

CENAO-REG
17-SPGP-01

SUBJECT: Environmental Assessment, Section 404(b)(1) Guidelines Evaluation, Public Interest Review and Statement of Findings Regarding Proposed Department of the Army Virginia State Program General Permit (17-SPGP-01)

MEMORANDUM FOR RECORD

1. Application as described in the public notice.

- a. **APPLICANT:** General Public in Virginia
- b. **WATERWAY & LOCATION:** Waters of the United States, including wetlands, and located in the Commonwealth of Virginia
- c. **PROJECT PURPOSE:** The U.S. Army Corps of Engineers, Norfolk District (District) is evaluating proposals to reissue with modifications, reissue without modification, or not to reissue the Virginia State General Programmatic (SPGP). This environmental assessment (EA), 404(b)(1) analysis, and Statement of Findings (SOF) documents our evaluation process and decision.

(1) **Basic:** The District proposes to issue the 12-SPGP-01, with modifications, as 17-SPGP-01, for a five-year period. Processing changes to 17-SPGP-01 have been proposed. The 17-SPGP-01 provides authorization for the construction of certain work which entails the discharge of dredged or fill material into nontidal waters of the United States provided that full and appropriate related state authorization is obtained and that the public strictly adheres to the terms and conditions of the 17-SPGP-01 and the applicable Virginia Water Protection (VWP) Permit, informal resolution, letter of agreement, executive compliance agreement or letter of consent. GPs, including SPGPs, may be issued under authority of Section 404(e) of the CWA.

(2) **Overall:** Section 404(e) of the CWA (33 U.S.C. § 1344) and Department of the Army (DA) regulations (33 C.F.R. § 325.2(e)(2), 322.2(f), and 323.2(h)) allow the U.S. Army Corps of Engineers (Corps) to issue general permits (GPs), on a statewide basis, that authorize, for the purpose of Section 404 of the Clean Water Act (CWA), certain activities that are also regulated by a state regulatory authority. This type of GP is a state program general permit (SPGP). The SPGP identifies the terms, limits, and conditions under which specific activities authorized by the state regulatory authority may also be authorized under Section 404 of the CWA with limited case-by-case review by the Corps. The activities authorized by an SPGP must result only in minimal individual and cumulative adverse effects on the aquatic environment. The goals of SPGPs are as follows: 1) to reduce duplicative project evaluation; 2) to simplify the authorization process; 3) to provide equivalent or enhanced environmental protection for aquatic resources; and 4) to promote more effective and efficient

use of Corps and state resources.

- (1) **Water Dependency Determination:** The construction of residential, commercial, institutional and linear transportation projects is not, in most instances, considered a water dependent activity.

d. PROPOSED WORK:

- (1) **Avoidance and Minimization Information:** The proposed 17-SPGP-01 applies to certain activities currently regulated by both the Corps and the VDEQ, described in more detail below. Work covered under 17-SPGP-01 is activity-specific to ensure that projects authorized under each category will have no more than minimal individual and cumulative environmental impacts. If projects do not meet the terms and conditions of 17-SPGP-01 or the VDEQ's VWP permit regulations, informal resolution, letter of agreement, executive compliance agreement, or letter of consent these projects will be reviewed under alternate Corps permit processes.

When a proposed activity may result in more than minimal individual or cumulative adverse environmental effects, interfere with navigation, or may be contrary to the public interest, the District retains authority, at its discretion, to review the application using other existing Corps permitting procedures. The 17-SPGP-01 contains provisions for the U.S. Environmental Protection Agency (EPA) and the U.S. Fish and Wildlife Service (FWS) to review certain applications and to require that the District process the projects under other Corps permitting procedures if all of the agencies' project-specific recommendations are not incorporated by the applicants.

- (2) **Compensatory Mitigation:** 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 wetland 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, 0.5:1 for open waters and 1:1 for conversion of forested wetlands to herbaceous emergent wetlands. Mitigation for open waters impacts will be determined by the VDEQ project manager on a case-by-case basis. All wetland mitigation will comply with the Corps-EPA Compensatory Mitigation Regulations dated March 31, 2008 (33 CFR 332/40 CFR 230)

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 the Corps-EPA Compensatory Mitigation Regulations dated March 31, 2008 (33CFR 332/40 CFR 230)

2. Authority.

- Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. §403).
- Section 404 of the Clean Water Act (33 U.S.C. §1344).
- Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

3. Scope of Analysis.

- a. NEPA. 17-SPGP 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 meet the terms and conditions outlined herein. The use of 17-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 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.

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 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.

(1) Determined scope.

Only within the footprint of the regulated activity within the delineated water.

Over entire property. The scope of review, for the purpose of 17-SPGP-01, may be expanded to include the entire property on a case-by-case basis. The scope of the project will be evaluated in accordance with 33 CFR part 325, Appendix B.

- b. NHPA "Permit Area".

(1) **Tests.** Activities outside the waters of the United States **may be** included because one or more of the following tests **are** met:

- i. The need for such activities **is** dependent upon the authorization of the work or structures within the waters of the United States (answer affirmatively only if such activities would not occur but for the work in waters of the US)
- ii. Such activities **are** integrally related to the work or structures to be authorized within waters of the United States (or, conversely, the work or structures to be authorized must be essential to the completeness of the overall project or program)
- iii. Such activities **are** directly associated (first order impact) with the work or structures to be authorized.

(2) **Tests.** Activities outside the waters of the United States **may not be** included because all of the following tests **are** met:

- i. The need for such activities **is not** dependent upon the authorization of the work or structures within the waters of the United States (answer affirmatively only if such activities would not occur but for the work in waters of the US)
- ii. Such activities **are not** integrally related to the work or structures to be authorized within waters of the United States (or, conversely, the work or structures to be authorized must be essential to the completeness of the overall project or program)
- iii. Such activities **are not** directly associated (first order impact) with the work or structures to be authorized.

(3) Determined scope. The scope of the project will be determined on a case-by-case basis and will be evaluated in accordance with Appendix C of 33 CFR part 325

c. ESA "Action Area".

(1) Action area means all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action.

(2) Determined scope. Every project will be subject to Section 7 review however the determined scope will be made on the individual project.

4. Public Comments.

- a. PUBLIC HEARING: The Corps **did not** conduct a public meeting or hearing on the proposed project.
- b. PUBLIC NOTICE: A Public Notice was issued on **April 11, 2017** soliciting comments on the proposed project.
- c. COMMENTS AND RESPONSE: Following are the comments received and the

response to those comments.

(1) Environmental Protection Agency (EPA) comments:

EPA comment: The EPA has concerns that the limits of the SPGP are more than minimal, individually and cumulatively, and they request an analysis showing how the effects are minimal.

Corps response: Between June, 2012 and August, 2015 the 12-SPGP-01 annual reports show that 590 projects have been permitted by the 12-SPGP-01. These projects include residential, commercial, institutional and linear transportation projects or some combination.

In that same timeframe the VDEQ authorized approximately 113 acres of fill in jurisdictional wetlands and open waters. The VDEQ authorized approximately 129,697 linear feet fill in jurisdictional waters including perennial, intermittent or ephemeral stream channels. Approximately 165 acres of wetland mitigation was required, approximately 75,072 linear feet of stream channel mitigation was required and approximately 112,579 stream credits were required to be purchased from approved mitigation banks. Mitigation included but was not limited to: rehabilitation, enhancement or preservation of wetlands, streams and vegetated buffers. Wetland and open water mitigation occurred at over a 1.5:1 ratio and stream mitigation occurred at 1.4:1 ratio thus meeting "no net loss".

As a comparison, the District authorizes between 4000 and 5000 permits per year. The District Engineer and the VDEQ will monitor and review geographic areas that may be subject to more than minimal cumulative adverse effects. The DE has the authority to require individual permits where the cumulative adverse effects are more than minimal or to add conditions to the 17-SPGP-01 permit either on a case-by-case basis to ensure that the individual and cumulative adverse effects are minimal. The Corps expects that the SPGP permit will encourage applicants to design their projects within the scope of the SPGP rather than request individual permits for projects that could result in greater adverse impacts to the aquatic environment. This SPGP permit conforms to the type of residential, commercial, institutional and linear transportation projects typically authorized and is viewed as having minimal individual and cumulative adverse impact on the aquatic environment.

The Corps expects use to continue at this level. Therefore, impacts associated with activities authorized by this SPGP, when considered cumulatively are not greater than minimal.

EPA comment: The EPA recommends that all impacts both temporary and permanent be included when calculating thresholds with regard to federal coordination.

Corps response: All temporary impacts must be restored to pre-construction contours within in 12 months. If determined on a case-by-case basis that a temporary impact is

more than minimal or that it may have detrimental impacts that Corps/DEQ may decide to coordinate those projects for federal coordination.

In addition, the SPGP replaces Nationwide Permit (NWP) #14, NWP #29 and NWP #39 none of which calculate temporary impacts towards permitting or mitigation thresholds. There are some NWP's that use temporary impacts to determine reporting requirements for the Corps, however the PCN (JPA) is already required as a condition of the SPGP. Therefore the language is consistent with the NWPs.

EPA comment: The EPA recommends that the 17-SPGP retain a maximum total impact (temporary and permanent) threshold of 2,000 linear feet of stream channel but limit permanent impacts to 1,000 linear feet.

Corps response: As part of the Corps review of the SPGP revisions, the District evaluated several alternatives including reducing stream impact thresholds:

We have determined that reducing the thresholds of the SPGP program would result in substantial program inefficiencies by placing a great deal of additional project review, notably labor intensive individual permit (IP) review, on the District for project proposals that result in minimal impacts to waters of the United States. Therefore this alternative was determined to be unacceptable, as the additional workload demands on the District, without the commensurate budget increases needed to hire and train more staff, would certainly result in longer permit processing times and poor customer service for projects that qualify for general permit processing.

In addition, several measures have been incorporated into the SPGP review process to ensure that only projects with minimal impacts are determined to be the Least Environmentally Damaging Practicable Alternative (LEDPA) are authorized. Federal screening by the Corps, EPA and USFWS is an example of a measure that is incorporated into the SPGP review process.

EPA comment: EPA supports relocation of the screening procedures however they recommend retaining some of the language regarding federal agency objections to avoidance and minimization or compensation.

Corps response: Throughout the language of the permit authorization it states that the projects must have no more than minimal, the project must meet LEDPA and that at any time the DE has the right to exert discretionary authority. Specifics regarding agency objection are more appropriately located in the Standard Operating Procedures (SOP). The SOP will be posted on the District website and available to the public so that the process is clear and transparent.

EPA comment: The EPA supports the requirements for compensatory mitigation and the inclusion of compensation requirements for permanent impacts to open waters. The EPA is not aware of any banks with open water credits and would like to continue discussions on other mitigation options for open waters

Corps response: There currently are no banks with open water credits nor does the District routinely support the crediting of open waters. Therefore most open water compensation will be accomplished out-of-kind through the purchase of wetland credits.

EPA comment: The EPA recommends the Corps consider including a requirement in the General Conditions to monitor the restoration of temporary fills.

Corps response: As a condition of the VWP the DEQ receives construction monitoring reports. In effort to reduce duplicative effort the Corps typically defers the monitoring to the VDEQ. In addition, the SPGP projects are routinely subject to compliance checks by both the Corps and the VDEQ.

EPA comment: EPA recommends including a disclaimer on the "Complete Application" checklist indicating that additional project specific information may be requested from the applicant as necessary to complete agency(ies) review of the application. In addition, EPA recommends #10 on the checklist specifically identify both permanent losses and temporary impacts to WOUS.

Corps response: The requested changes were accepted and made to the checklist.

EPA comment: The EPA stated that they would like to work with the Corps on updating the SOP however they did not provide any specific comments.

Corps response: The SOP is intended to be a living document that changes as regulations, policies and procedures change for both the Corps and the VDEQ. The Corps is open to working with the public and other agencies to ensure that it is effective, efficient and in compliance with regulations.

(2) Northern Virginia Building Industry Association (NVBIA) comments:

NVBIA comment: The NVBIA has concerns that the counter sinking requirement "to restore a surface water channel within 15 days post construction..." is in direct conflict with local E&S and VDOT regulations.

Corps response: The condition is to ensure compliance with the general permit conditions for Aquatic Life Movements. The Corps is not prescriptive in how the permittee complies with this condition and is of the understanding that there are alternatives available that allow compliance with this permit condition as well as with VDOT and locality requirements.

(3) Southern Environmental Law Center (SELC) comments:

SELC comment: The SELC is concerned with the District's plan to establish new thresholds for federal screening and include them only in the SOP document – outside of the public review. The SELC request the Corps republish the permit and the proposed to

changes to the SOP.

Corps response: Changes were not made to the thresholds for federal coordination and the process is consistent with the previous SPGP versions. The procedural discussion was simply removed from the permit authorization letter and placed in the SOP where it is more appropriately located. The SOP will be available to the public via the District website and once the 17-SPGP is issued.

(4) Department of Conservation and Recreation (DCR) comments:

DCR comment: General conditions 10 and the complete checklist the DCR recommends that the applicant obtain information on rare, threatened and endangered species by contacting the Virginia Department of Games and Inland Fisheries (VDGIF) and the Virginia Department of Conservation and Recreation – Division of Natural Heritage (VDCR)

Corps response: For compliance with WWP permits the VDEQ currently uses the DCR database to look for state threatened/endangered species. However the VDEQ will be using the USFWS IPAC database to perform review and coordination of federally threatened/endangered species.

In regard to surveys, the VDEQ currently coordinates with the DCR regarding state listed species however the VDEQ will coordinate with the USFWS regarding federally listed species.

DCR comment: For activities with adverse impacts to natural heritage resources and significant wetland communities DCR recommends the 17-SPGP permit not be utilized. Instead we recommend the applicant be required to obtain an individual permit providing additional time for coordination and information gathering including species surveys.

Corps response: The VDEQ is responsible for ensuring that all coordination, surveys and resolution of adverse impacts are completed through their state review process and as part of their Virginia Water Permit review. The federal process still includes coordination and resolution for federally threatened and endangered species and an SPGP verification cannot be issued until the Section 7 process is complete. Processing the project as an individual permit would provide no added value as the Section 7 process is the same during general permit review and individual permit review. Not allowing the use of the SPGP for projects mentioned would put additional workload demands on the District and result in longer permit processing times and poor customer service for projects that qualify for general permit processing and adhere to the same Section 7 requirements for review.

DCR comment: DCR recommends the thresholds for linear transportation remain at 1/3 acre of impact rather than the proposed 1/2 acre of impact.

Corps response: The SPGP replaces Nationwide Permit (NWP) #14. The limits of the NWP #12 were raised to 1/2 acre in the 2012 nationwide permit issuance. Therefore the

language and 1/2 acre threshold is consistent with the NWP.

(5) Wetlands Studies and Solutions Inc, (WSSI) comments:

WSSI comment: Please clarify whether general conditions 25.b. is meant to apply inside the culvert in addition to the inlet/outlet protection.

Corps response: This condition is meant to apply to the inside of the culvert as well as the inlet/outlet.

WSSI comment: WSSI suggest that the 17-SPGP-01 requirement for open water compensation be consistent with the VWP regulations.

Corps response: Due to regulations changes the state no longer requires a permit for impacts to open waters that do not have a detrimental effect on public health, animal life, or aquatic life or to the uses of such waters for domestic or industrial consumption, recreation, or other uses. However there are cases where they VDEQ may require a permit, and potentially compensation, for open waters.

The Corps regulates the discharge of fill into WOUS and generally requires compensation for the loss or permanent impacts to WOUS. If an open water feature is regulated under Section 404 of Clean Water Act the Corps may require compensation.

WSSI comment: The WSSI had questions regarding Section IV.A.1.b. of the SPGP SOP: It is our understanding that the 15 days start from receipt of a completed 17-SPGP Federal Coordination Form. If so, are there any repercussions if the COE does not notify DEQ within 15 days? Also, do the referenced internal procedures include any required response timeframes for the SHPO and/or other state agencies?

Corps response: The Corps will notify the VDEQ, within 15 days, as to what coordination, if any is required for Section 106. This is to allow transparency in the process and to keep the applicant and VDEQ informed on the status of the review. The SPGP may not be issued until the VDEQ has been notified by the Corps that the Section 106 process has been completed.

Timeframes for the initial Section 106 coordination is typically 30 days however extensions may be granted when requested. Beyond the initial coordination, timeframes vary depending on the level of coordination and the commenting agency involved.

WSSI comment: Section IV.A.4 addresses formal consultation related to Endangered Species Act Section 7. Are there any notification or response timeframe requirements associated with this consultation?

Corps response: There are timeframes and they are listed in the "NAO ESA Project Review Process" which is referenced in the SOP. This information will be posted on our website and made available to the public upon issuance of the 17-SPGP.

WSSI comment: We request that the COE consider revisions to the SOP that will promote predictability of inter-agency coordination review timeframes and eliminate unnecessary scheduling delays.

Corps response: The SOP is an internal document that is meant establish a process for the state that both adheres to federal regulations and is consistent with the process for all permits across the District. The SOP is intended to be a living document that changes as regulations, policies and procedures change for both the Corps and the VDEQ. The Corps is open to working with the public and other agencies to ensure that it is effective, efficient and in compliance with regulations.

(6) Mr. Doug Simpson comments:

Mr. Simpson's comment: I'm proposing language that would require the permittee to consider aids to navigation when designing a project. Occasionally, we are asked with short notice to move aids to navigation for projects (usually dredging, but have had land-based projects also be of concern). If we can get the designers thinking about AtoN early, that would really help us head off AtoN/permitted project conflicts.

Corps response: General condition 14 address impacts to navigation and the potential removal of structures that impede navigation. In addition, work in Section 10 WOUS and/or tidal waters is not authorized under the 17-SPGP therefore the number of projects involving navigation should be minimal.

5. Alternatives Analysis.

a. BASIC AND OVERALL PROJECT PURPOSE:

Same as Project Purpose in Paragraph 1.

b. WATER DEPENDENCY DETERMINATION:

Same as in Paragraph 1.

c. OTHER ALTERNATIVES CONSIDERED:

(1) **Off-site locations:** As part of the VDEQ/Corps least damaging, practicable alternative review, either agency may request that the applicant provide a discussion regarding the feasibility of using off-site locations. This is done on a case-by-case basis.

(2) **On-site configurations:** As part of the VDEQ/Corps least damaging, practicable alternative review, either agency may request that the applicant provide alternative site designs and discuss the feasibility of using the alternative site designs. This is done on a case-by-case basis.

(3) **Other Alternatives to SPGP-01 modification and reissuance:** In

response to DEQ's current request for a SPGP modification, the District evaluated several alternatives to DEQ's proposal including, elimination of the SPGP program in Virginia altogether, reinstating NWP's while utilizing the SPGP program for projects from ½ to one acre, maintaining the status quo under SPGP-01, removing Section 10 WOUS from SPGP-01 coverage, reducing stream impact thresholds to 1500 linear feet and expanding the scope of the SPGP to two acres:

a. We have determined that reinstatement of NWP's with the abolition of the SPGP program would result in substantial program inefficiencies by placing a great deal of additional project review, notably labor intensive individual permit (IP) review, on the District for project proposals that result in minimal impacts to waters of the United States. Therefore this alternative was determined to be unacceptable, as the additional workload demands on the District, without the commensurate budget increases needed to hire and train more staff, would certainly result in longer permit processing times and poor customer service for projects that qualify for general permit processing.

b. We have determined that reinstatement of NWP's for projects under ½ acre with the SPGP program remaining in effect for projects between ½ and one acre of impact would likely create a faster permit process for some applicants and would avoid permit fees for some applicants. In this situation, applicants would need to obtain NWP's from the District for projects up to ½ acre, SPGP's from DEQ for projects between ½ and one acre, including up to 2,000 linear feet of stream, and IP's from the District along with either a general permit or IP from DEQ for projects over one acre or over 2,000 linear feet of stream. All of these different types of reviews entail different application requirements. The complexities of this type of system would be unnecessarily confusing for the regulated public. Allowing minimal impact projects to proceed under 17-SPGP-01 alone creates a predictable process for the regulated public. Also, this alternative would not achieve the savings in terms of manpower resources that the District expects from implementing the modified 17-SPGP-01. These resources would be more effectively redirected to achieve quicker turnaround times for confirmations of delineations and preapplication requests, and in improving enforcement and compliance.

c. Continuing to process applications under the existing SPGP-01 thereby maintaining the status quo (the "no action alternative"). Operating in this fashion has proven to provide adequate protection of the Commonwealth's aquatic resources, however, there still ways to further address reduction of regulatory duplication and conflicting requirements of permittees.

d. Expansion of the scope of the SPGP to allow impacts up to two acres in size is not supported by EPA.

e. Removal of Section 10 projects from coverage under the SPGP-01 was implemented with the 17-SPGP revisions. The District determined this appropriate to ensure full review and processing is completed in accordance with Section 10 of

the Rivers and Harbors Act (RHA).

f. The District does not see value in reducing stream thresholds to 1500 linear feet due to the low number of permits authorized that exceed the 1500 linear feet impact total. From 2010 to 2015 9 SPGP permits were issued for projects that proposed stream impacts that exceeded 1500 linear feet. Reduction of the linear footage was determined to be unacceptable, as the additional workload demands on the District would result in longer permit processing times for projects that qualify for general permit processing. Federal screening by the Corps, EPA and USFWS is incorporated into the SPGP review process to ensure that only projects with minimal impacts are determined to be the Least Environmentally Damaging Practicable Alternative (LEDPA) are authorized.

DEQ's current proposed modification to the SPGP, in contrast to all of the above alternatives, should result in a reduction of interagency duplication of effort and a narrower likelihood of the two agencies making conflicting demands of permit applicants. The proposal builds on DEQ's state permit processing program and should result in a streamlined, more straightforward, process for projects with minimal impacts.

The monitoring reports found that the SPGP-01 fulfilled the four goals of SPGPs stated above and complied with the statutory requirements of Section 404(e) of the CWA and DA regulations at 33 C.F.R. §§ 322.2(f) and 323.2(h), also achieving the programmatic goal of "no net loss" of wetlands. Review of the potential impacts of the proposal, alternatives considered, comments from the public, and the findings of the monitoring reports, all indicate that modification of the SPGP permit program in Virginia is appropriate.

(1) **Least environmentally damaging practicable alternative:** The VDEQ and the Corps must determine that the project presented meets the least environmentally damaging practicable alternative. If the project does not meet this requirement the applicant must either revise the project or apply for another type of permit authorization.

6. **Evaluation of the 404(b)(1) Guidelines.** (NA)

a. **FACTUAL DETERMINATIONS:**

(1) **Physical Substrate:** Projects authorized by the 17-SPGP-01 may result in alterations to the physical substrate of both wetland and stream features. Any permanent loss due to alterations in the physical substrate of waters of the United States, including wetlands, may require compensatory mitigation.

(2) **Water circulation, fluctuation and salinity:** Downstream flows may be temporarily disrupted as construction occurs however applicants are required to

maintain hydrology or mitigate for permanent losses. Salinity is not expected to change.

- (3) **Suspended particulate/turbidity:** There may be a temporary increase in downstream sedimentation during project construction. Most projects are required to meet "best management practices" (BMPs) and are required to implement storm water management features and/or Low Impact Development.
- (4) **Contaminate availability:** Construction of authorized features is not expected to increase the availability of contaminants within the system. BMPs associated with the projects may actually serve to reduce contaminants long-term.
- (5) **Aquatic ecosystem and organisms:** Some stream and wetland systems will be converted to either upland or open water. This change in habitat type may reduce or eliminate populations of certain species within the project area but will likely increase populations of other species. Any permanent loss may require compensatory mitigation which will likely increase species presence in other locations.
- (6) **Proposed disposal Site:** The 17-SPGP-01 authorizes the discharge of fill material into non-tidal waters of the United States, including wetlands that are regulated by Section 404 of the Clean Water Act (33 U.S.C. 1344).
- (7) **Cumulative effects on the aquatic ecosystem:** Between June, 2012 and August, 2015 the 12-SPGP-01 annual reports show that 590 projects have been permitted by the 12-SPGP-01. These projects include residential, commercial, institutional and linear transportation projects or some combination.

In that same timeframe the VDEQ authorized approximately 113 acres of fill in jurisdictional wetlands and open waters. The VDEQ authorized approximately 129,697 linear feet fill in jurisdictional waters including perennial, intermittent or ephemeral stream channels. Approximately 165 acres of wetland mitigation was required, approximately 75,072 linear feet of stream channel mitigation was required and approximately 112,579 stream credits were required to be purchased from approved mitigation banks. Mitigation included but was not limited to: rehabilitation, enhancement or preservation of wetlands, streams and vegetated buffers. Wetland and open water mitigation occurred at over a 1.5:1 ratio and stream mitigation occurred at 1:4:1 ratio thus meeting "no net loss".

As a comparison, the District authorizes between 4000 and 5000 permits per year. The District Engineer and the VDEQ will monitor and review geographic areas that may be subject to more than minimal cumulative adverse effects. The DE has the authority to require individual permits where the cumulative adverse effects are more than minimal or to add conditions to the 17-SPGP-01 permit either on a case-by-case basis to ensure that the individual and cumulative adverse effects are minimal. The Corps expects that the SPGP

permit will encourage applicants to design their projects within the scope of the SPGP rather than request individual permits for projects that could result in greater adverse impacts to the aquatic environment. This SPGP permit conforms to the type of residential, commercial, institutional and linear transportation projects typically authorized and is viewed as having minimal individual and cumulative adverse impact on the aquatic environment.

The Corps expects use to continue at this level. Therefore, impacts associated with activities authorized by this SPGP, when considered cumulatively are not greater than minimal.

(8) **Secondary effects on the aquatic ecosystem:** Negative downstream effects are expected to be short term and minimal during and immediately following construction. However, any secondary impact that is determined to cause a permanent loss of waters and/or wetlands may be considered a permanent impact and may require compensation.

b. RESTRICTIONS ON DISCHARGES (230.10).

- (1) It has been demonstrated in Section 5 that there **are no** practicable, less damaging alternatives which could satisfy the project's basic purpose. The activity **can be** located in a special aquatic site (wetlands, sanctuaries, and refuges, mudflats, vegetated shallows, coral reefs, riffle & pool complexes). The activity **does not** need to be located in a special aquatic site to fulfill its basic purpose.
 - (2) The proposed activity **does not** violate applicable State water quality standards or Section 307 prohibitions or effluent standards based on information from the certifying agency. The proposed activity **does not** jeopardize the continued existence of federally listed threatened or endangered species or affect their critical habitat. The proposed activity **does not** violate the requirements of a federally designate marine sanctuary.
 - (3) The activity **will not** cause or contribute to significant degradation of waters of the United States, including adverse effects on human health; life stages of aquatic organisms' ecosystem diversity, productivity and stability; and recreation, esthetic, and economic values.
 - (4) Appropriate and practicable steps **have** been taken to minimize potential adverse impacts of the discharge on the aquatic ecosystem (see Paragraph 8 for description of mitigating actions).
7. **Public Interest Review:** All public interest factors have been reviewed as summarized here. Both cumulative and secondary impacts on the public interest were considered.

- a. **CONSERVATION:** The activities authorized by this SPGP may modify the natural resource characteristics of project areas. Compensatory mitigation, when required for activities authorized by this SPGP, will result in the restoration, enhancement, creation, or preservation of aquatic habitats that should offset losses to conservation values. The adverse effects of the activities authorized by this SPGP on conservation will be minor, since the SPGP authorizes only those activities with minimal adverse effects on the aquatic environment and the Corps' scope of analysis is usually limited to impacts to aquatic resources.

- b. **ECONOMICS (33CFR Part 320.4(q)):** The construction of these residential, commercial, institutional and linear transportation projects will have small but positive impacts on local economies. During construction, these activities may generate jobs and revenue for local contractors as well as revenue to building supply companies for the sale of construction materials. Some of these projects will provide a more reliable water supply for rural communities while helping to maintain or increase economic productivity in the surrounding area. Activities authorized by this SPGP will benefit some communities by helping to sustain the local economic base.

- c. AESTHETICS: The construction of SPGP projects will alter the visual character of some waters of the United States. The lateral extent and perception of these changes will vary, depending on the size and configuration of the project, the nature of the surrounding area, and the public uses of the area. Projects authorized by this SPGP could possibly modify some aesthetic characteristics, such as air quality and noise however any such effect effect will be determined during the project review. These projects will most likely result in an increase in human use of the project area and surrounding land. However, regardless of whether they are positive or negative, the impacts are expected to be insignificant from a national perspective.

- d. **GENERAL ENVIRONMENTAL CONCERNS:** Activities authorized by this SPGP will affect general environmental concerns, such as water and land pollution. The authorized work will also affect the physical, chemical, and biological characteristics of the environment. Adverse effects to the chemical composition of the aquatic environment will be addressed by Special Condition 11 which states that the discharged material may not consist of unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.) and must be free from toxic pollutants in toxic amounts. Compensatory mitigation may also be required by the District Engineer to ensure that the net adverse effects on the aquatic environment are minimal.

- e. WETLANDS (*33CFR Part 320.4(b)*): Wetlands provide habitat, including foraging, nesting, spawning, rearing, and resting sites for aquatic and terrestrial species. The destruction of wetlands may alter natural drainage patterns. Wetlands reduce erosion by stabilizing the substrate. Wetlands also act as storage areas for stormwater and flood waters. Wetlands may act as groundwater discharge or recharge areas. The loss of wetland vegetation will adversely affect water quality because these plants trap sediments, pollutants, and nutrients and transform chemical compounds. Wetland vegetation also provides habitat for microorganisms that remove nutrients and pollutants from water. Wetlands, through the accumulation of organic matter, act as sinks for some nutrients and other chemical compounds, reducing the amounts of these substances in the water.

Wetlands may be permanently filled by the proposed projects or converted to open water by flooding within the impoundments. Some wetlands may be temporarily impacted by the work through the use of temporary staging areas and access roads. A portion of the affected wetlands may result in the permanent loss of aquatic resource functions and values.

However, impacts to waters of the US, including wetlands, are expected to be minimal since the permit conditions require on-site avoidance, minimization, and compensatory mitigation of impacts to maximum extent practicable. The District Engineer can exercise discretionary authority to require an individual permit or add case-specific special conditions if the work will result in more than minimal adverse effects on the aquatic environment.

Finally, some projects that involve the installation of sediment control ponds and BMPs may provide some positive environmental benefits by increasing the surface area and perimeter of aquatic habitat and shallow areas, promote additional wetland vegetation, and serve as a nutrient sink to protect downstream waters from farm generated pollutants.

- f. HISTORIC PROPERTIES (*33CFR Part 320.4(e)*): General Condition 8 of the SPGP states: 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. Through an existing agreement, the District will coordinate specific types of activities and activities in certain areas that have a high potential to affect historic resources with the Virginia Department of Historic Resources. Therefore, the SPGP should not adversely affect historical and cultural values.

- g. FISH AND WILDLIFE VALUES (33CFR Part 320.4(c)): This SPGP authorizes activities in waters of the United States, including non-tidal wetlands which provide habitat to many species of fish and wildlife. Activities authorized by this SPGP will alter habitat characteristics of the impounded portions of the affected streams and wetlands by converting these segments to open water. This may decrease the quantity and quality of habitat for those assemblages of fish and wildlife species that require shallow flowing and/or cool water temperatures, including fish such as darters (genus *Etheostoma*) and daces (genus *Rhinichthys*) and some amphibian species such as some ambystomid (mole) salamanders, while increasing habitat for species adapted to those conditions such as the redbreast sunfish (*Lepomis auritus*), large mouth bass (*Micropterus salmoides*), and bullfrog (*Rana catesbeiana*). Based on coordination procedures with State and Federal regulatory and resource agencies, the impacts to aquatic resources caused by this SPGP will be avoided and/or minimized to the maximum extent appropriate and practicable through the inclusion of project specific restrictions and conditions.

The VDEQ/District will coordinate such JPA's with the Fish and Wildlife Service, the Virginia Department of Game and Inland Fisheries, the Virginia Department of Conservation and Recreation, and the Virginia Department of Environmental Quality as appropriate.

In implementing this SPGP, the District Engineer will require all appropriate and practicable compensatory mitigation will be required for all non-tidal wetland impacts over 1/10 acre and all stream impacts in excess of 300 linear feet; unless the District Engineer determines that the impacts are minimal and waive this requirement.

The Corps may accept compensatory wetland mitigation in the form of wetland creation or restoration, or preservation. Generally, impacts to forested wetlands will be compensated for at a 2:1 ratio, scrub shrub wetlands at a 1.5:1 ratio, emergent wetlands at a 1:1 ratio and 0.5:1 ratio for open waters. Wetland creation or restoration, as determined by the Corps, may occur either onsite or off-site. Off-site mitigation and the use of wetland mitigation banks must occur either within the same hydrologic unit code (HUC) as the wetland impact, or within an adjacent HUC in the same river watershed. (For those previously approved mitigation banks with a service area greater than the aforementioned areas, the Corps will accept credits from those banks under this SPGP provided the impacts are within the bank's geographic service area.) To the extent practicable, wetland mitigation should be in-kind (e.g., forested wetlands for forested wetlands).

Stream impacts may be mitigated for using stream restoration, bioengineering, riparian preservation through restrictive covenants, livestock exclusion with buffers and fencing, and wetland restoration and creation.

Based on the areas and activities excluded, the implementation of all appropriate and practicable on-site avoidance, minimization measures, and compensatory mitigation, the JPA requirement, the authorized activities should have minimal adverse effects on fish and wildlife values.

- h. FLOOD HAZARDS AND FLOODPLAIN VALUES (*33CFR Part 320.4(l)*): No adverse effects are anticipated. Special Condition 17 of the SPGP requires that all practicable efforts shall be made to conduct the work authorized by 17-SPGP-01 in a manner so as to avoid any adverse impact on the Federal Emergency Management Agency designated 100-year floodplain. This condition, in addition to the requirement to avoid and minimize impacts will reduce losses of floodplain values. Exclusion from the SPGP of certain aquatic resource areas and organic soils (histosols) will reduce impacts in the 100-year floodplain. Other Federal, State, and local agencies regulate activities within the 100-year floodplain and are responsible for addressing potential flood hazards.

- i. LAND USE: Activities authorized by this SPGP are likely to alter the land use of the lands surrounding the projects. However, these projects will likely support continuation of current developmental and economic goals of the local community. The projects will facilitate ongoing economic growth and support of the local economy. In any event, the primary responsibility for land use decisions is held by State, local, and Tribal governments, the Corps scope of analysis is limited to significant issues of overriding national importance, such as navigation and water quality (see 33 CFR 320.4(j)(2)).

- j. NAVIGATION (*33CFR Part 320.4(o)*): There will be no adverse impacts to navigation. SPGP does not authorize any work in navigable waters subject to Section 10 of the Rivers and Harbors Act (33 U.S.C. 403)
- k. SHORE EROSION AND ACCRETION (*33CFR Part 320.4(f)*): The activities authorized by this SPGP will have minor direct effects on shoreline erosion and accretion processes. Special Condition 25 of the SPGP requires implementation of adequate sedimentation and erosion control measures. In addition, Special Condition 23 requires any equipment working in wetlands must be placed on mats or other measures taken to minimize soil disturbance.
- l. RECREATION (*33CFR Part 320.4(e)*): The construction of SPGP projects will likely have some beneficial effects on recreational uses. Some projects such as parks and ball fields will be constructed for recreational purposes. Recreational impacts should be minimized where appropriate through mitigation such as wetland creation or restoration, maintenance of buffers, and preservation of wetlands.
- m. WATER SUPPLY AND CONSERVATION (*33CFR Part 320.4(m)*): Only minor adverse effects are anticipated.
- n. WATER QUALITY (*33CFR Part 320.4(d)*): While there will be temporal decreases in downstream water quality due to earthwork associated with the construction of the developments, the permittee must obtain a VWP permit from the VDEQ, which serves as certification under Section 401 of the CWA. All conditions of the VWP permit become conditions of the 17-SPGP-01 authorization. In addition, permittees must also comply with Virginia erosion and sediment control law. Minimal adverse effects to water quality are anticipated.
- o. ENERGY NEEDS (*33CFR Part 320.4(n)*): The activities authorized by this SPGP may result in only a minor increase in energy consumption in the area. Any additional energy demand would be associated with providing electrical and water supplies to the proposed developments. This demand is likely to be relatively insignificant on a local or state-wide basis.
- p. SAFETY: The activities authorized by this SPGP will be subject to Federal, State, and local safety laws and regulations. Therefore, this SPGP will not adversely affect the safety of project areas.
- q. FOOD AND FIBER PRODUCTION: Projects authorized by this SPGP will have no more than minor adverse effects on food and fiber production.

- r. **MINERAL NEEDS:** Activities authorized by this SPGP may increase demand for clay, aggregates, and stone, which are typically used to construct impoundment structures. There will also be an increased demand for other building materials, such as corrugated steel, plastic, and concrete pipe, which are made from minerals and mineral ores. However, no long-term adverse effects are anticipated.
- s. **CONSIDERATION OF PROPERTY OWNERSHIP (33CFR Part 320.4(g)):** The SPGP complies with 33 CFR 320.4(g), which states that an inherent aspect of property ownership is a right to reasonable private use.
- t. **NEEDS AND WELFARE OF THE PEOPLE:** Issuance of this SPGP should increase the effectiveness and timeliness of the Corps Regulatory Program with no loss in the protections provided the aquatic resources of the US. Work authorized under the SPGP will occur on private property. No adverse effects are anticipated.
- u. **FEDERAL PROJECTS:** No adverse impacts are anticipated. Furthermore, general condition 13 requires all commercial and institutional development projects that include the construction of wind energy generating structures, solar towers, or overhead powerlines must be coordinated with the DOD Clearinghouse.

8. Other Laws and Policies:

- a. **ENDANGERED SPECIES ACT:** Issuance of the 17-SPGP-01 will not affect threatened or endangered species or their critical habitat. The Corps will ensure that Section 7 consultation requirements are fully satisfied for individual projects prior to authorization as appropriate.
- b. **ESSENTIAL FISH HABITAT.** Adverse impacts to Essential Fish Habitat **will not** result from the proposed project.
- c. **HISTORIC PROPERTIES:** The issuance of the 17-SPGP-01 will have no affect on any sites listed, or eligible for listing, in the National Register of Historic Places, or otherwise of national, state, or local significance. The Corps will ensure that all 106 requirements are met on individual project authorization as appropriate.
- d. **CUMULATIVE & SECONDARY IMPACTS:** See section 6a.(7) & (8) above.
- e. **CORPS WETLAND POLICY.** Based on the public interest review herein, the beneficial effects of the project outweigh the detrimental impacts of the project.
- f. **WATER QUALITY CERTIFICATION:** (NA)/ under Section 401 of the Clean Water Act has/has not yet been issued by /State/Commonwealth.
- g. **COASTAL ZONE MANAGEMENT (CZM) CONSISTENCY/PERMIT:** Issuance of a State permit certifies that the project is consistent with the CZM plan.

- h. OTHER AUTHORIZATIONS. The applicant must comply with all state and federal laws that are applicable to their project. An SPGP authorization does not supersede other state and federal requirements.
- i. SIGNIFICANT ISSUES OF OVERRIDING NATIONAL IMPORTANCE. NA

9. Compensation and other mitigation actions.

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, 0.5:1 for open waters and 1:1 for conversion of forested wetlands to herbaceous emergent wetlands. Mitigation is consistent with Corps-EPA Compensatory Mitigation Regulations dated March 31, 2008 (33 CFR 332/40 CFR 230)

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. Mitigation is consistent with Corps-EPA Compensatory Mitigation Regulations dated March 31, 2008 (33 CFR 332/40 CFR 230)

10. General evaluation criteria under the public interest review. We considered the following within this document:

- a. The projects authorized by an SPGP are in high demand and are necessary to support local economy, housing demands and institutional needs such as fire and rescue and schools. In addition, supporting infrastructure such as roadways, utilities and storm water management are need also needed. The benefits of these projects include land use and economic return on the property, economic growth and sustainability as well as safety, capacity and congestion issues.
- b. Detrimental impacts are expected to be minimal although they would be permanent in the construction area. The beneficial effects associated with utilization of the property would be permanent.

11. Determinations.

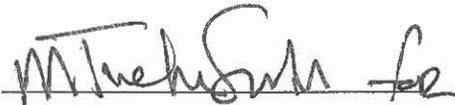
- a. PUBLIC HEARING: Public hearing **was not** held for this SPGP reissuance. The Corps found that sufficient information **was** available to evaluate the proposed project and there **was no** need for a public hearing.

- b. **CLEAN AIR ACT:** The proposed SPGP has been analyzed for conformity applicability pursuant to regulations implementing Section 176(c) of the Clean Air Act. It has been determined that the activities proposed under this SPGP **will not** exceed *de minimis* levels of direct emissions of a criteria pollutant or its precursors and are exempted by 40 CFR Part 93.153. Any later indirect emissions are generally not within the Corps' continuing program responsibility and generally cannot be practicably controlled by the Corps. For these reasons a conformity determination is not required for this Regional Permit.
- c. **RELEVANT PRESIDENTIAL EXECUTIVE ORDERS:**
- (1) **EO 13175, Consultation with Indian Tribes, Alaska Natives, and Native Hawaiians:** This action has no substantial direct effect on Indian tribes.
 - (2) **EO 11988, Floodplain Management:** Alternatives, minimization, and compensation of the effects were considered above. Work performed under this SPGP should have no appreciable effects to floodplain functions or values.
 - (3) **EO 12898, Environmental Justice.** In accordance with Title III of the Civil Right Act of 1964 and Executive Order 12898, it has been determined that the project **would not** directly or through contractual or other arrangements, use criteria, methods, or practices that discriminate on the basis of race, color, or national origin **and/or would not** have a disproportionate effect on minority or low-income communities. The categories of activities authorized by this SPGP generally do not, by their nature, cause the kinds of adverse impacts addressed by this Executive Order.
 - (4) **EO 13112, Invasive Species.** Any potential invasive species issues will be addressed with the review of the individual project request.
 - (5) **EO 13212 and 13302, Energy Supply and Availability.** The project **may** increase the production, transmission, or conservation of energy, or strengthen pipeline safety. However, the impacts on energy supply and availability have been determined to be minimal. Some projects covered under the SPGP authorization may actually assist in creating and supporting more energy.
- d. **FINDING OF NO SIGNIFICANT IMPACT (FONSI).** Having reviewed the information provided by the applicant and all interested parties and an assessment of the environmental impacts, I find that this permit action **will not** have a significant impact on the quality of the human environment. Therefore, an Environmental Impact Statement **will not** be required.
- e. **STATEMENT OF FINDINGS:**
- (1) **Compliance with 404(b)(1) guidelines.** Having completed the evaluation in

paragraph 5, I have determined that the proposed discharge **complies** with the 404(b)(1) guidelines.

(2) **Public Interest Determination:** I find that issuance of a Department of the Army permit is **not** contrary to the public interest.

PREPARED BY:

 Date: 26 JUNE 2017

Anna R. Lawston
Project Manager

REVIEWED BY:

 Date 29 June 2017

For William T. Walker
Chief, Regulatory Branch

APPROVED BY:

 Date 29 June 2017

Jason E. Kelly, PE.
Colonel, Corps of Engineers
Commanding