APPENDIX D

Federal Consistency Determination, Clean Air Act General Conformity Rule Record of Non-Applicability, and Clean Water Act Section 404(b)(1)

Coastal Zone Management Act (CZMA) Federal Consistency Determination for the Third Port Improvements Project
Joint Base Langley-Eustis – Fort Eustis (JBLE-Eustis)
in Newport News, Virginia

On behalf of Joint Base Langley-Eustis – Fort Eustis (JBLE-Eustis), this document provides the Commonwealth of Virginia with the U.S. Army Corps of Engineers (USACE), Norfolk District's Federal Consistency Determination (FCD) under CZMA section 307(c)(1) and 15 CFR Part 930, sub-part C, for the Third Port Improvements Project at the JBLE at Fort Eustis in Newport News, Virginia. The information in this FCD is provided pursuant to 15 CFR Section 930.39. This FCD is being submitted for coordination and concurrence from the Virginia Department of Environmental Quality (DEQ).

Proposed Federal Agency Activity

The purpose of the Proposed Action is to prepare JBLE-Eustis for up to 10 new vessels that will be assigned to the Third Port in the near future. The new class of vessels is longer than the vessels of the current fleet (117 feet) and requires improvements be made to berthing areas and access to the turning basin. Additionally, other improvements will be executed to increase the usable waterway for the vessel fleet, including the new vessels, and to aid in training for cargo logistics and vessel operations. The new vessels will replace older vessels in the fleet; there will be no net increase in the number of vessels in the fleet. Sediment accretion in mooring and berthing areas has restricted their use by the existing fleet, therefore requiring maintenance and improvements to facilitate operations in areas that are outside of the channel framework (Figure 1). Proposed work would be constructed from the water. The project involves multiple phases that may be constructed either consecutively or concurrently across multiple funding years.

Background

The Third Port facility is located at Fort Eustis, a joint base aligned with the Langley Air Force Base as of October 1, 2010. Both Langley Air Force Base and Fort Eustis are located in the Hampton Roads area of southeastern Virginia. Fort Eustis is located adjacent to the City of Newport News and the James River (Figure 1). The Third Port facility, located along Skiffes Creek (Figure 2), is a deepwater port used to train personnel in cargo logistics and vessel operations. The 7th Transportation Brigade (Composite), an assigned tenant element of the U.S. Army Transportation Center Fort Eustis (USATCFE), maintains a harbor complex at the Third Port.

The existing Third Port facility provides a safe harbor for the 7th Group's watercraft fleet and serves as a deployment platform for Army units. It is a strategic port supporting military watercraft and other government agencies in cargo operations, logistics management, training, and vessel operations. It consists of a pier for movement control and berthing of approximately 50 military watercraft consisting of tugboats, Logistics Support Vessels, Landing Craft Mechanized and fuel

Figure 1. Skiffes Creek Channel located adjacent to the Third Port facility with the entrance channel located in the James River (western portion of the channel).

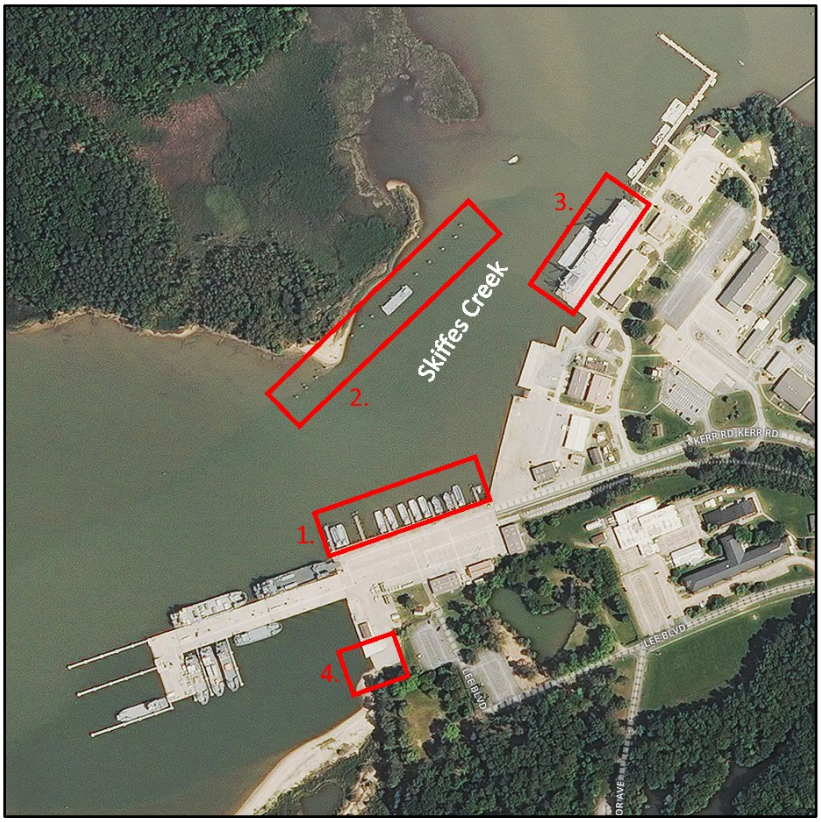

Figure 2. Project areas within Skiffes Creek: 1) finger piers; 2) mooring field; 3) landship; and 4) General's ramp.

barges. Commercial vessels also use Skiffes Creek to access two industrial complexes located upstream of the Third Port.

Scope of Improvements

The improvements to the Third Port facility include changes to the finger piers to accommodate the new vessels and existing fleet, realignment of the mooring field with the addition of a sill to increase the usable waterway and reduce shoreline accretion channelward of the mooring piles, improvements to the landship to aid in training exercises, and the addition of a subaqueous bulkhead at the General's ramp to reduce shoreline accretion in the channel framework. An itemized list of the general improvement elements and detailed improvement descriptions are provided below. Figure 2 shows the general locations of the project areas.

1. Finger Piers Improvements:
    a. Demolition of seven (7) existing finger piers and associated timber mooring piles;
    b. Construction of one (1) new concrete pier (132 feet long) and five (5) finger piers (122 feet long) and associated concrete mooring piles;
    c. Construction of a concrete wave screen (126 feet long) along the western side of the concrete pier;
    d. Construction of a stern ramp (542 feet long) along the bulkhead;
    e. New work dredging to a maximum dredging depth of -18 feet MLLW removing up to 14,000 cy of new work sediment in the improved finger pier berthing area (approximately 1.9 acres); and
    f. Placement of the new work dredged material at the Fort Eustis Dredged Material Management Area (FEDMMA).
2. Mooring Field Improvements:
    a. Demolition of existing timber moorings;
    b. Realignment and construction of up to 22 new steel mooring piles within the 950-foot-long variable width mooring field;
    c. Construction of a subaqueous sill (sheet pile or riprap, to be determined) within the existing mooring field as a nearshore stabilization feature;
    d. Maintenance dredging and new work dredging to a maximum dredging depth of -14 feet MLLW removing an estimated 1,000 cy of maintenance dredged material and 10,000 cy of new work dredged material from the access area channelward of the realigned mooring field; and
    e. Placement of maintenance and new work dredged material from the mooring field at the FEDMMA.
3. Landship Improvements:
    a. Construction of eight steel monopiles with fender assemblies and 14 steel piles to support gangways.
4. General's Ramp Improvements:
    a. Construction of a subaqueous steel sheet sill (200 feet long) with one (1) steel monopile and associated fendering.

Finger Piers

Currently, seven finger piers (Piers 8 – 14) provide berthing for the fleet of support vessels at the Third Port; however, the condition and size of the existing piers is inadequate to accommodate the new class of vessels that will be berthed at the Third Port. The existing piers are constructed of timber decking on timber piles, with timber mooring dolphins located along the piers for berthing. Because the timber mooring dolphins lack a fendering system with rubber energy absorbers, both the piers and vessels have sustained damage. The need for the Proposed Action is to improve the Finger Piers to accommodate the new vessels. This is proposed to be accomplished by removing the timber piers and replacing them with an updated design configuration and materials to meet current and future mission requirements (Figure 3).

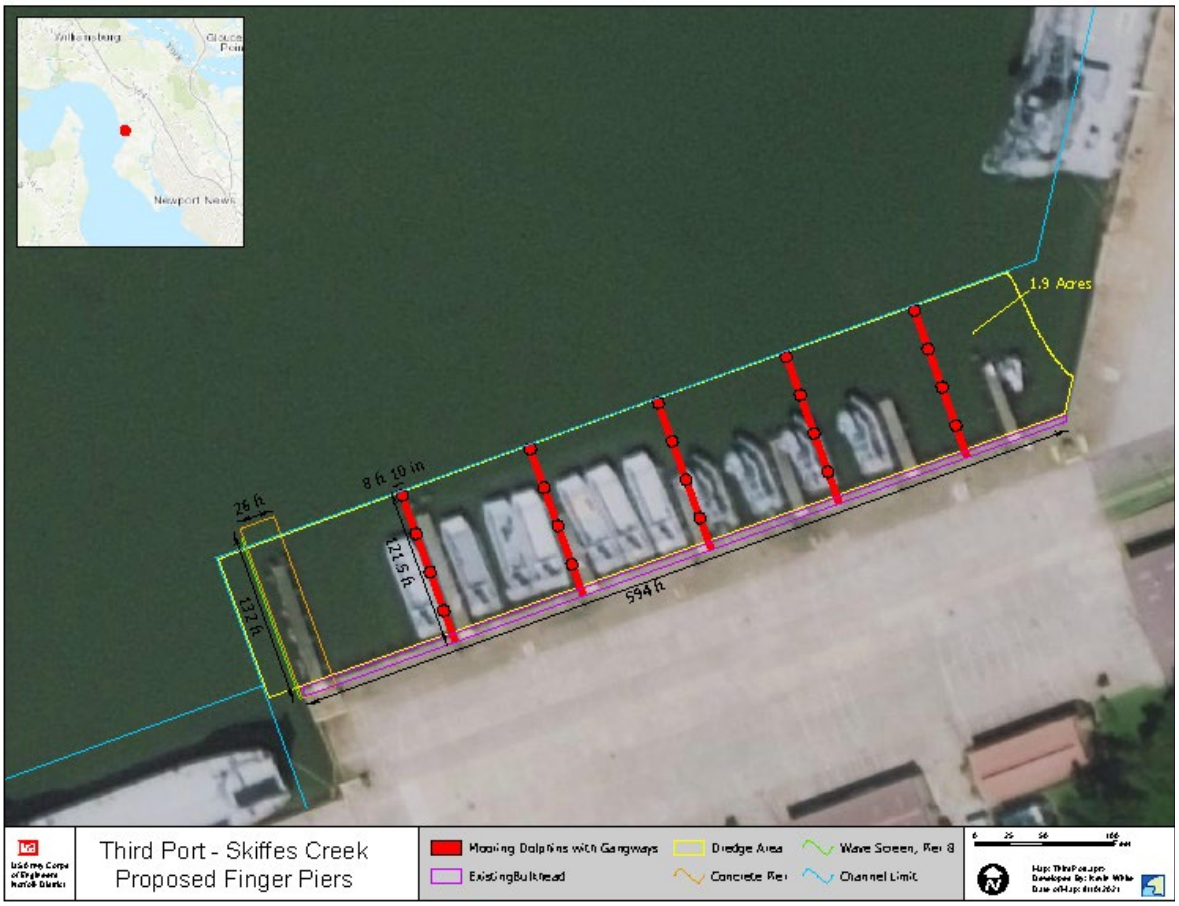

Figure 3. Proposed finger pier improvements, including structural improvements and new work dredging in the berthing area.

The following summarizes the proposed finger piers and associated mooring piles:

- Pier 8 is intended to be replaced with a steel pile-supported concrete pier and will be extended from 93 feet to 132 feet in length.
    - The concrete pier would be supported by 41 concrete piles (20-inch square), which would be installed using impact hammering.

- Piers 9 – 14 would be replaced with five concrete mooring dolphin/gangway structures; one existing pier would be eliminated.
    - Pier 9 would be extended from 93 feet to 122 feet in length.
    - The remaining four piers would be extended from 53 feet to 122 feet in length.
    - For the five piers replacing Piers 9 – 14, 20 concrete piles (20-inch square) would be installed using impact hammering for each pier, totaling 100 piles.

The new vessels are stern-loading and require stable support for loading ramps. A stern ramp support platform is proposed to be constructed along the length of the bulkhead east of Pier 8 and would be:

- Approximately 542 feet in length;
- Supported by 55 concrete piles (20-inch square).

To reduce wave action in the berthing area that may damage berthed ships, a wave screen is proposed to be installed along the western side of Pier 8, as follows:

- Construction of a wave screen approximately 126 feet in length from concrete sheet piles (30 inch x 12 inch). Sheet piles would be installed using impact hammering.
- Hydrodynamic modeling will determine the appropriate level of porosity of the wave screen.

Sediment accretion in the finger pier berthing area has reduced the operational depths of the area. The following summarizes the proposed new work dredging in the finger pier berthing area:

- New work dredging will deepen approximately 1.9 acres of unvegetated subaqueous bottom between the toe of the channel and the bulkhead that supports the finger piers from the existing mudline (varies from approximately -2 feet to -19 feet MLLW) to -17 feet MLLW (maximum allowable dredging depth of -18 feet MLLW including allowable overdepth).
- Approximately 14,000 cubic yards of new work dredged material would be removed from the berthing area.
- Approximately 11,000 cubic yards of material will be removed during each future maintenance cycle.

Mooring Field

The mooring field is located north of and across Skiffes Creek from the finger piers. The field is approximately 850 feet long and varying width and extends north from the James River into Skiffes Creek. Existing timber mooring dolphins, spaced approximately 50 feet apart, provide mooring for the modular causeway system (MCS). These dolphins lack appropriate fendering and have become damaged. Additionally, there is substantial shoreline accretion in the area which has migrated into the mooring field and resulted in the relocation and operation of the MCS further into the navigable waterway.

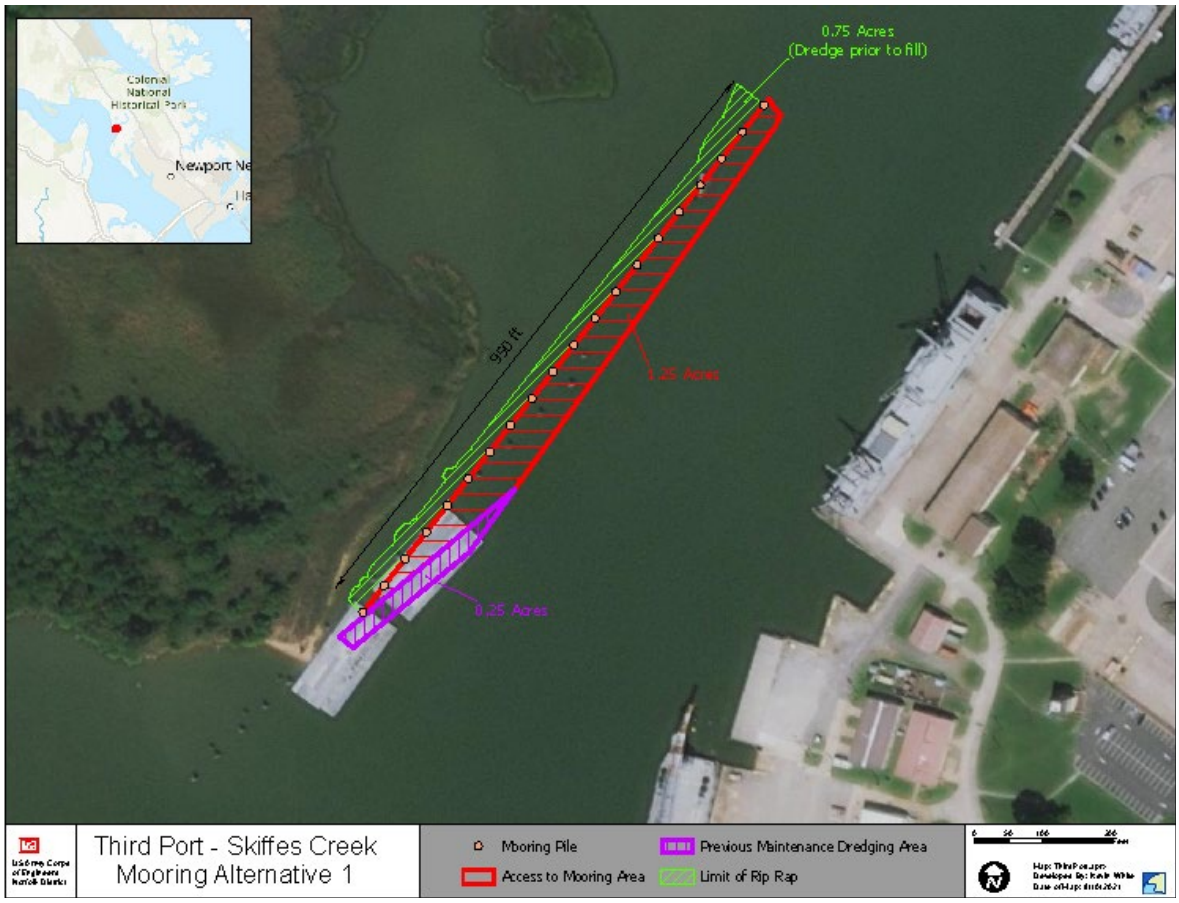

Figure 4. Proposed realignment of the mooring field, including proposed new work and maintenance dredging in the mooring field access area and riprap sill (Alternative 1) shoreward of the realigned moorings.

The need for the Proposed Action is to realign the moorings, maintenance dredge within a portion of the mooring field access area, deepen and widen a portion of the access area with new work dredging, and stabilize the near-shore area of the mooring field to restore the navigable depths of the mooring field without impacting existing wetlands and to facilitate the use of the mooring dolphins. The proposed alignment will improve operations within the navigable waterway. The following summarizes the proposed improvements to the mooring field:

- Twenty (20) of existing timber moorings (seven piles each) will be removed and replaced with approximately 22 steel monopiles (36-inch diameter) at approximately 50-foot intervals.
- The new mooring field would be approximately 950 linear feet long and would be realigned and located further upstream in Skiffes Creek than the existing mooring field.
- The installation of either a subaqueous riprap or subaqueous bulkhead behind or between the monopiles would mitigate the potential for shoreline accretion in the area channelward of the moorings.
    - The proposed riprap sill alternative (Figure 4) would harden approximately 0.75 acres of unvegetated subaqueous bottom and would require dredging in the

footprint (approximately 11,500 cubic yards) prior to placement of mattresses and stone fill.

- The proposed bulkhead sill alternative (Figure 5) would harden approximately 0.05 acres of unvegetated subaqueous bottom and would be installed using impact hammering.

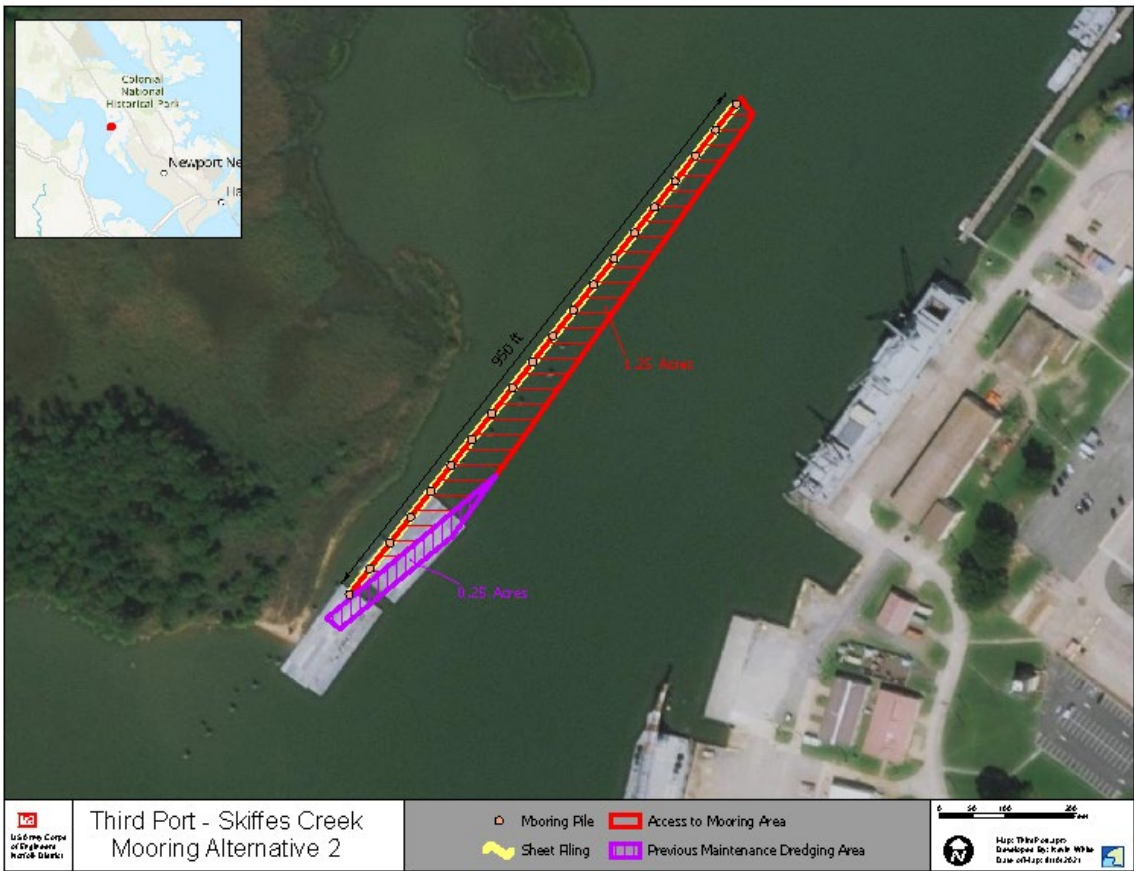

Figure 5. Proposed bulkhead sill (Alternative 2) at the mooring field. Not that the bulkhead width is not to scale.

Maintenance and new work dredging to re-establish operational depths for training and mission requirements would deepen the access area (approximately 1.5 acres of unvegetated subaqueous bottom) between the toe of the channel and the mooring field from the existing mudline (varies from approximately -2 feet to -11 feet MLLW) to a depth of -11 feet MLLW (maximum allowable depth of -14 feet MLLW). Dredging within the mooring field access area includes:

- Approximately 1,000 cubic yards of maintenance dredged material removed from an area of approximately 0.25 acre.
    - Area was previously maintained to -15 feet MLLW.
- Approximately 10,000 cubic yards of new work dredged material removed from an area of approximately 1.25 acres.

- Approximately 11,500 cubic yards of new work dredged material removed once from an area of approximately 0.75 acre in the footprint of the riprap sill. This material would not be removed under the bulkhead sill alternative.
- Future maintenance events will remove approximately 8,000 cubic yards of material during each maintenance cycle.

Landship

The landship is a stationary mock cargo vessel hull used for training exercises. The mock vessel sits on a concrete deck supported by concrete piles. Previously, the landship had mooring dolphins and catwalks along the channel side for training and access. The need for the Proposed Action is to improve the landship to aid in training. Monopile dolphins with fendering and a steel pile-supported gangway will be installed along the landship as follows (Figure 6):

- To support the gangways, 14 steel pipe piles (24-inch diameter) are proposed to be installed.
- Eight (8) steel monopiles (36-inch diameter) are proposed to be installed to support the fender assembly.

Figure 6. Proposed improvements to the landship.

General's Ramp

The general's ramp is located at the southwest corner of the Third Port facility. The general's ramp is a gently sloped concrete ramp used to load and unload wheeled cargo. The area of the ramp adjacent to Goose Island has experienced accretion of sandy material, which has hindered vessel movement in the area. The need for the Proposed Action is to increase the depth of the general's ramp area and to decrease accretion of material. The proposed improvements will prevent the sloughing of material or slope slip failure into the basin while also protecting the existing wetlands. The following improvements are proposed at the general's ramp (Figure 7):

- A subaqueous steel sheet bulkhead (approximately 200 linear feet) is proposed to be installed perpendicular to the shore at the southeast edge of the general's ramp. Steel sheet pile would be installed using impact hammering.
    - Approximately 0.01 acres of unvegetated subaqueous bottom would be hardened due to the proposed bulkhead.
- A steel monopile (36-inch diameter) and donut fender assembly would protect the channelward end of the bulkhead. The monopile would be installed using impact hammering.

Debris Removal

Debris created from the removal of existing structures, including timber piles, decking, and other debris, would be removed from the work area via barge and placed in containers in the designated location on land. The debris would then be trucked to a nearby landfill or other appropriate disposal facility.

Dredging and Placement Methods

New work and current and future maintenance dredging would be conducted by mechanical dredge, hydraulic cutterhead dredge, or a combination of both plant types consistent with the most economical and environmentally acceptable alternative.

Typical methods for mechanical dredges are as follows:

- Dredged material would be removed from the channel and placed onto a scow or barge.
- Dredged material may be pumped out of the scow and placed via pipeline into the Fort Eustis Dredged Material Management Area (FEDMMA).

Typical methods for hydraulic cutterhead dredges are as follows:

- Dredged material would be hydraulically pumped through a pipeline (typically 16" diameter) varying in length from approximately 4,000 feet to 6,000 feet, depending on the distance to the FEDMMA.
- The pipeline would be submerged and floating pipeline necessary to accommodate navigation or run over water, supported by flotation devices, to the shoreline, then cross Harrison Road and into FEDMMA.

Figure 7. Proposed improvements to the general's ramp area.

If dredged material placement capacity is not available at FEDMMA, the scow or barge may be transported for placement of dredged material at the Norfolk Ocean Disposal Site (NODS) under the Marine Protection, Research, and Sanctuaries Act, Section 103 if the dredged material is determined to be suitable through appropriate testing.

Enforceable Policies

The Virginia Coastal Resources Management Program (VCP) contains the below enforceable policies (A-L):

A. Tidal and Non-Tidal Wetlands

It is the policy of the Commonwealth to preserve the tidal wetlands, to prevent their despoliation and destruction, and to accommodate necessary economic development in a manner consistent with wetlands preservation. Furthermore, it is the Commonwealth's policy that non-tidal surface waters, including wetlands and streams, shall be protected. Impacts to wetlands and streams shall be avoided or minimized to the maximum extent practicable. Tidal wetlands are administered by the Virginia Marine Resources Commission (VMRC) under the authority of the Tidal Wetlands Act of 1972 (Virginia Code § 28.2-1301 and -1308; 4 VAC § 20-390-20). Tidal and nontidal wetlands are administered by the Department of Environmental Quality (DEQ) through the Virginia Water Protection Permit program and includes Water Quality Certification pursuant to Section 401 of the Clean Water Act (Virginia Code §§ 32.1-44.15:20 and §§ 62.1-44.15:21; and 9 VAC §§ 25-210-10, -210-45, 210-80, 260-10, -380, and -390).

Estuarine and marine emergent wetlands can be found adjacent to but not within the project footprint (Figure 8). The closest wetlands identified are estuarine wetlands adjacent to mooring field at a distance of approximately 45 feet from the proposed realignment. Note that the sill proposed for construction immediately behind the mooring field to stabilize the near-shore area and mitigate shoreline accretion channelward of the moorings may be located closer to or immediately adjacent to existing wetlands, depending on which alternative is chosen. All efforts will be made to avoid and minimize impacts to vegetated wetlands.

Unvegetated wetlands occur within the project area. Impacts to unvegetated wetlands will be avoided and minimized to the maximum extent practicable.

B. Subaqueous Lands

All decisions affecting subaqueous lands shall be guided by the Commonwealth's General Policy to conserve, develop, and utilize its natural resources, its public lands, and its historical sites and buildings and to protect its atmosphere, lands, and waters from pollution, impairment, or destruction, for the benefit, enjoyment, and general welfare of the people of the Commonwealth. The General Assembly has authorized VMRC to grant or deny any use of state-owned bottomlands, including dredging, aquaculture, the taking and use of material from the bottomland, and the placement of wharves, bulkheads, and fill. (Virginia Code §§ 28.2-1200, -1203, -1204 and -1205).

Impacts to water quality will be minor and temporary, consisting of localized increases in turbidity

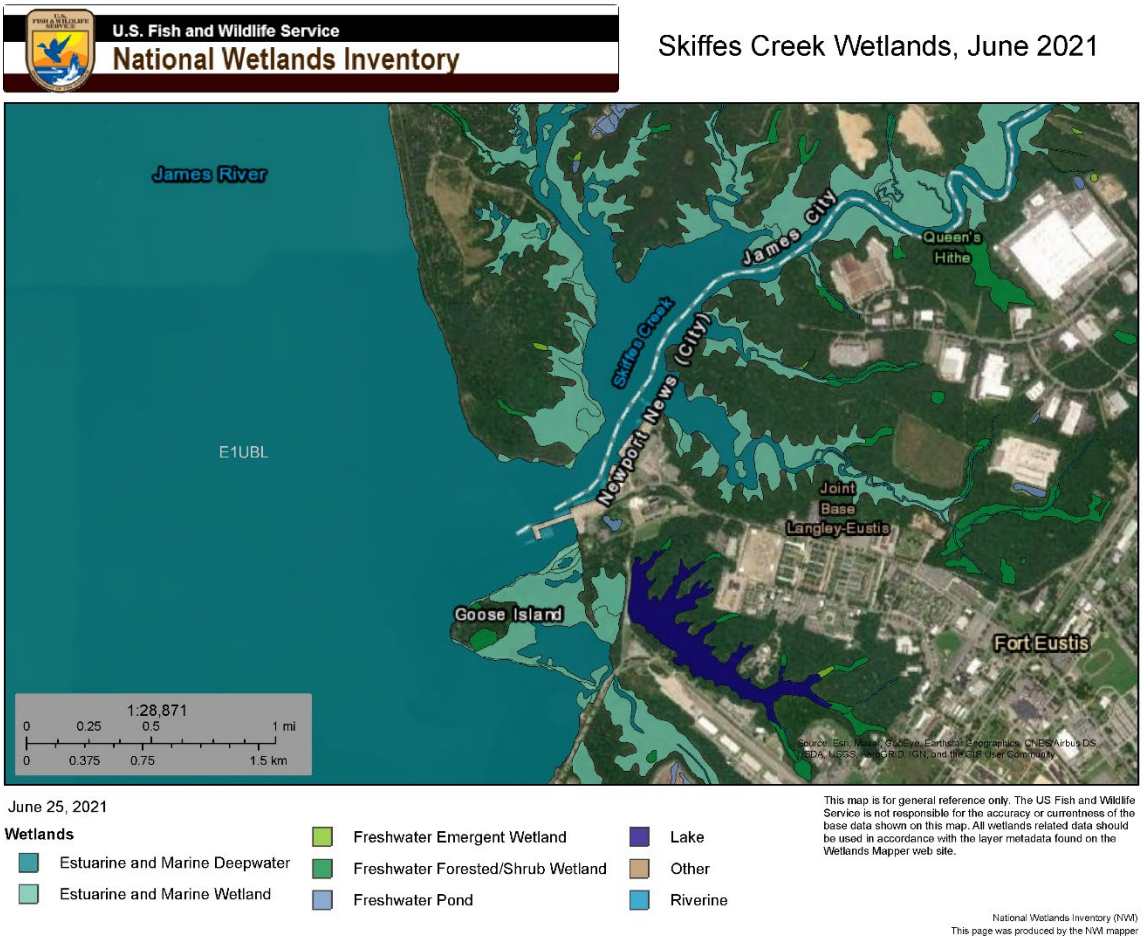

Figure 8. National Wetlands Inventory (NWI) map of wetlands in or adjacent to the project site.

due to dredging, sill construction, and pile driving. Impacts to benthic habitat, including benthic prey species, due to dredging will be minor and temporary as benthic habitat areas and benthic organisms are expected to recover fairly quickly. There is no submerged aquatic vegetation (SAV) located in or near the project area (Figure 9); therefore, no impacts are anticipated to SAV. Sediment accretion in the mooring and berthing areas has restricted their use by the fleet of vessels at JBLE-Eustis. Maintenance and new work dredging in the mooring and berthing areas located outside of the current channel framework will increase the usable waterway for the existing fleet and new vessels in support of the mission of JBLE-Eustis. Dredged material may be placed at the FEDMMA. Dredged material may also be placed at the NODS, located within the territorial sea beyond state waters, as an alternate placement site if capacity at FEDMMA is not available.

C. Dunes and Beaches

Dune and beach protection is carried out pursuant to the Coastal Primary Sand Dune Protection Act and is intended to prevent despoliation and destruction of coastal primary sand dunes and beaches. This program is administered by the Marine Resources Commission (Virginia Code §§ 28.2-1401 and -1408).

There are no sand dunes or beaches located in the project area; therefore, no impacts are anticipated.

Figure 9. Submerged aquatic vegetation (SAV) in the vicinity of the project area per the Virginia Institute of Marine Science (VIMS) annual SAV survey.

D. Chesapeake Bay Preservation Areas

It is the policy of the Commonwealth to protect and improve the water quality of the Chesapeake Bay, its tributaries, and other state waters by minimizing the effect of human activity upon these waters. To that end, the Commonwealth will ensure that land use and development performance criteria and standards are implemented in Chesapeake Bay Preservation Areas, which if improperly used or developed may result in substantial damage to the water quality of the Chesapeake Bay and its tributaries. This program is administered by DEQ and 84 Bay Act localities through the Chesapeake Bay Preservation Act (*Virginia Code §§ 28.2-104.1, 62.1-44.15:24, -44.15:51, -44.15:67, -44.15:68, -44.15:69, -44.15:73, -44.15:74, and -44.15:78*) and Chesapeake Bay Preservation Area Designation and Management Regulations (*9 VAC §§ 25-830-30, -40, -80, -90, -100, -120, -130, -140, and -150*).

All proposed activities are in-water or on federal property. The proposed project involves no land development. Therefore, no impacts to Chesapeake Bay Preservation Areas are anticipated.

E. Marine Fisheries

It is the policy of the Commonwealth to conserve and promote the seafood and marine resources of the Commonwealth, including fish, shellfish and marine organisms, and manage the fisheries to maximize food production and recreational opportunities within the Commonwealth's territorial waters. This program is administered by the Marine Resources Commission (VMRC) (Virginia Code §28.2-101, -201, -203, -203.1, -255, -551, -600, -601, -603, -618, and -1103 and the Constitution of Virginia, Article XI, Section 3).

While there is limited recreational use of Skiffes Creek, the proposed activity will temporarily affect the use of the Skiffes Creek for recreational fishing. No commercial fishing occurs in Skiffes

Creek. There will be temporary increases in water column turbidity associated with dredging and material placement at NODS. There will also be temporary increases in noise and water column turbidity due to pile driving. Potential impacts to fisheries management will include temporary disturbance to feeding and movement patterns for species that may be within the project area. A portion of the proposed project will be hardened due to proposed sill construction at the mooring field.

Skiffes Creek is located within a shellfish condemnation zone (Figure 10). Therefore, no private oyster leases exist in the proposed project area and coordination with the private oyster holders adjacent to the project area is not required. Additionally, there are no public shellfish grounds located within the project area. Therefore, no additional special coordination is required for public shellfish areas.

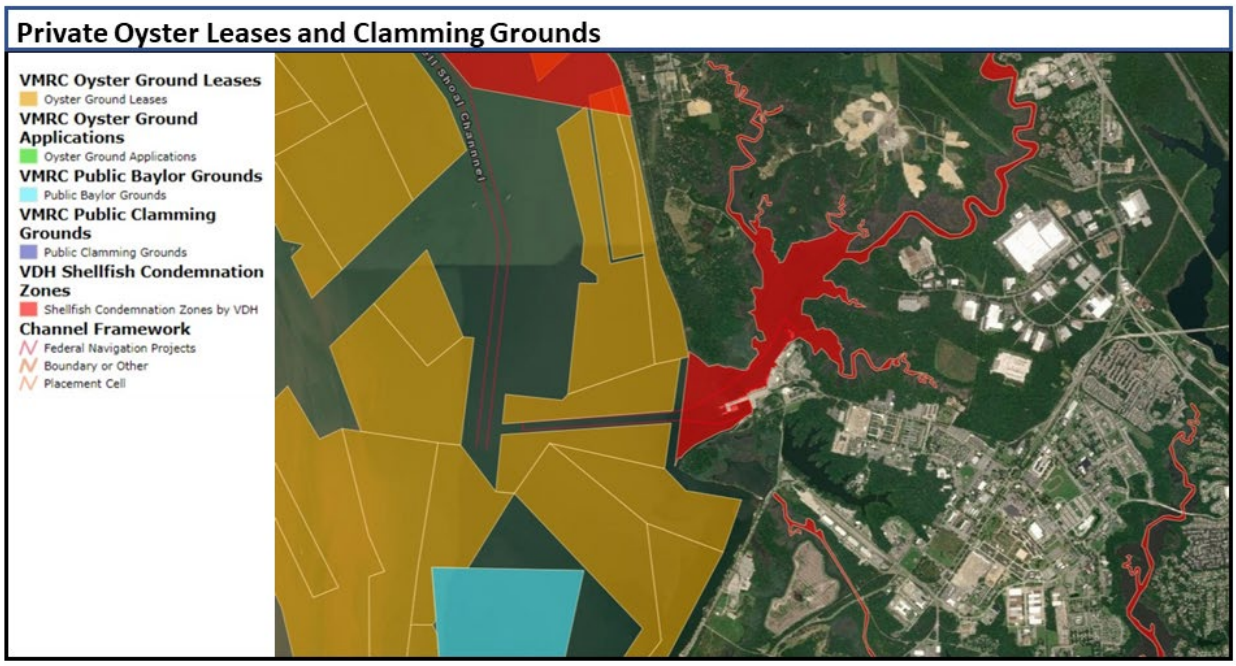

Figure 10. Private Oyster Leases and Clamming Grounds in the vicinity of the project area.

Dredged material placement operations at the Fort Eustis Dredged Material Management Area (FEDMMA) typically have occurred via hydraulic pipeline to the upland confined placement facility. The pipeline will consist of both floating and submerged pipeline to the shoreline. There are private oyster leases adjacent to the pipeline area that are avoided by the typical pipeline route.

The Magnuson-Stevens Fishery Conservation and Management Act (16 United States Code 1801 et seq.) established a management system for marine fisheries resources in the United States. Congress charged National Oceanic and Atmospheric Administration (NOAA) Fisheries and fishery management councils, along with other Federal and State/Commonwealth agencies and the fishing community, to identify habitats essential to managed species, which include marine, estuarine, and anadromous finfish, mollusks, and crustaceans. These habitats, referred to as Essential Fish Habitat (EFH), include "those waters and substrate necessary to fish for spawning,

breeding, feeding, or growth to maturity." An Essential Fish Habitat Assessment was submitted to NOAA Fisheries on July 19, 2021 for coordination.

F. Wildlife and Inland Fisheries

Activities affecting wildlife and inland fisheries shall not negatively impact the Commonwealth's efforts in conserving, protecting, replenishing, propagating and increasing of the supply of game birds, game animals, fish and other wildlife of the Commonwealth, including fish or wildlife listed as threatened or endangered by the Department of Wildlife Resources Board, the use of drugs on vertebrate wildlife, and nonindigenous aquatic nuisance, predatory, or undesirable species. The Department of Wildlife Resources (DWR) administers the enforceable policy affecting: Wildlife and Fish (Virginia Code §§ 29.1-501, -512, -521, -530.2, -531, -533, -542, -543.1, -545, -548, -549, -550, -552, -554, -556, -569, and -574; 4 VAC §§ 15-30-10, -20, -50, and 15-290-60); State-listed Threatened and Endangered Species (Virginia Code §§ 29.1-501, -564, -566, -567, and -568; 4 VAC §§ 15-20-130 and -140); The Use of Drugs on Vertebrate Wildlife (Virginia Code § 29.1-501 and -508.1); and Nonindigenous Aquatic Nuisance, Predatory, or Undesirable Species (Virginia Code §§ 29.1-501, -542, -543.1, -545, -569, -571, -574, and -575; 4 VAC §§ 15-20-210, -30-20, -30-40, and 15-290-60).

State-listed species that are reported to occur or may potentially occur within the vicinity of the proposed project include the Atlantic sturgeon (*Acipenser oxyrhynchus*), shortnose sturgeon (*Acipenser brevirostrum*), northern long-eared bat (*Myotis septentrionalis*), Indiana bat (*Myotis sodalis*), little brown bat (*Myotis lucifigus*), tri-colored bat (*Perimyotis sublavus*), Rafinesque's eastern big-eared bat (*Coyrnohinus rafinesquii macrotis*), red knot (*Calidris canutus rufa*), eastern black rail (*Laterallus jamaicensis jamaicensis*), peregrine falcon (*Falco peregrinus*), loggerhead shrike (*Lanius ludovicianus*), migrant loggerhead shrike (*Lanius ludovicianus migrans*), Henslow's sparrow (*Ammodramus henslowii*), canebrake rattlesnake (*Crotalus horridus*), eastern tiger salamander (*Ambystoma tigrinum*), and Mabee's salamander (*Ambystoma mabeei*).

The Atlantic sturgeon (*Acipenser oxyrhynchus*) has been observed in the James River near Skiffes Creek. The Atlantic sturgeon is a federally listed endangered species and is also state listed as endangered in Virginia. In April and May of any given year, Atlantic sturgeon make spawning runs from coastal waters through the Chesapeake Bay to reach freshwater tributaries. Atlantic sturgeon have been observed spawning in the James and York Rivers. Spawning occurs between the salt front and the fall line in narrow reaches of the James River. There has been no documented spawning in Skiffes Creek or the action area; there is no suitable spawning habitat in the action area. Atlantic sturgeon are bottom dwellers, feeding on benthic mollusks, insects, and crustaceans. Juvenile Atlantic sturgeon can spend several years in brackish water before moving into coastal habitats. Atlantic sturgeon critical habitat is designated in the James River. Portions of the proposed action occur in designated Atlantic sturgeon critical habitat located at the mouth of Skiffes Creek where it meets the James River.

The shortnose sturgeon (*Acipenser brevirostrum*) may be present in the action area. The shortnose sturgeon is federally- and state-listed as endangered. Only two shortnose sturgeon have been captured in the James River, of which Skiffes Creek is a tributary. Both captures occurred at river kilometer 48 (river mile 30) of the James River, approximately 29 river kilometers (12 river miles)

upriver of the action area. In Chesapeake Bay, spawning historically occurred in the Susquehanna and Potomac Rivers and may occur currently in the James River.

An effects determination of "not likely to adversely affect" (NLAA) for Atlantic sturgeon, shortnose sturgeon, and Atlantic sturgeon critical habitat was submitted to the NMFS Protected Resources Division (PRD) under the USACE NLAA Program on July 19, 2021. NMFS concurred with the determination of NLAA listed species or critical habitat on August 10, 2021.

The northern long-eared bat (*Myotis septentrionalis*) is known to inhabit areas of Fort Eustis. No known roosts or hibernaculum exist in Fort Eustis. An effects determination of "may affect" for the northern long-eared bat was submitted to FWS through the Information for Planning and Consultation (IPaC) system on July 14, 2021 as part of the responsibility of the action agency under the Endangered Species Act (ESA) Section 7(a)(2). The USACE determined that the action is consistent with the activities analyzed in the FWS' Programmatic Biological Opinion, dated 5 January 2016, which addresses activities exempted from "take" prohibitions applicable to the northern long-eared bat under the ESA, as amended. A determination of "no effect" was made for northern long-eared bat critical habitat. Indiana bats (*Myotis sodalis*) have also been identified at Fort Eustis via acoustic means; however, no individuals have been captured in surveys.

As determinations of "may effect" and "no effect" were made for the northern long-eared bat and critical habitat, respectively, a self-certification package was submitted to the FWS Virginia Field Office on July 19, 2021.

Peregrine falcons have been observed nesting in a ship that is part of the James River Reserve Fleet. State special concern birds, northern harrier (*Circus cyaneus*) and least tern (*Sterna antillarum*), have also been documented in the vicinity of Fort Eustis during the spring breeding season.

Land-based species, including state-listed bats, birds, reptiles, and amphibians, are unlikely to be impacted by the project. All construction activities would take place from the water and along developed areas of the port. The pipeline route for placing dredged material at the Fort Eustis Dredged Material Management Area (FEDMMA) follows a previously used, maintained route that may require minimal tree removal for maintenance and access (all trees ≤ 3 inches dbh). Impacts due to noise are short-term and temporary and will cease when construction is completed.

G. Plant Pest and Noxious Weeds

The enforceable policy applies to activities affecting quarantines established for pests by the Board of Agriculture and Consumer Services (BACS) or the Commissioner of Agriculture and Consumer Services, the importation of regulated articles proclaimed a menace to public health by BACS, and plant pests and noxious weeds. The Virginia Department of Agriculture and Consumer Services (VDACS) is responsible for the administration of the policy addressing: Quarantines (Virginia Code §§ 3.2-700 and -703; 2 VAC §§ 5-315-10 to -130, - 318-10 to -140, -330-10 to -90, and -440-10 to -70, -100, and -110); Importation of Regulated Articles (Virginia Code § 3.2-704); and Plant Pests and Noxious Weeds (Virginia Code §§ 3.2-712 and -804; 2 VAC §§ 5- 315-10 to -130, -317-10 to -100, -318-10 to -140, -330-10 to -90, and -440-10 to - 70, -100, and -110).

The proposed improvements are primarily in-water elements that will involve marine-based construction and upland placement of dredged material. Therefore, no introductions or importation of plant pests or noxious weeds is anticipated.

H. Commonwealth Lands

The enforceable policy applies to activities on state-owned lands managed by DWR and the Department of Conservation and Recreation (DCR) to include the free passage of anadromous and other migratory fish, the removal of coastal resources from Back Bay, encroachments into game refuges, tampering with DWR owned or operated aquatic and terrestrial habitats, and fire use, hunting and fishing, feeding wildlife, boating and vehicle use in state parks. DWR authority for the administration of the policy includes: Dams and Fish Passage (Virginia Code § 29.1-532); Back Bay (Virginia Code § 29.1-103(10); 4 VAC § 15-20-90); Damage to Boundary Enclosures and Entry to Refuges (Virginia Code § 29.1- 554); and Protection of Aquatic and Terrestrial Habitats Used or Owned by DGIF (Virginia Code § 29.1-554; 4 VAC §§ 15-20-150 and -320-100). DCR authority for the administration of the policy includes: Fire Prevention (4 VAC §§ 5-30-70 and -220); Hunting and Fishing in State Parks (4 VAC §§ 5-30-240 to -250).
Feeding Wildlife in State Parks Prohibited (4 VAC § 5-30-422); and Boating and Vehicles in State Parks (4 VAC §§ 5-30-190, -290, and -330).

All proposed activities are in-water in Skiffes Creek or on federal property. Therefore, no impacts to Commonwealth Lands managed by DWR or DCR are anticipated.

I. Point Source Air Pollution

The Clean Air Act established by the Federal Government and the Commonwealth of Virginia is automatically incorporated into the Commonwealth's Coastal Zone Management Program in accordance with 15 CFR § 923.45. Furthermore, it is the policy of the Commonwealth, after observing the effects of air pollution, to abate, control, and prohibit air pollution throughout the Commonwealth (Virginia Code § 10.1-1308). DEQ is responsible for the administration of the policy affecting: Asphalt Paving Operations in Volatile Organic Compound Emission Control Areas (Virginia Code §§ 10.1-1308 and -1322; 9 VAC §§ 5-20-206 and -45-780); Open Burning (Virginia Code §§ 10.1-1308 and -1322; 9 VAC §§ 5-80-1105, - 130-10, -130-30 to -50, 20-60-30, and 5-60-200); Fugitive Dust Emissions (Virginia Code §§ 10.1-1308 and -1322; 9 VAC §§ 5-50- 90 and -40-90); State Operating Permits (Virginia Code §§ 10.1-1308 and -1322; 9 VAC § 5-80- 800); and New Source Review (Virginia Code §§ 10.1-1308 and -1322; 9 VAC §§ 5-80- 1100, -1400, -1605, and -2000).

The Third Port within Skiffes Creek is located in the Air Quality Control Region (AQCR) known as the Hampton Roads Intrastate ACQR in Virginia 940 CFR 81.93) and is part of the Norfolk-Virginia Beach-Hampton Roads (Hampton Roads), VA Marginal Maintenance Area for the 1997 ozone NAAQS. The Hampton Roads area is currently in attainment for all other NAAQS. Although the 1997 ozone standard has been revoked, maintenance areas for that standard must still demonstrate compliance with the standard for 20 years. This requirement is based on the South Coast II Court Decision and subsequent EPA guidance. The Hampton Roads Area was redesignated to attainment for the 1997 ozone NAAQS on June 1, 2007, which would be the point at which the maintenance timeline would start. This includes conducting conformity determinations for projects within those areas, and Hampton Roads is one such area. Therefore, a

conformity analysis was completed to estimate emission totals of each criterial pollutant associated with the Proposed Action and Alternatives. The total annual direct and indirect emissions of the project were estimated to be below *de minimis* levels for maintenance areas [40 CFR 93.153(b)(2)]. A Record of Non-Applicability (RONA) was prepared in August 2021 (see Attachment A for RONA). See Attachment B (Appendix I: Air Emissions Estimates) for detailed emissions estimates.

J. Point Source Water Pollution

It is the policy of the Commonwealth to protect existing high quality state waters and restore all other state waters to such condition of quality that any such waters will permit all reasonable public uses and will support the propagation and growth of all aquatic life, including game fish, which might reasonably be expected to inhabit them; safeguard the clean waters of the Commonwealth from pollution; prevent any increase in pollution; reduce existing pollution; promote and encourage the reclamation and reuse of wastewater in a manner protective of the environment and public health; and promote water resource conservation, management and distribution, and encourage water consumption reduction in order to provide for the health, safety, and welfare of the present and future citizens of the Commonwealth. The National Pollutant Discharge Elimination System (NPDES) permit program established pursuant to Section 402 of the federal Clean Water Act and administered by DEQ as the Virginia Pollutant Discharge Elimination System (VPDES) permit program (Virginia Code § 62.1-44.2; 9 VAC § 25-31-20).

A Virginia Pollutant Discharge Elimination System (VPDES) permit is not required for this project since dredging projects and associated dredged material discharges, which are regulated under Section 404 of the Clean Water Act, are exempt from VPDES regulations.

This FCD is being submitted for coordination and concurrence of the project dredged material discharges meeting state water quality standards under Section 401 of the Clean Water Act.

K. Non-point Source Water Pollution

It is the policy of the Commonwealth to control stormwater runoff to protect the quality and quantity of state waters from the potential harm of unmanaged stormwater; to control soil erosion and sediment deposition in order to prevent unreasonable degradation of properties, stream channels, state waters, and other natural resources; and to otherwise act to control nonpoint source water pollution to ensure the general health, safety, and welfare of the citizens of the Commonwealth. Virginia's Erosion and Sediment Control Law requires soil-disturbing projects to be designed to reduce soil erosion and to decrease inputs of chemical nutrients and sediments to the Chesapeake Bay, its tributaries, and other rivers and waters of the Commonwealth. This program is administered by DEQ (Virginia Code §§ 62.1- 44.15:25, 62.1-44.15:52; 9 VAC §§ 25-840-30, 25-870-20).

The proposed improvements are primarily in-water elements that will involve marine-based construction. The current scope does not require land disturbance of erodible soils in upland areas that may require management; however, erosion and sediment control (ESC) and storm water management (SWM) best management practices will be incorporated into the project design as necessary to ensure compliance with state programs.

L. Shoreline Sanitation

It is the policy of the Commonwealth for sewage to be disposed of in a safe and sanitary manner that protects the public health and welfare and the environment. The Virginia Department of Health administers the enforceable policy for conventional and alternative onsite sewage systems. Adequate Service for Human Occupied Structures (Virginia Code §§ 32.1-12 and -164; 12 VAC §§ 5-610-20 and -80). Public and Environmental Health Protection (Virginia Code §§ 32.1-12 and -164; 12 VAC §§ 5-610-20, -120, -240, -320, -330, -450 to -500, -560, -593, -594, -596, -597, -670, -720 to -770, -810, -815, -870, -880, -890, -960, -965, -1000, -1010, - 1040, -1050, -1060, -1070, -1110, -1120, -1130, -613-10 to -210, and -640-5,-20 to -40, -60 to -90, -110 to -120, -140 to -180, -210 to -290, -390 to -470, and -490 to -520). Onsite Sewage System Design Requirements (Virginia Code §§ 32.1-12, - 163.5(A), -163.6(A), and -164; 12 VAC §§ 5-610-260 and -597).

The proposed project does not involve alterations to any existing on-site sewage systems; therefore, impacts to shoreline sanitation are not anticipated.

Advisory Policies for Geographic Area of Particular Concern

a. Coastal Natural Resource Areas

Coastal Natural Resource Areas are areas that have been designated as vital to estuarine and marine ecosystems and/or are of great importance to areas immediately inland of the shoreline. These areas receive special attention from the Commonwealth because of their conservation, recreational, ecological, and aesthetic values. These areas include the following resources: wetlands, aquatic spawning, nursing, and feeding grounds, coastal primary sand dunes, barrier islands, significant wildlife habitat areas, public recreation areas, sand gravel resources, and underwater historic sites.

The project area may contain spawning, nursing, and/or feeding grounds for finfish and shellfish. Section 7 consultations under the Endangered Species Act (ESA) for the project activities in Skiffes Creek are being coordinated with NOAA Fisheries and U. S. Fish and Wildlife Service. An Essential Fish Habitat (EFH) Assessment has been submitted for coordination with NOAA Fisheries on July 19, 2021.

b. Coastal Natural Hazard Areas

This policy covers areas vulnerable to continuing and severe erosion and areas susceptible to potential damage from wind, tidal, and storm related events including flooding. New buildings and other structures should be designed and sited to minimize the potential for property damage due to storms or shoreline erosion. The areas of concern are highly erodible areas and coastal high hazard areas, including flood plains.

The project does not involve construction of buildings or structures in coastal natural hazard areas.

c. Waterfront Development Areas

These areas are vital to the Commonwealth because of the limited number of areas suitable for waterfront activities. The areas of concern are commercial ports, commercial fishing piers, and community waterfronts.

There are no commercial fishing piers and/or community waterfronts located in the project area. While this project includes no onshore development, it does support waterfront activities by providing safe, reliable mooring and berthing for the military vessel fleet located at JBLE-Eustis as well as supporting training operations.

Advisory Policies for Shorefront Access Planning and Protection

a. Virginia Public Beaches
These public shoreline areas will be maintained to allow public access to recreational resources.

There are no public beaches within the project area; consequently, this project will not affect public access to beaches.

b. Virginia Outdoors Plan (VOP)
The VOP, which is published by Virginia's Department of Conservation and Recreation (DCR), identifies recreational facilities in the Commonwealth that provide recreational access. Prior to initiating any project, consideration should be given to the proximity of the project site to recreational resources identified in the VOP.

This project is consistent with the Virginia Outdoor Plan for Region 23, Hampton Roads, whose main recreational activities revolve around water access and boating. There is no public access point near the project site. The installation and Third Port facility are guarded 24 hour per day. This project will not impede safe water access to the Skiffes Creek Channel.

c. Parks, Natural Areas, and Wildlife Management Areas
The recreational values of these areas should be protected and maintained.

The project area contains no Parks, Natural Areas, or Wildlife Management Areas.

d. Waterfront Recreational Land Acquisition
It is the policy of the Commonwealth to protect areas, properties, lands, or any estate or interest therein, of scenic beauty, recreational utility, historical interest, or unusual features which may be acquired, preserved, and maintained for the citizens of the Commonwealth.

This project does not limit the ability of the Commonwealth in any way to acquire, preserve, or maintain waterfront recreational lands.

e. Waterfront Recreational Facilities
Boat ramps, public landings, and bridges shall be designed, constructed, and maintained to provide points of water access when and where practicable.

This project does not involve the design, construction, or maintenance of any boat ramps, public landings, or bridges.

f. Waterfront Historic Properties

The Commonwealth has a long history of settlement and development, and much of that history has involved both shorelines and near-shore areas. The protection and preservation of historic shorefront properties is primarily the responsibility of the Virginia Department of Historic Resources.

A Section 106 consultation with a determination of "no adverse effect" to historic resources was submitted to the Department of Historic Resources (VDHR) on August 18, 2021. This project will enhance a previously developed areas within the Third Port. The proposed action is similar to the area's current state, with no anticipated adverse impacts to the architectural resources at the Third Port. Therefore, the Corps is requesting VDHR concurrence with the 'no adverse effect' determination.

Determination

Based upon the above information, data, and analysis, the U.S. Army Corps of Engineers, Norfolk District, on behalf of the JBLE-Eustis, finds that new work dredging, dredged material placement, sill construction, and pile driving activities proposed in the Third Port Improvements Project located in Skiffes Creek is consistent to the maximum extent practicable with the enforceable policies of the Virginia Coastal Resources Management Program.

Pursuant to 15 CFR Section 930.41, the Virginia Coastal Resources Management Program has 60 days from the receipt of this letter in which to concur with or object to this Federal Consistency Determination, or to request an extension under 15 CFR section 930.41(b). Virginia's concurrence will be presumed if its response is not received by the U.S. Army Corps of Engineers on the 60th day from receipt of this determination.

AGENCY DETERMINATION

Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

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Ann F. Jennings
Secretary of Natural and Historic Resources

David K. Paylor
Director
(804) 698-4000

October 15, 2021

Norfolk District Corps of Engineers
ATTN: CENAO-WR-OT (Megan Wood)
803 Front Street
Norfolk, Virginia 23510-1096
Via email: megan.a.wood@usace.army.mil

RE: Federal Consistency Determination for the Third Port Improvements Project, U.S. Air Force, Joint Base Langley Eustis-Eustis, City of Newport News, DEQ 21-110F

Dear Ms. Wood:

The Commonwealth of Virginia has completed its review of the Federal Consistency Determination (FCD) for the above-referenced project. The Department of Environmental Quality (DEQ) is responsible for coordinating Virginia's review of FCDs submitted under the Coastal Zone Management Act and responding to appropriate officials on behalf of the Commonwealth. This letter is in response to the FCD received August 26, 2021, submitted by U.S. Army Corps of Engineers Norfolk District on behalf of the U.S. Air Force at Joint Base Langley Eustis-Eustis. The following agencies and locality participated in this review:

Department of Environmental Quality
Department of Wildlife Resources
Department of Conservation and Recreation
Marine Resources Commission
Department of Historic Resources
Department of Health
City of Newport News

In addition, the Hampton Roads Planning District Commission was invited to comment on the proposal.

PROJECT DESCRIPTION

The U.S. Air Force (Air Force or applicant) at Joint Base Langley-Eustis-Eustis (JBLE-Eustis) proposes to make improvements to the Third Port at Fort Eustis in City of Newport News, Virginia. The Third Port facility, located along Skiffes Creek, is a deepwater port used to train personnel in cargo logistics and vessel operations. The improvements to the Third Port facility include:

- changes to the finger piers to accommodate the new vessels and existing fleet,
- realignment of the mooring field with the addition of a sill to increase the usable waterway and reduce shoreline accretion channelward of the mooring piles,
- improvements to the landship to aid in training exercises, and
- the addition of a subaqueous bulkhead at the General's ramp to reduce shoreline accretion in the channel framework.

The purpose of the Proposed Action is to prepare JBLE-Eustis for up to 10 new vessels (Maneuver Support Vessels (Light) (MSV(L)) that will be assigned to the Third Port in 2022. The new class of vessels is longer (117 feet) than the vessels of the current fleet and requires improvements be made to berthing areas and access to the turning basin. Additionally, other improvements will be executed to increase the usable waterway for the vessel fleet, including the new vessels, and to aid in training for cargo logistics and vessel operations.

Two Action Alternatives are being considered. Alternative 1 includes replacing the finger piers, constructing a wave screen, constructing a stern ramp, and deepening the berthing area. The mooring field would be realigned, the mooring piles would be replaced, a riprap sill would be constructed to reduced shoreline accretion in the mooring area, and the mooring field access area would be deepened. Gangways and fendering would be added to the Landship to improve access and training operations. A bulkhead sill would be constructed at the general's ramp to reduce shoreline accretion and slope slip failure in the maintained turning basin. Alternative 2 includes the same improvements as described in Alternative 1, except that a bulkhead sill would be constructed at the mooring field instead of a riprap sill. This alternative would reduce the amount of new work dredging required to complete the project and the area of permanently hardened subaqueous bottom.

An Environmental Assessment is being prepared in accordance with the National Environmental Policy Act) to analyze the potential environmental impacts of the Proposed Action. The EA is planned for release in the fall of 2021.

PUBLIC PARTICIPATION

In accordance with Title 15, Code of Federal Regulations (CFR), §930.42, the public was invited to participate in the review of the FCD. Public notice of this proposed action was published in the OEIR Program Newsletter and on the DEQ website from

September 7, 2021 through October 1, 2021. No public comments were received in response to the notice.

FEDERAL CONSISTENCY UNDER THE COASTAL ZONE MANAGEMENT ACT

Pursuant to the Coastal Zone Management Act of 1972 (CZMA), as amended, and the federal consistency regulations implementing the CZMA (15 CFR, Part 930, Subpart C, Section 930.30 *et seq*.), federal activities located inside or outside of Virginia's designated coastal management area that can have reasonably foreseeable effects on coastal resources or coastal uses must be implemented in a manner consistent, to the maximum extent practicable, with the Virginia Coastal Zone Management (CZM) Program. The Virginia CZM Program consists of a network of programs administered by several agencies. DEQ coordinates the review of Federal Consistency Determinations with agencies administering the enforceable policies and advisory policies of the Virginia CZM Program.

FEDERAL CONSISTENCY CONCURRENCE

Based on our review of the consistency determination and the comments submitted by agencies administering the enforceable policies of the Virginia CZM Program, DEQ concurs that the proposal is consistent to the maximum extent practicable with the Program provided all applicable permits and approvals are obtained as described below. If, prior to implementation, the proposed activities should change significantly and any of the enforceable policies of the Virginia CZM Program would be affected, pursuant to 15 CFR, Part 930, Subpart C, §930.46(a), the Air Force must submit supplemental information to DEQ for review and approval. However, other state approvals which may apply to this project are not included in this consistency concurrence. Therefore, the applicant must ensure that this project is constructed and operated in accordance with all applicable federal, state and local laws and regulations.

FEDERAL CONSISTENCY ANALYSIS

According to information in the FCD, the proposed project would have no effect on the following enforceable policies: dunes and beaches, Chesapeake Bay Preservation Areas, plant pests and noxious weeds, commonwealth lands, point source pollution, and shoreline sanitation. The agencies responsible for the administration of the enforceable policies of the Virginia CZM Program generally agree with the determination. The Air Force must ensure that the proposed action is consistent with the aforementioned policies. In addition, the Air Force considered the effects of the proposal on the advisory policies of the Virginia CZM Program in accordance with 15 CFR §930.39(c), and finds the proposal consistent with the policies. The analysis which follows responds to the discussion of the enforceable policies of the Virginia CZM Program that apply to this project and review comments submitted by agencies that administer the enforceable policies.

1. Tidal and Nontidal Wetlands. According to the FCD (page 11), estuarine and marine emergent wetlands can be found adjacent to but not within the project footprint. The closest wetlands identified are estuarine wetlands adjacent to mooring field at a distance of approximately 45 feet from the proposed realignment. Unvegetated wetlands occur within the project area. Impacts to unvegetated wetlands will be avoided and minimized to the maximum extent practicable.

1(a) Agency Jurisdiction. The purpose of the policy is to preserve and protect wetlands and non-tidal surface waters, to prevent their despoliation and destruction, and accommodate necessary economic development in a manner consistent with wetlands preservation. Impacts to wetlands and streams shall be avoided or minimized to the maximum extent practicable. Tidal Wetlands are administered by the Virginia Marine Resources Commission (VMRC) under the authority of the Tidal Wetlands Act of 1972 (*Virginia Code § 28.2-1301 and -1308; 4 VAC § 20-390-20*). Tidal and Nontidal Wetlands are administered by the Department of Environmental Quality (DEQ) through the Virginia Water Protection Permit program and includes Water Quality Certification pursuant to Section 401 of the Clean Water Act (*Virginia Code §§ 62.1-44.15:20 and -44.15:21; and 9 VAC §§ 25-210-10, -210-45, 210-80, 260-10, -380, -390*).

1(b) Agency Findings.

(i) Virginia Marine Resources Commission

VMRC finds that possible impacts to existing wetlands associated with the installation of the sill may require a wetlands permit form the Newport News Wetlands Board.

(ii) Department of Environmental Quality

The Virginia Water Protection (VWP) Permit program at the DEQ Tidewater Regional Office (TRO) finds that permanent or temporary impacts to surface waters and wetlands may require a permit pursuant to §401 of the Clean Water Act, Virginia Code §62.1-44.15:20, and Virginia Administrative Code 9 VAC 25-210-10 *et seq*.

1(c) Requirements. *VWPP Regulations* incorporate the concept of avoidance and minimization from the Guidelines for Specification of Disposal Sites for Dredged or Fill Material (40 CFR Part 230), also known as the Section 404(b)(1) guidelines. All practicable efforts to minimize unavoidable impacts to state waters, including wetlands, must be incorporated into the project design and construction plan. The project must clearly demonstrate that the proposed activity, in terms of impacts to state waters and fish and wildlife resources, is the least environmentally damaging practicable alternative.

1(d) Recommendations. In general, DEQ recommends that stream and wetland impacts be avoided to the maximum extent practicable. To minimize unavoidable impacts to wetlands and waterways, DEQ recommends the following practices:

- Operate machinery and construction vehicles outside of stream-beds and wetlands; use synthetic mats when in-stream work is unavoidable.
- Preserve the top 12 inches of material removed from wetlands for use as wetland seed and root-stock in the excavated area.
- Erosion and sediment controls should be in place prior to clearing and grading, and maintained in good working order to minimize impacts to state waters. The controls should remain in place until the area is stabilized.
- Place heavy equipment, located in temporarily impacted wetland areas, on mats, geotextile fabric, or use other suitable measures to minimize soil disturbance, to the maximum extent practicable.
- Restore all temporarily disturbed wetland areas to pre-construction conditions and plant or seed with appropriate wetlands vegetation in accordance with the cover type (emergent, scrub-shrub, or forested). The applicant should take all appropriate measures to promote revegetation of these areas. Stabilization and restoration efforts should occur immediately after the temporary disturbance of each wetland area instead of waiting until the entire project has been completed.
- Place all materials which are temporarily stockpiled in wetlands, designated for use for the immediate stabilization of wetlands, on mats, geotextile fabric in order to prevent entry in state waters. These materials should be managed in a manner that prevents leachates from entering state waters and must be entirely removed within thirty days following completion of that construction activity. The disturbed areas should be returned to their original contours, stabilized within thirty days following removal of the stockpile, and restored to the original vegetated state.
- Flag or clearly mark all non-impacted surface waters within the project or right-of-way limits that are within 50 feet of any clearing, grading, or filling activities for the life of the construction activity within that area. The project proponent should notify all contractors that these marked areas are surface waters where no activities are to occur.
- Employ measures to prevent spills of fuels or lubricants into state waters.

1(e) Conclusion. The proposal will be consistent to the maximum extent practicable with the wetlands management enforceable policy of the Virginia CZM Program, provided the Air Force obtains and complies with any necessary permitting for impacts to jurisdictional waters and wetlands.

For additional information regarding VMRC comments, contact Ben Nettleton at (757) 247-8027 or ben.nettleton@mrc.virginia.gov.

2. Subaqueous Lands. According to the FCD (pages 11-12), impacts to water quality will be minor and temporary, consisting of localized increases in turbidity due to dredging, sill construction, and pile driving. Impacts to benthic habitat, including benthic prey species, due to dredging will be minor and temporary as benthic habitat areas and benthic organisms are expected to recover fairly quickly.

2(a) Agency Jurisdiction. All decisions affecting subaqueous lands shall be guided by the Commonwealth's General Policy to conserve, develop, and utilize its natural

resources, its public lands, and its historical sites and buildings and to protect its atmosphere, lands, and waters from pollution, impairment, or destruction, for the benefit, enjoyment, and general welfare of the people of the Commonwealth. The General Assembly has authorized VMRC to grant or deny any use of state-owned bottomlands, including dredging, aquaculture, the taking and use of material from the bottomland, and the placement of wharves, bulkheads, and fill. (*Virginia Code §§ 28.2-1200, -1203, -1204 and -1205*).

2(b) Agency Findings. VMRC finds that the project will impact state-owned submerged lands and a subaqueous permit will be required. Impacts to these jurisdictional areas will be evaluated and permitted during the application process.

2(c) Conclusion. The proposed project will be consistent to the maximum extent practicable with the subaqueous lands enforceable policy of the Virginia CZM Program, provide the applicant obtains and complies with conditions of its VMRC permit.

3. Dunes and Beaches. The FCD (page 12) states that there are no sand dunes or beaches located in the project area

3(a) Agency Jurisdiction. The policy promotes the preservation and protection of coastal primary sand dunes and beaches, to prevent their despoliation and destruction, and whenever practical, to accommodate necessary economic development in a manner consistent with the protection of such features. Dune and beach protection is carried out pursuant to the Coastal Primary Sand Dune Protection Act as administered by VMRC (*Virginia Code §§ 28.2-1401 and -1408*).

3(b) Agency Findings. VMRC confirms that there are no dunes or beaches in close proximity to the project area.

3(c) Conclusion. The proposed action is consistent to the maximum extent practicable with the dunes and beaches enforceable policy of the Virginia CZM Program.

For additional information regarding VMRC comments, contact Ben Nettleton at (757) 247-8027 or ben.nettleton@mrc.virginia.gov.

4. Marine Fisheries. According to the FCD (pages 13-14), while there is limited recreational use of Skiffes Creek, the proposed activity will temporarily affect the use of the Skiffes Creek for recreational fishing. No commercial fishing occurs in Skiffes Creek. There will be temporary increases in water column turbidity associated with dredging and material placement at NODS. There will also be temporary increases in noise and water column turbidity due to pile driving. Potential impacts to fisheries management will include temporary disturbance to feeding and movement patterns for species that may be within the project area. No private oyster leases exist in the proposed project area and coordination with the private oyster holders adjacent to the project area is not required. There are no public shellfish grounds located within the project area.

4(a) Agency Jurisdiction. The policy stresses the conservation and promotion of seafood and marine resources of the Commonwealth, including fish, shellfish and marine organisms, and the management of the fisheries to maximize food production and recreational opportunities within the Commonwealth's territorial waters. The policy is administered by VMRC (*Virginia Code §§ 28.2-101, -201, -203, -203.1, -225, -551, -600, -601, -603 -618, and -1103, -1203 and the Constitution of Virginia, Article XI, Section 3*).

4(b) Agency Findings. VMRC finds that the Third Port Improvements Project may have temporary impacts to fisheries and will require coverage under a VMRC permit.

4(c) Requirements. Erosion and run-off controls should be in place to prevent impacts to marine fisheries. A time-of-year restriction for project construction may be required to limit impacts to anadromous fishes. Additionally, sound attenuation procedures may be required for the installation of steel piles and steel bulkhead.

4(d) Conclusion. The proposed project will be consistent to the maximum extent practicable with the marine fisheries enforceable policy of the Virginia CZM Program, provided the Air Force obtains and complies with the conditions of its VMRC issued permit.

5. Wildlife and Inland Fisheries. According to the FCC (pages 15-16), the Atlantic sturgeon (*Acipenser oxyrhynchus*) has been observed in the James River near Skiffes Creek. The Atlantic sturgeon is a federally listed endangered species and is also state listed as endangered in Virginia. Portions of the proposed action occur in designated Atlantic sturgeon critical habitat located at the mouth of Skiffes Creek where it meets the James River. The federal- and state-listed endangered shortnose sturgeon (Acipenser brevirostrum) may be present in the action area. An effects determination of "not likely to adversely affect" (NLAA) for Atlantic sturgeon, shortnose sturgeon, and Atlantic sturgeon critical habitat was submitted to the National Marine Fisheries Service (NMFS) Protected Resources Division (PRD) under the Corps Not Likely to Adversely Affect (NLAA) Program on July 19, 2021. NMFS concurred with the determination of NLAA listed species or critical habitat on August 10, 2021. Land-based species, including state-listed bats, birds, reptiles, and amphibians, are unlikely to be impacted by the project. All construction activities would take place from the water and along developed areas of the port.

5(a) Agency Jurisdiction. The Department of Wildlife Resources (DWR) administers the enforceable policy for activities affecting wildlife and inland fisheries to ensure they do not negatively impact the Commonwealth's efforts in conserving, protecting, replenishing, propagating and increasing of the supply of game birds, game animals, fish and other wildlife of the Commonwealth(*Virginia Code §§ 29.1-501, -512, -521, -530.2, -531, -533, -542, -543.1, -545, -548, -549, -550, -552, -554, -556, -569, and -574; 4 VAC §§ 15-30-10, -20, -50, and 15-290-60*), fish or wildlife listed as threatened or endangered by the Department of Wildlife Resources Board(*Virginia Code §§ 29.1-501, -564, -566, -567, and -568; 4 VAC §§ 15-20-130 and -140*), the use of drugs on vertebrate wildlife

(*Virginia Code § 29.1-501 and -508.1*), and nonindigenous aquatic nuisance, predatory, or undesirable species(*Virginia Code §§ 29.1-501, -542, -543.1, -545, -569, -571, -574, and -575; 4 VAC §§ 15-20-210, -30-20, -30-40, and 15-290-60*).

5(b) Agency Findings.

(i) Anadromous Fish Species

DWR documents the Atlantic sturgeon from the project area. The James River, just downstream of this project site, has been designated a Threatened and Endangered Species Water due to the presence of this species. In addition, Skiffes Creek has been designated a Potential Anadromous Fish Use Area and the James River has been designated a Confirmed Anadromous Fish Use Area due to the presence of other anadromous fish species.

(ii) Bald Eagle

This project site is located within close proximity of historic and/or active bald eagle nests and a Bald Eagle Concentration Area and Roost Zone.

(iii) Colonial Waterbird Colonies

DWR documents colonial waterbird colonies supporting Green herons and/or Great blue herons from the project site.

5(c) Recommendations.

(i) Anadromous Fish Species

DWR recommends the following to protect this unique fishery from harm associated with the proposed instream work.

- Adhere to a time-of-year restriction for instream work from March 15 through June 30 and August 1 through November 15 of any year.
- Conduct instream activities during low- or no-flow conditions.
- Use non-erodible cofferdams or turbidity curtains to isolate the construction area.
- Block no more than 50% of the streamflow at any given time (minimal overlap of construction footprint notwithstanding).
- Stockpile excavated material in a manner that prevents reentry into the stream.
- Restore original streambed and streambank contours.
- Revegetate barren areas with native vegetation.
- Implement strict erosion and sediment control measures.
- Design and perform instream work in a manner that minimizes impacts upon natural streamflow and movement of resident aquatic species.
- Use dam and pump-around for as limited a time as possible and return water to the stream free of sediment and excess turbidity.

- Use matting made from natural/organic materials such as coir fiber, jute, and/or burlap to minimize potential wildlife entanglements resulting from use of synthetic/plastic erosion and sediment control matting.
- Install concrete (e.g. Trimie method, grout bags, concrete pour) only “in the dry” allowing the concrete to harden and cure prior to contact with open water to minimize harm to the aquatic environment and species.
- Adhere to erosion and sediment controls during dredging and placement of dredged materials in uplands.

(ii) Bald Eagle

DWR recommends using the Center for Conservation Biology (CCB) Eagle Nest Locator to determine if any active eagle nests are known from the project area to ensure protection of Bald eagles in compliance with the Bald and Golden Eagle Act. If active Bald eagle nests have been documented from the project area, the project should proceed in a manner consistent with state and federal guidelines for protection of Bald eagles as described in the DWR manual *Management of Bald Eagle Nests, Concentration Areas, and Communal Roosts in Virginia: A Guide for Landowners*. This may include coordination with the U.S. Fish and Wildlife Service (USFWS) regarding possible impacts upon Bald eagles or the need for a federal Bald Eagle Take Permit.

(iii) Colonial Waterbird Colonies

DWR recommends that areas located within 0.25-mile of work sites be visually assessed to determine if any active heron rookeries are located within the area. If so, the rookery should be mapped and any construction or dredging activities located within 0.25-mile of a colony/rookery should adhere to a time-of-year restriction from February 15 through August 15 of any year. DWR also recommends the establishment of a 500-foot naturally vegetated buffer around the colony to allow for future site suitability.

(iv) Songbird Nesting

DWR recommends that tree removal and ground clearing adhere to a time-of-year restriction protective of resident and migratory songbird nesting from March 15 through August 15 of any year.

5(d) Conclusion. The proposed project is consistent to the maximum extent practicable with the wildlife and inland fisheries enforceable policy, assuming the applicant adheres to recommendations for the protection of listed species and/or designated resources under DWR’s jurisdiction and the strict adherence to best management practices for erosion and sediment control.

For additional information, contact DWR, Amy Ewing at (804) 367-2211 or amy.ewing@dwr.virginia.gov.

6. Commonwealth Lands. According to the FCD (page 17), all proposed activities are in-water in Skiffes Creek or on federal property. Therefore, no impacts to Commonwealth Lands managed by DWR or DCR are anticipated.

6(a) Agency Jurisdiction. The enforceable policy applies to activities on state-owned lands managed by DWR and DCR to include the free passage of anadromous and other migratory fish (Virginia Code § 29.1-532), the removal of coastal resources from Back Bay (Virginia Code § 29.1-103(10); 4 VAC § 15-20-90), encroachments into game refuges (Virginia Code § 29.1-554), tampering with DWR owned or operated aquatic and terrestrial habitats (Virginia Code § 29.1-554; 4 VAC §§ 15-20-150 and -320-100), and fire use (4 VAC §§ 5-30-70 and -220), hunting and fishing (4 VAC §§ 5-30-240 to -250), feeding wildlife (4 VAC § 5-30-422), boating and vehicle use in state parks (4 VAC §§ 5-30-190, -290, and -330).

6(b) Agency Findings. DCR finds that there are no State Natural Area Preserves under DCR's jurisdiction in the project vicinity. DWR finds that the proposal is consistent with the commonwealth lands enforceable policy under its jurisdiction.

6(c) Conclusion. The proposed project is consistent to the maximum extent practicable with the commonwealth lands enforceable policy.

For additional information, contact DWR, Amy Martin at (804) 347-2211 or amy.martin@dwr.virginia.gov and/or DCR, Robbie Rhur at (804) 371-2594 or robbie.rhur@dcr.virginia.gov.

7. Point Source Air Pollution. According to the FCD (pages 17-18), while the Hampton Roads area is designated a marginal maintenance area for ozone, it is in attainment for all other National Ambient Air Quality Standards (NAAQS). The total annual direct and indirect emissions of the project were estimated to be below *de minimis* levels for maintenance areas.

7(a) Agency Jurisdiction. The policy is administered by DEQ through the federal Clean Air Act and Virginia's legally enforceable State Implementation Plan for the attainment and maintenance of the National Ambient Air Quality Standards. It is the policy of the Commonwealth to abate, control, and prohibit air pollution throughout the Commonwealth (*Virginia Code § 10.1-1308*), to include: asphalt paving operations in volatile organic compound emission control areas (*Virginia Code §§ 10.1-1308 and -1322; 9 VAC §§ 5-20-206 and -45-780*), open burning (*Virginia Code §§ 10.1-1308 and -1322; 9 VAC §§ 5-80-1105, -130-10, -130-30 to -50, 20-60-30, and 5-60-200*), fugitive dust emissions (*Virginia Code §§ 10.1-1308 and -1322; 9 VAC §§ 5-50-90 and -40-90*), state operation permits (*Virginia Code §§ 10.1-1308 and -1322; 9 VAC § 5-80-800*), and new source review (*Virginia Code §§ 10.1-1308 and -1322; 9 VAC §§ 5-80-1100, -1400, -1605, and -2000*).

7(b) Agency Findings. The DEQ Air Division finds that project is located in an ozone (O_3) attainment area and emission control area for volatile organic compounds (VOCs) and oxides of nitrogen (NO_x).

7(c) Recommendation. All precautions should be taken to restrict the emissions of VOCs and NO_x during construction principally by controlling or limiting the burning of fossil fuels.

7(d) Requirements.

(i) Fugitive Dust

During construction, fugitive dust must be kept to a minimum by using control methods outlined in 9 VAC 5-50-60 *et seq.* of the *Regulations for the Control and Abatement of Air Pollution*. These precautions include, but are not limited to, the following:

- Use, where possible, of water or chemicals for dust control;
- Installation and use of hoods, fans, and fabric filters to enclose and vent the handling of dusty materials;
- Covering of open equipment for conveying materials; and
- Prompt removal of spilled or tracked dirt or other materials from paved streets and removal of dried sediments resulting from soil erosion.

(ii) Open Burning

Should the project include the open-burning of waste or the use of special incineration devices, these activities must meet the requirements under 9 VAC 5-130 *et seq.* of the *Regulations* for open burning, and may require a permit. The *Regulations* provide for, but do not require, the local adoption of a model ordinance concerning open burning. The Air Force should contact local fire officials to determine what local requirements, if any, exist.

7(e) Conclusion. The proposed project is consistent to the maximum extent practicable with the point source air pollution enforceable policy of the Virginia CZM Program, provided the Air Force obtains all applicable approvals prior to construction.

For additional information regarding air comments, contact the DEQ Air Division, Kotur Narasimhan at (804) 698-4415 or kotur.narasimhan@deq.virginia.gov.

8. Point Source Water Pollution. According to the FCD (page 17), a Virginia Pollutant Discharge Elimination System (VPDES) permit is not required for this project since dredging projects and associated dredged material discharges, which are regulated under Section 404 of the Clean Water Act, are exempt from VPDES regulations.

8(a) Agency Jurisdiction The policy is administered by DEQ to protect existing high quality state waters and restore all other state waters to permit all reasonable public uses

and support the propagation and growth of all aquatic life. Legal authority is granted by the National Pollutant Discharge Elimination System (NPDES) permit program established pursuant to Section 402 of the federal Clean Water Act and administered by DEQ as the Virginia Pollutant Discharge Elimination System (VPDES) permit program (*Virginia Code § 62.1-44.2; 9 VAC § 25-31-20*).

8(b) Agency Findings. The VPDES program at DEQ-TRO finds that the Proposed Action does not appear to result in any point source discharges of process water or wastewater that would necessitate a VPDES permit.

8(c) Conclusion. The proposed project is consistent to the maximum extent practicable with the point source water pollution enforceable policy of the Virginia CZM Program.

For additional information, contact DEQ-TRO, Kyle Winter at (804) 527-5052 or kyle.winter@deq.virginia.gov.

9. Nonpoint Source Water Pollution. According to the FCD (page 18), the proposed improvements are primarily in-water elements that will involve marine-based construction. The current scope does not require land disturbance of erodible soils in upland areas that may require management; however, erosion and sediment control and storm water management best management practices will be incorporated into the project design as necessary to ensure compliance with state programs.

9(a) Agency Jurisdiction. The policy addresses the control stormwater runoff to protect the quality and quantity of state waters from the potential harm of unmanaged stormwater. Virginia's Erosion and Sediment Control Law requires soil-disturbing projects to be designed to reduce soil erosion and to decrease inputs of chemical nutrients and sediments to the Chesapeake Bay, its tributaries, and other rivers and waters of the Commonwealth. This program is administered by DEQ (*Virginia Code §§ 62.1-44.15:25, 62.1-44.15:52; 9 VAC §§ 25-840-30, 25-870-20*).

9(b) Requirements.

(i) Erosion and Sediment Control and Stormwater Management Plans

The Air Force and its authorized agents conducting regulated land-disturbing activities on private and public lands in the state must comply with *VESCL&R* and *VSWML&R,* including coverage under the general permit for stormwater discharge from construction activities, and other applicable federal nonpoint source pollution mandates (e.g. Clean Water Act-Section 313, federal consistency under the Coastal Zone Management Act). Clearing and grading activities, installation of staging areas, parking lots, roads, buildings, utilities, borrow areas, soil stockpiles, and related land-disturbing activities that result in the total land disturbance of equal to or greater than 10,00 square feet (2,500 square feet in a Chesapeake Bay Preservation Area) would be regulated by *VESCL&R.* If applicable, the applicant must prepare and implement an Erosion and Sediment Control (ESC) Plan to ensure compliance with state law and regulations.

Land-disturbing activities that result in the total land disturbance of equal to or greater than one acre (2,500 square feet in Chesapeake Bay Preservation Area) would be regulated by *VSWML&R.* If applicable, the applicant must prepare and implement a Stormwater Management (SWM) plan to ensure compliance with state law and regulations. The ESC/SWM plan is submitted to DEQ-TRO, which serves the area where the project is located, for review for compliance. The applicant is ultimately responsible for achieving project compliance through oversight of on-site contractors, regular field inspection, prompt action against non-compliant sites, and other mechanisms consistent with agency policy. [Reference: VESCL 62.1-44.15 *et seq*.]

(ii) General Permit for Discharges of Stormwater from Construction Activities (VAR10)

The owner or operator of projects involving land-disturbing activities of equal to or greater than one acre is required to apply for registration coverage under the General Permit for Discharges of Stormwater from Construction Activities and develop a project-specific stormwater pollution prevention plan (SWPPP). Construction activities requiring registration also include land disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan of development will collectively disturb equal to or greater than one acre

- The SWPPP must be prepared prior to submission of the registration statement for coverage under the General Permit.
- The SWPPP must address water quality and quantity in accordance with the VSMP Permit Regulations.

General information and registration forms for the Construction General Permit are available from DEQ. [Reference: Virginia Stormwater Management Act 62.1-44.15 *et seq*.; VSMP Permit Regulations 9 VAC 25-880 *et seq.*].

9(c) Conclusion. The proposed project is consistent to the maximum extent practicable with the nonpoint source water pollution enforceable policy of the Virginia CZM Program, provided it complies with the requirements described above, if applicable.

For additional information, contact DEQ-OSWM, Larry Gavan at (804) 698-4040 or larry.gavan@deq.virginia.gov.

ADDITIONAL ENVIRONMENTAL CONSIDERATIONS

In addition to the enforceable policies of the Virginia CZM Program, comments were provided with respect to other applicable requirements and recommendations. The applicant must ensure that this project is constructed and operated in accordance with all applicable federal, state, and local laws and regulations.

1. Solid and Hazardous Waste Management.

1(a) Agency Jurisdiction. On behalf of the Virginia Waste Management Board, the DEQ Division of Land Protection and Revitalization (DLPR) is responsible for carrying out the mandates of the Virginia Waste Management Act (Virginia Code §10.1-1400 et seq.), as well as meeting Virginia's federal obligations under the Resource Conservation and Recovery Act and the Comprehensive Environmental Response Compensation Liability Act, commonly known as Superfund.

Virginia:

- Virginia Waste Management Act, Virginia Code § 10.1-1400 *et seq.*
- *Virginia Solid Waste Management Regulations*, 9 VAC 20-81
  - (9 VAC 20-81-620 applies to asbestos-containing materials)
- *Virginia Hazardous Waste Management Regulations*, 9 VAC 20-60
  - (9 VAC 20-60-261 applies to lead-based paints)
- *Virginia Regulations for the Transportation of Hazardous Materials*, 9 VAC 20-110.

Federal:

- Resource Conservation and Recovery Act (RCRA), 42 U.S. Code sections 6901 *et seq.*
- U.S. Department of Transportation *Rules for Transportation of Hazardous Materials*, 49 *Code of Federal Regulations*, Part 107
- Applicable rules contained in Title 40, *Code of Federal Regulations*.

DEQ-DLPR also administers laws and regulations on behalf of the State Water Control Board governing Petroleum Storage Tanks (Virginia Code § 62.1-44.34:8 *et seq*.), including Aboveground Storage Tanks (9 VAC 25-91 *et seq*.) and Underground Storage Tanks (9 VAC 25-580 *et seq*. and 9 VAC 25-580-370 *et seq*.), also known as 'Virginia Tank Regulations' and § 62.1-44.34:14 *et seq*. which covers oil spills.

1(b) Agency Findings. DEQ-DLPR staff conducted a search of solid and hazardous waste databases (including petroleum releases) to identify waste sites in close proximity (200-foot radius) to the project area. The search identified one petroleum release site within the project area which might impact the project.

> PC Number 19942680, Fort Eustis-Near Bldg 414, 1407 Washington Blvd, Fort Eustis, Virginia, 23604, Release Date: 03/06/1994, Status: Closed.

1(c) Requirements.

(i) Waste Management

Any soil, sediment or groundwater that is suspected of contamination or wastes that are generated must be tested and disposed of in accordance with applicable federal, state, and local laws and regulations. All construction waste must be characterized in accordance with the *Virginia Hazardous Waste Management Regulations* prior to management at an appropriate facility.

(ii) Petroleum Contamination

If evidence of a petroleum release is discovered during construction, it must be reported to DEQ-TRO in accordance with Virginia Code § 62.1-44.34.8 through 19 and 9 VAC 25-580-10 *et seq*. The disposal of contaminated soils and groundwater must be done in accordance with DEQ regulatory guidelines.

(iii) Petroleum Storage Tanks

The installation and operation of any regulated petroleum storage tanks, either above-ground storage tank (AST) or underground storage tank (UST), must be conducted in accordance with 9 VAC 25-91-10 *et seq*. and/or 9 VAC 25-580-10 *et seq*. Additional information and coordination should be addressed with the Tanks Program at DEQ-TRO at tro.tanks@deq.virginia.gov.

(iv) Asbestos-Containing Materials and Lead-Based Paint

All structures being demolished, renovated, or removed should be checked for asbestos-containing materials (ACM) and lead-based paint (LBP) prior to demolition. If ACM or LBP are found, in addition to the federal waste-related regulations mentioned above, state regulations 9 VAC 20-81-620 (ACM) and 9 VAC 20-60-261 (LBP) must be followed.

1(d) Recommendation. DEQ encourages all construction projects and facilities to implement pollution prevention principles, including the reduction, reuse, and recycling of all solid wastes generated. All generation of hazardous wastes should be minimized and handled appropriately.

For additional questions or further information regarding waste comments, contact DEQ-DLPR, Carlos Martinez at (804) 698-4575 or carlos.martinez@deq.virginia.gov.

2. Pesticides and Herbicides. DEQ recommends that the use of herbicides or pesticides for construction or landscape maintenance should be in accordance with the principles of integrated pest management. The least toxic pesticides that are effective in controlling the target species should be used to the extent feasible. Contact the

Department of Agriculture and Consumer Services at (804) 786-3501 for more information.

3. Natural Heritage Resources.

3(a) Agency Jurisdiction.

(i) The Virginia Department of Conservation and Recreation (DCR) Division of Natural Heritage (DNH)

DNH's mission is conserving Virginia's biodiversity through inventory, protection and stewardship. The Virginia Natural Area Preserves Act (Virginia Code §10.1-209 through 217), authorizes DCR to maintain a statewide database for conservation planning and project review, protect land for the conservation of biodiversity, and the protect and ecologically manage the natural heritage resources of Virginia (the habitats of rare, threatened and endangered species, significant natural communities, geologic sites, and other natural features).

(ii) Virginia Department of Agriculture and Consumer Services (VDACS)

The Endangered Plant and Insect Species Act of 1979 (Virginia Code Chapter 39 §3.1-1020 through 1030) authorizes VDACS to conserve, protect and manage endangered and threatened species of plants and insects. Under a Memorandum of Agreement established between VDACS and the DCR, DCR represents VDACS in comments regarding potential impacts on state-listed threatened and endangered plant and insect species.

3(b) Agency Findings.

(i) Natural Heritage Resources

According to information currently in DCR's Biotics Data System (Biotics), natural heritage resources have not been documented within the project boundary including a 100 foot buffer. The absence of data may indicate that the project area has not been surveyed, rather than confirm that the area lacks natural heritage resources. In addition, the project boundary does not intersect any of the predictive models identifying potential habitat for natural heritage resources.

(ii) State-listed Plant and Insect Species

DCR-DNH finds that the activity will not affect any documented state-listed plants or insects at the site.

3(c) Recommendation. Contact DCR-DNH to secure updated information on natural heritage resources if the scope of the project changes or six months pass before the

project is implemented, since new and updated information is continually added to the Biotics Data System.

4. Floodplain Management.

4(a) Agency Jurisdiction. The DCR Division of Dam Safety and Floodplain Management (DSFM) is the lead coordinating agency for the Commonwealth's floodplain management program and the National Flood Insurance Program (Executive Oder 45). The National Flood Insurance Program (NFIP) is administered by the Federal Emergency Management Agency (FEMA), and communities who elect to participate in this voluntary program manage and enforce the program on the local level through that community's local floodplain ordinance. Each local floodplain ordinance must comply with the minimum standards of the NFIP, outlined in 44 CFR 60.3; however, local communities may adopt more restrictive requirements in their local floodplain ordinance, such as regulating the 0.2% annual chance flood zone (shaded Zone X).

4(b) Requirements. All development within a Special Flood Hazard Area (SFHA) or floodplain, as shown on the locality's Flood Insurance Rate Map (FIRM), must be permitted and comply with the requirements of the local floodplain ordinance. Projects conducted by federal agencies within the SFHA must comply with federal Executive Order 11988: Floodplain Management.

DCR's Floodplain Management Program does not have regulatory authority for projects in the SFHA. The applicant/developer must contact the local floodplain administrator for an official floodplain determination and comply with the community's local floodplain ordinance, including receiving a local permit. Failure to comply with the local floodplain ordinance could result in enforcement action from the locality. The Air Force is encouraged reach out to the local floodplain administrator to ensure compliance with the local floodplain ordinance.

4(c) Recommendation. DCR recommends the Air Force access the Virginia Flood Risk Information System (VFRIS) to find flood zone information.

For additional information, contact DCR-DSFM, Angela Davis at (804) 371-6135 or angela.davis@dcr.virginia.gov.

5. Public Water Supply.

5(a) Agency Jurisdiction. Virginia Department of Health (VDH) Office of Drinking Water (ODW) reviews projects for the potential to impact public drinking water sources (groundwater wells, springs and surface water intakes). VDH administers both federal and state laws governing waterworks operation.

5(b) Agency Findings. VDH-ODW finds that the Newport News (PWS ID 3700500) public groundwater wells 1B is located is within a 1-mile radius of the project site, and

its Skiffes Creek and Lee Hall surface water intakes are located within a 5-mile radius of the project site.

5(c) Requirements. Potential impacts to public water distribution systems must be verified by the local utility.

5(d) Recommendations. VDH-ODW recommends the following measures for the protection of water supply sources:

- Best Management Practices should be employed on the project site, including erosion and sediment control and Spill Prevention Controls and Countermeasures.
- Materials should be managed while on-site and during transport to prevent impacts to nearby surface water.

For additional information, contact VDH-ODW, Arlene Fields Warren at (804) 864-7781 or arlene.warren@vdh.virginia.gov.

6. Historic Resources.

6(a) Agency Jurisdiction. The Virginia Department of Historic Resources (DHR) conducts reviews of both federal and state projects to determine their effect on historic properties. Under the federal process, DHR is the State Historic Preservation Office, and ensures that federal undertakings-including licenses, permits, or funding-comply with Section 106 of the National Historic Preservation Act of 1966, as amended, and its implementing regulation at 36 CFR Part 800. Section 106 requires federal agencies to consider the effects of federal projects on properties that are listed or eligible for listing on the National Register of Historic Places. The DHR Review and Compliance Division has additional information on applicable state and federal laws and how to submit an application for review.

6(b) Agency Findings. DHR finds that there are a few National Register of Historic Places (NRHP) eligible architectural properties located within the Area of Potential Effects (APE) for this undertaking. However, it is DHR's opinion that the nature of the undertaking will result in only visual impacts to these historic properties, which will not significantly diminish their feeling or setting. Based on the information provided, DHR concurs with the Corps' determination, on behalf of the Air Force, that the historic properties in the APE will not be adversely affected by the undertaking.

6(c) Requirement. Implementation of the undertaking in accordance with the finding of no adverse effect as documented fulfills the federal agency's responsibilities under Section 106 of the National Historic Preservation Act (NHPA). If for any reason the undertaking is not or cannot be conducted as proposed in the finding, consultation under Section 106 must be reopened.

For additional information, contact DHR, Samantha Henderson at (804) 482-6088 of samantha.henderson@dhr.virginia.gov.

7. Local Review.

7(a) Agency Jurisdiction. In accordance with CFR 930, Subpart A, § 930.6(b) of the *Federal Consistency Regulations*, DEQ, on behalf of the state, is responsible for securing necessary review and comment from other state agencies, the public, regional government agencies, and local government agencies, in determining the Commonwealth's concurrence or objection to a federal consistency certification.

7(b) Agency Findings. The Environmental Division at the City of Newport News reviewed the FCD for the proposed project and agrees with the findings of the Air Force. Newport News has no objection to the project.

For additional information, contact the Newport News Environmental Division, Louis Bott at (757) 933-2350 or bottlj@nnva.gov.

8. Pollution Prevention. DEQ advocates that principles of pollution prevention and sustainability be used in all construction projects as well as in facility operations. Effective siting, planning, and on-site BMPs will help to ensure that environmental impacts are minimized. However, pollution prevention and sustainability techniques also include decisions related to construction materials, design, and operational procedures that will facilitate the reduction of wastes at the source.

8(a) Recommendations. We have several pollution prevention recommendations that may be helpful in construction projects and operational activities at Fort Eustis:

- Consider development of an effective Environmental Management System (EMS). An effective EMS will ensure that the proposed facility is committed to minimizing its environmental impacts, setting environmental goals, and achieving improvements in its environmental performance. DEQ offers EMS development assistance and it recognizes facilities with effective Environmental Management Systems through its Virginia Environmental Excellence Program (VEEP). VEEP provides recognition, annual permit fee discounts, and the possibility for alternative compliance methods.
- Consider environmental attributes when purchasing materials. For example, the extent of recycled material content, toxicity level, and amount of packaging should be considered and can be specified in purchasing contracts.
- Consider contractors' commitment to the environment (such as an EMS) when choosing contractors. Specifications regarding raw materials and construction practices can be included in contract documents and requests for proposals.
- Choose sustainable materials and practices for construction and design. These could include asphalt and concrete containing recycled materials, and integrated pest management in landscaping, among other things.

- Integrate pollution prevention techniques into the project's maintenance and operation. Maintenance facilities should be designed with sufficient and suitable space to allow for effective inventory control and preventative maintenance.

DEQ's Office of Pollution Prevention provides information and technical assistance relating to pollution prevention techniques and EMS. For more information, contact DEQ's Office of Pollution Prevention, Meghann Quinn at (804) 698-4021 or meghann.quinn@deq.virginia.gov.

9. Energy Conservation. The facility should be planned and designed to comply with state and federal guidelines and industry standards for energy conservation and efficiency. The commonwealth encourages architectural and engineering designers to recognize and incorporate the energy, environmental, and sustainability concepts listed in the Leadership in Energy and Environmental Design (LEED) Green Building Rating System into the development and procurement of their projects. Contact the Department of Mines, Minerals and Energy, David Spears at (434) 951-6350 or david.spears@dmme.virginia.gov, for assistance in meeting this challenge.

10. Water Conservation. The following recommendations will result in reduced water use associated with the operation of the facility:

- Grounds should be landscaped with hardy native plant species to conserve water as well as lessen the need to use fertilizers and pesticides.
- Convert turf to low water-use landscaping such as drought resistant grass, plants, shrubs and trees.
- Low-flow toilets should be installed in new facilities.
- Consider installing low flow restrictors and aerators to faucets.
- Improve irrigation practices by:
    - upgrading sprinkler clock; water at night, if possible, to reduce evapotranspiration (lawns need only 1 inch of water per week, and do not need to be watered daily; overwatering causes 85% of turf problems);
    - installing a rain shutoff device; and
    - collecting rainwater with a rain bucket or cistern system with drip lines.

REGULATORY AND COORDINATION NEEDS

1. Tidal and Non-Tidal Wetlands. Proposed impacts to jurisdictional wetlands and surface waters may require a Virginia Water Protection Permit pursuant to Virginia Code §62.1-44.15:20 *et seq*. The submission of a JPA to VMRC initiates the review process. For additional information and coordination, contact the VWP Permit program at DEQ-TRO, Jeff Hannah at (757) 518-2146 or jeff.hannah@deq.virginia.gov.

2. Subaqueous Lands. The Air Force must coordinate with VMRC pursuant to Virginia Code §28.2-1200 through 1400, to obtain authorization for anticipated impacts to state

subaqueous lands. For additional information and coordination, contact VMRC, Ben Nettleton at (757) 247-8027 or ben.nettleton@mrc.virginia.gov.

3. Marine Fisheries. Coordinate with VMRC, Ben Nettleton at (757) 247-8027 or ben.nettleton@mrc.virginia.gov, on the impact of the proposed project on marine fisheries resources.

4. Wildlife and Inland Fisheries. Contact DWR, Amy Martin at (804) 367-2211 or amy.martin@dwr.virginia.gov, with any questions regarding its recommendations for the protection of aquatic and land-based wildlife resources.

5. Point Source Air Pollution. Guidance on minimizing the emission of volatile organic compounds (VOCs) and oxides of nitrogen (NO_x) during construction may be obtained from DEQ-TRO. Activities associated with the Proposed Action may be subject to air regulations administered by DEQ. The state air pollution regulations that may apply to the construction of the project are:

- fugitive dust and emissions control (9 VAC 5-50-60 *et seq*.); and
- open burning restrictions (9 VAC 5-130).

The Air Force should contact the appropriate local fire officials for information on any local requirements pertaining to open burning. For more information, contact DEQ-TRO, John Brandt at (757) 518-2010 or john.brandt@deq.virginia.gov.

6. Nonpoint Source Water Pollution.

6(a) Erosion and Sediment Control and Stormwater Management. The proposed project must comply with Virginia's *Erosion and Sediment Control Law* (Virginia Code § 62.1-44.15:61) and *Regulations* (9 VAC 25-840-30 *et seq*.) and *Stormwater Management Law* (Virginia Code § 62.1-44.15:31) and *Regulations* (9 VAC 25-870-210 *et seq*.) as administered by DEQ in Virginia. Activities that disturb 2,500 square feet or more in CBPAs would be regulated by *VESCL&R* and *VSWML&R*. If applicable, erosion and sediment control and stormwater management requirements should be coordinated with DEQ-TRO, Courtney Smith at (757) 493-1073 or courtney.smith@deq.virginia.gov.

6(b) General Permit for Stormwater Discharges from Construction Activities (VAR10). For land-disturbing activities of equal to or greater than one acre, the Air Force is required to apply for registration coverage under the Virginia Stormwater Management Program General Permit for Discharges of Stormwater from Construction Activities (9 VAC 25-880-1 *et seq.*). Specific questions regarding the Stormwater Management Program requirements should be directed to DEQ-TRO, Gavan Washburn at (757) 493-1072 or gavan.washburn@deq.virginia.gov.

7. Solid and Hazardous Wastes.

7(a) Solid and Hazardous Waste Management Regulations. All solid waste, hazardous waste, and hazardous materials must be managed in accordance with all applicable federal, state, and local environmental regulations. For additional information concerning location and availability of suitable waste management facilities in the project area or if free product, discolored soils, or other evidence of contaminated soils are encountered, contact DEQ-TRO, Sean Priest at (757) 518-2141 or jonathan.priest@deq.virginia.gov.

7(b) Asbestos-Containing Material. The owner or operator of a demolition activity, prior to the commencement of the activity, is responsible to thoroughly inspect affected structures for the presence of asbestos, including Category I and Category II nonfriable asbestos containing material (ACM). Upon classification as friable or non-friable, all waste ACM shall be disposed of in accordance with the Virginia Solid Waste Management Regulations (9 VAC 20-80-640), and transported in accordance with the Virginia regulations governing Transportation of Hazardous Materials (9 VAC 20-110-10 et seq.). Contact the DEQ-TRO, Sean Priest at (757) 518-2141 or jonathan.priest@deq.virginia.gov and the Department of Labor and Industry, Doug Wiggins (540) 562-3580 ext. 131 for additional information.

7(c) Lead-Based Paint. This project must comply with the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA) regulations, and with the Virginia Lead-Based Paint Activities Rules and Regulations. For additional information regarding these requirements contact the Department of Professional and Occupational Regulation at (804) 367-8500.

7(d) Petroleum Contamination. In accordance with Virginia Code §§ 62.1-44.34.8 through 9 and 9 VAC 25-580-10 *et seq*., contact DEQ-TRO, Melinda Woodruff at (757) 518-2174 or melinda.woodruff@deq.virginia.gov, if evidence of a petroleum release is discovered during construction of the Proposed Action.

8. Natural Heritage Resources. Contact DCR-DNH, Rene Hypes at (804) 371-2708 or rene.hypes@dcr.virginia.gov, to secure updated information on natural heritage resources if the scope of the project changes and/or six months has passed before it is utilized, since new and updated information is continually added to the Biotics Data System.

9. Floodplain Management. The proposed project must comply with the Newport News floodplain ordinance. For additional information and coordination, contact the City of Newport News, Hai Tran at (757) 926-8264 or htran@nnva.gov.

Thank you for the opportunity to review and respond to the FCD for the Third Port Improvements Project at JBLE-Eustis in the City of Newport News. The detailed comments submitted by reviewing agencies are attached. Please contact me at (804) 698-4204 or John Fisher at (804) 698-4339 for clarification of these comments.

Sincerely,

Bettina Rayfield, Program Manager
Environmental Impact Review and Long-Range Priorities

Enclosures

Ec: Amy Martin, DWR
Robbie Rhur, DCR
Tiffany Birge, VMRC
Roger Kirchen, DHR
Arlene Fields Warren, VDH
Craig Galant, City of Newport News
Ben McFarlane, HRPDC

DEPARTMENT OF ENVIRONMENTAL QUALITY
DIVISION OF AIR PROGRAM COORDINATION

ENVIRONMENTAL REVIEW COMMENTS APPLICABLE TO AIR QUALITY

TO: John Fisher

We thank **OEIR** for providing DEQ-AIR an opportunity to review the following project:

Document Type: Federal Consistency Determination
Project Sponsor: Department of the Army
Project Title: Third Port Improvements Project-JBLE-Eustis
Location: City of Newport News
Project Number: DEQ #21-110F

Accordingly, I am providing following comments for consideration.

PROJECT LOCATION: **X OZONE ATTAINMENT AND EMISSION CONTROL AREA FOR NOX & VOC**

REGULATORY REQUIREMENTSMAY BE APPLICABLE TO:
- **X CONSTRUCTION**
- ☐ OPERATION

STATE AIR POLLUTION CONTROL BOARD REGULATIONS THAT MAY APPLY:

1. ☐ 9 VAC 5-40-5200 C & 9 VAC 5-40-5220 E – STAGE I
2. ☐ 9 VAC 5-45-760 et seq. – Asphalt Paving operations
3. **X 9 VAC 5-130 et seq. – Open Burning**
4. **X 9 VAC 5-50-60 et seq. Fugitive Dust Emissions**
5. ☐ 9 VAC 5-50-130 et seq. - Odorous Emissions; Applicable to_____
6. ☐ 9 VAC 5-60-300 et seq. – Standards of Performance for Toxic Pollutants
7. ☐ 9 VAC 5-50-400 Subpart_____, Standards of Performance for New Stationary Sources, designates standards of performance for the_____
8. ☐ 9 VAC 5-80-1100 et seq. of the regulations – Permits for Stationary Sources
9. ☐ 9 VAC 5-80-1605 et seq. Of the regulations – Major or Modified Sources located in PSD areas. This rule may be applicable to the _____
10. ☐ 9 VAC 5-80-2000 et seq. of the regulations – New and modified sources located in non-attainment areas
11. ☐ 9 VAC 5-80-800 et seq. Of the regulations – State Operating Permits. This rule may be applicable to _____

COMMENTS SPECIFIC TO THE PROJECT:

All precautions are necessary to restrict the emissions of volatile organic compounds (VOC) and oxides of nitrogen (NO_x).

(Kotur S. Narasimhan)
Office of Air Data Analysis **DATE: August 27, 2021**

MEMORANDUM

TO: John Fisher, DEQ/EIR Environmental Program Planner

FROM: Carlos A. Martinez, Division of Land Protection & Revitalization Review Coordinator

DATE: September 14, 2021

COPIES: Sanjay Thirunagari, Division of Land Protection & Revitalization Review Manager; file

SUBJECT: Environmental Impact Review: 21-110F Third Port Improvements Project-JBLE-Eustis in the City of Newport News, Virginia.

The Division of Land Protection & Revitalization (DLPR) has completed its review of the Department of The Army's August 27, 2021 EIR for Third Port Improvements Project-JBLE-Eustis in the City of Newport News, Virginia.

DLPR staff conducted a search (200 ft. radius) of the project area of solid and hazardous waste databases (including petroleum releases) to identify waste sites in close proximity to the project area. DLPR identified one (1) petroleum release sites within the project area which might impact the project.

DLPR staff has reviewed the submittal and offers the following comments:

***Hazardous Waste/RCRA Facilities* – none in close proximity to the project area**

***CERCLA Sites* – none in close proximity to the project area**

***Formerly Used Defense Sites (FUDS)* – none in close proximity to the project area.**

***Solid Waste* – none in close proximity to the project area**

***Virginia Remediation Program (VRP)* – none in close proximity to the project area**

<u>Petroleum Releases</u> – One (1) found in close proximity to the project area.

1. ***PC Number 19942680, Fort Eustis – Near Bldg 414, 1407 Washington Blvd, Fort Eustis, Virginia, 23604, Release Date: 03/06/1994, Status: Closed.***

Please note that the DEQ's Pollution Complaint (PC) cases identified should be further evaluated by the project engineer or manager to establish the exact location, nature and extent of the petroleum release and the potential to impact the proposed project. In addition, the project engineer or manager should contact the DEQ's Tidewater Regional Office at (757) 518-2000 (Tanks Program) for further information about the PC cases.

PROJECT SPECIFIC COMMENTS

None

GENERAL COMMENTS

<u>Soil, Sediment, Groundwater, and Waste Management</u>

Any soil, sediment or groundwater that is suspected of contamination or wastes that are generated must be tested and disposed of in accordance with applicable Federal, State, and local laws and regulations. Some of the applicable state laws and regulations are: Virginia Waste Management Act, Code of Virginia Section 10.1-1400 *et seq.*; Virginia Hazardous Waste Management Regulations (VHWMR) (9VAC 20-60); Virginia Solid Waste Management Regulations (VSWMR) (9VAC 20-81); Virginia Regulations for the Transportation of Hazardous Materials (9VAC 20-110). Some of the applicable Federal laws and regulations are: the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. Section 6901 *et seq.*, and the applicable regulations contained in Title 40 of the Code of Federal Regulations; and the U.S. Department of Transportation Rules for Transportation of Hazardous Materials, 49 CFR Part 107.

<u>Asbestos and/or Lead-based Paint</u>

All structures being demolished/renovated/removed should be checked for asbestos-containing materials (ACM) and lead-based paint (LBP) prior to demolition. If ACM or LBP are found, in addition to the federal waste-related regulations mentioned above, State regulations 9VAC 20-81-620 for ACM and 9VAC 20-60-261 for LBP must be followed. Questions may be directed to Melinda Woodruff at the DEQ's Tidewater Regional Office at (757) 518-2000.

<u>Pollution Prevention – Reuse - Recycling</u>

Please note that DEQ encourages all construction projects and facilities to implement pollution prevention principles, including the reduction, reuse, and recycling of all solid wastes generated. All generation of hazardous wastes should be minimized and handled appropriately.

If you have any questions or need further information, please contact Carlos A. Martinez by phone at (804) 698-4575 or email carlos.martinez@deq.virginia.gov.

Commonwealth of Virginia

Fisher, John <john.fisher@deq.virginia.gov>

Re: NEW PROJECT ARMY Third Port Improvements Project-JBLE-Eustis, DEQ #21-110F

1 message

Gavan, Lawrence <larry.gavan@deq.virginia.gov> Wed, Sep 1, 2021 at 10:55 AM
To: "Fisher, John" <john.fisher@deq.virginia.gov>

(a) Agency Jurisdiction. The Department of Environmental Quality (DEQ) administers the *Virginia Erosion and Sediment Control Law and Regulations* (*VESCL&R*) and *Virginia Stormwater Management Law and Regulations* (*VSWML&R*).

(b) Erosion and Sediment Control and Stormwater Management Plans. The Applicant and its authorized agents conducting regulated land-disturbing activities on private and public lands in the state must comply with *VESCL&R* and *VSWML&R*, including coverage under the general permit for stormwater discharge from construction activities, and other applicable federal nonpoint source pollution mandates (e.g. Clean Water Act-Section 313, federal consistency under the Coastal Zone Management Act). Clearing and grading activities, installation of staging areas, parking lots, roads, buildings, utilities, borrow areas, soil stockpiles, and related land-disturbing activities that result in the total land disturbance of equal to or greater than 10,000 square feet (2,500 square feet in Chesapeake Bay Preservation Area) would be regulated by *VESCL&R*. Accordingly, the Applicant must prepare and implement an erosion and sediment control (ESC) plan to ensure compliance with state law and regulations. Land-disturbing activities that result in the total land disturbance of equal to or greater than 1 acre (2,500 square feet in Chesapeake Bay Preservation Area) would be regulated by *VSWML&R*. Accordingly, the Applicant must prepare and implement a Stormwater Management (SWM) plan to ensure compliance with state law and regulations. The ESC/SWM plan is submitted to the DEQ Regional Office that serves the area where the project is located for review for compliance. The Applicant is ultimately responsible for achieving project compliance through oversight of on-site contractors, regular field inspection, prompt action against non-compliant sites, and other mechanisms consistent with agency policy. [Reference: VESCL 62.1-44.15 et seq.]

(c) General Permit for Stormwater Discharges from Construction Activities (VAR10). DEQ is responsible for the issuance, denial, revocation, termination and enforcement of the Virginia Stormwater Management Program (VSMP) General Permit for Stormwater Discharges from Construction Activities related to municipal separate storm sewer systems (MS4s) and construction activities for the control of stormwater discharges from MS4s and land disturbing activities under the Virginia Stormwater Management Program.

The owner or operator of projects involving land-disturbing activities of equal to or greater than 1 acre is required to register for coverage under the General Permit for Discharges of Stormwater from Construction Activities and develop a project-specific Stormwater Pollution Prevention Plan. Construction activities requiring registration also include land disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan of development will collectively disturb equal to or greater than one acre The SWPPP must be prepared prior to submission of the registration statement for coverage under the general permit and the SWPPP must address water quality and quantity in accordance with the *VSMP Permit Regulations*.
[Reference: Virginia Stormwater Management Act 62.1-44.15 et seq.; VSMP Permit Regulations *9*VAC25-880 *et seq.]*

DEPARTMENT OF ENVIRONMENTAL QUALITY
TIDEWATER REGIONAL OFFICE

Environmental Impact Review
Coordination Review

To: Office of Environmental Impact Review

From: Jeff Hannah, Regional VWPP Program Manager

Date: September 17, 2021

Project: Project Third Port Improvements Project-JBLE-Eustis, DEQ #21-110F

As requested, the DEQ Tidewater Regional Office has reviewed the supplied information and offers the following comments:

Air Compliance Program :
The following air regulations may be applicable: Virginia Administrative Code 9 VAC 5-50-60 *et seq*. which addresses the abatement of visible emissions and fugitive dust emissions, and Virginia Administrative Code 9 VAC 5-130-10 et *seq*. which addresses open burning. For additional information, contact John Brandt, DEQ-TRO at (757) 518-2010.

Land Program (Solid and Hazardous Waste):
All construction and demolition waste, including any excess soil, must be characterized in accordance with the Virginia Hazardous Waste Management Regulations and disposed of at an appropriate facility as applicable.
For additional information, contact Sean Priest, DEQ-TRO at (757)518-2141or jonathan.priest@deq.virginia.gov .

Stormwater:
A construction general permit (CGP) is required prior to commencement of land disturbing activities greater than 1 acre for the discharge of sediment from construction activities. An approved Erosion and Sediment Control Plan (<1 acre of land disturbance) or an approved Stormwater Management Plan (>1 acre of land disturbance) is required prior to commencement of any land disturbing activities. In addition, DEQ is the review authority for state and federal plan review and approval, within the Tidewater Region, to coincide with permit application processing. For additional information, contact Gavin Washburn, DEQ-TRO at (757)493-1072.

Virginia Water Protection Permit Program (VWPP):
Potential adverse impacts to water quality and wetlands resulting from surface runoff due to construction activities must be minimized. This can be achieved by using Best Management Practices (BMPs). Permanent or temporary impacts to surface waters and wetlands may require DEQ authorization under §401 of the Clean Water Act, Virginia Code §62.1-44.15:20, and Virginia Administrative Code 9 VAC 25-210-10 *et seq*. Provided that any and

all necessary permits are obtained and complied with, the project will be consistent with DEQ program requirements. For additional information, contact Jeff Hannah, DEQ-TRO at (757)518-2146.

Water Permit Program (VPDES):

No comments as there does not appear to be any point source discharges of process water or wastewater associated with this project that would necessitate a VPDES permit.

Petroleum Storage Tank Program:

DEQ records do not indicate any reported petroleum releases along the proposed project footprint. If evidence of a petroleum release is discovered during implementation of this project, it must be reported to DEQ, as authorized by CODE # 62.1-44.34.8 through 19 and 9 VAC 25-580-10 et seq. Contact Ms. Melinda Woodruff at (757) 518-2174. Petroleum-contaminated soils and ground water generated during implementation of this project must be properly characterized and disposed of properly.

Installation and operation of any regulated petroleum storage tank(s) either AST or UST must also be conducted in accordance with the Virginia Regulations 9 VAC 25-91-10 et seq and / or 9 VAC 25-580-10 et seq. Documentation and / or questions should be submitted to TRO Tanks at Tidewater Regional Office – 5636 Southern Blvd., Virginia Beach, VA 23462. tro.tanks@deq.virginia.gov.

Based on the submitted information, it appears the proposed project will result in a *[Level of impact]* environmental impact.

Commonwealth of Virginia

Henderson, Samantha <samantha.henderson@dhr.virginia.gov>

JBLE-Eustis Third Port project (DHR File No. 2021-0238)

1 message

Henderson, Samantha <samantha.henderson@dhr.virginia.gov> Thu, Sep 16, 2021 at 11:44 AM
To: "Wright, Javier Ann F CIV USARMY CENAO (USA)" <JavierAnn.F.Wright@usace.army.mil>

Dear Ms. Wright:

The Department of Historic Resources (DHR) has received for our review and comment the JBLE-Eustis Third Port project (DHR File No. 2021-0238). There are a few National Register of Historic Places (NRHP) eligible architectural properties located within the Area of Potential Effects (APE) for this undertaking. However, it is DHR's opinion that the nature of the undertaking will result in only visual impacts to these historic properties, which will not significantly diminish their feeling or setting. Based on the information provided, DHR concurs with the U.S. Army Corps of Engineers' determination that the historic properties in the APE will not be adversely affected by the undertaking.

Implementation of the undertaking in accordance with the finding of *no adverse effect* as documented fulfills the federal agency's responsibilities under Section 106 of the National Historic Preservation Act. If for any reason the undertaking is not or cannot be conducted as proposed in the finding, consultation under Section 106 must be reopened.

Thank you for your consideration of historic resources. Please contact me if you have any questions or if we may provide any further assistance.

Regards,

--
Samantha J. Henderson
Project Review Archaeologist
Review and Compliance Division
Virginia Department of Historic Resources
2801 Kensington Avenue | Richmond, VA 23221
(804) 482-6088 | samantha.henderson@dhr.virginia.gov

DHR is currently teleworking. Please consider contacting me via email rather than via a phone call as I am not at my desk.

Commonwealth of Virginia

Fisher, John <john.fisher@deq.virginia.gov>

ESSLog# 41538_21-110F_JBLE Eustis Third Port Improvements_DWR_AEM20210927

1 message

Martin, Amy <amy.martin@dwr.virginia.gov> Mon, Sep 27, 2021 at 4:29 PM
To: John Fisher <john.fisher@deq.virginia.gov>
Cc: Clinton Morgeson <clinton.morgeson@dwr.virginia.gov>, rr nhreview <nhreview@dcr.virginia.gov>

John,
We have reviewed the subject project that proposes to construct improvements to the port at Ft Eustis on Skiffes Creek. These improvements include improvements to the finger piers, mooring field, landship, and Generals Ramp that include dredging, pile driving, and associated activities. We document Atlantic Sturgeon from the project area. The James River, just downstream of this project site, has been designated a Threatened and Endangered Species Water due to the presence of this species. In addition, Skiffes Creek has been designated a Potential Anadromous Fish Use Area and the James River has been designated a Confirmed Anadromous Fish Use Area due to the presence of other anadromous fishes. **To best protect this unique fishery from harm associated with the proposed instream work, we recommend that instream work associated with this project adhere to a time of year restriction from March 15 through June 30 and August 1 through November 15 of any year. In addition, we recommend conducting any in-stream activities during low or no-flow conditions, using non-erodible cofferdams or turbidity curtains to isolate the construction area, blocking no more than 50% of the streamflow at any given time (minimal overlap of construction footprint notwithstanding), stockpiling excavated material in a manner that prevents reentry into the stream, restoring original streambed and streambank contours, revegetating barren areas with native vegetation, and implementing strict erosion and sediment control measures. We recommend that instream work be designed and performed in a manner that minimizes impacts upon natural streamflow and movement of resident aquatic species. If a dam and pump-around must be used, we recommend it be used for as limited a time as possible and that water returned to the stream be free of sediment and excess turbidity. To minimize potential wildlife entanglements resulting from use of synthetic/plastic erosion and sediment control matting, we recommend use of matting made from natural/organic materials such as coir fiber, jute, and/or burlap. To minimize harm to the aquatic environment and its residents resulting from use of the Tremie method to install concrete, installation of grout bags, and traditional pouring of concrete, we recommend that such activities occur only in the dry, allowing all concrete to harden and cure prior to contact with open water.**

We recommend adherence to erosion and sediment controls during dredging and placement of dredged materials in uplands.

This project site is located within close proximity of historic and/or active bald eagle nests and a Bald Eagle Concentration Area and Roost Zone. To ensure protection of bald eagles in compliance with the Bald and Golden Eagle Act, we recommend using the Center for Conservation Biology (CCB) Eagle Nest Locator to determine if any active eagle nests are known from the project area. If active bald eagle nests have been documented from the project area, we recommend that the project proceed in a manner consistent with state and federal guidelines for protection of bald eagles; including coordination, if indicated, with the U.S. Fish and Wildlife Service regarding possible impacts upon bald eagles or the need for a federal bald eagle take permit.

We also document colonial waterbird colonies supporting Green Herons and/or Great Blue Herons from the project site. **We recommend that areas located within 0.25 miles of work sites be visually assessed to determine if any active heron rookeries are located within the area. If so, the rookery should be mapped and any construction or dredging activities located within 0.25 mile of a colony/rookery should adhere to a time of year restriction from February 15 through August 15 of any year. We also recommend that a 500ft naturally vegetated buffer around the colony be protected from impacts to allow for future site suitability.**

We recommend that all tree removal and ground clearing adhere to a time of year restriction (TOYR) protective of resident and migratory songbird nesting from March 15 through August 15 of any year.

We recommend adherence to erosion and sediment controls during ground disturbance. To minimize potential wildlife entanglements resulting from use of synthetic/plastic erosion and sediment control matting, we recommend use of matting made from natural/organic materials such as coir fiber, jute, and/or burlap.

Assuming adherence to our recommendations for the protection of listed species and/or designated resources under our jurisdiction, as described in bolded font above, and assuming strict adherence to best management practices for erosion and sediment control is maintained, we find this project to be consistent with the Wildlife and Inland Fisheries and Commonwealth Lands Enforceable Policies of the Coastal Zone Management Program.

This project is located within 2 miles of a documented occurrence of a state or federal threatened or endangered plant or insect species and/or other Natural Heritage coordination species. Therefore, we recommend coordination with VDCR-DNH regarding protection of these resources.

Thanks, Amy

Amy Martin
Environmental Services Biologist
Manager, Wildlife Information
she/her/hers
P 804.367.2211
Department of Wildlife Resources
CONSERVE. CONNECT. PROTECT.
A 7870 Villa Park Drive, P.O. Box 90778, Henrico, VA 23228
www.VirginiaWildlife.gov

Commonwealth of Virginia

Fisher, John <john.fisher@deq.virginia.gov>

NEW PROJECT ARMY Third Port Improvements Project-JBLE-Eustis, DEQ #21-110F

1 message

Bott, Louis J. <bottlj@nnva.gov> Mon, Aug 30, 2021 at 9:24 AM
To: "John.Fisher@deq.virginia.gov" <John.Fisher@deq.virginia.gov>
Cc: "Earley, Sherry B." <earleysb@nnva.gov>, "Galant, Craig M." <galantcm@nnva.gov>, "Clayton, Ralph L." <claytonrl@nnva.gov>, "Wilson, Jerri G." <wilsonjg@nnva.gov>

Mr. Fisher,

The Coastal Zone Management Act (CZMA) Federal Consistency Determination document "Third Port Improvements Project Joint Base Langley-Eustis – Fort Eustis (JBLE-Eustis)" has been reviewed by the City of Newport News, Virginia. The City concurs with the U.S. Army Corps of Engineers, Norfolk District findings that the proposed work involving dredging, dredged material placement, sill construction, and pile driving activities located in Skiffe's Creek is consistent with the Virginia Coastal Resources Management Program and has no objection or additional comments to provide on the determination.

Regards,

Louis J. Bott Jr. REM, CHMM

Environmental Division Manager

City of Newport News, Virginia

bottlj@nnva.gov (757)933-2350

Commonwealth of Virginia

Fisher, John <john.fisher@deq.virginia.gov>

Re: NEW PROJECT ARMY Third Port Improvements Project-JBLE-Eustis, DEQ #21-110F

1 message

Warren, Arlene <arlene.warren@vdh.virginia.gov> Tue, Aug 31, 2021 at 2:33 PM
To: John Fisher <john.fisher@deq.virginia.gov>
Cc: rr Environmental Impact Review <eir@deq.virginia.gov>

Project Name: Third Port Improvements Project-JBLE-Eustis
Project #: 21-110 F
UPC #: N/A
Location: City of Newport News

VDH – Office of Drinking Water has reviewed the above project. Below are our comments as they relate to proximity to **public drinking water sources** (groundwater wells, springs and surface water intakes). Potential impacts to public water distribution systems or sanitary sewage collection systems **must be verified by the local utility.**

The following public groundwater wells are located within a 1 mile radius of the project site:

PWS ID Number	City/County	System Name	Facility Name
3700500	NEWPORT NEWS	NEWPORT NEWS_ CITY OF	WELL 1B

The following surface water intakes are located within a 5 mile radius of the project site:

PWS ID Number	System Name	Facility Name
3700500	NEWPORT NEWS_ CITY OF	SKIFFES CREEK
3700500	NEWPORT NEWS_ CITY OF	LEE HALL

The project is not within the watershed of any public surface water intakes.

Best Management Practices should be employed, including Erosion & Sedimentation Controls and Spill Prevention Controls & Countermeasures on the project site.

Materials should be managed while on site and during transport to prevent impacts to nearby surface water.

The Virginia Department of Health – Office of Drinking Water appreciates the opportunity to provide comments. If you have any questions, please let me know.

Best Regards,

Arlene Fields Warren

GIS Program Support Technician

Office of Drinking Water

Virginia Department of Health

109 Governor Street

Richmond, VA 23219

COMMONWEALTH of VIRGINIA

Marine Resources Commission
380 Fenwick Road
Bldg 96
Fort Monroe, VA 23651-1064

Ann F. Jennings
Secretary of Natural and Historic Resources

Steven G. Bowman
Commissioner

September 23, 2021

Department of Environmental Quality
Office of Environmental Impact Review
Attn: John Fisher
1111 East Main St
Richmond, VA 23219

Re: Federal Consistency Determination - Third Port Improvements Project -JBLE-Eustis, DEQ #21-110F

Dear Mr. Fisher,

This will respond to the request for comments regarding the Federal Consistency Determination for the Third Port Improvements Project -JBLE-Eustis project (DEQ #21-110F), prepared by the U.S. Army Corps of Engineers, Norfolk District, on behalf of Joint Base Langley-Eustis- Fort Eustis (JBLE - Eustis). Specifically, JBLE - Eustis has proposed improvements to the existing berthing area and access to the turning basin, which include changes to the existing finger piers, realignment of the mooring field and addition of a sill, improvements to the landship, maintenance and new dredging, and the installation of a new bulkhead to accommodate a new fleet of larger vessels in Newport News, Virginia.

We reviewed the provided documents and found the proposed project is within the jurisdictional areas of the Virginia Marine Resources Commission (VMRC) and will require a permit from this agency.

Please be advised that the Virginia Marine Resources Commission (VMRC) pursuant to Chapters 12, 13, and 14 of Title 28.2 of the Code of Virginia administers permits required for submerged lands, tidal wetlands, and beaches and dunes. Additionally, the VMRC administers the enforceable policies of fisheries management, subaqueous lands, tidal wetlands, and coastal primary sand dunes and beaches, which comprise some of Virginia's Coastal Zone Management Program. VMRC staff has reviewed the submittal and offers the following comments:

Fisheries and Shellfish: the Third Port Improvements Project may have temporary impacts to fisheries. Erosion and run-off controls should be in place to prevent impacts to marine fisheries. A time of year restriction for project construction may be required to limit impacts to anadromous fishes. Additionally, sound attenuation procedures may be required for the installation of steel piles and steel bulkhead.

Submerged Lands: this project will impact State-owned submerged lands and a subaqueous permit will be required. Impacts to these jurisdictional areas will be evaluated and permitted during the application process.

Tidal Wetlands: possible impacts to existing wetlands associated with the installation of the sill may require a wetlands permit form the Newport News Wetlands Board.

Beaches and Coastal Primary Sand Dunes: none in close proximity to the project area

As such, this project has some foreseeable impact on the VMRC's enforceable policies. As proposed, we have no objection to the consistency findings provided by the applicant. Should the proposed project change, a new review by this agency may be required relative to these jurisdictional areas.

Please contact me at 757-247-8027 or by email at ben.nettleton@mrc.virginia.gov if you have questions. Thank you for the opportunity to comment.

Sincerely,

Ben Nettleton

BN/tlb
HM

Matthew J. Strickler
Secretary of Natural and Historic Resources and Chief Resilience Officer

Clyde E. Cristman
Director

COMMONWEALTH of VIRGINIA

DEPARTMENT OF CONSERVATION AND RECREATION

Rochelle Altholz
Deputy Director of Administration and Finance

Nathan Burrell
Deputy Director of Government and Community Relations

Darryl M. Glover
Deputy Director of Dam Safety & Floodplain Management and Soil & Water Conservation

Thomas L. Smith
Deputy Director of Operations

MEMORANDUM

DATE: September 20, 2021

TO: John Fisher, DEQ

FROM: Roberta Rhur, Environmental Impact Review Coordinator

SUBJECT: DEQ 21-110F, Third Port Improvements Project, JLBE-Eustis

Division of Natural Heritage

The Department of Conservation and Recreation's Division of Natural Heritage (DCR) has searched its Biotics Data System for occurrences of natural heritage resources from the area outlined on the submitted map. Natural heritage resources are defined as the habitat of rare, threatened, or endangered plant and animal species, unique or exemplary natural communities, and significant geologic formations.

According to the information currently in Biotics, natural heritage resources have not been documented within the submitted project boundary including a 100 foot buffer. The absence of data may indicate that the project area has not been surveyed, rather than confirm that the area lacks natural heritage resources. In addition, the project boundary does not intersect any of the predictive models identifying potential habitat for natural heritage resources.

There are no State Natural Area Preserves under DCR's jurisdiction in the project vicinity.

Under a Memorandum of Agreement established between the Virginia Department of Agriculture and Consumer Services (VDACS) and the DCR, DCR represents VDACS in comments regarding potential impacts on state-listed threatened and endangered plant and insect species. The current activity will not affect any documented state-listed plants or insects.

New and updated information is continually added to Biotics. Please re-submit project information and map for an update on this natural heritage information if the scope of the project changes and/or six months has passed before it is utilized.

The Virginia Department of Game and Inland Fisheries (VDGIF) maintains a database of wildlife locations, including threatened and endangered species, trout streams, and anadromous fish waters that may contain information not documented in this letter. Their database may be accessed from http://vafwis.org/fwis/ or contact Ernie Aschenbach at 804-367-2733 or Ernie.Aschenbach@dwr.virginia.gov.

Division of Dam Safety and Floodplain Management

Floodplain Management Program:

The National Flood Insurance Program (NFIP) is administered by the Federal Emergency Management Agency (FEMA), and communities who elect to participate in this voluntary program manage and enforce the program on the local level through that community's local floodplain ordinance. Each local floodplain ordinance must comply with the minimum standards of the NFIP, outlined in 44 CFR 60.3; however, local communities may adopt more restrictive requirements in their local floodplain ordinance, such as regulating the 0.2% annual chance flood zone (Shaded X Zone).

All development within a Special Flood Hazard Area (SFHA), as shown on the locality's Flood Insurance Rate Map (FIRM), must be permitted and comply with the requirements of the local floodplain ordinance.

State Agency Projects Only

Executive Order 45, signed by Governor Northam and effective on November 15, 2019, establishes mandatory standards for development of state-owned properties in Flood-Prone Areas, which include Special Flood Hazard Areas, Shaded X Zones, and the Sea Level Rise Inundation Area. These standards shall apply to all state agencies.

1. Development in Special Flood Hazard Areas and Shaded X Zones
    A. All development, including buildings, on state-owned property shall comply with the locally-adopted floodplain management ordinance of the community in which the state-owned property is located and any flood-related standards identified in the Virginia Uniform Statewide Building Code.
    B. If any state-owned property is located in a community that does not participate in the NFIP, all development, including buildings, on such state-owned property shall comply with the NFIP requirements as defined in 44 CFR §§ 60.3, 60.4, and 60.5 and any flood-related standards identified in the Virginia Uniform Statewide Building Code.
        (1) These projects shall be submitted to the Department of General Services (DGS), for review and approval.
        (2) DGS shall not approve any project until the State NFIP Coordinator has reviewed and approved the application for NFIP compliance.
        (3) DGS shall provide a written determination on project requests to the applicant and the State NFIP Coordinator. The State NFIP Coordinator shall maintain all documentation associated with the project in perpetuity.
    C. No new state-owned buildings, or buildings constructed on state-owned property, shall be constructed, reconstructed, purchased, or acquired by the Commonwealth within a Special Flood Hazard Area or Shaded X Zone in any community unless a variance is granted by the Director of DGS, as outlined in this Order.

The following definitions are from Executive Order 45:

Development for NFIP purposes is defined in 44 CFR § 59.1 as "Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials."

The Special Flood Hazard Area may also be referred to as the 1% annual chance floodplain or the 100-year floodplain, as identified on the effective Flood Insurance Rate Map and Flood Insurance Study. This includes the following flood zones: A, AO, AH, AE, A99, AR, AR/AE, AR/AO, AR/AH, AR/A, VO, VE, or V.

The Shaded X Zone may also be referred to as the 0.2% annual chance floodplain or the 500- year floodplain, as identified on the effective Flood Insurance Rate Map and Flood Insurance Study.

The Sea Level Rise Inundation Area referenced in this Order shall be mapped based on the National Oceanic and Atmospheric Administration Intermediate-High scenario curve for 2100, last updated in 2017, and is intended to denote the maximum inland boundary of anticipated sea level rise.

"State agency" shall mean all entities in the executive branch, including agencies, offices, authorities, commissions, departments, and all institutions of higher education.

"Reconstructed" means a building that has been substantially damaged or substantially improved, as defined by the NFIP and the Virginia Uniform Statewide Building Code.

Federal Agency Projects Only

Projects conducted by federal agencies within the SFHA must comply with federal Executive Order 11988: Floodplain Management.

DCR's Floodplain Management Program does not have regulatory authority for projects in the SFHA. The applicant/developer must contact the local floodplain administrator for an official floodplain determination and comply with the community's local floodplain ordinance, including receiving a local permit. Failure to comply with the local floodplain ordinance could result in enforcement action from the locality. For state projects, DCR recommends that compliance documentation be provided prior to the project being funded. For federal projects, the applicant/developer is encouraged reach out to the local floodplain administrator and comply with the community's local floodplain ordinance.

To find flood zone information, use the Virginia Flood Risk Information System (VFRIS): www.dcr.virginia.gov/vfris

To find community NFIP participation and local floodplain administrator contact information, use DCR's Local Floodplain Management Directory: www.dcr.virginia.gov/dam-safety-and-floodplains/floodplain-directory

The remaining DCR divisions have no comments regarding the scope of this project. Thank you for the opportunity to comment.

COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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Matthew J. Strickler
Secretary of Natural Resources

David K. Paylor
Director

(804) 698-4000
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MEMORANDUM

TO: John Fisher, DEQ Office of Environmental Impact Review

FROM: Daniel Moore, Principal Environmental Planner

DATE: October 27, 2021

SUBJECT: DEQ - 21-110F– Army: Fort Eustis, 3rd Port Improvement Project, City of Newport News

We have reviewed the Federal Consistency Determination documents for the proposed Fort Eustis 3rd Port Improvement Project in Newport News and offer the following comments regarding consistency with the provisions of the *Chesapeake Bay Preservation Area Designation and Management Regulations* (Regulations):

In the City of Newport News, the areas protected by the Chesapeake Bay Preservation Act, as locally implemented, require conformance with performance criteria. These areas include Resource Protection Areas (RPAs) and Resource Management Areas (RMAs). RPAs include tidal wetlands, certain non-tidal wetlands and tidal shores. RPAs also include a 100-foot vegetated buffer area located adjacent to and landward of these features and along both sides of any water body with perennial flow. RMA lands in Newport News include floodplains, highly erodible soils and all lands adjacent to and 100 feet landward of the RPA. The City of Newport News also designated Intensely Developed Areas (IDAs) as redevelopment areas of the City, which incorporates both the RPA and RMA.

Under the Federal Consistency Regulations of the *Coastal Zone Management Act of 1972*, federal actions in Virginia must be conducted in a manner "consistent to the maximum extent practicable" with the enforceable policies of the Virginia Coastal Zone Management Program. Those enforceable policies are administered through the Chesapeake Bay Preservation Act and Regulations.

Federal actions on installations located within Tidewater Virginia are required to be consistent with the performance criteria of the Regulations on lands analogous to locally designated RPAs

and RMAs, as provided in §9VAC25-830-130 and 140 of the Regulations, including the requirement to minimize land disturbance (including access and staging areas), retain existing vegetation and minimize impervious cover as well as including compliance with the requirements of the *Virginia Erosion and Sediment Control Handbook,* and stormwater management criteria consistent with water quality protection provisions of the *Virginia Stormwater Management Regulations*." For land disturbance over 2,500 square feet, the project must comply with the requirements of the *Virginia Erosion and Sediment Control Handbook.*

The proposed project includes construction, from the water, of the following off-shore elements:

- Finger Piers Improvements: a. Demolition of seven (7) existing finger piers and associated timber mooring piles; b. Construction of one (1) new concrete pier (132 feet long) and five (5) finger piers (122 feet long) and associated concrete mooring piles; c. Construction of a concrete wave screen (126 feet long) along the western side of the concrete pier; d. Construction of a stern ramp (542 feet long) along the bulkhead; e. New work dredging to a maximum dredging depth of -18 feet MLLW removing up to 14,000 cy of new work sediment in the improved finger pier berthing area (approximately 1.9 acres); and f. Placement of the new work dredged material at the Fort Eustis Dredged Material Management Area (FEDMMA).
- Mooring Field Improvements: a. Demolition of existing timber moorings; b. Realignment and construction of up to 22 new steel mooring piles within the 950- foot-long variable width mooring field; c. Construction of a subaqueous sill (sheet pile or riprap, to be determined) within the existing mooring field as a nearshore stabilization feature; d. Maintenance dredging and new work dredging to a maximum dredging depth of - 14 feet MLLW removing an estimated 1,000 cy of maintenance dredged material and 10,000 cy of new work dredged material from the access area channelward of the realigned mooring field; and e. Placement of maintenance and new work dredged material from the mooring field at the FEDMMA.
- Landship Improvements: a. Construction of eight steel monopiles with fender assemblies and 14 steel piles to support gangways.
- General's Ramp Improvements: a. Construction of a subaqueous steel sheet sill (200 feet long) with one (1) steel monopile and associated fendering.

Based on review of all submitted documentation, the proposed project will not result in any land development activities, and all project meet the definition for water-dependent uses. Per §9VAC25-830-140 of the Regulations, new or expanded water-dependent facilities may be allowed provided that such facilities do not: a) conflict with the local comprehensive plan; b) complies with the general performance criteria referenced in §9VAC25-830-130 of the Regulations; c) any nonwater-dependent component is located outside of all locally-designated RPAs; and d) access to all water-dependent facilities is provided with the minimum disturbance necessary (where practicable, a single point of access will be provided.)

Provided the above conditions are met the proposed activity would be consistent with the Regulations and the *Chesapeake Bay Preservation Act.*

CLEAN AIR ACT GENERAL CONFORMITY RULE
RECORD OF NON-APPLICABILITY

Clean Air Act – General Confirmatory Rule
Record of Non-Applicability
Third Port Improvements Project,
Skiffes Creek, Joint Base Langley-Eustis – Fort Eustis
Project located in Newport News, Virginia

Section 176(c) (42 U.S.C. § 7506) of the Clean Air Act (CAA) requires Federal agencies to ensure that emissions from Federal actions will conform to state implementation plans (SIP) designed to maintain an attainment designation for air pollutants as defined by the National Ambient Air Quality Standard (NAAQS). The conformity rule applies to Federal actions which cause emissions in areas designated as nonattainment under Section 107 of the CAA and maintenance areas established under Section 157A of the CAA. The Environmental Protection Agency's General Conformity Regulations also exempt certain categories of actions from the conformity analysis requirement.

Project description

The Third Port Improvements Project will take place at the Third Port located on Joint Base Langley-Eustis – Fort Eustis (JBLE-Eustis) in Skiffes Creek, a tributary of the James River, in Newport News, Virginia. The purpose of the project is to prepare JBLE-Eustis for up to 10 new vessels that will be assigned to the Third Port in the near future. This new class of vessels will berth along the finger piers; however, the new vessels are longer (117 feet in length) than vessels in the existing fleet that berth in the finger pier area and require improvements to berthing areas and access to the turning basin. Additionally, other improvements will be executed to increase the usable waterway for the vessel fleet, including the new vessels, and to aid in training for cargo logistics and vessel operations. The new vessels will replace older vessels in the fleet; there will be no net increase in the number of vessels in the fleet. All proposed work will be constructed from the water. The project involves multiple phases that may be constructed either consecutively or concurrently across multiple funding years depending on funding availability.

Under Alternative 1, the existing timber finger piers would be demolished and replaced with a concrete-pile supported concrete pier and concrete mooring dolphin/gangway structures. One existing pier would be eliminated. All piers would be lengthened. A concrete pile-supported stern ramp and a concrete sheet pile wave screen would be constructed. New work dredging would increase the depth of the finger pier berthing area to -17 feet MLLW (maximum allowable depth of -18 feet MLLW). The existing mooring field would be realigned and lengthened, and timber moorings would be replaced with steel monopiles. A subaqueous riprap sill would be constructed to mitigate shoreline accretion channelward of the moorings, and dredging would be required in the footprint of the riprap prior to placement of mattresses and stone fill. Maintenance and new work dredging would increase the depth of the mooring field access area to -11 feet MLLW (maximum allowable depth of -14 feet MLLW). Improvements to the landship would include the installation of steel pile-supported gangways and monopiles with fendering. Improvements to the general's ramp include the installation of a subaqueous bulkhead perpendicular to shore and one monopile with fendering.

The proposed improvements under Alternative 2 are the same as those described by Alternative 1, except that the riprap sill at the mooring field would be replaced by a subaqueous bulkhead sill. This alternative would reduce the amount of dredging required at the mooring field site and would decrease the area of subaqueous bottom that would be hardened.

Under the No Action Alternative, the proposed improvements would not be performed. The finger piers would not be replaced, the mooring field would not be replaced and realigned with depths restored, the landship would not be improved, and the general's ramp would not be improved. No new work dredging would occur. The finger piers would not meet the requirements of the new vessel class, and the operational depths of the berthing areas would continue to decrease due to sediment accretion. The operational depth of the mooring field would continue to decline, continued shoreline accretion in the area would decrease the useable length of the field, and utilization of the area would continue to impact or worsen impacts to the navigable waterway. The landship would not be improved to better support training operations. The general's ramp would not be improved to prevent or slow sediment accretion; eventually shoreline accretion will severely reduce vessel maneuverability such that the ramp will be unnavigable or unusable for loading and unloading wheeled cargo. Due to all these impacts, the No Action Alternative would not adequately support the JBLE-Eustis mission.

The Third Port within Skiffes Creek is located in the Air Quality Control Region (AQCR) known as Hampton Roads Intrastate ACQR in Virginia (40 CFR 81.93) and is part of the Norfolk-Virginia Beach-Hampton Roads (Hampton Roads), VA Marginal Maintenance Area for the 1997 ozone NAAQS. The Hampton Roads area is currently in attainment for all other NAAQS. Although the 1997 ozone standard has been revoked, maintenance areas for that standard must still demonstrate compliance with the standard for 20 years. This requirement is based on the South Coast II Court Decision and subsequent EPA guidance. The Hampton Roads Area was redesignated to attainment for the 1997 ozone NAAQS on June 1, 2007, which would be the point at which the maintenance timeline would start. This includes conducting conformity determinations for projects within those areas, and Hampton Roads is one such area. Therefore, a conformity analysis was completed to estimate emission totals of each criteria pollutant associated with the Proposed Action.

The Proposed Action would result in air emissions from the operation of the propulsion motors of harbor craft vessels, associated auxiliary motors onboard vessels, land vehicles associated with demolition and construction, and non-road construction equipment. The USEPA's *Port Emissions Inventory Guidance* (2020) was used to estimate harbor craft vessel emissions based on the estimated hours of usage and emission factors for each motorized source. Emission factors for pile extractors and drivers were obtained from the "Final Environmental Assessment for Joint Logistics Over-the-Shore Training at Joint Expeditionary Base Little Creek-Fort Story, Virginia Beach, Virginia and Marine Corps Base Camp Lejeune, Jacksonville, North Carolina" (2015), which is partially within the Hampton Roads area. Other project emissions were estimated using the Air Force's Air Conformity Applicability Model (ACAM) in accordance with the Air Force Manual 32-7002, *Environmental Compliance and Pollution Prevention*. Section 4.3 and Appendix C of the Environmental Assessment illustrate the estimated emission totals for each criteria pollutant and describes the methodology used to develop these estimates. The estimates were found to be well below *de minimis* threshold levels in accordance with 40 CFR

93.153(b)(2) for maintenance areas, therefore the Action Alternatives do not require a formal General Conformity Analysis.

We have considered the potential direct and indirect emissions from the Third Port Improvements project, and reach the following conclusion(s):

[ ] The action is entirely outside of and will not cause any direct or indirect emissions in any nonattainment or maintenance area [see 40 CFR 93.153(b)].

[x] The total direct and indirect emissions are below de minimis levels [40 CFR 93.153(c)(1) for the exemption, but for the applicable levels see 40 CFR 93.153(b)(1) for nonattainment areas or 40 CFR 93.153(b)(2) for maintenance areas].

[ ] The following de minimis exemption to the conformity requirements applies: 40 CFR Part 93.153(c)(2)(ix) "Maintenance dredging and debris disposal where no new depths are required, applicable permits are secured, and disposal will be at an approved disposal site".

[ ] The action is on the agency's "presumed to conform" list at: [EPA regulation describing the "presumed to conform" process see 40 CFR 93.153(f)].

[ ] The facility has a facility-wide emissions budget approved by the State as a part of the SIP, and the emissions from the proposed action are within the budget.

To the best of my knowledge the information provided is correct and accurate. I concur in the finding that the proposed action meets the exemptions stated above and thus will conform to the SIP.

Lesley Dobbins-Noble Date: 2021.08.20 15:50:35 -04'00'

20 August 2021
Date

Lesley Dobbins-Noble
Chief, Operations Branch

CLEAN WATER ACT SECTION 404(b)(1)

Final Evaluation of 404(b)(1) Guidelines
Contained in Vol. 45 No. 249
of the Federal Register dated 24 December 1980

Third Port Improvements Project, Skiffes Creek,
Joint Base Langley-Eustis, Fort Eustis, Virginia
November 2021

1. Technical Evaluation Factors
   a. Physical and Chemical Characteristics of Aquatic Ecosystem (230.20-230.25)(Subpart C)

		N/A	Not Significant	Significant
(1)	Substrate impacts	☐	☑	☐
(2)	Suspended particulates/turbidity impacts	☐	☑	☐
(3)	Water Quality Control	☐	☑	☐
(4)	Alteration of current patterns and water circulation	☐	☑	☐
(5)	Alteration of normal water fluctuations/hydroperiod	☐	☑	☐
(6)	Alteration of salinity gradients	☐	☑	☐

Dredging operations will increase turbidity at the dredging location; however, impacts will be minor and short-term and will dissipate once dredging has ceased. Placement at the proposed confined disposal facility (Fort Eustis Dredged Material Management Area) is not anticipated to have significant impacts on the water quality of the surrounding waterways (Skiffes Creek and James River). Placement at the alternative overboard placement area (Norfolk Ocean Disposal Site) will increase turbidity at the placement site; however, this will be a minor, short-term impact that will dissipate once placement activities are complete.

   b. Biological Characteristics of the Aquatic Ecosystem (230.30-230.32) (Subpart D)

		N/A	Not Significant	Significant
(1)	Effect on threatened/endangered species and their habitat	☐	☑	☐
(2)	Effect on aquatic food web	☐	☑	☐
(3)	Effect on other wildlife (mammals, birds, reptiles, and amphibians)	☐	☑	☐

Based on a search of Virginia's endangered species databases and coordination with the U.S. Fish and Wildlife Service and National Marine Fisheries Service,

the project will not significantly affect any federally- or state-listed threatened or endangered species.

c. Special Aquatic Site (230.40-230.45)(Subpart E)

		N/A	Not Significant	Significant
(1)	Sanctuaries and refuges	☑	☐	☐
(2)	Wetlands	☐	☑	☐
(3)	Mud flats	☐	☑	☐
(4)	Vegetated shallows	☑	☐	☐
(5)	Coral reefs	☑	☐	☐
(6)	Riffle and pool complexes	☑	☐	☐

Vegetated wetlands are located adjacent to the project area; however, all efforts will be made to avoid and minimize impacts to wetlands. Unvegetated wetlands (mudflats) occur adjacent to the project area; impacts to unvegetated wetlands will be avoided and minimized to the maximum extent practicable. There is no submerged aquatic vegetation (SAV) in the project area; therefore, no impacts are anticipated. There are no sanctuaries and refuges, coral reefs, or riffle and pool complexes located in the project area; therefore, no impacts are anticipated.

d. Human Use Characteristics (230.50-230.54)(Subpart F)

		N/A	Not Significant	Significant
(1)	Effects on municipal and private water supplies	☑	☐	☐
(2)	Recreational and commercial fisheries impacts	☐	☑	☐
(3)	Effects on water-related recreation	☐	☑	☐
(4)	Aesthetic impacts	☐	☑	☐
(5)	Effects on parks, national and historical monuments, national seashores, wilderness areas, research sites, and similar preserves	☑	☐	☐

2. Evaluation of Dredged or Fill Material (230.60)(Part G)
   a. The following information has been considered in evaluating the biological availability of possible contaminants in dredged or fill material. **(Check only those appropriate)**

- [x] (1) Physical characteristics
- [ ] (2) Hydrography in relation to known or anticipated sources of contaminants
- [x] (3) Results from previous testing of the material in the vicinity of the project
- [ ] (4) Known, significant sources of persistent pesticides from land runoff or percolation
- [ ] (5) Spill records for petroleum products or designated (Section 311 of CWA) hazardous substances
- [ ] (6) Other public records of significant introduction of contaminants from industries, municipalities, or other sources
- [ ] (7) Known existence of substantial material deposits of substances which could be released in harmful quantities to the aquatic environment by man-induced discharges
- [ ] (8) Other sources (specify)

Placement at Fort Eustis Dredged Material Management Area (FEDMMA), a confined disposal facility, is expected to provide sufficient constraints within the placement site to reduce any potential contaminant to acceptable levels due to the retention of solids at the site preventing its transport beyond the boundaries of the confined disposal facility consistent with the provisions of 40 CFR 230.60(d). Additionally, any material placed at the alternative placement site, Norfolk Ocean Disposal Site (NODS), must undergo further MPRSA Section 103 testing, be found compliant with the provisions therein, and receive concurrence from the EPA and the USACE to receive a Section 103 permit for ocean disposal of dredged material. Dredged material from Skiffes Creek Channel was sampled and characterized in May 2014 in accordance with Section 103 of MPRSA to ensure placement site compatibility with the NODS. There is no reason to suspect contamination.

b. An evaluation of the appropriate information in 2a above indicated that there is reason to believe the proposed dredged or fill material is not a carrier of contaminants, or that levels of contaminants are substantively similar at extraction and disposal sites and not likely to exceed constraints. The material meets the testing exclusion criteria.

YES [x] NO [ ]

3. Disposal Site Delineation (Section 230.11(f))
   a. The following factors, as appropriate, have been considered in evaluating the disposal site.
      - [x] (1) Depth of water at disposal site

- [x] (2) Current velocity, direction, and variability at disposal site
- [x] (3) Degree of turbulence
- [ ] (4) Water column stratification
- [ ] (5) Discharge of vessel speed and direction
- [x] (6) Rate of discharge
- [x] (7) Dredged material characteristics (constituents, amount, and type of material, settling velocities)
- [ ] (8) Number of discharges per unit of time
- [ ] (9) Other factors affecting rates and patterns of mixing (specify)

b. An evaluation of the appropriate factors in 4a above indicates that the disposal site and/or size of mixing zone are acceptable.

YES [x] NO [ ]

4. Actions to Minimize Adverse Effects (Section 230.70-230.77)(Subpart H)

All appropriate and practicable steps have been taken, through application of recommendations of Section 230.70-230.77 to ensure minimal adverse effects of the proposed discharge.

YES [x] NO [ ]

5. Factual Determination (Section 230.11)

A review of appropriate information as identified in items 2-5 above indicates that there is a minimal potential for short- or long-term environmental effects of the proposed discharge as related to:

- [x] a. Physical substrate at the disposal site (review sections 2a, 3, 4, & 5)
- [x] b. Water circulation, fluctuation, & salinity (review sections 2a, 3, 4, & 5)
- [x] c. Suspended particulates/turbidity (review sections 2a, 3, 4, & 5)
- [x] d. Contaminant availability (review sections 2a, 3, & 4)
- [x] e. Aquatic ecosystem structure and function (review sections 2b, c; 3, & 5)
- [x] f. Disposal site (review sections 2, 4, & 5)
- [x] g. Cumulative impact on the aquatic ecosystem
- [x] h. Secondary impacts on the aquatic ecosystem

6. Review of Compliance (230.10(a)-(d))(Subpart B)

A review of the permit application indicates that:

a. The discharge represents the least environmentally damaging practicable alternative and if in a special aquatic site, the activity associated with the discharge must have direct access or proximity to, or be located in the aquatic ecosystem to fulfill its basic purpose (if no, see section 2 and information gathered for EA alternative);

YES ☑ NO ☐

b. The activity does not appear to 1) violate applicable state water quality standards or effluent standards prohibited under Section 307 of the CWA; 2) jeopardize the existence of Federally designated marine sanctuary (if no, see section 2b and check responses from resource and water quality certifying agencies;

YES ☑ NO ☐

c. The activity will not cause or contribute to significant degradation of waters of the U.S. including adverse effects on human health, life stages of organisms dependent on the aquatic ecosystem, ecosystem diversity, productivity and stability, and recreational, aesthetic, and economic values (if no, see section 2);

YES ☑ NO ☐

d. Appropriate and practicable steps have been taken to minimize potential adverse impacts of the discharge on the aquatic ecosystem (if no, see section 5);

YES ☑ NO ☐

The proposed discharge of fill or dredged material is the least environmentally damaging practicable alternative and meets the Federal Standard.

7. Findings

☑ a. The proposed disposal site for discharge of dredged or fill material complies with the Section 404(b)(1) guidelines

☐ b. The proposed disposal site for discharge of dredged or fill material complies with the Section 404(b)(1) guidelines with the inclusion of the following conditions:

c. The proposed disposal site for discharge of dredged or fill material does not comply with the Section 404(b)(1) guidelines for the following reason(s):

☐ (1) There is a less damaging practicable alternative
☐ (2) The proposed discharge will result in significant degradation of the aquatic ecosystem

☐ (3) The proposed discharge does not include all practicable and appropriate measures to minimize potential harm to the aquatic ecosystem.

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Date: 2021.11.05 15:39:23 -04'00'

5 November 2021
Date

Lesley Dobbins-Noble
Chief, Operations Branch
Norfolk District
U.S. Army Corps of Engineers