in-stream work within the timeframes recommended by the DGIF.

**31. Water supply intakes.** No discharge of dredged or fill material may occur in proximity of a public water supply intake.

**32. Invasive Species.** Plant species on the most current *Virginia Department of Conservation and Recreation's Invasive Alien Plant List* shall not be used for replanting activities authorized by the SPGP. The list of invasive plants in Virginia may be found at: [http://www.dcr.virginia.gov/natural\\_heritage/documents/invlist.pdf](http://www.dcr.virginia.gov/natural_heritage/documents/invlist.pdf).

**General Procedural Conditions:**

**33. Inspections.** The permittee understands and agrees that the Corps and/or the VDEQ are permitted and allowed to make periodic inspections at any time the Corps or VDEQ deems necessary in order to assure that the activities being performed under authority of this permit are in accordance with the terms and conditions prescribed herein. The Corps reserves the right to require post-construction engineering drawings and/or surveys of any work authorized under 12-SPGP-01, as deemed necessary on a case-by-case basis.

**34. Maintenance.** The permittee shall maintain the work authorized herein in good condition and in conformance with all terms and conditions of this permit. All fills shall be properly maintained to ensure public safety.

**35. Property rights.** 12-SPGP-01 does not convey any property rights, either in real estate or material, or convey any exclusive privileges, nor does it authorize any injury to property or invasion of rights or any infringement of Federal, state, or local laws or regulations.

**36. Modification, suspension, and revocation.** 12-SPGP-01 and individual verifications under 12-SPGP-01 may be either modified, suspended, or revoked in whole or in part pursuant to the policies and procedures of 33 C.F.R. § 325.7. Any such action shall not be the basis for any claim for damages against the United States.

**37. Restoration directive.** The permittee, upon receipt of a restoration directive, shall restore the waters of the United States to their former conditions without expense to the United States and as directed by the Secretary of the Army or his/her authorized representative. If the permittee fails to comply with such a directive, the Secretary or his/her designee, may restore the waters of the United States to their former conditions, by contract or otherwise, and recover the cost from the permittee.

**38. Special conditions.** The Corps may impose other special conditions on a project authorized pursuant to 12-SPGP-01 that are determined necessary to minimize adverse navigational and/or environmental effects or based on any other factor of the public interest. Failure to comply with all conditions of the authorization, including special conditions, constitutes a permit violation and may subject the permittee, or his/her contractor, to criminal, civil, or administrative penalties and/or restoration.

**39. False or incomplete information.** In granting authorization pursuant to this permit, the Corps has relied upon information and data provided by the permittee. If, subsequent to notification by the Corps or the VDEQ that a project qualifies for this permit, such information and data prove to be materially false or materially incomplete, the Corps may suspend or revoke authorization, in whole or in part, and/or the United States or Corps may institute appropriate legal proceedings.

**40. Abandonment.** If the permittee decides to abandon the activity authorized under 12-SPGP-01, unless such abandonment is merely the transfer of property to a third party, he/she may be required to restore the area to the satisfaction of the Corps.

**41. Transfer of authorization.** In order to transfer authorization under 12-SPGP-01, the transferee and permittee must supply the Corps and the VDEQ with a written and signed, by all appropriate parties, request to make such a transfer. Such transfer is not effective until written approval has been granted by the Corps or the VDEQ.

**42. Binding effect.** The provisions of the permit authorization shall be binding on any assignee or successor in interest of the original permittee.

**General Conditions Regarding Duration of Authorizations:**

**43. Duration of authorization.** Activities authorized under 12-SPGP-01 must be completed by May 31, 2017.

**44. Time extensions.** If a permittee is unable to complete the work authorized under 12-SPGP-01 in the time limit provided in the initial authorization, he/she must submit a request for a time extension to the Corps and the VDEQ for consideration at least one month prior to the expiration of the permit authorization.

**45. Expiration of 12-SPGP-01.** Unless further modified, suspended, or revoked, 12-SPGP-01 will be in effect until May 31, 2017. Upon expiration, it may be considered for revalidation. Activities which have commenced (i.e., are under construction) or are under contract to commence construction in reliance upon 12-SPGP-01 will remain authorized provided the activity is completed within twelve months of the date of this 12-SPGP-01's expiration of May 31, 2017, unless discretionary authority has been exercised on a case-by-case basis to modify, suspend, or revoke the authorization in accordance with 33 CFR 325.7(a-e).

5/31/12  
Date

  
\_\_\_\_\_  
PAUL B. OLSEN, P.E.  
Colonel, Corps of Engineers  
Commanding

**PROGRAMMATIC AGREEMENT  
NORFOLK DISTRICT REGULATORY OFFICE,  
ACHP, VDEQ, and VDHR on 07-SPGP-01  
AND SECTION 106 OF THE NHPA**

## Virginia Department of Historic Resources Data Sharing System

The Virginia Department of Historic Resources (VDHR) serves as the official state repository for information on historic resources. Information in the VDHR Data Sharing System (DSS) has been compiled primarily by independent consultants and volunteers.

Due to the fragile and irreplaceable nature of historic and archaeological sites, locational information on such properties may be exempted from the Virginia Freedom of Information Act under the Code of Virginia 2.2-3705.7 (10) and the National Historic Preservation Act. The user affirms that the information derived will not be used to the detriment of the resource and accepts responsibility to take reasonable precautions to ensure the security of site location information.

The DSS is comprised of Commercial off the Shelf (COTS) products with a web-based interface for data entry/review, attribute and geospatial query and report generation.

- Access to DSS application is by authentication of a username/password. Any user logging on should already have been approved by a duly authorized or licensed organization that has agreed to abide by the “DSS Use and Access Agreement”.
- The client side software required for DSS use is Microsoft Internet Explorer, version 5.5 and higher
- The URL to access the DSS is <http://www.hrdss.state.va.us>.

As of April 28, 2008, there are approximately 78,000 individually recorded architectural resources and 39,500 archaeological resources in the VDHR inventory. To VDHR’s knowledge, all resources that are listed in the National Register of Historic Places and/or the Virginia Landmarks Register or those resources that have been evaluated and found to be potentially eligible for listing in the federal and/or state registers, have been recorded in the DSS. The boundaries of these resources have been updated and are in the Geographic Information System (GIS) component of the DSS. Utilizing the GIS, users can view sites superimposed on either 1:24,000-scale topographic maps or higher resolution Virginia Base Map Program (VBMP) imagery. This gives the user the advantage of seeing the geographic locations of sites within a research area, as well as to be able to view their distribution alongside other selected layers. A GIS containing cultural resource data gives Architectural Historians and Archaeologists the advantage of reducing the time it takes to perform contracted survey work and general research on any given area within the state. Archaeological site records in the VDHR inventory are comprehensive in the Data Sharing System (DSS) with records and attributes being reviewed and locations mapped. The DSS is not comprehensive at this time for historic architectural records in the VDHR inventory. Approximately 4,000 architectural records

**PROGRAMMATIC AGREEMENT  
NORFOLK DISTRICT REGULATORY OFFICE,  
ACHP, VDEQ, and VDHR on 07-SPGP-01  
AND SECTION 106 OF THE NHPA**

have not yet been entered into the DSS and not all of the fields have been filled out within existing DSS records. Of the records entered in DSS, approximately 7,000 are not currently mapped. VDHR staff is making every effort to have all information currently on file entered and mapped in the DSS.

The absence of historic resources in VDHR records does not necessarily mean that historic properties are not present at a specific location. A large majority of the commonwealth has not been systematically surveyed for archaeological resources and existing architectural resource surveys are not considered to be comprehensive. VDHR makes no warranty as to the accuracy or completeness of the data for any purposes.

Obtaining information on previously recorded historic properties does not constitute review under Section 106 of the National Historic Preservation Act. If a project is federally funded, licensed, or assisted, the federal agency may require you to obtain VDHR comment under Section 106. VDHR comment under Section 106 is a separate process and must be initiated through the VDHR Office of Review and Compliance.

**PROGRAMMATIC AGREEMENT AMONG  
U.S. ARMY CORPS OF ENGINEERS  
NORFOLK DISTRICT REGULATORY BRANCH,  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, AND THE VIRGINIA  
STATE HISTORIC PRESERVATION OFFICE  
REGARDING IMPLEMENTATION OF THE NORFOLK DISTRICT CORPS OF  
ENGINEERS PERMIT PROGRAM**

**WHEREAS**, the U.S. Army Corps of Engineers Norfolk District Regulatory Branch (Corps) proposes to administer the Corps' Regulatory Permit Program (Regulatory Program) authorized by Section 404 of the Clean Water Act of 1973, Section 10 of the Rivers and Harbors Act of 1899, and Section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972;

**WHEREAS**, the Corps has determined that the issuance of Permits may have an effect upon properties included in or eligible for inclusion in the National Register of Historic Places and has consulted with the Advisory Council on Historic Preservation (Council) and the Virginia State Historic Preservation Officer (SHPO) pursuant to Section 800.13 of the regulations (36 CFR Part 800) implementing Section 106 of the National Historic Preservation Act (16 V.S.C. 470f), and Section 110(t) of the same Act (16 V.S.C. 470h-2(f));

**WHEREAS**, the activities listed in Appendix A are categorically excluded from further review pursuant to Section 106 of the National Historic Preservation Act of 1966, as amended and the Corps regulations 33 CFR Part 325 *Processing of Department of the Army Permits: Procedures for the Protection of Historic Properties* provided there are no previously identified National Register listed properties in the project area and the activity is not associated with other actions requiring coordination with the SHPO; and

**NOW, THEREFORE**, the Corps, the Council, and the SHPO agree that applications for Corps Permits shall be administered in accordance with the following stipulations to satisfy the Corps' Section 106 responsibilities.

**STIPULATIONS**

The Corps will ensure that the following measures are carried out:

1. Review of applications for Corps Permits will be conducted in accordance with 36 CFR § § 800.4-800.6 of the Council's regulations *Protection of Historic Properties*, and the Corps regulations 33 CFR Part 325 *Processing of Department of the Army Permits: Procedures for the Protection of Historic Properties*.
2. If a proposed Permit activity is found to have an effect on property listed or eligible for listing on the National Register, and the Corps and the SHPO concur that the effect will not be adverse, then the Corps may issue the permit absent Council comment.
  - a. If the Corps and the SHPO disagree on an effect determination for a proposed Permit activity, then the Corps will proceed in accordance with

**Corps of Engineers, Norfolk District  
Programmatic Agreement  
January 17, 1996**

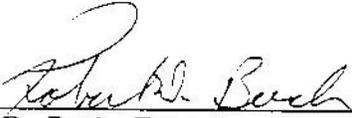
36 CFR § 800.5(d)(1)(ii), and with the Corps' regulations 33 CFR Part 325

*Processing of Department of the Army Permits: Procedure for the Protection of Historic Properties.*

- b. If the Corps and the SHPO disagree regarding the implementation of any stipulated permit conditions, then the Corps will request the comments of the Council in accordance with stipulation 3 below.
  - c. The Council may participate in the review of any Permit activity if requested by any party to this agreement or by a member of the interested public.
3. At any time during implementation of the measures in this agreement, should an objection to any such measure or its manner of implementation be raised by the SHPO or a member of the interested public, the Corps shall consult with the objecting party to resolve the objection. If the Corps determines that the objection cannot be resolved, the Corps shall request the comments of the Council pursuant to 36 CFR § 800.5(e). The Corps' responsibility to carry out all actions under this agreement that are not the subjects of the dispute will remain unchanged.
4. The Council and the SHPO may monitor activities carried out pursuant to this Programmatic Agreement, and the Council will review such activities if so requested. The Corps will cooperate with the Council and the SHPO in carrying out their review and monitoring responsibilities.
5. Any party to this Programmatic Agreement may request that it be amended, whereupon the parties will consult in accordance with 36 CFR § 800.13 to consider such amendment.
6. Any party to this Programmatic Agreement may terminate it by providing thirty (30) days notice to the other parties, provided the parties will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, the Corps will comply with 36 CFR §§ 800.4 through 800.6 and the Corps regulations 33 CFR Part 325 *Processing of Department of the Army Permits Procedures for the Protection of Historic Properties* with regard to individual undertakings covered by this Programmatic Agreement.
7. In the event the Corps does not carry out the terms of this Programmatic Agreement, the Corps will comply with 36 CFR §§ 800.4 through 800.6 and the Corps regulations 33 CFR Part 325 *Processing of Department of the Army Permits: Procedure for the Protection of Historic Properties* with regard to individual undertakings covered by this Programmatic Agreement.

Execution and implementation of this Programmatic Agreement evidences that the Corps has satisfied its Section 106 responsibilities for all Permit actions.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By:  Date: 2/5/96  
Robert D. Bush, Executive Director

U.S. ARMY CORPS OF ENGINEERS, NORFOLK DISTRICT

By:  Date: 1/22/96  
Robert H. Reardon, Jr.  
Colonel, Corps of Engineers  
District Engineer

VIRGINIA STATE HISTORIC PRESERVATION OFFICER

By:  Date: 1/17/96  
H. Alexander Wise, Jr., Director

**APPENDIX A**  
**CATEGORICAL EXCLUSIONS FOR NORFOLK DISTRICT**  
**CORPS OF ENGINEERS REGULATORY BRANCH**

The following activities do not require coordination with the Virginia Department of Historic Resources, provided there are no previously identified National Register properties and the activity is not associated with other actions requiring coordination with the SHPO:

1. Aids to Navigation. The placement of aids to navigation and regulatory markers. (NW-1)
2. Structures in Artificial Canals. Structures constructed in artificial canals, except historic canals, within principally residential developments. (NW-2)
3. Maintenance. The repair, rehabilitation, or replacement of any previously authorized, currently serviceable, structure or fill, or of any currently serviceable structure or fill authorized by 33 CFR 330.3, provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit or the most recently authorized modification. (NW-3)
4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities. Fish and wildlife harvesting devices and activities such as pound nets, crab traps, crab dredging, eel pots, lobster traps, duck blinds, clam and oyster digging; and small fish attraction devices such as open water fish concentrators (sea kites, etc.). (NW-4)
5. Scientific Measurement Devices. Staff gages, tide gages, water recording devices, water quality testing and improvement devices and similar structures. Small weirs and flumes constructed primarily to record water quantity and velocity are also authorized provided the discharge is limited to 25 cubic yards. (NW-5)
6. Survey Activities. Survey activities including core sampling, seismic exploratory operations, and plugging of seismic shot holes and other exploratory-type bore holes. (NW-6)
7. Outfall Structures. Activities related to construction of outfall structures and associated intake structures where the effluent from the outfall is authorized, conditionally authorized, or specifically exempted, or are otherwise in compliance with regulations issued under the National Pollutant Discharge Elimination System program (Section 402 of the Clean Water Act). (NW-7)
8. Oil and Gas Structures. Structures for the exploration, production, and transportation of oil, gas, and minerals on the outer continental shelf within areas leased for such purposes by the Department of the Interior, Minerals Management Service. (NW-8)
9. Structures in Fleeting and Anchorage Areas. Structures, buoys, floats, and other devices placed within anchorage or fleeting areas to facilitate moorage of vessels where such areas have been established for that purpose by the U.S. Coast Guard. (NW-9)

10. Mooring Buoys. Non-commercial, single-boat, mooring buoys. (NW-10)
11. Temporary Recreational Structures. Temporary buoys, markers, small floating docks, and similar structures placed for recreational use during specific events such as water skiing competitions and boat races or seasonal use provided that such structures are removed within 30 days after use has been discontinued. (NW-11)
12. Utility Line Backfill and Bedding. Discharges of material for backfill or bedding for utility lines, including outfall and intake structures, provided there is no change in preconstruction contours. (NW-12)
13. U.S. Coast Guard Approved Bridges. Discharges of dredged or fill material incidental to the construction of bridges across navigable waters of the United States, including cofferdams, abutments, foundation seals, piers, and temporary construction and access fills provided such discharges have been authorized by the U.S. Coast Guard as part of the bridge permit. (NW-15)
14. Return Water From Upland Contained Disposal Areas. Return water from an upland, contained dredged material disposal area. (NW-16)
15. Hydropower Projects. Discharges of dredged or fill material associated with (a) small hydropower projects at existing reservoirs where the project, which includes the fill, is licensed by the Federal Energy Regulatory Commission (FERC) under the Federal Power Act of 1920, as amended; and has a total generating capacity of not more than 5000 KW; or (b) hydropower projects for which the FERC has granted an exemption from licensing pursuant to Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708) and Section 30 of the Federal Power Act, as amended. (NW-17)
16. Minor Discharges. Minor discharges of less than 25 cubic yards of dredged or fill material into waters of the United States, where no material is placed in a special aquatic site, including wetlands. (NW-18)
17. Minor Dredging. Dredging of no more than 25 cubic yards below the plane of the ordinary high water mark or the mean high water mark from navigable waters of the United States as part of a single and complete project. (NW-19)
18. Oil Spill Cleanup. Activities required for the containment and cleanup of oil and hazardous substances which are subject to the National Oil and Hazardous Substances Pollution Contingency Plan, provided that the work is done in accordance with the Spill Control and Countermeasure Plan required by 40 CFR 112.3 and any existing State contingency plan and provided that the Regional Response Team (if one exists in the area) concurs with the proposed containment and cleanup action. (NW-20)
19. Surface Coal Mining Activities. Activities associated with surface coal mining activities provided they are authorized by the Department of the Interior, Office of Surface Mining, or by states with approved programs under Title V of the Surface Mining Control and Reclamation Act of 1977. (NW-21)

20. Removal of Vessels. Temporary structures or minor discharges of dredged or fill material required for the removal of wrecked, abandoned, or disabled vessels, or the removal of man-made obstructions to navigation. The vessels must be documented to be less than 50 years old (fiberglass and aluminum hulls are all less than 50 years old). (NW-22)
21. Structural Discharge. Discharges of material such as concrete, sand, rock, etc. into tightly sealed forms or cells where the material will be used as a structural member for standard pile supported structures, such as piers and docks; and for linear projects, such as bridges, transmission line footings, and walkways. (NW-25)
22. Wetland and Riparian Restoration and Creation Activities. Activities in waters of the United States associated with the restoration of altered and degraded non-tidal wetlands and creation of wetlands on private lands in accordance with the terms and conditions of a binding wetland restoration or creation agreement between the landowner and the U.S. Fish and Wildlife Service (USFWS) or the Natural Resources Conservation Service (NRCS); or activities associated with the restoration of altered and degraded non-tidal wetlands, riparian areas and creation of wetlands and riparian areas on U.S. Forest Service and Bureau of Land Management lands, Federal surplus lands (e.g., military lands proposed for disposal), Farmers Home Administration inventory properties, and Resolution Trust Corporation inventory properties that are under Federal control prior to being transferred to the private sector. (NW-27)
23. Modifications of Existing Marinas. Reconfigurations of existing docking facilities within an authorized marina area. No dredging, additional slips or dock spaces, or expansion of any kind within waters of the United States are authorized by this nationwide permit. (NW-28)
24. Temporary Construction, Access and Dewatering. Temporary structures and discharges, including cofferdams, necessary for construction activities or access fills or dewatering of construction sites; provided the associated permanent activity was previously authorized by the Corps of Engineers or the U.S. Coast Guard, or for bridge construction activities not subject to Federal regulation. (NW-33)
25. Maintenance Dredging of Existing Basins. Excavation and removal of accumulated sediment for maintenance of existing marina basins, canals, and boat slips to previously authorized depths or controlling depths for ingress/egress whichever is less provided the dredged material is disposed of at a previously used upland site and proper siltation controls are used. (NW-35)
26. Emergency Watershed Protection and Rehabilitation. Work done by or funded by the Soil Conservation Service qualifying as an "exigency" situation (requiring immediate action) under its Emergency Watershed Protection Program (7 CFR Part 624) and work done or funded by the Forest Service under its Burned-Area Emergency Rehabilitation Handbook (FSH 509.13). (NW-37)

27. Farm Buildings. Discharges of dredged or fill material into jurisdictional wetlands (but not including prairie potholes, playa lakes, or vernal pools) that were in agricultural crop production prior to December 23, 1985 (i.e., farmed wetlands) for foundations and building pads for buildings or agricultural related structures necessary for farming activities. The discharge will be limited to the minimum necessary but will in no case exceed one acre. (NW-40)
28. Maintenance of Existing Mosquito Control Ditches and Drainage Ditches. Maintenance dredging of existing ditches in navigable waters and waters of the United States for either mosquito control purposes or maintaining drainage from upland areas. (RP-15)
29. Private Piers and Mooring Piles. The installation of open pile piers and mooring piles for private use, including mooring piles for uncovered boat lifts. (RP-17)
30. Groins and Spurs or Baffles. Structures constructed perpendicular (or nearly so) to a shoreline and extending seaward from the shoreline whose sole purpose is to protect the shoreline from erosion. Also included are spurs or baffles constructed perpendicular to groins for the sole purpose of dampening diffracted wave energy. (RP-19, Activity 3)
31. Maintenance Dredging for Previously Authorized Projects. Maintenance dredging of projects which received an individual Department of the Army permit for the initial dredging. Areas to be dredged and dredged depths shall not exceed those specified by the original authorization or exceed controlling depths for ingress/egress whichever is less. The dredged material must be disposed of at a previously used upland site. (RP-19, Activity 4)
32. Open-pile Piers at Community, Commercial or Government Facilities for Recreational Use. All open-pile piers associated with the construction or expansion of any community, commercial or government facility for recreational use, including floating piers, travel-lift piers, etc. (RP-19, Activity 6)
33. Recreational Boathouses and Covered Boat Lifts. Any boathouse or covered boat lift whose primary purpose is recreational. (RP-19, Activity 8)
34. Mooring Piles/Dolphins, Fender Piles and Camels. All such structures, either isolated or part of large facilities, whose primary purpose is recreational. Pilings installed to establish osprey nests are also included. (RP-19, Activity 9)
35. Crab Pounds. Structures associated with the marketing of crabs. (RP-19, Activity 10)
36. Submerged Sills. Low, detached structures constructed near shore and parallel to the shoreline for the purpose of building up an existing beach by trapping and retaining sand in the littoral zone. (RP-19, Activity 11)
37. Low Breakwaters. Structure constructed parallel to and channelward of a shoreline for the purpose of reducing incoming wave energy. (RP-19, Activity 12)

38. Aquaculture/Mariculture Activities. The bottom and suspended culturing and harvesting of bivalve mollusks in the intertidal and subaqueous areas of navigable waters. This includes deployment and maintenance of buoys, rafts, trays, and other equipment associated with the activity, and work including temporary wet storage, and harvesting. (RP-19, Activity 13)

Norfolk District Standard Operating Procedures  
for Section 106 Coordination  
with the Virginia Department of Historic Resources (VDHR)

**I. Review for Historic Resources**

- A. Determine Corps permit area for the project.
- B. Review VDHR's Data Sharing System (DSS) or the Corps' GIS historic properties layer for information on known historic properties in project area.
- C. Determine if there are any National Register listed or potentially eligible historic resources (architectural, landscapes, battlefields, etc.) on the project site or that could be affected visually by the undertaking.
- D. Certain Nationwide and Regional Permits have been programmatically excluded from coordination on historic properties (see attached "Corps and VDHR Programmatic Exclusions" June, 2007).
  - For permit types listed as "programmatically excluded", provided a review of VDHR's DSS does not indicate the existence of inventory properties listed as eligible or potentially eligible National Register listed properties in the project area and the activity is not associated with other actions requiring coordination, these activities are programmatically excluded from review.
  - Document to the file that project is programmatically excluded and include a print out from the DSS. Include appropriate subordinate action in Corps database (ORM).
  - If the DSS indicates the existence of inventory properties listed as eligible or potentially eligible National Register listed properties in the project area, follow the coordination as noted below.
- E. If project is an individual permit which requires a public notice, be sure to include information about the known historic resource(s) in the public notice (locational information and maps are NOT to be included in the public notice).

**II. Coordination with VDHR**

**A. No Coordination Required with VDHR**

- No known historic properties on the project site; and
- Corps permit area is less than 1 acre; and
- No National Register listed or potentially eligible historic resources (architectural, landscapes, battlefields, etc.) that could be affected visually by the undertaking.
- Document to the file - "no historic properties affected" (DSS print out placed in file).
- Include appropriate subordinate action in Corps database (ORM).

**B. Coordination Required with VDHR**

- Known historic properties present in permit area or viewshed; or
- Corps scope of analysis ("permit area") is greater than 1 acre; or
- National Register listed or potentially eligible resources (architectural, landscapes, battlefields, etc.) could be affected visually by the undertaking.

Norfolk District Standard Operating Procedures  
for Section 106 Coordination  
with the Virginia Department of Historic Resources (VDHR)

C. Coordination Procedures

- Review VDHR's Data Sharing System (VDHR DSS) for information on known historic properties in project area and print out a copy of the map.
- Complete the "VDHR Coordination Form" form and provide the information required by VDHR for project review. If the Corps effect determination is known, include the determination and VDHR concurrence line.
- Send to VDHR:
  1. VDHR coordination memo
  2. Project Vicinity Map or Quad Sheet (with location marked)
  3. Plan view drawings with permit area marked
  4. Printout from VDHR Data Sharing System (DSS)
  5. DSS inventory form for known historic properties
  6. Photos of structures (if available)
  7. Copies of previous correspondence from VDHR
- Faxed copies can be difficult to read. It is suggested that information is mailed or scanned and sent by e-mail. Document coordination- delivery confirmation, "read receipt" or fax receipt can be used to insure the information is received.
- VDHR has 30 days from receipt to comment.

**III. VDHR Comments**

A. No Historic Properties Affected

- If VDHR does not respond or does not object to our "no historic properties affected" determination by the end of their 30 day comment period, then the Section 106 process ends.
- Document to the file- "no historic properties affected".
- Include appropriate subordinate action in Corps database (ORM).
- If VDHR disagrees with our determination, see Section V, Dispute Resolution.

B. Archeological Survey or Additional Information Required

- If VDHR recommends an archeological survey or requests additional information, coordinate with your supervisor to determine our action. VDHR will provide justification for survey requests.
- Corps will require archeological surveys within the permit area only. Coordinate with VDHR regarding the area to be surveyed prior to contacting applicant.
- The applicant may be informed about the additional information or survey requirements verbally but a letter must follow (form letter in Regulatory Shared files).
- Copies of any reports must be forwarded to both the Corps and VDHR for approval.

Norfolk District Standard Operating Procedures  
for Section 106 Coordination  
with the Virginia Department of Historic Resources (VDHR)

- VDHR needs two copies of the report- one for the Richmond office and one for the regional office. Submittal to VDHR must include request for concurrence with report recommendations from Corps.
- Send a copy (or request that the applicant's agent send it) of Phase II reports for Native American archeological sites to the Virginia Council on Indians (VCI):  
ATTN: Deanna Beacham, Program Specialist  
P.O. Box 1475  
Richmond, Virginia 23218  
804-225-2084  
[Deanna.Beacham@governor.virginia.gov](mailto:Deanna.Beacham@governor.virginia.gov)

**IV. Assess Effects on Historic Properties**

**A. No Historic Properties Affected**

- An archeological or architectural survey has been conducted, and the report indicates that there are no historic properties in the permit area or viewshed, or that the historic properties are not eligible for the National Register; and
- VDHR concurs with the findings in the report.
- Document to the file- "no historic properties affected".
- Include appropriate subordinate action in Corps database (ORM).

**B. No Adverse Effect**

- In coordination with VDHR, we determine that there are historic properties that are eligible or potentially eligible for the National Register that could be affected by the undertaking.
- The project is modified or permit conditions are imposed such that the effects on the historic property are not adverse.
- If VDHR concurs with a finding of "no adverse effect", or no response is received after 30 days from VDHR's receipt of such a finding, then the permit may proceed.
- No coordination with ACHP is required for "no adverse effect" determinations.
- Include appropriate subordinate action in Corps database (ORM).

**C. Adverse Effect**

- In coordination with VDHR, we determine that there are historic properties that are eligible or potentially eligible for the National Register that will be adversely affected by the undertaking.
- Notify ACHP per 800.6(a)(1)- (see form letter in Regulatory Shared Files) and determine if they will participate (in most cases, no)- 15 day response required from ACHP.
- Place notice on the Regulatory web site to notify public about project and effects to historic properties or have the applicant place a notice in the local newspaper (unless a public notice discussed historic property issues).

Norfolk District Standard Operating Procedures  
for Section 106 Coordination  
with the Virginia Department of Historic Resources (VDHR)

- Consulting parties- the local government must be invited to be a consulting party. Other interested parties may be invited to participate in the consultation if recommended by VDHR or if they request participation.
- Work with SHPO, ACHP (if involved), consulting parties, and the applicant to resolve adverse effects.
- A Memorandum of Agreement must be executed to finalize section 106, unless there is no resolution and the coordination is terminated (consult Section Chief regarding termination procedures).
- A copy of the MOA must be forwarded to the ACHP (800.6(b)) (see form letter in Regulatory Shared Files) prior to permit issuance.
- Include appropriate subordinate action in Corps database (ORM).

V. Dispute Resolution

If at any point in the coordination process there are disagreements with the agencies or applicant on the course of action, consult with your Section Chief.

## CORPS & VDHR PROGRAMMATIC EXCLUSIONS

Programmatic Exclusions are categories of permits that have been excluded from coordination with the Virginia Department of Historic Resources (VDHR) per the Programmatic Agreement between Norfolk District, VDHR and the Advisory Council on Historic Preservation. Activities qualifying for exclusion do not require coordination, provided VDHR's Data Sharing System (DSS) does not indicate the existence of inventory properties listed as eligible or potentially eligible for the National Register of Historic Places within the project area and the activity is not associated with other actions requiring coordination with VDHR.

<u>Nationwide Permits</u>	<u>Programmatic Exclusion</u>
NWP #1 Aids to Navigation	Excluded
NWP #2 Structures in Artificial Canals	Excluded
NWP #3 Maintenance	Excluded
NWP #4 Fish & Wildlife Harvesting, Enhancement & Attraction Devices & Activities	Excluded
NWP #5 Scientific Measurement Devices	Excluded
NWP #6 Survey Activities	Excluded
NWP #7 Outfall Structures and Associated Intake Structures	Excluded
NWP #8 Oil and Gas Structures on the Outer Continental Shelf	Excluded
NWP #9 Structures in Fleeting and Anchorage Areas	Excluded
NWP #10 Mooring Buoys	Excluded
NWP #11 Temporary Recreational Structures	Excluded
NWP #12 Utility Line Activities	Excluded
NWP #13 Bank Stabilization	NO
NWP #14 Linear Transportation Projects	NO (SPGP-01)
NWP #15 U.S. Coast Guard Approved Bridges	Excluded
NWP #16 Return Water From Upland Contained Disposal Areas	Excluded
NWP #17 Hydropower Projects	Excluded
NWP #18 Minor Discharges	Excluded
NWP #19 Minor Dredging	Excluded
NWP #20 Response Operations for Oil and Hazardous Substances	Excluded
NWP #21 Surface Coal Mining Activities	NO *
NWP #22 Removal of Vessels	Excluded
NWP #23 Approved Categorical Exclusions	Not applicable
NWP #24 Indian Tribe or State Administered Section 404 Program	Not applicable
NWP #25 Structural Discharges	Excluded
NWP #26 RESERVED	Not applicable
NWP #27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities	NO
NWP #28 Modifications of Existing Marinas	Excluded
NWP #29 Residential Developments	NO
NWP #30 Moist Soil Management for Wildlife	NO
NWP #31 Maintenance of Existing Flood Control Facilities	Excluded
NWP #32 Completed Enforcement Actions	NO
NWP #33 Temporary Construction, Access and Dewatering	Excluded
NWP #34 Cranberry Production Activities	Not applicable

## CORPS & VDHR PROGRAMMATIC EXCLUSIONS

<u>Nationwide Permit</u>	<u>Programmatic Exclusion</u>
NWP #35 Maintenance Dredging of Existing Basins	Excluded
NWP #36 Boat Ramps	NO
NWP #37 Emergency Watershed Protection and Rehabilitation	Excluded
NWP #38 Cleanup of Hazardous and Toxic Waste	NO
NWP #39 Commercial & Institutional Developments	Not applicable (SPGP-01)
NWP #40 Agricultural Activities	Excluded
NWP #41 Reshaping Existing Drainage Ditches	Excluded
NWP #42 Recreational Facilities	NO
NWP #43 Stormwater Management Facilities	NO
NWP #44 Mining Activities	NO
NWP #45 Repair of Uplands Damaged by Discrete Events	Excluded
NWP #46 Discharges in Ditches	Excluded
NWP #47 RESERVED	Not applicable
NWP #48 Commercial Shellfish Aquaculture Activities	Excluded
NWP #49 Coal Remining Activities	NO*
NWP #50 Underground Coal Mining Activities	NO*
NWP #51 Land-Based Renewable Energy Generation Facilities	NO
NWP #52 Water-Based Renewable Energy Generation Pilot Projects	NO

*\*If the Department of Mines, Minerals and Energy (DMME) coordinates with VDHR and the applicant provides a copy of a letter from VDHR concurring with a “No Historic Properties Affected” or “No Adverse Effect”, no further coordination with VDHR is required by the Norfolk District.*

<u>Regional Permits</u>	<u>Programmatic Exclusion</u>
RP-5 (Construction of Small Impoundments)	NO
RP-15 (Maintenance Dredging of Ditches)	Excluded
RP-17 (Private piers, mooring piles, boathouses)	Excluded
RP-18 (Private piers, mooring piles, boathouses)	Excluded
RP-19 (State Program General Permit)	
Activity 1 (Aerial Transmission Lines)	NO
Activity 2 (Groins, Spurs, Baffles & Associated Beach Nourishment)	Excluded
Activity 3 (Maintenance Dredging)	Excluded
Activity 4 (Bulkheads, Riprap & Backfill)	NO
Activity 5 (Community, Commercial or Government Piers)	NO
Activity 6 (Boat ramps and Accessory Structures)	NO
Activity 7 (Recreational or Commercial Boathouses and Covered Boat Lifts)	Excluded
Activity 8 (Mooring piles, Dolphins, Fender Piles and Camels)	Excluded
Activity 9 (Crab pounds)	Excluded
Activity 10 (Submerged Sills and Associated Beach Nourishment)	Excluded

## CORPS & VDHR PROGRAMMATIC EXCLUSIONS

Activity 11 (Low Breakwaters and Associated Beach Nourishment)	Excluded
Activity 12 (Aquaculture/Mariculture Activities)	Excluded
Activity 13 (Temporary Commercial moorings)	Excluded
RP-20 (Creation of Artificial Reefs and Dredging of Old Shellfish Reefs Operated or Managed by the Commonwealth of Virginia)	NO
RP-22 (Lake Gaston- piers, boat ramps, boathouses, dredging, bulkheads, riprap, utility lines) (only piers, boathouses and dredging excluded)	NO
RP-40 (Maintenance Dredging in Non-Tidal Waters)	Excluded

<u>Letters of Permission/Individual Permits</u>	<u>Programmatic Exclusion</u>
LOP-1 (VDOT Road and Railway Projects)	NO
LOP-2 (Navigationally Related Recreational and Commercial Dredging)	Excluded
SPGP-01 (State Program General Permit for Residential, Commercial, Institutional Developments and Linear Transportation Projects in non-tidal waters)	NO
Individual Permit	NO

*Note: The Programmatic Exclusions for the nationwide permits and any other permits issued to the Virginia Department of Transportation (VDOT) may be revised when a Programmatic Agreement currently in development with VDOT is executed.*

## 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:

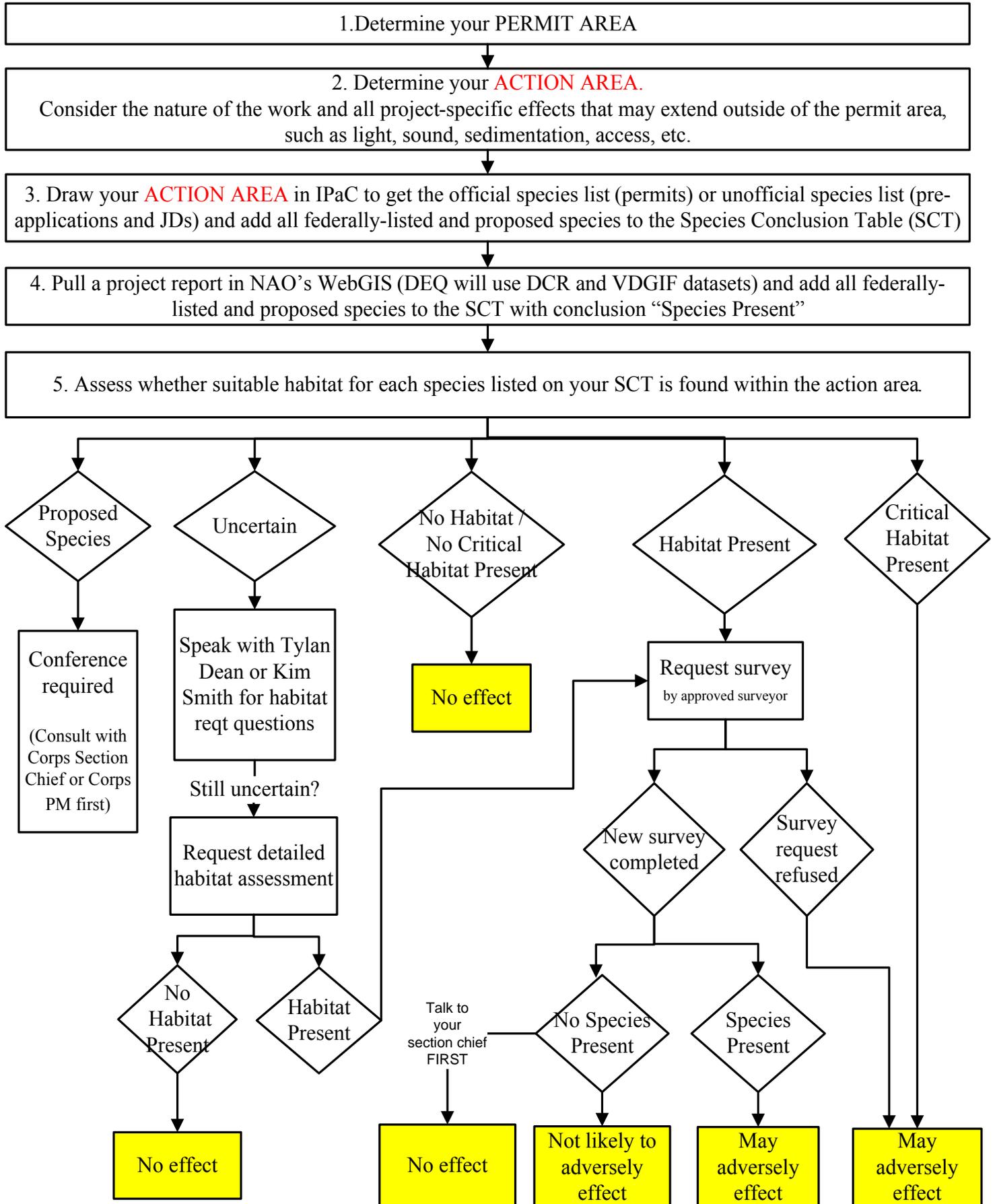
***Please note this information is being provided to you based on the preliminary data you submitted to the Corps relative to project boundaries and project plans. Consequently, these findings and recommendations are subject to change if the project scope changes or new information becomes available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

# Appendix C

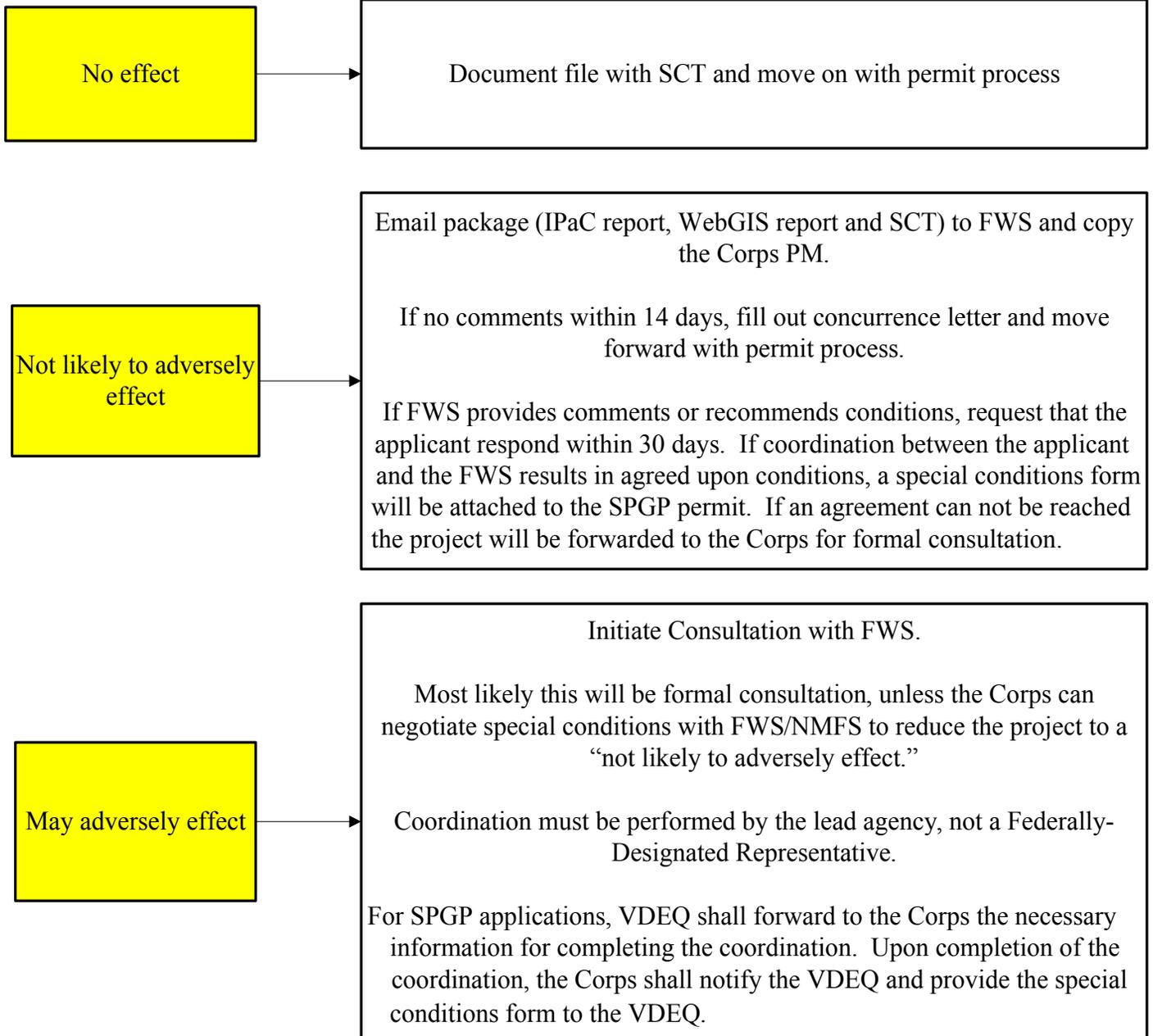
# NAO ESA Project Review Process

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](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:

<b><u>If you get a hit for:</u></b>	<b><u>Coordinate with:</u></b>
<p align="center">Bald Eagles (nests, concentration areas or buffer)</p>	<p align="center">No coordination - Applicant must obtain permit.</p> <p align="center">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.”</p>
<p align="center">Anadromous Fish</p>	<p align="center">NOAA Fisheries                      Unless NWP/RP (use TOY restriction)</p>
<p align="center">EFH</p>	<p align="center">NOAA Fisheries                      Unless NWP/RP (general concurrence)</p>
<p align="center">SAV</p>	<p align="center">NOAA Fisheries</p>
<p align="center">Cold Water Stream Trout</p>	<p align="center">VDGIF</p>
<p align="center">Migratory Birds</p>	<p align="center">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.”</p>

# Appendix D



U.S. Army Corps of Engineers  
Norfolk District

**State Program General Permits  
Section 106 Coordination Form**  
***To be completed by: VWPP PM***

<p><b>To:</b> VWPP Program Cultural Resources Specialist</p> <p><b>From:</b> Regional Office  ( ) - (phone)  ( ) - (fax)  @deq.virginia.gov</p>	<p><b>Project Name:</b></p> <p><b>DEQ Project Number:</b></p> <p><b>Date Received by DEQRO:</b></p> <p><b>Date Sent to CRS:</b></p> <p><b>CRS Deadline:</b></p>
<p><b>Site Address/location:</b></p> <p><b>Brief Project Description (include land use &amp; current site conditions, and proposed impacts):</b></p>	<p><b>Locality:</b></p> <p><b>USGS Quadrangle:</b></p> <p><b>Latitude/Longitude:</b></p> <p><b>Waterway/Watershed:</b></p> <p><b>Total Project Area (in acres):</b></p>
<p><b>Applicant's Name/Address/Phone Number:</b></p>	<p><b>Consultant's Name/Address/Phone Number:</b></p>
<p><b><i>To be completed by: VWPP Cultural Resources Specialist</i></b></p>	
<p><b>The project as proposed will have no effect on historical properties.</b></p> <p><b>The proposed project has been forwarded to the COE for official Permit Area/APE and Section 106 determination.</b></p>	<p><b>CRS's overall assessment and comments regarding the project area:</b></p>
<p><b>Known Cultural Resources (if any):</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Historic structures (greater than 50 years)</li> <li><input type="checkbox"/> Structure ruins or foundations</li> <li><input type="checkbox"/> Cemetery or possible grave sites</li> <li><input type="checkbox"/> Artifacts seen/reported/recovered from surface</li> <li><input type="checkbox"/> Civil War fortifications/camps/features</li> <li><input type="checkbox"/> Dam and or possible mill features</li> <li><input type="checkbox"/> Other (specify)</li> </ul>	<p><b>Enclosures:</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Project Vicinity Map or 7.5 Quad Sheet (mark location)</li> <li><input type="checkbox"/> Plan view drawings with permit area marked</li> <li><input type="checkbox"/> Printout from VDHR Data Sharing System (DSS)</li> <li><input type="checkbox"/> DSS inventory form for known historic properties</li> <li><input type="checkbox"/> Photos of structures (if available)</li> <li><input type="checkbox"/> Copies of previous correspondence from VDHR</li> <li><input type="checkbox"/> Other (specify):</li> </ul>

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	 <p><b>U.S. Army Corps of Engineers Norfolk District</b></p>
<p><b>State Program General Permits Section 106 Coordination Form</b></p>	
<p><b><i>To be Completed by: USACE Project Manager</i></b></p>	
<p><b>COE Project Manager &amp; Contact Information:</b></p>	<p><b>COE Project Number:</b></p> <p><b>DEQ Project Number:</b></p> <p><b>Project Name:</b></p> <p><b>Date Sent to VDHR:</b></p> <p><b>Suspense Date for Comments:</b></p>
<p><b>Permit Area/Area of Potential Effect:</b></p>	<p><b>Additional Information Enclosures:</b></p>
<p><b>Known Historical Properties – Archaeological:</b></p>	<p><b>Known Historical properties – Architectural:</b></p>
<p><b>CORPS EFFECT DETERMINATION:</b></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.

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

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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

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 PERMIT EFFECTS  
 ON HISTORIC PROPERTIES IN  
 SPOTSYLVANIA COUNTY, VIRGINIA

WHEREAS, the Norfolk District, Corps of Engineers (Corps) is responsible for administering Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act which require a permit for proposed construction, dredging, or filling in waters of the United States (including wetlands) within the Commonwealth of Virginia; and

WHEREAS, the Corps of Engineers is required pursuant to Section 106 of the National Historic Preservation Act (16 U.S.C. 470f) to take into account the effects of Corps undertakings on historic properties included in or eligible for inclusion in the National Register of Historic Places and to consult with the Virginia State Historic Preservation Officer (SHPO) and allow the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment on the undertaking; and

WHEREAS, Spotsylvania County, Virginia, is one of the fastest growing counties in the country and was the scene of numerous battles and fighting during the Civil War. The National Park Service (NPS) has called the Spotsylvania- Fredericksburg area "*the bloodiest landscape in North America. No place more vividly reflects the Civil War's tragic cost*"; and

WHEREAS, the Corps, the ACHP, and the SHPO already operate within a 1995 Programmatic Agreement, amended 2005, 2005 Appendix A) that guides the implementation of the Corps' permit application review process in satisfaction of that agency's responsibilities under Section 106; and

WHEREAS, the Corps, in consultation with the SHPO, the Fredericksburg/Spotsylvania National Military Park (NPS), and the County of Spotsylvania (County) (henceforth, Signatories) have developed and agreed to implement these coordination procedures to facilitate project planning and the Corps' preapplication process with regard to activities in Spotsylvania County, Virginia; and

WHEREAS, the Signatories are aware of the historical, archaeological, and cultural resources within the County of Spotsylvania and are committed to the conservation and preservation of these resources, and

WHEREAS, the Signatories agree to work together to integrate historic resources information from existing sources (including but not limited to the SHPO's Data Sharing System (DSS) database, the NPS Related and Adjacent Lands Database (NPS RALD), the County's Database,

and the NRHP) along with predictive modelling to consider the effects on historic properties and acknowledge that such searches do not preclude the need for additional survey if the Corps, in consultation with the SHPO, directs an applicant to continue identification efforts; and

WHEREAS, the Signatories recognize that in its permit program, the Corps issues and verifies permits for actions that often occur on private property, and while this circumscribes the influence the Corps may exert in preservation of historic properties, it does not absolve the Corps from meeting its responsibilities under Section 106; and

WHEREAS, the Spotsylvania Historical Association has been invited to consult in this agreement and has declined to sign as a concurring party; and

WHEREAS, the Virginia Council on Indian has been invited to consult in this agreement and has declined to sign as a concurring party; and

WHEREAS, the Rappahannock Tribe has been invited to consult in this agreement and has declined to sign as a concurring party; and

NOW THEREFORE, all Signatories acknowledge the importance of implementing the following process to facilitate the project review process, minimizing delays, and addressing potential effects to historic properties early in the project development stage. All Signatories to this Memorandum of Understanding (MOU) pledge to work together to make this data available and review proposed projects in accordance with the following:

## STIPULATIONS

### 1. County Planning Efforts:

A. The County agrees to coordinate its planning efforts with the Signatories to this MOU. These planning efforts shall include, but not be limited to, revisions of the Comprehensive Plan, Sector Plan, Neighborhood Plan, Redevelopment Plan, or other plans which adopt goals, objectives and policies implemented through Zoning and Subdivision regulations.

B. Specific projects as proposed rezonings, subdivisions and site plans will be reviewed within the County's Technical Review Committee (TRC) or other informal meetings in advance of these meetings and then invite the Corps to participate.

### 2. Corps Review and Coordination Efforts:

A. The Corps agrees to provide comments to the County on specific projects as requested. In developing its comments, the Corps will consult the SHPO's DSS, the NPS RALD, and the County's database to ensure that all known historic resources will be considered in these meetings.

B. The Corps will advise the project proponent identified through the County Planning Efforts of the need for a Corps permit and preliminary measures to avoid and/or minimize impacts to both aquatic and historic resources.

C. In those cases where the project proponents contact the Corps before the County, the Corps will consult the SHPO's DSS, the NPS RALD, and the County's database to ensure that the project proponent is aware of all known historic resources early in the project/plan design process. Depending on the scale of the potential project, the Corps, at its discretion, will notify the County, the SHPO, and the NPS of this potential undertaking during the reapplication stage.

### 3. County, SHPO and NPS Efforts:

A. The County, the SHPO, and NPS agree to work together to integrate the County's data and the NPS' RALD into the SHPO's DSS through a cost share agreement or other means.

### 4. Duration of Agreement

A. This MOU shall continue in full force and effect ~~until~~ for five (5) years after the date of the last signature. At any time during the six-month period prior to such date, the Corps may request the Signatories to consider an extension or modification of this MOU. No extension or modification will be effective unless all Signatories have agreed to it in writing.

### 5. Termination

A. Any Signatory to this MOU may terminate it by providing thirty (30) days notice to the other Signatories. The Signatories will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, the Corps will comply with 36 CFR 800.4 through 800.6 with respect to all individual action under the MOU.

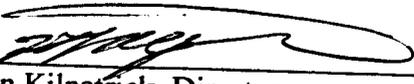
Execution and implementation of this Memorandum of Understanding is evidence that the Corps is seeking to meet its Section 106 responsibilities by taking into account the effects of its permits on historic properties in the early stages of planning in partnership with the County of Spotsylvania.

Signatories

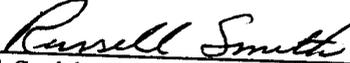
U.S. ARMY CORPS OF ENGINEERS, NORFOLK DISTRICT

By: \_\_\_\_\_ Date: \_\_\_\_\_  
J. Robert Hume, III Chief, Regulatory Branch

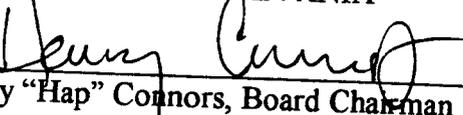
VIRGINIA STATE HISTORIC PRESERVATION OFFICER

By:  Date: 9/25/06  
Kathleen Kilpatrick, Director

FREDERICKSBURG/SPOTSYLVANIA NATIONAL MILITARY PARK

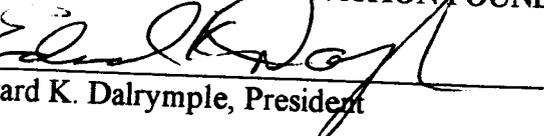
By:  Date: 9/18/06  
Russell Smith, Superintendent

COUNTY OF SPOTSYLVANIA

By:  Date: 8/8/06  
Henry "Hap" Connors, Board Chairman

Concurring Parties

SPOTSYLVANIA PRESERVATION FOUNDATION, INC.

By:  Date: 3/13/06  
Edward K. Dalrymple, President