

**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