U.S. Department of the Interior
National Park Service, Northeast Region

Finding of No Significant Impact

Repair and Stabilize the York River Shoreline to Protect the Colonial Parkway
Colonial National Historical Park
York County, Virginia

INTRODUCTION

The National Park Service (NPS) proposes to repair and stabilize sections of the York River shoreline within Colonial National Historical Park (the park) in order to protect the Colonial Parkway (the parkway) from ongoing erosion. The parkway, a resource listed on the National Register of Historic Places (the National Register), is the principal transportation link between the park's Yorktown and Jamestown Units. Artificial structures currently in place to defend the shoreline against wind-driven wave action are antiquated and characterized by local failures, rendering them ineffective. Projected sea-level rise as well as landward migration of the shoreline will exacerbate this problem. In addition to the parkway, archeological resources, estuarine wetlands, and public safety are threatened by shoreline erosion.

The NPS proposes to repair the existing shoreline defense and install new structures within park property only, commencing near the confluence of Felgates Creek and the York River and continuing downstream to the boundary with the U.S. Coast Guard Training Center in Yorktown. Actions needed include rehabilitation or installation of a combination of shoreline treatments, including rock revetments, rock spurs, continuous and gap sills, and shore-attached breakwaters.

The NPS prepared an Environmental Assessment (EA) to develop and analyze alternatives for repair and stabilization of the York River Shoreline. The EA described the goals of the project; presented a range of reasonable alternatives, including the no-action alternative; analyzed the effects of each alternative on the human environment; and solicited agency and public comments on the proposed action. The EA for this proposal was released on July 30, 2012, for a 30-day agency and public review.

The project recognizes Secretary of the Interior Order No. 3289, Amendment No. 1, Section 3a, which requires that each bureau and office of the Department of the Interior consider and analyze potential climate change impacts when undertaking long-range planning exercises and making major decisions regarding the use of Department resources. The proposed actions will consider rates of sea-level rise and make sure that resulting designs are adaptable to future conditions. The shoreline stabilization project will also provide opportunities to enhance or restore tidal wetland features as part of the overall shoreline management strategy, consistent with Executive Order 11990 directing federal agencies "…to preserve and enhance the natural and beneficial values of wetlands…" and to "…strive to achieve a longer-term goal of net gain of wetlands Servicewide."

Specific considerations and concerns identified throughout the project planning and scoping processes included planning for anticipated sea-level rise, appreciating the regulatory

implications of the potential approaches, considering site access restrictions from both land and water, and accommodating existing recreational uses. The following guiding principles were used to develop the various alternatives analyzed in the Environmental Assessment (EA):

- options should be in keeping with the project's purpose and need statement
- options should be acceptable within the current regulatory climate and make sense from a permitting standpoint
- options should be largely in keeping with shoreline treatments that are proven and typical of the setting and not experimental or untested
- options should recognize the considerable degree of shoreline manipulation that has already occurred within the project area and strive to refurbish existing structures and/or develop structures that complement existing structures from a hydrodynamic standpoint such that post-construction impacts on local bathymetry (i.e., scour) and local/regional depositional patterns are unaffected to the greatest extent possible
- options should be suitable for the given hydrogeomorphic setting and/or degree of anthropogenic change
- options should be designed to account for sea-level rise and be consistent with the guidelines of the NPS *Climate Change Response Strategy*
- construction materials and methods should be readily available and feasible to employ
- options should represent a long-term but reasonable solution and be of a nature that reflects the level of observed threat to the adjacent park resources

This document records the NPS decision and a finding of no significant impact (FONSI) for the alternative selected for implementation.

SELECTED ALTERNATIVE

Based on the analysis presented in the EA, the NPS has selected Alternative 2 (NPS Preferred Alternative) for implementation. The selected alternative is described on pages 48-71 of the EA.

The selected alternative will meet the purpose and need of the project by reducing the risk to the parkway and other upland resources from landward migration of the shoreline through shoreline treatments. Living shoreline approaches, such as gap sills, will enhance and restore tidal wetland areas. Areas of revetment rehabilitation also may have their splash aprons vegetated with saltmeadow cordgrass (*Spartina patens*), further improving shoreline habitat for what is otherwise a defensive shoreline stabilization approach. The selected alternative offers better consistency with established means of shoreline defense for the Chesapeake Bay area than the other alternatives.

The project area is divided into five Reaches (see Figures 2a and 2b in EA).

Reach IA

Reach IA extends from the northern tip of the point at the Ringfield Picnic Area south to the mouth of Felgates Creek. Wave attack on the bluffs of the Ringfield Picnic Area has resulted in the displacement of cultural artifacts from the soil column and onto the back beach. Under the selected alternative, the principal treatment approach is the use of a rock sill with pocket beaches occurring at purposeful breaks in the sill. An approximately 200 foot-long pocket beach will be created in the center of the Reach between two seaward-pointing spurs. The revetments protecting the pilings supporting the bridge over Felgates Creek will be rehabilitated, potentially including repositioning and/or reapplication of rock material to increase the effective height. Construction access to Reach IA will be provided by a single barge port located near the center of the Reach. The road will be approximately 15 feet wide and constructed of sand.

Appropriate equipment such as a track hoe, equipped with a long boom and hydraulic thumb bucket or rock grapple, will be used to carefully place the rock material to construct the sill. Subsequent to installation of the sill, the sandy roadbed material will be left in place and augmented behind the sill as necessary to provide a planting medium for the establishment of tidal marsh vegetation. Saltmarsh cordgrass (*Spartina alterniflora*) will be established behind the sill, transitioning to saltmeadow cordgrass as elevation increases. Installation of the haul road and the placement of the sandy planting substrate may overlap with and impact the seaward fringe of existing estuarine wetlands; however, the area of post-construction planting will result in an overall increase in wetland area, since the sill will be positioned some distance seaward of the existing wetland fringe and planting will proceed out to the flank of the sill.

Reach I

Reach I extends from the mouth of Felgates Creek eastward along Bellfield Straight to the mouth of Indian Field Creek. Two shoreline treatments will be implemented within Reach I as part of the selected alternative. As described for Reach IA, a gap sill will be constructed immediately downstream of Felgates Creek at Sub-Reach “a”. In addition, zones of saltmarsh cordgrass and saltmeadow cordgrass will be established. For the remainder of Reach I, the proposed shoreline treatment will consist of rehabilitation of the existing revetment. The design of the revetment will seek to augment the structures in a vertical and seaward direction. Rehabilitation will require a minor degree of bank cutting (on the order of 5 to 10 feet) to facilitate construction access and to achieve the appropriate grade to “attach” the revetment to the bank.

Two barge ports will be used for Reach I, one located at either end, in addition to two vehicle turnouts provided at regular spacing. On-land material staging may be required and will take place in the grassy areas near the barge port. The rock materials from the current revetment will be reused as part of both the construction process and as a foundation for new armor stone. Revetment rehabilitation will proceed from an interior location within the Reach and retreat to each barge port.

Treatment of Reach I will also include the reparation of gully erosion between the bluff line and the parkway road surface. Although the work may be accomplished from the haul road, it is

likely that some work will need to be performed via access from the parkway using moderate duty equipment. No excavation will be carried out, and the gully will be backfilled with an appropriate material. Reparation of the gully will also include recontouring and revegetation, following guidelines approved by park staff.

Reach II

Reach II extends from the mouth of Indian Field Creek to the western pier of the Naval Weapons Station in Yorktown. Revetment rehabilitation will occur in three locations in a manner similar to that for Reach I: Sub-Reaches "a", "d", and "g". New rock sills will be created upstream and downstream of Sandy Point at Sub-Reaches "ab" and "c", where bathymetric conditions are amenable to marsh wetland creation. The sill at Sub-Reach "ab" will be constructed in roughly the same location as the existing remnants of the revetment, using these materials to the maximum extent possible in construction. The upland area landward of the sill; hydraulic fill placed during the construction of the Indian Field Creek bridge, will be excavated to create a planting terrace approximately 40 feet inland from the existing revetment. This approach will facilitate the creation of a marsh fringe wetland system similar to what may have been present along the shoreline before construction of the parkway.

At Sub-Reach "c", the rock sill will be located seaward of the current and discontinuous sill by approximately 30 feet. The proposed new sill will have a single gap and associated pocket beach and will reduce the risk of shoreline recession and subsequent parkway damage by enhancing the wetland interface between the mean low water line and the parkway. An existing sill will be rehabilitated at Sub-Reach "e", just upstream of the NPS breakwaters located in Sub-Reach "f". Each of these construction activities will be carried out using construction equipment and haul roads similar to those described for Reaches IA and I. The NPS breakwaters will be rehabilitated, including repositioning of the existing concrete slabs only as needed to accommodate the placement of new rock required to augment structure height.

Reach III

Reach III extends from the eastern pier of the Naval Weapons Station in Yorktown to a point just beyond the location of Redoubt 1/Fusilier's Redoubt at the Yorktown Victory Center. The only proposed new breakwater construction within the project boundaries takes place in Reach III, Sub-Reach "a". The elevation of the beach and the backshore area is insufficient to dissipate wave energy during storm events. In order to reduce the risk of shoreline recession at Sub-Reach "a", five separate breakwaters are proposed. The breakwaters will be spaced by a gap distance of roughly 200 feet, and they will be located approximately 130 feet seaward of the current shoreline. The total footprint for all five breakwaters will be approximately 31,550 square feet (0.72 acre). Each breakwater will be attached to shore by a bar of sand that will be brought to the site from offshore sources. Construction will proceed in the same manner as that described for the rock sill at Reach IA.

The lowermost segment of Sub-Reach "b" will be rehabilitated and include a new spur pointing downstream where the riverbank turns sharply south. The spur will act as an artificial headland, moving the point of wave diffraction farther offshore to assist in attaining local equilibrium of the shoreline plan form. Downstream of the mouth of Ballard Creek, the existing revetment

running along the base of the York River Cliffs will be rehabilitated in similar fashion to the revetment at Reach I, Sub-Reach "b". Two barge ports will be required to provide construction access for Reach III.

Reach IV

Reach IV extends from a location at the Point of Rocks due east of the Yorktown Battlefield visitor center through to the property line with the Unites States Coast Guard Training Station in Yorktown, not including those private properties intermingled in this reach. Revetment rehabilitation will take place at Reach IV. Construction will be carried out in identical fashion to revetment rehabilitation in the Reaches described above.

OTHER ALTERNATIVES CONSIDERED

Two other alternatives were considered in the EA, the No-action Alternative and Alternative 3. The No-action Alternative is described on pages 38-48 of the EA, and Alternative 3 is described on pages 48-50 and 71-79 of the EA.

Under the No-action Alternative, no comprehensive or planned and designed shoreline improvements would be carried out. Rather, reparations to existing shoreline defenses would be carried out on an as needed basis in response to an observed and imminent threat to the parkway caused by continued landward migration of the shoreline, storm related or otherwise. Other maintenance activities would include occasional removal of excess vegetation from riverbank slopes (particularly along Bellfield Straight), where such vegetation may pose a threat to bank stability and/or block the viewshed of the York River.

Under Alternative 3, the shoreline treatment, means of access, and necessary equipment would be identical to the selected alternative for Reach IA, with a continuous wooden sill being used instead of a rock sill. The large pocket beach shown in a central location of Reach IA for the selected alternative would not be created. For Reach I, the only difference between Alternatives 2 and 3 is the use of steel sheet piling as opposed to revetment rehabilitation. The specifications of the haul road and required heavy equipment would remain the same, with the addition of a pile driver. The footprint of the pile driver may require a wider haul road and turn out width than that described for the selected alternative. This additional width would likely be made up by extending the road in a seaward direction (fill) as opposed to additional bank cut back. However, because stone material from the revetment may lie in close proximity to the toe of the slope (i.e., the ideal position for sheet pile installation), more extensive bank cut back may be required in order to expose a substrate that is relatively void of large stone material and thus amenable to pile driving.

The proposed treatments for Reach II in Alternative 3 vary somewhat from the selected alternative. The most pronounced difference is the use of revetment along the back beach at Sub-Reach "f" as opposed to the rehabilitation of the NPS breakwaters. Under Alternative 3 for Reach III, Sub-Reach "a" would be treated in similar fashion to the area landward of the NPS breakwaters; with a rock revetment installed at the back beach. Steel sheet piling would be employed along the base of the York River Cliffs at Sub-Reach "c," as opposed to revetment

rehabilitation under the selected alternative. The approach carried out for Reach IV would be identical to the selected alternative (i.e., revetment rehabilitation).

ENVIRONMENTALLY PREFERABLE ALTERNATIVE

In accordance with the DO-12 Handbook, the NPS identifies the environmentally preferable alternative in its NEPA documents for public review and comment [Sect. 4.5 E(9)]. The environmentally preferable alternative is the alternative that causes the least damage to the biological and physical environment and best protects, preserves, and enhances historical, cultural, and natural resources. The environmentally preferable alternative is identified by the Responsible Office after weighing long-term environmental impacts against short-term impacts in evaluating what is the best protection of these resources. In some situations, such as when different alternatives impact different resources to different degrees, there may be more than one environmentally preferable alternative (43 CFR 46.30).

Based on the analysis of environmental consequences of each alternative presented in Chapter 4 of the EA, the selected alternative is the environmentally preferable alternative. This alternative best protects and preserves the cultural and natural resources of and along the parkway by reducing the risk to the parkway from landward migration of the shoreline, presenting greater opportunity for wetland enhancement and restoration, and offering better consistency with established means of shoreline defense for the Chesapeake Bay area (i.e., construction methods, application, and overall appearance of the completed treatment).

MITIGATION MEASURES

To prevent and minimize potential adverse impacts associated with the selected alternative, best management practices (BMPs) and mitigation measures will be implemented during the construction and post construction phases of the project. General and resource specific BMPs and mitigation measures are listed below. Additional mitigation measures will be included in the contractors' specifications.

Coastal Resource and Soils/Wetland Resources/Wildlife and Wildlife Habitat

- Equipment use in vegetated wetland areas will be avoided to the greatest extent possible. Mats composed of individual timbers cabled together will be used to minimize impacts where avoidance is not possible.

- A contractor kickoff meeting will be held to ensure that all workers are apprised of proper protocol to follow in the event of an emergency, including contact information for first responders.

- Appropriate measures will be employed to prevent or control spills of fuels, lubricants, or other contaminants from entering waterways or wetlands. These include safe handling and refueling procedures and proper deployment of containment measures such as oil booms. Actions will be consistent with state water quality standards and Clean Water Act Section 401 certification requirements. A hazardous spill plan will be approved by the

park prior to construction. This plan will state what actions will be taken in the case of a spill, notification measures, and preventive measures to be implemented, such as the placement of refueling facilities, storage, and handling of hazardous materials, etc.

- Regulations require that a Stormwater Pollution Prevention Plan (SWPPP) must be prepared prior to submitting a registration statement for permit coverage under the Virginia Stormwater Management Permit (VSMP).

- During the shoreline stabilization design phase, the NPS will prepare and implement Erosion and Sediment Control Plans that comply with the Virginia Erosion and Sediment Control Law. The NPS will be responsible for overseeing on-site contractors, conducting regular field inspections, and taking prompt action against non-compliance, if necessary. Appropriate erosion and siltation controls will be maintained during construction, and all exposed soil or fill material will be permanently stabilized at the earliest practicable date. A Type II turbidity curtain will be used to minimize the movement of turbid water away from the construction site. A Type II curtain extends from the water surface below the water line to the river bottom and is rated for a slight current of no greater than five feet per second and mild wind conditions. A float in the top of the curtain weighs along the bottom to keep the curtain hanging vertically in the water.

- Best management practices (BMPs) for drainage and sediment control will be implemented to prevent or reduce nonpoint source pollution and minimize soil loss and sedimentation in drainage areas. BMPs will include all or some of the following actions, depending on site-specific requirements:

    - Disturbed areas will be kept as small as possible to minimize exposed soil and the potential for erosion.

    - Regular site inspections will occur during construction to ensure that erosion control measures were properly installed and are functioning effectively.

    - Should high wave and water conditions be forecasted, equipment will be moved to a safe location within the project area or to another location outside the project area.

- The contractor will not leave vehicles idling for more than five minutes when parked or not in use.

- Wildlife collisions will be reported to park personnel.

- The NPS recognizes the York River at the project location is an Anadromous Fish Use Area and will consider the recommendations provided by the Department of Game and Inland Fisheries (DGIF) with respect to the protection of the Anadromous Fish Use Area (see Attachment B).

Vegetation

- If required, stockpile materials will be placed in grassy areas at the mouths of Felgates Creek and Indian Fields Creek so as to avoid impacting previously undisturbed or unmaintained areas. Erosion prevention and sediment control measures will be placed down-gradient of each area to contain any potential spills or sediment run-off.

- Where plantings or seeding are required, native plant material will be obtained and used in accordance with NPS policies and guidance. In an effort to avoid introduction of non-native/noxious plant species, no hay or straw bales will be used during revegetation or for temporary erosion control.

- Management techniques will be implemented to foster rapid development of target native plant communities and to eliminate invasion by exotic or other undesirable species. Techniques may include the use of hydroseeding and a tackifier, plant inspection at delivery and before installation to ensure plant health, plant installation during appropriate planting windows and with due regard for tide forecasts, and inspection of installed plants. Planted areas will be monitored after construction to determine if efforts are successful or if plant mortality warrants replanting and/or controlling non-native plant species.

Special Status Species

- The NPS will coordinate with the DGIF, Virginia Department of Conservation and Recreation (DCR), and the US Fish and Wildlife Service (USFWS) regarding any need for a time-of-year restriction on construction in observance of bald eagle nest building and rearing. The breeding and nesting season is typically noted as December 15 to July 15.

Archeological Resources

- Construction access will be restricted to an approach from the water using barge ports. This recognizes the inadequate load rating of the parkway and the presence of archeological resources in close proximity to the shoreline in upland areas at multiple locations.

- Park cultural resources staff will be available during construction to advise or take appropriate actions should any archeological resources be uncovered during construction.

- If during construction previously undiscovered archeological resources were uncovered, all work in the immediate vicinity of the discovery will be halted and the procedures outlined in the 2010 Programmatic Agreement, Stipulation VII.A1 through A5 (Post Review Discoveries) will be implemented. Construction may proceed only after NPS has determined that implementation of the actions undertaken to address the discovery are complete.

- The NPS will ensure that all contractors and subcontractors are informed of the penalties for illegally collecting artifacts or intentionally damaging archeological sites or historic properties. Contractors and subcontractors also will be instructed on procedures to follow in case previously unknown archeological resources are uncovered during construction.

Furthermore, the state, federal, and local permits that will be required before this project proceeds with construction typically include a variety of conditions specifically related to the protection of water quality and natural resources from additional construction-related impacts. Permits would be required under and in accordance with the following regulations.

- Section 404 of the Clean Water Act
- Section 10 of the River and Harbors Act
- Submerged Lands Act (Section 28.2-1200 Code of Virginia)
- Virginia Water Protection Permit Program
- Virginia Stormwater Management Program
- York County Tidal Wetlands Board (Section 28.2-1300 Code of Virginia)

Additional information about permitting requirements can be found in Attachment B.

According to NPS DO 77-1: Wetland Protection, a SOF is required when the preferred alternative would have adverse impacts on wetlands. Due to the proposed phased approach to performing shoreline improvements, SOF's will be prepared on a phase-by-phase basis as preliminary design plans are advanced to construction-ready documents. This allows for potential wetland impacts to be assessed and compensated for, as necessary, based on more informed plans.

According to NPS DO-77-2: Floodplain Management, a SOF is required when an action is to occur within a floodplain. Due to the proposed phased approach to performing shoreline improvements, SOF's will be prepared on a phase-by-phase basis as preliminary design plans are advanced to construction-ready documents. This allows for potential floodplain impacts to be assessed based on more informed plans.

WHY THE SELECTED ALTERNATIVE WILL NOT HAVE A SIGNIFICANT EFFECT ON THE HUMAN ENVIRONMENT

As defined in 40 CFR § 1508.27, significance is determined by examining the following criteria:

1) Impacts that may have both beneficial and adverse aspects and which on balance may be beneficial, but that may still have significant adverse impacts that require analysis in an Environmental Impact Statement (EIS).

Implementation of the selected alternative will result in both beneficial and minor, adverse impacts; however, no major or significant impacts were identified that will require analysis in an EIS. Impacts of the selected alternative on coastal resources and soils; wetlands resources; floodplains; wildlife and wildlife habitat; vegetation; special status species; cultural landscapes;

historic structures; archeological resources; visitor use and experience; public safety; and infrastructure and park operations were identified and are described in detail in Chapter 4 of the EA.

Of the twelve resources of concern analyzed in the EA, the selected alternative will result in long-term, beneficial impacts for eight resources. Impacts will be below the level of detection for two resources (cultural landscapes and historic structures) and no impact will occur for archeological resources. The only resource with long-term adverse impacts is floodplains, and this impact will be negligible. With the exception of Infrastructure and Park Operations, all other adverse impacts will be short term and related to project construction. Infrastructure and Park Operations may experience a long-term and minor adverse impact should visitor management be required in areas where living shoreline treatments will be constructed. The level of intensity for all adverse impacts will not exceed minor.

2) The degree to which public health and safety are affected.

The selected alternative will reduce the risk of erosion for the parkway, thereby reducing the risk of impacts on public health and safety. However, short-term impacts will nevertheless occur during project construction. These will include the presence and activities of construction equipment on the grassy shoulder of the parkway at Bellfield Straight where gully erosion will be repaired. Partial shoulder or lane closures may be required in this area depending on the type of equipment required to perform the work and convey the materials to the site. The potential for conflicts between construction equipment and recreational traffic may arise.

The placement of construction materials in staging areas at Poley Point and Sandy Point, if required, would present another potential risk to public safety. However, such staging areas will be cordoned off and signage posted to indicate that the active work zone is a restricted area and to discourage visitors from walking upon over climbing over stone materials. Because the construction equipment required for the shoreline rehabilitation and repair will access the study area from the water, there will be limited opportunity for visitor interaction. The construction site also will be cordoned off and proper signage erected to discourage visitors from accessing the area.

Based on the foregoing, construction related impacts to public safety arising from the selected alternative will be short-term, minor and adverse, whereas post-construction impacts will be long-term and beneficial.

3) Any unique characteristics of the area (proximity to historic or cultural resources, wild and scenic rivers, ecologically critical areas, wetlands or floodplains, and so forth).

As described on page 1 of the EA, and considered throughout the document, the Colonial Parkway is itself a historic resource. The selected alternative does not propose to modify any historic structures within the park. No changes will be made to the parkway character-defining features, except for the shoreline. The selected alternative will result in a long-term, negligible impact on historic structures, since the impacts will be neither adverse nor beneficial and will be below the level of detection.

As noted on page 25 of the EA, the selected alternative could modify aesthetic elements of the cultural landscape of the Colonial Parkway. No changes will be made to the parkway's character-defining features, except for vegetation, shoreline, and cultural resources. Where vegetation is disturbed during construction, it will be replaced in kind. Impacts of the spatial character of the parkway during construction will result due to the presence of construction equipment within the viewshed, noise from the equipment, and the possible use of grassy areas for staging. These impacts will be temporary, short-term, minor and adverse. After construction, the selected alternative will result in a long-term, negligible impact on the cultural landscape, since the impacts will be neither adverse nor beneficial and will be below the level of detection.

As described in the EA, an archeological survey of the parkway was completed in 2009 by the College of William and Mary Center for Archaeological Research. The survey identified a variety of resources that are eligible or potentially eligible for inclusion on the National Register of Historic Places. The resources are predominantly Middle to Late Woodland camps, including the Native American village of Kiskiak. Based on these studies, implementation of the selected alternative will not have an adverse effect on any resources potentially eligible for the National Register, since most of the proposed shoreline treatments do not involve any disturbance to upland areas of the riverbanks where resources were identified.

As described on page 24 of the EA, based on Flood Insurance Rate Maps created by FEMA, the proposed shoreline improvements will lie within the 100-year flood zone. The selected alternative will be classified as Class I according to DO-77-2 guidelines. Although the selected alternative will result in the placement of fill materials within FEMA-designated flood zones throughout the project area, the alternative minimizes flood zone encroachment by reincorporating the existing structure to the greatest extent feasible. In addition, the project setting near the mouth of the York River and the infinite storage capacity of the ocean to which it is connected means that floodplain impacts will be negligible.

As described in the EA, vegetated and unvegetated wetlands occur within the boundaries of the project area. Permanent impacts from the selected alternative to vegetated wetlands will total approximately 12,582 square feet, but will be offset by roughly 14,000 square feet of created wetland at Reach II, Sub-Reach "ab", resulting in a slight gain in vegetated wetlands areas. Similarly, impacts to unvegetated intertidal wetlands will total approximately 246,136 square feet and will be offset by the development of roughly 247,467 square feet of intertidal wetlands and structures created in subtidal areas. Because the selected alternative will employ living shoreline approaches wherever existing tidal wetland systems are present and because there will be no net loss of wetlands, the implementation of this alternative will result in short-term, minor adverse impacts on vegetated wetland resources during construction and long-term, beneficial impacts on both vegetated and unvegetated wetland resources.

As described throughout the EA, the shoreline of the York River is a unique coastal resource, and the selected alternative will maintain a situation in which a variety of shoreline treatment approaches reduce the risk of shoreline erosion on the parkway and cultural and archeological resources. Resulting land impacts will be minimal and will include minor cut back into the riverbank in areas where revetment rehabilitation is proposed. The selected alternative will result in the thorough repair and stabilization of the shoreline within the project area and provide for

opportunities for the enhancement of the unique shoreline habitat. All required permits and approvals will be obtained and the selected alterative incorporates all mitigation previously identified herein, pages 6 - 9 and in the EA, Pages –80 – 82.

There were no wild and scenic rivers, ecologically critical areas, or prime farmland identified within the project area.

4) The degree to which impacts are likely to be highly controversial.

As measured by public comment on the EA, the environmental effects of this project are not likely to be highly controversial. No comments were received from private individuals and organizations.

5) The degree to which the potential impacts are highly uncertain or involve unique or unknown risks.

No highly uncertain, unique, or unknown risks were identified during preparation of the EA or the public review period.

6) Whether the action may establish a precedent for future actions with significant effects, or represents a decision in principle about a future consideration.

The selected alternative neither establishes NPS precedent for future actions with significant effects, nor represents a decision in principle about a future consideration. Future actions will be evaluated through additional, project-specific planning processes that incorporate requirements of NEPA, Section 106 of the National Historic Preservation Act, and NPS policies.

7) Whether the action is related to other actions that may have individual insignificant impacts but cumulatively significant effects. Significance cannot be avoided by terming an action temporary or breaking it down into small component parts.

Impacts of the selected alternative on coastal resources and soils; wetlands resources; floodplains; wildlife and wildlife habitat; vegetation; special status species; cultural landscapes; historic structures; archeological resources; visitor use and experience; public safety; and infrastructure and park operations were identified in the EA. As described in Chapter 4 of the EA, cumulative impacts were defined by combining the impacts of the selected alternative with the impacts of other past, present, and reasonably foreseeable future actions.

The selected alternative will contribute an imperceptible to appreciable increment to an overall beneficial impact on cumulative actions for all resources except floodplains. With respect to floodplains, the selected alternative will contribute an imperceptible adverse increment through the placement of fill materials within FEMA-designated flood zones. These fill materials are required in order to rehabilitate existing structures and install new shoreline treatment approaches. No past, present, and reasonably foreseeable future actions have or will continue to contribute to the cumulative impact on special status species and archeological resources. The overall cumulative impact on resources is negligible.

8) The degree to which the action may adversely affect historic properties in or eligible for listing in the National Register of Historic Places, or other significant scientific, archeological, or cultural resources.

The Colonial Parkway is itself a historic resource listed on the National Register. The only known historic structures to be in direct or indirect impact areas are those associated with the parkway. The selected alternative does not propose to modify any of these historic structures within the park. No changes will be made to the parkway character-defining features, except for the shoreline. The selected alternative will result in a long-term, negligible impact on historic structures, since the impacts will be neither adverse nor beneficial and will be below the level of detection. Attachment B includes the Virginia SHPO's concurrence with the findings of the EA.

9) The degree to which an action may adversely affect an endangered or threatened species or its habitat.

The presence of endangered and threatened species, and associated habitat, is described on pages 140-144 of the EA. An official species list and online project review certification letter were downloaded from the USFWS website (http://www.fws.gov/northeast/virginiafield/ endspecies/Project_Reviews.html) on December 5, 2012. The only federally listed species included on the USFWS official species list was the small whorled pogonia (*Isotria medeoloides*). A discussion of the small whorled pogonia is included in an errata on page 17 of this document. No suitable habitat for the federally listed threatened small whorled pogonia is known to occur in the study area. Therefore, the proposed action will have no effect on the species.

A query of the Virginia Department of Game and Inland Fisheries (DGIF) database resulted in a total of 19 potential special status species in the vicinity of the project area. Seven of the 19 species have potential habitat within the project area. Of this number, two are listed species: the state listed threatened bald eagle (*Haliaeetus leucocephalus*) and the state listed threatened peregrine falcon (*Falco peregrines*). The remaining five are state species of concern, which are not afforded protection under either the Endangered Species Act of 1973 or the Virginia Endangered Species Act. Therefore, the proposed project would have no effect on this species. Overall, no federally listed species have potential habitat within the project area.

The bald eagle was removed from the federal list of endangered species in 2007, though it remains protected under the Bald and Golden Eagle Protection Act, the Migratory Bird Treaty Act, and the Lacey Act. According to the 2010 Virginia Eagle Nest Survey Report published by the College of William and Mary Center for Conservation Biology (CCB), an active and occupied bald eagle nest was observed in the Ringfield Picnic Area landward of Reach IA, but was not productive. During construction, the proximity of heavy machinery and the noise emitted, coupled with temporary human occupation of the shoreline area, may impact the use of the existing nest at the Ringfield Picnic Area. No candidate roosting or nesting trees will be proposed for cutting under the selected alternative.

The NPS also consulted with the USFWS during project scoping and will continue to do so during project planning and in advance of construction. Specifically, as previously mentioned

under "Mitigation Measures," the NPS will coordinate with the DGIF, the DCR, and the USFWS regarding any need for a time-of-year restriction on construction in observance of bald eagle nest building and rearing. The breeding and nesting season is typically noted as December 15 to July 15. The NPS will work with these agencies and the CCB to determine if any other mitigation is appropriate under the circumstances.

The NPS recognizes the York River at the project location is an Anadromous Fish Use Area and will consider the recommendations provided by the Department of Game and Inland Fisheries (DGIF) with respect to the protection of the Anadromous Fish Use Area, including coordination with the USFWS (see Attachment B).

10) Whether the action threatens a violation of federal, state, or local law or requirements imposed for the protection of the environment.

The selected alternative does not violate federal, state, or local environmental protection laws.

PUBLIC INVOLVEMENT

Various agencies and neighboring property owners were contacted via letter and invited to a scoping meeting at the park held on March 17, 2010. Invitees included the Commander of the Naval Weapons Station in Yorktown, the Virginia Institute of Marine Science, the Virginia Department of Environmental Quality Office of Environmental Impact Review, the Commanding Office of the United States Coast Guard, the Virginia Department of Conservation and Recreation, the United States Fish and Wildlife Service, the United States Army Corps of Engineers, the Virginia Center for Conservation Biology, the Virginia Marines Resources commission, and the York County Department of Environmental and Developmental Services. Those agencies and neighboring landowners that were not able to attend the meeting were encouraged to provide written comments to the NPS. At the meeting, the Virginia Institute for Marine Science presented a summary of the findings and recommendations of the Shoreline Management Plan and answered questions from meeting participants. Information received during scoping was used in preparation of the EA. Copies of agency scoping correspondence were included in the EA as Appendix A.

The EA for this proposal was released on July 30, 2012, for a 30-day agency and public review period. A notification to this effect and an electronic version of the EA was placed on the NPS Planning, Environment and Public Comment website on this same date at the address: http://parkplanning.nps.gov/colo. Electronic and/or hard copies of the EA were distributed to those agencies and landowners previously consulted during public scoping. At the request of the DEQ, the NPS extended the period of review for agencies of the Commonwealth of Virginia through September 11, 2012.

Responses during the agency and public review period were received from the Jamestown-Yorktown Foundation and the DEQ. No comments were received from private citizens. The Jamestown-Yorktown Foundation supports the implementation of the selected alternative and notes that implementation of the selected alternative is not likely to adversely impact their museum visitors or programming in any way. The DEQ response synthesizes the comments and

recommendations of a number of state agencies and the relevant planning district commission, including:

- Department of Environmental Quality
- Department of Conservation and Recreation
- Department of Game and Inland Fisheries
- Department of Health
- Department of Transportation
- Department of Historic Resources
- Hampton Roads Planning District Commission

In addition, the DEQ extended an invitation for comments from the Virginia Marine Resources Commission, the Department of Agriculture and Consumer Services, and York County. The DEQ response also notes that, in accordance with 15 CFR § 930.2, public notice of the proposed action was published on their website from August 14, 2012 through September 11, 2012.

The DEQ concluded that the Commonwealth of Virginia has no objection to the project as presented, providing that activities are performed in accordance with the recommendations included in their response and the relevant regulatory permits are secured. In addition, based on a review of the Federal Consistency Determination contained in the EA and the comments and recommendations submitted by agencies administering the enforceable policies of the Virginia Coastal Zone Management Program (VCP), the DEQ concurs that the project is consistent with the VCP. The complete DEQ letter is provided as Attachment B.

With respect to Section 7 of the Endangered Species Act, a search of the USFWS online database, completion of USFWS online project review process resulted in an official species list and a certification letter, which were downloaded from the USFWS website on December 5, 2012 and included here as Attachment C. Through this process it was determined that the current project will have no effect on federally listed threatened or endangered species. No further consultation is required at this time. As discussed previously in this document, the NPS will continue to coordinate with the USFWS as well as with VADGIF with regard to Bald Eagles during project planning and in advance of construction.

With respect to Section 106 of the National Historic Preservation Act, the DHR expressed full support for the selected alternative, concurred with the assessment of likely impacts to cultural resources, historic structures and archaeological sites, and indicated that no further comments on the document would be forthcoming (see Attachment B). The NPS will coordinate with the DHR to complete the Section 106 process under the programmatic agreement executed on January 2011 and contained in Appendix A of the EA.

CONSULTATION WITH TRIBAL NATIONS

The Catawba Indian Nation and the Virginia Council on Indians were consulted for this project, per compliance with Section 106 of the National Historic Preservation Act. Both are consulting parties on the Programmatic Agreement between the NPS and the Virginia State Historic Preservation Office concerning the project.

During agency and public review and comment period, comments were received from the Catawba Indian Nation, expressing a preference for the selected alternative. The Catawba Indian Nation requested that they be notified if Native American artifacts and/or human remains are located during the ground disturbance phase of the project. No comments from the Virginia Council on Indians were received during the public review period.

FINDING OF NO SIGNIFICANT IMPACT

The NPS has selected Alternative 2 for implementation. The selected alternative is described on pages 48-71 of the EA. The selected alternative will not constitute an action that normally requires preparation of an EIS. The selected alternative will not have a significant effect on the human environment. Negative environmental impacts that could occur are minor in intensity. There are no significant impacts on public health, public safety, threatened or endangered species, sites or districts listed in or eligible for listing in the National Register, or other unique characteristics of the region. No highly uncertain or controversial impacts, unique or unknown risks, significant cumulative effects, or elements of precedence were identified. Implementation of the selected alternative will not violate any federal, state, or local environmental protection laws.

Based on the foregoing, it has been determined that an EIS is not required for this action and thus will not be prepared.

Recommended: _____ 12/13/12

P. Daniel Smith, Superintendent — Date
Colonial National Historical Park

Approved: _____ 1/15/13

Dennis R. Reidenbach, Regional Director — Date
Northeast Region, National Park Service

Errata Sheet

Repair and Stabilize the York River Shoreline to Protect the Colonial Parkway
Environmental Assessment
Colonial National Historical Park

This errata sheet documents changes to the text of the Repair and Stabilize the York River Shoreline to Protect the Colonial Parkway Environmental Assessment (EA) made following public release of the EA in August 2012.

Information on a federally listed species was omitted from the EA. Changes in the environmental assessment generated by these revisions are presented below. The addition of this information does not change the results of the impact analysis. These changes are incorporated into the environmental assessment.

The following paragraph should be added after Table 8 on page 141:

Small Whorled Pogonia (*Isotria medeoloides*)

The federally listed threatened small whorled pogonia is an herbaceous perennial orchid. In Virginia, the small whorled pogonia is found in ordinary looking third-growth upland forest with an open understory and a closed canopy where the topographic is typically moderately sloping or almost level. The plants are usually associated with decaying vegetative matter such as fallen trunks and limbs, leaf litter, bark, and tree roots. The pogonia is found in soils that are acidic sandy loams with low nutrient content. The flowers appear in late April to mid-May. Suitable habitat for this species does not occur within the study area.

The following paragraph should be added prior to the last paragraph on page 183:

No suitable habitat for the federally listed threatened small whorled pogonia is known to occur in the study area. Therefore, the proposed project would have no effect on this species.

The environmental assessment and this errata section form the record on which the finding of no significant impact is based.

ATTACHMENT A:
NON-IMPAIRMENT DETERMINATION

By enacting the NPS Organic Act of 1916 (Organic Act), Congress directed the U.S. Department of Interior and the NPS to manage units "to conserve the scenery and the natural and historic objects and wildlife therein and to provide for the enjoyment of the same in such a manner and by such a means as will leave them unimpaired for the enjoyment of future generations" (16 USC § 1). Congress reiterated this mandate in the Redwood National Park Expansion Act of 1978 by stating that NPS must conduct its actions in a manner that will ensure no "derogation of the values and purposes for which these various areas have been established, except as may have been or shall be directly and specifically provided by Congress" (16 USC 1a-1).

NPS Management Policies 2006, Section 1.4.4, explains the prohibition on impairment of park resources and values:

> While Congress has given the Service [NPS] the management discretion to allow impacts within parks, that discretion is limited by the statutory requirement (generally enforceable by the federal courts) that the Park Service [NPS] must leave park resources and values unimpaired unless a particular law directly and specifically provides otherwise. This, the cornerstone of the Organic Act, establishes the primary responsibility of the National Park Service [NPS]. It ensures that park resources and values will continue to exist in a condition that will allow the American people to have present and future opportunities for enjoyment of them.

The NPS has discretion to allow impacts on Park resources and values when necessary and appropriate to fulfill the purposes of a Park (NPS 2006 sec. 1.4.3). However, the NPS cannot allow an adverse impact that would constitute impairment of the affected resources and values (NPS 2006 sec 1.4.3). An action constitutes an impairment when its impacts "harm the integrity of Park resources or values, including the opportunities that otherwise would be present for the enjoyment of those resources or values" (NPS 2006 sec 1.4.5). To determine impairment, the NPS must evaluate "the particular resources and values that would be affected; the severity, duration, and timing of the impact; the direct and indirect effects of the impact; and the cumulative effects of the impact in question and other impacts" (NPS 2006 sec 1.4.5).

IMPAIRMENT DETERMINATION FOR THE SELECTED ALTERNATIVE

This determination on impairment has been prepared for the selected alternative. An impairment determination is made for all relevant resource impact topics analyzed for the selected alternative including coastal resources and soils; wetland resources; floodplains; wildlife and wildlife habitat; vegetation; special status species; cultural landscapes; historic structures; and

archeological resources. An impairment determination is not made for visitor use and experience, public safety, and infrastructure and park operations because impairment findings relate back to park resources and values, and these impact areas are not generally considered to be park resources or values according to the Organic Act, and cannot be impaired in the same way that an action can impair park resources and values.

COASTAL RESOURCES AND SOILS

The selected alternative will implement a variety of shoreline treatment approaches that are best suited to its local setting, including revetment rehabilitation, rock sills and marsh plantings, gap sills and pocket beaches, and shore-attached breakwaters. Resulting impacts to land area will be minimal and include minor cut back into the riverbank in areas where revetment rehabilitation is proposed. Potential impacts to water quality in shoreline habitats within and downstream of the project area posed by land disturbance remobilized nearshore sediments during construction will be minimized via the use of Type II turbidity curtains during construction. Implementing shoreline stabilization and protection approaches in a comprehensive manner will diminish the risk of impacts to shoreline habitats posed by riverbank slumping and the translocation of sediments and/or artificial materials into sensitive natural environments. Impacts on shoreline habitat will be temporary and construction related. Mitigation measures will be undertaken to prevent soil disturbance and compaction, including the use of mats and low ground pressure vehicles, if available, to distribute loading evenly.

Offshore shoreline treatment approaches, such as sills and breakwaters, can trap sediment eroded from upstream locations and from the backshore areas, possibly interrupting natural sediment transport. This will be unlikely, however, under the selected alternative, because the provenance of sediment in transport in the York River is overwhelmingly from upstream tributaries feeding the York River and from the Chesapeake Bay, with little contribution from shoreline erosion. The project area is already armored and living shoreline approaches will be backfilled with sediment to establish equilibrium. Impacts can be minimized by careful design and accounting for the local wave climate and existing bathymetric conditions. Accordingly, when considering the negligible to relatively minor adverse impacts of the potential disruption of sediment transport and localized channel scouring against the benefits afforded by the shoreline treatment approaches, the selected alternative will result in long-term, beneficial impacts on coastal resources and soils. Impacts to coastal resources and soils will not result in an impairment.

WETLAND RESOURCES

The selected alternative will employ living shoreline approaches wherever existing tidal wetland systems are present to optimize the opportunities for habitat enhancement and restoration. Permanent impacts to vegetated wetlands will total approximately 12,582 square feet, but will be offset by roughly 14,000 square feet of created wetlands at Reach II, Sub-Reach “ab”, resulting in a slight gain in vegetated wetland areas. Impacts to unvegetated intertidal wetlands will total approximately 246,136 square feet and will be offset by the development of roughly 247,467

square feet of intertidal wetlands and structures created in subtidal areas. Because there will be no net loss of wetlands, implementation of the selected alternative will result in short-term, minor adverse impacts on vegetated wetland resources during construction and long-term, beneficial impacts on both vegetated and unvegetated wetland resources. Impacts to wetland resources will not result in an impairment.

FLOODPLAINS

The selected alternative will result in the placement of fill materials within FEMA-designated flood zones throughout the project area in order to rehabilitate existing structures and install new shoreline treatment approaches. The alternative, however, will minimize flood zone encroachment by reincorporating existing structures to the greatest extent feasible while designing to address both recognized deficiencies and projected sea level rise. The selected alternative does not propose or promote human occupancy of a floodplain, nor does it increase flood risk. No structures other than those expressly designed for shoreline repair, rehabilitation, and protection will be installed. The alternative will result in long-term, negligible adverse impacts to floodplains, since the project setting near the mouth of the York River and infinite storage capacity of the ocean to which it is connected means that floodplain impacts will be negligible. Impacts to floodplains will not result in an impairment.

WILDLIFE AND WILDLIFE HABITAT

Through stabilization of the shoreline using a combination of defensive and living shoreline approaches, the selected alternative will reduce the risk to upland habitats from erosion and enhance and expand tidal wetland habitat. During construction of the alternative, some disturbance of wildlife and wildlife habitat will likely occur as a result of encroachment on subaqueous lands and potentially within wetland areas for haul road construction and operation, as well as equipment traffic and noise. Overall, the selected alternative will have short-term, negligible adverse impacts from construction and long-term, beneficial impacts on wildlife and wildlife habitat. Impacts to wildlife and wildlife habitat will not result in an impairment.

VEGETATION

By stabilizing the shoreline through defensive and living shoreline approaches, the selected alternative will protect upland vegetation from erosion and enhance and expand tidal wetland vegetation. Potential impacts may occur to wetland vegetation during construction during installation of the haul road and/or related to the placement of sandy fill behind rock sills or gap rock sills and areas of breakwater rehabilitation and creation. These areas, however, will be replanted with saltmarsh and/or saltmeadow cordgrass after final grading is established, and impacts to wetlands will be considered temporary and the project self mitigating. Type II turbidity curtains will be deployed to contain suspended sediments and prevent their mobilization in the vicinity of submerged aquatic vegetation (SAV) and throughout Reach IV. Overall, the

selected alternative will result in short-term, minor adverse impacts during construction and a long-term, beneficial impact on vegetation. Impacts to vegetation will not result in an impairment.

SPECIAL STATUS SPECIES

Under the selected alternative, stabilization of the shoreline in the project area will reduce the risk of upland habitat loss from erosion. During construction, the proximity of heavy machinery and the noise emitted, coupled with temporary human occupation of the shoreline area, may impact the use of the existing nest at the Ringfield Picnic Area. No candidate roosting or nesting trees will be proposed for cutting under the selected alternative. The NPS will work with the Virginia Department of Game and Inland Fisheries and the College of William and Mary Center for Conservation Biology to determine if any mitigation is appropriate under the circumstances. Mitigation may include a time of year restriction on construction so as to minimize disturbance during periods of nest building and rearing of eaglets. In consideration of construction related issues, impacts to special status species will be short-term, minor and adverse, however the potential for habitat preservation will represent a long-term, beneficial impact. Impacts to special status species will not result in an impairment.

CULTURAL LANDSCAPES

The selected alternative will involve no changes to the Colonial Parkway's character-defining features except for vegetation, shoreline, and cultural resources. The shoreline and bluff will be subjected to enhanced erosion control measures, and no new elements will be introduced into the cultural landscape. Where vegetation is disturbed during construction, it will be replaced in kind. Impacts on the spatial character of the parkway during construction will be caused by the presence of construction equipment within the viewshed, the noise this equipment may emit, and the possible use of grassy areas for staging. These impacts will be temporary, short-term, minor and adverse. After construction is complete, the selected alternative will result in long-term, negligible impacts on the cultural landscape, since the impacts will be neither adverse nor beneficial and will be below the level of detection. Impacts to cultural landscapes will not result in an impairment.

HISTORIC STRUCTURES

Under the selected alternative, no changes will be made to the Colonial Parkway character-defining features except for the shoreline. The shoreline and bluff will be subjected to preventative maintenance, and existing erosion-prevention measures will be stabilized and new measures installed. Overall, the alternative will result in long-term, negligible impacts on historic structures since the impacts will be neither adverse nor beneficial and will be below the level of detection. Impacts to historic structures will not result in an impairment.

ARCHEOLOGICAL RESOURCES

An archeological survey identified a variety of resources that are eligible or potentially eligible for inclusion on the National Register of Historic Places. Based on these studies, implementation of the selected alternative will not have an adverse effect on any resources potentially eligible for the National Register, since most of the proposed shoreline treatments do not involve any disturbance to upland areas of the riverbanks where resources were identified. Impacts to archeological resources will not result in an impairment.

COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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September 20, 2012

Superintendent, Colonial National Historical Park
Repair and Stabilize the York River Shoreline to Protect the
Colonial Parkway Environmental Assessment
ATTN: Dorothy Geyer
P.O. Box 210
Yorktown, Virginia 23690

RE: Draft Environmental Assessment and Federal Consistency Determination for the Repair and Stabilize the York River Shoreline to Protect the Colonial Parkway, Colonial National Historical Park, York County, (DEQ 12-150F).

Dear Ms. Geyer:

The Commonwealth of Virginia has completed its review of the June 2012 Draft Environmental Assessment (EA) and Federal Consistency Determination (FCD) (received August 6, 2012) for the repair and stabilization of the York River shoreline to protect the Colonial Parkway at the Colonial National Historical Park in York County. The Department of Environmental Quality (DEQ) is responsible for coordinating Virginia's review of federal environmental documents and responding to appropriate federal officials on behalf of the Commonwealth. DEQ is also responsible for coordinating Virginia's review of FCDs submitted pursuant to the Coastal Zone Management Act (CZMA) and providing the state's response. The following agencies and planning district commission participated in the review of the EA and FCD for this proposal:

Department of Environmental Quality
Department of Conservation and Recreation
Department of Game and Inland Fisheries
Department of Health
Department of Transportation
Department of Historic Resources
Hampton Roads Planning District Commission

In addition, the Virginia Marine Resources Commission, Department of Agriculture and Consumer Services and York County were invited to comment on the proposal.

PROJECT DESCRIPTION

The National Park Service (NPS) proposes to repair and stabilize the York River shoreline at Colonial National Historical Park to protect the Colonial Parkway in York County. The repair of the existing shoreline protection system and the installation of new structures within park property would commence near the confluence of Felgates Creek and the York River and continue downstream to the boundary with the U.S. Coast Guard Training Center in Yorktown. Actions needed to achieve these goals include the rehabilitation or installation of a combination of shoreline treatments, including:

- rock revetments;
- rock spurs;
- continuous and gap sills;
- pocket beaches; and
- shore-attached breakwaters.

The EA evaluates three alternatives including a no action alternative. The EA concludes that the implementation of the NPS preferred alternative (Alternative 2) would result in long-term beneficial impacts to coastal resources and soils, wetlands, wildlife and wildlife habitat, vegetation, special status species, visitor use and experience, public safety, and infrastructure and park operations

CONCLUSION

Based on the information provided in the Draft Environmental Assessment and comments from reviewers, the Commonwealth has no objection to the proposal as presented. Provided activities are performed in accordance with the recommendations which follow in the Impacts and Mitigation section of this report, this proposal is unlikely to have significant effects on ambient air quality, important farmland, forest resources, and wetlands. It is unlikely to adversely affect species of plants or insects listed by state agencies as rare, threatened, or endangered.

ENVIRONMENTAL IMPACTS AND MITIGATION

1. Surface Waters and Wetlands. According to the EA (page 158), potential impacts to water quality in shoreline habitats within and downstream of the study area as a result of nearshore sediments remobilized during construction would be minimized via the use of Type II turbidity curtains during construction.

The EA (page 167) states that permanent impacts to vegetated wetlands would total 12,582 square feet but would be offset by roughly 14,000 square feet of created wetland resulting in a slight gain in vegetated wetland areas. Similarly, impacts to unvegetated intertidal wetlands (246,136 square feet) would be offset by the development of roughly 247,467 square feet of intertidal wetlands and structures created in subtidal areas.

1(a) Agency Jurisdiction. The State Water Control Board (SWCB) promulgates Virginia's water regulations, covering a variety of permits to include Virginia Pollutant Discharge Elimination System (VPDES) Permit, Virginia Pollution Abatement Permit, Surface and Groundwater Withdrawal Permit, and the Virginia Water Protection Permit (VWPP). The VWPP is a state permit which governs wetlands, surface water, and surface water withdrawals/impoundments. It also serves as § 401 certification of the federal *Clean Water Act* § 404 permits for dredge and fill activities in waters of the U.S. The VWPP Program is under the Office of Wetlands and Water Protection/Compliance, within the DEQ Division of Water Quality Programs. In addition to central office staff that review and issue VWP permits for transportation and water withdrawal projects, the seven DEQ regional offices perform permit application reviews and issue permits for the covered activities.

1(b) Agency Findings. According to the VWPP program at the DEQ Tidewater Regional Office, the proposed shoreline stabilization project involves activities regulated under the VWPP Program.

1(c) Requirement. A Joint Permit Application (JPA) should be submitted to the Virginia Marine Resources Commission for dissemination to the appropriate regulatory agencies.

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

- Use directional drilling from upland locations for stream crossings, to the extent practicable. If directional drilling is not feasible, stockpile the material excavated from the trench for replacement.
- Operate machinery and construction vehicles outside of stream-beds and wetlands; use synthetic mats when in-stream work is unavoidable;
- Construct trenches in a manner that does not drain the wetlands (for example, backfilling with extensive gravel layers thereby creating a French drain effect).
- Preserve the top 12 inches of trench material removed from wetlands for use as wetland seed and root-stock in the excavated area.

- Design erosion and sedimentation controls in accordance with the most current edition of the *Virginia Erosion and Sediment Control Handbook*. These 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 re-vegetation 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 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(d) Conclusion. Provided that all necessary VWPP authorizations are obtained and complied with, DEQ-TRO concludes that this project will be consistent with the requirements of the VWPP program.

For additional information regarding the VWPP program, contact DEQ-TRO, Bert Parolari at (757) 518-2166.

2. Subaqueous Lands. According to the FCD (Appendix B: Federal Consistency Determination, page B-1), subaqueous lands potentially occupied by macroinvertebrates and used by free-swimming organisms will be impacted. Overall, impacts on subaqueous lands will be short-term, negligible adverse impacts (construction related), and long-term beneficial impacts on wildlife and wildlife habitat.

2(a) Agency Jurisdiction. The Virginia Marine Resources Commission (VMRC), pursuant to Section 28.2-1204 of the Code of Virginia, has jurisdiction over any encroachments in, on, or over any state-owned rivers, streams, or creeks in the Commonwealth. For any development that involves encroachments channelward of ordinary high water along natural rivers and streams, a permit is required from VMRC.

The VMRC serves as the clearinghouse for the Joint Permit Application used by the:

- VMRC for encroachments on or over state-owned subaqueous beds as well as tidal wetlands;
- U.S. Army Corps of Engineers for issuing permits pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act;
- DEQ for issuance of a Virginia Water Protection Permit; and
- local wetlands board for impacts to wetlands.

2(b) Agency Findings. VMRC did not respond to our request for comments on the proposal.

For further information, contact VMRC, Randy Owen at (757) 247-2251.

3. Erosion and Sediment Control, and Stormwater Management. According to the EA (page 81), during the shoreline stabilization design phase, the NPS will prepare and implement Erosion and Sediment Control Plans that comply with the Virginia Erosion and Sediment Control Law. The NPS will be responsible for overseeing on-site contractors, conducting regular field inspections, and taking prompt action against non-compliance, if necessary.

3(a) Agency Jurisdiction. The Department of Conservation and Recreation (DCR) Division of Stormwater Management (DSM) administers the *Virginia Erosion and Sediment Control Law and Regulations* (*VESCL&R*) and *Virginia Stormwater Management Law and Regulations* (*VSWML&R*).

3(b) Requirements.

***(i)* Erosion and Sediment Control and Stormwater Management Plans**

According to DCR-DSM, the NPS 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 land disturbance equal to or greater than 2,500 square feet would be regulated by *VESCL&R*. Accordingly, the NPS must prepare and implement an erosion and sediment control (ESC) plan to ensure compliance with state law and regulations. The ESC plan is submitted to the DCR Regional Office that serves the area where the project is located for review for compliance. The NPS 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 §10.1-567]

(ii) Virginia Stormwater Management Program General Permit for Stormwater Discharges from Construction Activities

DCR 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.

Therefore, the operator or owner conducting land-disturbing activities equal to or greater than 2,500 square feet in areas designated as subject to the *Chesapeake Bay Preservation Area Designation and Management Regulations* are 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. 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*. General information and registration forms for the General Permit are available on DCR's website at: http://www.dcr.virginia.gov/stormwater_management/vsmp.shtml. [Reference: Virginia Stormwater Management Act §10.1-603.1 *et seq.*; VSMP Permit Regulations 4 VAC-50 *et seq.]*

4. Chesapeake Bay Preservation Areas. According to the EA (Appendix B: Federal Consistency Determination, page B-3), direct impacts to the 100-foot Resource Protection Area (RPA) buffer will only occur in locations where temporary construction access is needed. These impacts will be minor and will be mitigated for in accordance with Department of Conservation and Recreation's (DCR) Riparian Buffers Modification and Mitigation Guidance Manual. The NPS will coordinate directly with the York County Environmental Division and DCR Division of Stormwater Management, Local Implementation, which will review site plans as prepared, to ensure maximum compliance with Chesapeake Bay Preservation Regulations.

4(a) Agency Jurisdiction. DCR's Division of Stormwater Management (DSM)-Local Implementation (formerly the Division of Chesapeake Bay Local Assistance) administers the coastal lands management enforceable policy of the VCP which is governed by the *Chesapeake Bay Preservation Act* (*Bay Act*) (*Virginia Code* §10.1-2100-10.1-2114) and *Chesapeake Bay Preservation Area Designation and Management Regulations* (*Regulations*) (9 VAC 10-20 *et seq.*).

4(b) Agency Comments. According to DCR-DSM-LI, the areas protected by the *Bay Act*, as locally implemented in York County, require conformance with performance criteria. These areas include Resource Protection Areas and Resource Management Areas (RMAs) as designated by the local government. RPAs include:

- tidal wetlands;
- certain non-tidal wetlands;
- tidal shores; and
- 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.

RMAs, which require less stringent performance criteria, include only those areas of the County within 500 feet of the inland RPA boundary or the extent of the 100-year floodplain, whichever is greater.

4(c) Requirements. Federal actions on federal land which can affect Virginia's coastal uses and resources must be conducted in a manner consistent with the performance criteria of the *Regulations*.

(i) General Performance Criteria

Development on lands analogous to RPAs and RMAs are subject to general performance criteria found in 9 VAC 10-20-120 of the *Regulations*, including requirements to:

- minimize land disturbance (including access and staging areas);
- retain indigenous vegetation; and
- minimize post-development impervious surfaces.

For land disturbance over 2,500 square feet, the project must comply with:

- the requirements of the *Virginia Erosion & Sediment Control Handbook*, Third Edition, 1992; and
- stormwater management criteria consistent with water quality protection provisions of the *Virginia Stormwater Management Regulations* (4 VAC 50-60-

10) shall be satisfied.

(ii) Chesapeake Ecosystem Unified Plan

The 1998 Chesapeake Ecosystem Unified Plan requires the signatories, including the Department of the Army, to fully cooperate with local and state governments in carrying out voluntary and mandatory actions to comply with the management of stormwater. All signatory agencies committed to encouraging construction design that:

(a) minimizes natural area loss on new and rehabilitated federal facilities;
(b) adopts low impact development and best management technologies for stormwater, sediment and erosion control, and reduces impervious surfaces; and
(c) considers the *Conservation Landscaping and BayScapes Guide for Federal Land Managers.*

(iii) Chesapeake 2000 Agreement

The Chesapeake 2000 Agreement committed the signatory agencies to a number of sound land use and stormwater quality controls. The signatories additionally committed the agencies to lead by example with respect to controlling nutrient, sediment and chemical contaminant runoff from government properties. In December 2001, the Executive Council of the Chesapeake Bay Program issued *Directive No. 01-1: Managing Storm Water on State, Federal and District-owned Lands and Facilities*, which includes specific commitments for agencies to lead by example with respect to stormwater control.

4(d) Agency Findings. According to DCR-DSM-LI, pursuant to 9 VAC 10-20-130 5 of the *Regulations*, a shoreline erosion control project is permitted in RPAs, provided that necessary control techniques are employed, and appropriate vegetation established to protect or stabilize the shoreline in accordance with the best available technical advice and applicable permit conditions or requirements.

4(e) Conclusion. DCR-DSM-LI concludes that the project is consistent with the *Bay Act* and *Regulations* provided the NPS adheres to the above requirements.

5. Air Emissions. According to the EA (Appendix B: Federal Consistency Determination, page B-3), the Preferred Alternative will not increase future pollution levels of carbon monoxide (CO), volatile organic compounds (VOCs), and nitrous oxide (NOx), since improvements are limited to inert rock and sand, and plantings. Only minor short-term impacts will occur due to temporary construction activities, consisting of diesel exhaust from heavy equipment.

5(a) Agency Jurisdiction. DEQ's Air Quality Division, on behalf of the State Air Pollution Control Board, is responsible to develop regulations that become Virginia's *Air Pollution Control Law*. DEQ is charged to carry out mandates of the state law and related regulations as well as Virginia's federal obligations under the *Clean Air Act* as amended in 1990. The objective is to protect and enhance public health and quality of life through control and mitigation of air pollution. The division ensures the safety and quality of air in Virginia by monitoring and analyzing air quality data, regulating sources of air pollution, and working with local, state and federal agencies to plan and implement strategies to protect Virginia's air quality. The appropriate regional office is directly responsible for the issue of necessary permits to construct and operate all stationary sources in the region as well as to monitor emissions from these sources for compliance. As a part of this mandate, the environmental documents of new projects to be undertaken in the state are also reviewed. In the case of certain projects, additional evaluation and demonstration must be made under the general conformity provisions of state and federal law.

5(b) Agency Findings. According to the DEQ Air Division, the project site is located in an ozone (O_3) maintenance area and emission control area for volatile organic compounds (VOCs) and oxides of nitrogen (NO_x).

5(c) Recommendation. The NPS should take all reasonable precautions to limit emissions of VOCs and NO_x, principally by controlling or limiting the burning of fossil fuels.

5(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

This activity must meet the requirements under 9 VAC 5-130 *et seq.* of the *Regulations*

for open burning. The *Regulations* for open burning provide for, but do not require, the local adoption of a model ordinance concerning open burning. The NPS should contact York County officials to determine what local requirements, if any, exist.

For additional information regarding air comments, contact the DEQ Office of Air Data Analysis, Kotur Narasimhan at (804) 698-4415.

6. Solid Wastes and Hazardous Materials. The EA does not discuss solid and hazardous waste management.

6(a) Agency Jurisdiction. Solid and hazardous wastes in Virginia are regulated by the Virginia Department of Environmental Quality, the Virginia Waste Management Board (VWMB) and the U.S. Environmental Protection Agency. They administer programs created by the federal Resource Conservation and Recovery Act, Comprehensive Environmental Response Compensation and Liability Act, commonly called Superfund, and the Virginia Waste Management Act. DEQ administers regulations established by the VWMB and reviews permit applications for completeness and conformance with facility standards and financial assurance requirements. All Virginia localities are required, under the Solid Waste Management Planning Regulations, to identify the strategies they will follow on the management of their solid wastes to include items such as facility siting, long-term (20-year) use, and alternative programs such as materials recycling and composting.

6(b) Agency Findings. The DEQ Division of Land Protection and Revitalization (DLPR) (formerly called the Waste Division) conducted a Geographic Information System (GIS) data base search and found waste sites within a 500-foot radius of the project site. A cursory review of Waste Division data files determined that that there are a number of Resource Conservation and Recovery Act (RCRA) hazardous waste facilities, Comprehensive Environmental Response, Compensation and Liability Act (CECLA) site and petroleum release sites located within a 500-foot radius of the project site. However, their proximity to the project site is unknown. A list of these sites is included in the attachments to this document.

6(c) Requirements. Any soil that is suspected of contamination or wastes that are generated during construction-related activities must be tested and disposed of in accordance with applicable federal, state, and local laws and regulations. Any contaminated media which is generated from the facility project site is the NPS' responsibility which must ensure that contaminated media undergoes proper management, storage, treatment, and disposal in accordance with state regulations. Questions regarding the proper management of solid and/or hazardous waste as well as dredge spoils should be directed to the DEQ-TRO.

6(d) Recommendations.

(i) Comprehensive Environmental Response Compensation and Liability Act Site

The following websites may be accessed to locate additional information for this site using its identification number:

- http://www.epa.gov/superfund/sites/cursites/index.htm or
- http://www.epa.gov/enviro/html/rcris/rcris_query_java.html.

(ii) Petroleum Release Sites

Petroleum releases should be evaluated by the project engineer or manager to establish the exact location of the release and the nature and extent of the petroleum release and the potential to impact the proposed project. The facility representative should contact the DEQ's Tidewater Regional Office for further information and the administrative records of the PC cases which are in close proximity to the proposed project.

(i) Pollution Prevention

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.

7. Herbicides and Pesticides. DEQ recommends that the use of herbicides or pesticides for construction or landscape maintenance 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. Contact the Department of Agriculture and Consumer Services at (804) 786-3501 for more information.

8. Natural Heritage Resources. According to the EA (page 140), the DCR Division of Natural Heritage (DCR-DNH) has identified several natural heritage resources within the project area. According to the Biotics Data System maintained by DCR-DNH, the Poley Point Conservation Site and the Ballard Creek Ravines Conservation Site are within the study area. The natural heritage resource of concern for both sites is the state-listed threatened bald eagle (*Haliaeetus leucocephalus*). Due to the legal status of the bald eagle, the DCR recommended coordination with the DGIF to ensure compliance with protected species legislation.

8(a) Agency Jurisdiction.

(i) Department of Conservation and Recreation

The mission of the Virginia Department of Conservation and Recreation is to conserve Virginia's natural and recreational resources. DCR supports a variety of environmental programs organized within seven divisions including the Division of Natural Heritage. The Natural Heritage Program's (DCR-DNH) mission is conserving Virginia's biodiversity through inventory, protection, and stewardship. The *Virginia Natural Area Preserves Act*, 10.1-209 through 217 of the *Code of Virginia*, was passed in 1989 and codified DCR's powers and duties related to statewide biological inventory: maintaining a statewide database for conservation planning and project review, land protection for the conservation of biodiversity, and the protection and ecological management of natural heritage resources (the habitats of rare, threatened, and endangered species, significant natural communities, geologic sites, and other natural features).

(ii) Department of Agriculture and Consumer Services

The Endangered Plant and Insect Species Act of 1979, Chapter 39, §3.1-102- through 1030 of the *Code of Virginia*, as amended, authorizes the Virginia Department of Agriculture and Consumer Services (VDACS) to conserve, protect and manage endangered species of plants and insects. The VDACS Virginia Endangered Plant and Insect Species Program personnel cooperates with the U.S. Fish and Wildlife Service, DCR-DNH and other agencies and organizations on the recovery, protection or conservation of listed threatened or endangered species and designated plant and insect species that are rare throughout their worldwide ranges. In those instances where recovery plans, developed by the U.S. Fish and Wildlife Service, are available, adherence to the order and tasks outlines in the plans are followed to the extent possible.

8(b) Agency Findings.

(i) Reach 1-Bellfield Straight

According to the information currently in DCR-DNH files, this site is located within the Poley Point Conservation Site. Conservation sites are tools for representing key areas of the landscape that warrant further review for possible conservation action because of the natural heritage resources and habitat they support. Conservation sites are polygons built around one or more rare plant, animal, or natural community designed to include the element and, where possible, its associated habitat, and buffer or other adjacent land thought necessary for the element's conservation. Conservation sites are given a biodiversity significance ranking based on the rarity, quality, and number of element occurrences they contain; on a scale of 1-5, 1 being most significant. Poley

Point Conservation Site has been given a biodiversity significance ranking of B5, which represents a site of general significance. The natural heritage resource of concern at this site is:

Haliaeetus leucocephalus	bald eagle	G5/S2S3B,S3N/NL/LT

The bald eagle breeds from Alaska eastward through Canada and the Great Lakes region, along coastal areas off the Pacific and Atlantic Oceans, and the Gulf of Mexico, and in pockets throughout the western United States (NatureServe, 2009). In Virginia, it primarily breeds along the large Atlantic slope rivers (James, Rappahannock, Potomac, etc) with a few records at inland sites near large reservoirs (Byrd, 1991). Bald eagle nest sites are often found in the midst of large wooded areas near marshes or other bodies of water (Byrd, 1991). Bald eagles feed on fish, waterfowl, seabirds (Campbell et. al., 1990), various mammals and carrion (Terres, 1980). This species is currently classified as threatened by the Virginia Department of Game and Inland Fisheries. Threats to this species include human disturbance of nest sites (Byrd, 1991), habitat loss, biocide contamination, decreasing food supply and illegal shooting (Herkert, 1992).

(ii) Reach III-York River Cliffs

The Ballard Creek Ravines Conservation Site is located in the project area. Ballard Creek Ravines Conservation Site has been given a biodiversity significance ranking of B5, which represents a site of general significance. The natural heritage resource of concern at this site is the Bald eagle.

(iii) Reaches IA, II and IV

Biotics documents the presence of natural heritage resources in the project area. However, due to the scope of the activity and the distance to the resources, DCR-DNH does not anticipate that this project will adversely impact these natural heritage resources.

(iv) Threatened and Endangered Plant and Insect Species

VDACS has regulatory authority to conserve rare and endangered plant and insect species through the Virginia Endangered Plant and Insect Species Act. Under a Memorandum of Agreement established between VDACS and DCR, DCR has the authority to report for VDACS on state-listed plant and insect species. DCR finds that the current activity will not affect any documented state-listed plants or insects.

(ii) State Natural Area Preserves

DCR files do not indicate the presence of any State Natural Area Preserves under the agency's jurisdiction in the project vicinity.

8(c) Recommendations. The NPS should contact DCR-DNH at (804) 786-7951 to secure updated information on natural heritage resources if a significant amount of time passes before it is utilized. New and updated information is continually added to the Biotics Data System.

9. Shellfish Resources. According to the EA (page 125), the project area contains no Baylor Grounds (i.e., public oyster grounds), but does lie adjacent to several private oyster leases, particularly at the northeastern end of the project area (i.e., between Felgates Creek and Indian Field Creek) and at the southeastern end near the Coast Guard Pier. In addition, there is one oyster gardening site near the Coast Guard Pier, and two state constructed oyster reefs, both at the mouth of Felgates Creek. The tidal sections of Felgates Creek and Indian Field Creek are identified as shellfish condemnation zones, as well as the portion of the river interior to the Navy Pier.

9(a) Agency Jurisdiction. The Virginia Department of Health's (VDH) Division of Shellfish Sanitation (DSS) is responsible for protecting the health of the consumers of molluscan shellfish and crustacea by ensuring that shellfish growing waters are properly classified for harvesting, and that molluscan shellfish and crustacea processing facilities meet sanitation standards. The mission of this Division is to minimize the risk of disease from molluscan shellfish and crustacea products at the wholesale level by classifying shellfish waters for safe commercial and recreational harvest; by implementing a statewide regulatory inspection program for commercial processors and shippers; and by providing technical guidance and assistance to the shellfish and crustacea industries regarding technical and public health issues.

9(b) Agency Finding. According to VDH-DSS, the project is adjacent to both condemned and approved shellfish growing waters. The activity as described will not require expansion of the existing closure zones.

For additional information, contact VDH-DSS, Keith Skiles at (804) 864-7487.

10. Wildlife Resources and Protected Species. According to the EA (page 183), stabilization of the shoreline would reduce the risk of upland habitat loss from erosion. As such, suitable nesting trees for the bald eagle may persist for longer periods of time relative to the No-action Alternative. The protection and enhancement of tidal marsh fringes using living shoreline approaches would enhance overall wildlife habitat and nursery areas for fish, with potential beneficial impacts for other special status species, including colonial waterbirds.

10(a) Agency Jurisdiction. The Department of Game and Inland Fisheries (DGIF), as the Commonwealth's wildlife and freshwater fish management agency, exercises enforcement and regulatory jurisdiction over wildlife and freshwater fish, including state or federally listed endangered or threatened species, but excluding listed insects (*Virginia Code* Title 29.1). The DGIF is a consulting agency under the *U.S. Fish and Wildlife Coordination Act* (16 U.S.C. sections 661 *et seq.*), and provides environmental analysis of projects or permit applications coordinated through DEQ and several other state and federal agencies. DGIF determines likely impacts upon fish and wildlife resources and habitat, and recommends appropriate measures to avoid, reduce, or compensate for those impacts.

10(b) Agency Findings.

(i) Protected Species

According to DGIF records, the following listed species and resources under the agency's jurisdiction have been documented from the project area:

- federal-listed endangered roseate tern;
- federal-listed endangered Kemp's Ridley sea turtle;
- federal-listed threatened loggerhead sea turtle;
- state-listed threatened peregrine falcon;
- state-listed threatened Mabee's salamander;
- state-listed threatened bald eagles; and
- colonial waterbird colony.

However, based on the scope and location of the proposed work, DGIF does not anticipate the project to result in adverse impacts upon these species and resources

(ii) Anadromous Fish Use Area

The York River, at the project site, has been designated an Anadromous Fish Use Area.

10(c) Recommendations.

(i) Protected Species

DGIF recommends coordination with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service regarding possible impacts upon species under their jurisdictions.

(ii) Anadromous Fish Use Area

DGIF recommends the following measures for the protection of the Anadromous Fish Use Area:

- adhere to a time-of-year restriction from February 15 through June 15 of any year for all instream work in the York River;
- conduct any 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;
- stockpile excavated material in a manner that prevents reentry into the stream;
- restore original streambed and streambank contours;
- revegetate barren areas with native vegetation; and
- implement strict erosion and sediment control measures.

For additional information regarding these comments, contact DGIF, Amy Ewing at (804) 367-2211.

11. Public Water Supply.

11(a) Agency Jurisdiction. The Virginia Department of Health (VDH), Office of Drinking Water (ODW), reviews projects for the potential to impact public drinking water sources (groundwater wells and surface water intakes).

11(b) Agency Findings. VDH-ODW has no comments.

Contact VDH, Diedre Forsgren at (804) 864-7241 for additional information.

12. Transportation Impacts.

12(a) Agency Jurisdiction. The Virginia Department of Transportation (VDOT) provides comments pertaining to potential impacts to existing and future transportation systems.

12(b) Agency Findings. According to the VDOT Hampton Roads Planning Office there is one project either recently completed, under construction or proposed in VDOT's Six Year Plan and the Hampton Roads 2034 Long Range Plan that improves traffic flow in the vicinity of the project area: Paved Shoulders-Cook Road to Colonial Parkway-York County

An official traffic analysis was not included within the EA to validate traffic impacts.

However, the anticipated traffic impact from these proposed mitigation options do not adversely impact traffic operations in the area and impacts due to construction activities at these sites should be minimal.

12(c) Conclusion. VDOT concludes that this project will not have a negative impact on transportation within the region.

For additional information, contact VDOT, Darryll D Lewis, P.E. at (757) 925-1622 or darryll.lewis@vdot.virginia.gov.

13. Historic Structures and Archaeological Resources. According to the EA (page 187), no changes would be made to the parkway's character-defining features (spatial organization/context, spatial character, topography, circulation, vegetation, shoreline, drainage features, structures, small scale features, cultural resources, and parkway uses) except for vegetation, shoreline, and cultural resources. The proposed action would result in a long-term, negligible impact on the cultural landscape and historic structures since the impacts would be neither adverse nor beneficial and would be below the level of detection.

13(a) Agency Jurisdiction. The Department of Historic Resources (DHR) conducts reviews of projects to determine their effect on historic structures or cultural resources under its jurisdiction. DHR, as the designated State's Historic Preservation Office (SHPO), ensures that federal actions comply with Section 106 of the *National Historic Preservation Act of 1966* (*NHPA*), as amended, and its implementing regulation at 36 CFR Part 800. The *NHPA* 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. Section 106 also applies if there are any federal involvements, such as licenses, permits, approvals or funding.

13(b) Agency Findings. According to DHR, the agency fully supports the National Park Service's preferred alternative based upon the documentation provided. DHR agrees with the discussion in the document of likely impacts to cultural resources, historic structures and archaeological sites. DHR has no further comments on the document.

13(c) Requirements. The NPS must complete the Section 106 process for this project under the programmatic agreement executed with DHR in January 2011.

14. Regional Concerns.

14(a) Jurisdiction. In accordance with the Code of Virginia, Section 15.2-4207, planning district commissions encourage and facilitate local government cooperation

and state-local cooperation in addressing, on a regional basis, problems of greater than local significance. The cooperation resulting from this is intended to facilitate the recognition and analysis of regional opportunities and take account of regional influences in planning and implementing public policies and services. Planning district commissions promote the orderly and efficient development of the physical, social and economic elements of the districts by planning, and encouraging and assisting localities to plan, for the future.

14(b) Regional Comments. The Hampton Roads Planning District Commission reviewed the SEA and consulted with York County regarding the project. According to the PDC, the project appears to be consistent with local and regional plans and policies, provided all necessary permits and permissions are acquired, including a wetlands permit.

For additional information, contact HRPDC, John Carlock at (757) 420-8300.

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

15(a) Recommendations. We have several pollution prevention recommendations that may be helpful in the construction of this project and in the operation of the facility:

- Consider development of an effective Environmental Management System (EMS). An effective EMS will ensure that the 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.
- 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 infrastructure construction and design. These could include asphalt and concrete containing recycled materials, and integrated pest management in landscaping, among other things.

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, Sharon Baxter at (804) 698-4344.

FEDERAL CONSISTENCY UNDER THE COASTAL ZONE MANAGEMENT ACT

Pursuant to the Coastal Zone Management Act of 1972, as amended, 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, to the maximum extent practicable, be implemented in a manner consistent with the Virginia Coastal Zone Management Program (VCP). The VCP consists of a network of programs administered by several agencies. The DEQ coordinates the review of federal consistency determinations with agencies administering the Enforceable and Advisory Policies of the VCP. A federal consistency determination was submitted with the EA that includes an analysis of the enforceable policies of the VCP. In addition, the document includes a review of potential project impacts to the advisory policies of the VCP. The document finds the proposal consistent with the advisory policies.

Federal Consistency Public Participation

In accordance with 15 CFR § 930.2, public notice of the proposed action was published on DEQ's web site from August 14, 2012 to September 11, 2012. No public comments were received in response to the notice.

Federal Consistency Concurrence

Based on our review of the NPS' consistency determination, and the comments and recommendations submitted by agencies administering the enforceable policies of the VCP, DEQ concurs that this proposal is consistent with the VCP. However, other state approvals which may apply to this project are not included in this concurrence. Therefore, the NPS must ensure that this project is constructed and operated in accordance with all applicable federal, state, and local laws and regulations.

REGULATORY AND COORDINATION NEEDS

1. Surface Waters and Wetlands. Virginia Water Protection Permit program authorization is required for anticipated impacts to wetlands pursuant to Virginia Code §62.1-44.15:5. Coordination with the appropriate agencies for anticipated impacts is accomplished through the submission of a JPA to VMRC. For additional information regarding the VWPP program, contact DEQ-TRO, Bert Parolari at (757) 518-2166.

2. Subaqueous Lands. Proposed impacts to state subaqueous lands will require review by VMRC pursuant to Section 28.2-1200 *et seq.* of the *Code of Virginia.* The

permit process is initiated through the submission of a JPA by the NPS to VMRC. For additional information and coordination, contact VMRC, Randy Owen at (757) 247-2251.

3. Erosion and Sediment Control and Stormwater Management.

3(a) Erosion and Sediment Control and Stormwater Management. The NPS must ensure that it is in compliance with *Virginia's Erosion and Sediment Control Law* (Virginia Code 10.1-567) and *Regulations* (4 VAC 50-30-30 *et seq.*) and *Stormwater Management Law* (Virginia Code 10.1-603.5) and *Regulations* (4 VAC 3-20-210 *et seq.*). Activities that disturb 2,500 square feet or more of land in a CBPA would be regulated by *VESCL&R* and *VSWML&R*. The NPS is encouraged to contact DCR's Suffolk Regional Office at (757) 925-2468, for assistance with developing or implementing an ESC plan to ensure project conformance.

3(b) Virginia Stormwater Management Program General Permit for Stormwater Discharges from Construction Activities. For projects involving land-disturbing activities of 2,500 square feet or more in a CBPA, the NPS is required to develop a project-specific stormwater pollution prevention plan and apply for registration coverage under the Virginia Stormwater Management Program General Permit for Discharges of Stormwater from Construction Activities. Specific questions regarding the Stormwater Management Program requirements should be directed to Holly Sepety, DCR, at (804) 225-2613.

4. Chesapeake Bay Preservation Areas. This project must meet the requirements of the *Chesapeake Bay Preservation Act* (Virginia Code §§ 10-1-2100 through 10.1-2114) and *Chesapeake Bay Preservation Area Designation and Management Regulations* (Virginia Code 9 VAC 10-20-10 *et seq.*) as administered by DCR-DSM-LI. The project is subject to the criteria of 9 VAC 10-20-130 of the *Regulations* and, in particular, 9 VAC 10-20-130 5 a (4) for shoreline erosion control projects in RPA. For additional information and coordination, contact DCR-DSM-LI, Nancy Miller at (804) 225-3441.

5. Air Quality Regulations. This project may be subject to air regulations administered by the Department of Environmental Quality. The following sections of Virginia Administrative Code are applicable:

- 9 VAC 5-50-60 *et seq.* governing fugitive dust emissions;
- 9 VAC 5-130 *et seq.* for open burning.

For additional information and coordination, contact DEQ-TRO, Troy Breathwaite at (757) 518-2006. Also, contact the York County for any local requirements on open burning.

6. Solid and Hazardous Wastes. All solid waste, hazardous waste, and hazardous materials must be characterized and managed in accordance with all applicable federal, state, and local environmental 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) (9 VAC 20-60);
- Virginia Solid Waste Management Regulations (VSWMR) (9 VAC 20-80); and
- Virginia Regulations for the Transportation of Hazardous Materials (9 VAC 20-110).

Applicable federal regulations are as follows:

- *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
- *U.S. Department of Transportation Rules for Transportation of Hazardous Materials*, 49 CFR Parts 107, 171.1-172.558.

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, Milt Johnston at (757) 518-2151.

7. Historic and Archaeological Resources. The NPS must continue to coordinate this action with the Department of Historic Resources in accordance with *Section 106 of the National Historic Preservation Act*, as amended, and its implementing regulation 36 CFR 800. For additional information and coordination, contact DHR, Ethel Eaton at (804) 482-6088; fax (804) 367-2391; or e-mail ethel.eaton@dhr.virginia.gov.

8. Natural Heritage Resources. Contact DCR-DNH at (804) 786-7951 to secure updated information on natural heritage resources if a significant amount of time passes before the construction is initiated.

9. Protected Species. Coordinate with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service regarding possible project impacts upon species under their jurisdictions.

Thank you for the opportunity to review the Draft Environmental Assessment and Federal Consistency Determination for the repair and stabilization of the York River shoreline to protect the Colonial Parkway at the Colonial National Historical Park in York

County. Detailed comments of reviewing agencies are attached for your review. Please contact me at (804) 698-4325 or John Fisher at (804) 698-4339 for clarification of these comments.

Sincerely,

Ellie Irons, Program Manager
Environmental Impact Review

Enclosures

Ec: Cindy Keltner, DEQ-TRO
Steve Coe, DEQ-DLPR
Kotur Narasimhan, DEQ-Air
Tony Watkinson, VMRC
Amy Ewing, DGIF
Robbie Rhur, DCR
Keith Tignor, VDACS
Barry Matthews, VDH
Roger Kirchen, DHR
Chip Ray, VDOT
John M. Carlock, HRPDC

Cc: James McReynolds, York County

DEPARTMENT OF ENVIRONMENTAL QUALITY
TIDEWATER REGIONAL OFFICE
ENVIRONMENTAL IMPACT REVIEW COMMENTS

RECEIVED
SEP 11 2012
DEQ-Office of Environmental Impact Review

September 11, 2012

PROJECT NUMBER: 12-150F

PROJECT TITLE: Repair and stabilize the York River Shoreline

As Requested, TRO staff has reviewed the supplied information and has the following comments:

Petroleum Storage Tank Cleanups:
No comments.

Petroleum Storage Tank Compliance/Inspections:
No comments.

Virginia Water Protection Permit Program (VWPP):
The proposed shoreline stabilization project clearly involves activities regulated by the VWPP Program. A Joint Permit Application (JPA) should be submitted to the Virginia Marine Resources Commission for dissemination to the appropriate regulatory agencies. Provided you obtain the appropriate VWPP authorization, and comply with the conditions of that authorization, this project will be consistent with VWPP Program.

Air Permit Program :
No comments.

Water Permit Program :
Water Permits – no comments

Ground Water – No comments

Waste Permit Program :
All construction and demolition debris must be characterized in accordance with the Virginia Hazardous Waste Management regulations and managed at an appropriate facility.

The staff from the Tidewater Regional Office thanks you for the opportunity to provide comments.

Sincerely,

Cindy Keltner
Environmental Specialist II
5636 Southern Blvd.
VA Beach, VA 23462
(757) 518-2167
Cindy.Keltner@deq.virginia.gov

Douglas W. Domenech
Secretary of Natural Resources

David A. Johnson
Director

COMMONWEALTH of VIRGINIA

DEPARTMENT OF CONSERVATION AND RECREATION

203 Governor Street
Richmond, Virginia 23219-2010
(804) 786-1712

RECEIVED
SEP 06 2012
DEQ-Office of Environmental Impact Review

MEMORANDUM

DATE: September 6, 2012

TO: John Fisher, DEQ

FROM: Roberta Rhur, Environmental Impact Review Coordinator

SUBJECT: DEQ 12-150F, York River Shoreline Stabilization – Colonial Parkway

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.

Reach 1 – Bellfield Straight

According to the information currently in our files, this site is located within the Poley Point Conservation Site. Conservation sites are tools for representing key areas of the landscape that warrant further review for possible conservation action because of the natural heritage resources and habitat they support. Conservation sites are polygons built around one or more rare plant, animal, or natural community designed to include the element and, where possible, its associated habitat, and buffer or other adjacent land thought necessary for the element's conservation. Conservation sites are given a biodiversity significance ranking based on the rarity, quality, and number of element occurrences they contain; on a scale of 1-5, 1 being most significant. Poley Point Conservation Site has been given a biodiversity significance ranking of B5, which represents a site of general significance. The natural heritage resource of concern at this site is:

Haliaeetus leucocephalus	Bald eagle	G5/S2S3B,S3N/NL/LT

The Bald eagle breeds from Alaska eastward through Canada and the Great Lakes region, along coastal areas off the Pacific and Atlantic Oceans, and the Gulf of Mexico, and in pockets throughout the western United States (NatureServe, 2009). In Virginia, it primarily breeds along the large Atlantic slope rivers (James, Rappahannock, Potomac, etc) with a few records at inland sites near large reservoirs (Byrd, 1991). Bald eagle nest sites are often found in the midst of large wooded areas near marshes or other bodies of water (Byrd, 1991). Bald eagles feed on fish, waterfowl, seabirds (Campbell et. al., 1990), various mammals and carrion (Terres, 1980). Please note that this species is currently classified as threatened by the Virginia Department of Game and Inland Fisheries (VDGIF).

Threats to this species include human disturbance of nest sites (Byrd, 1991), habitat loss, biocide contamination, decreasing food supply and illegal shooting (Herkert, 1992).

Reach III – York River Cliffs

The Ballard Creek Ravines Conservation Site is located in the project area. Ballard Creek Ravines Conservation Site has been given a biodiversity significance ranking of B5, which represents a site of general significance. The natural heritage resource of concern at this site is the Bald eagle.

Due to the legal status of the Bald eagle, DCR recommends coordination with Virginia's regulatory authority for the management and protection of this species, the VDGIF, to ensure compliance with the Virginia Endangered Species Act (VA ST §§ 29.1-563 – 570).

Reaches IA, II & IV

Biotics documents the presence of natural heritage resources in the project area. However, due to the scope of the activity and the distance to the resources, we do not anticipate that this project will adversely impact these 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 Virginia Department of Conservation and Recreation (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 contact DCR for an update on this natural heritage information if a significant amount of time passes 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 Gladys Cason (804-367-0909 or Gladys.Cason@dgif.virginia.gov).
This project is located within 2 miles of a documented occurrence of a state listed animal. Therefore, DCR recommends coordination with VDGIF, Virginia's regulatory authority for the management and protection of this or these species to ensure compliance with the Virginia Endangered Species Act (VA ST §§ 29.1-563 – 570).

Division of Stormwater Management

Chesapeake Bay Local Assistance:
In York County, 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) as designated by the local government. RPAs include tidal wetlands, certain non-tidal wetlands and tidal shores, and a minimum 100-foot vegetated buffer area located adjacent to and landward of these features and along both sides of any water body with perennial flow. RMAs, which require less stringent performance criteria, include only those areas of the County within 500 feet of the inland RPA boundary or the extent of the 100-year floodplain, whichever is greater.

Pursuant to the *Coastal Zone Management Act* (the Management Act) of 1972, as amended, Federal activities affecting Virginia's coastal resources or coastal uses must be consistent with the Virginia Coastal Zone Management Program (Section 307(c)(1) of the Management Act and 15 CFR Part 930, sub-part C of the *Federal Consistency Regulations*).

The Chesapeake Bay Preservation Act and Regulations are incorporated in the Virginia Coastal Zone Management Program. Federal Consistency regulations implementing the Coastal Zone Management Act require that federal actions, and/or projects requiring federal approvals or assistance that may impact natural resources in a coastal zone, must be conducted in a manner consistent to the maximum extent practicable with the enforceable policies of a coastal state's federally approved coastal management program.

While RPAs/RMAs are not locally designated on federal lands, this does not relieve federal agencies of their responsibility to be consistent with the provisions of the Regulations, § 9 VAC 10-20-10 et seq., as one of the enforceable programs of the CZM Program. 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/RMAs, as provided in § 9 VAC 10-20-120. For land disturbance over 2,500 square feet, the project must comply with the requirements of the *Virginia Erosion and Sediment Control Handbook,* Third Edition, 1992. Additionally, stormwater management criteria consistent with water quality protection provisions of the *Virginia Stormwater Management Regulations,* § 4 VAC 50-60-10, shall be satisfied.

The 1998 *Federal Agencies' Chesapeake Ecosystem Unified Plan* requires the signatories to fully cooperate with local and state governments in carrying out voluntary and mandatory actions to comply with the management of stormwater. The signatories also committed to encouraging construction design that minimizes natural area loss on new and rehabilitated federal facilities, adopts low impact development and best management technologies for stormwater and erosion and sediment control, and reduces impervious surfaces. In addition, the *Chesapeake 2000* agreement committed the government agencies to a number of sound land use and stormwater quality controls. The signatories additionally committed the agencies to lead by example with respect to controlling nutrient, sediment and chemical contaminant runoff from government properties. In December 2001, the Executive Council of the Chesapeake Bay Program issued *Directive No. 01-1: Managing Storm Water on State, Federal and District-owned Lands and Facilities*, which includes specific commitments for the signatories to lead by example with respect to stormwater control.

Pursuant to § 9 VAC 10-20-130 5 of the Regulations, a shoreline erosion control project is permitted, provided that necessary control techniques are employed, and appropriate vegetation established to protect or stabilize the shoreline in accordance with the best available technical advice and applicable permit conditions or requirements.

Provided adherence to the above requirements, the proposed activity would be consistent with the *Chesapeake Bay Preservation Act* and the Regulations.

Stormwater Management:
The applicant and their authorized agents conducting regulated land disturbing activities on private and public lands in the state must comply with the Virginia Erosion and Sediment Control Law and Regulations (VESCL&R), Virginia Stormwater Management Law and Regulations 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-disturbance

activities that result in the land-disturbance of equal to or greater than 2,500 square feet would be regulated by VESCL&R. Accordingly, the applicant must prepare and implement erosion and sediment control (ESC) plan to ensure compliance with state law and regulations. The ESC plan is submitted to the DCR 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 §10.1-567;].

The operator or owner of construction activities involving land disturbing activities equal to or greater than 2,500 square feet in areas designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations adopted pursuant to the Chesapeake Bay Preservation Act are 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 (SWPPP). 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 Virginia Stormwater Management Program (VSMP) Permit Regulations. General information and registration forms for the General Permit are available on DCR's website at
http://www.dcr.virginia.gov/soil_and_water/index.shtml
[Reference: Virginia Stormwater Management Law Act §10.1-603.1 et seq.; VSMP Permit Regulations §4VAC-50 et seq.]

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

Cc: Amy Ewing, VDGIF

RECEIVED
AUG 10 2012
DEQ-Office of Environmental Impact Review

DEPARTMENT OF ENVIRONMENTAL QUALITY
DIVISION OF AIR PROGRAM COORDINATION

ENVIRONMENTAL REVIEW COMMENTS APPLICABLE TO AIR QUALITY

TO: John E. Fisher **DEQ - OEIA PROJECT NUMBER: 12 – 150F**

PROJECT TYPE: ☐ STATE EA / EIR **X FEDERAL EA / EIS** ☐ SCC

☐ CONSISTENCY DETERMINATION

PROJECT TITLE: REPAIR AND STABILIZE YORK RIVER SHORELINE TO PROTECT THE COLONIAL PARKWAY, COLONIAL NATIONAL HISTORIC PARK

PROJECT SPONSOR: DOI / NATIONAL PARK SERVICE

PROJECT LOCATION: **X OZONE MAINTENANCE 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 5-40-5200 C & 9 VAC 5-40-5220 F – STAGE II Vapor Recovery
3. ☐ 9 VAC 5-40-5490 et seq. – Asphalt Paving operations
4. **X 9 VAC 5-130 et seq. – Open Burning**
5. **X 9 VAC 5-50-60 et seq. Fugitive Dust Emissions**
6. ☐ 9 VAC 5-50-130 et seq. - Odorous Emissions; Applicable to_____
7. ☐ 9 VAC 5-50-160 et seq. – Standards of Performance for Toxic Pollutants
8. ☐ 9 VAC 5-50-400 Subpart_____, Standards of Performance for New Stationary Sources, designates standards of performance for the_____
9. ☐ 9 VAC 5-80-1100 et seq. of the regulations – Permits for Stationary Sources
10. ☐ 9 VAC 5-80-1700 et seq. Of the regulations – Major or Modified Sources located in PSD areas. This rule may be applicable to the _____
11. ☐ 9 VAC 5-80-2000 et seq. of the regulations – New and modified sources located in non-attainment areas
12. ☐ 9 VAC 5-80-800 et seq. Of the regulations – Operating Permits and exemptions. 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).

K. S. Narasimhan

(Kotur S. Narasimhan)
Office of Air Data Analysis

DATE: August 10, 2012

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

RECEIVED
SEP 0 7 2012
DEQ-Office of Environmental Impact Review

MEMORANDUM

TO: John Fisher, DEQ/EIR Environmental Program Planner

FROM: Steve Coe, DLPR Review Coordinator

DATE: September 7, 2012

COPIES: Sanjay Thirunagari, DLP&R Review Manager
EIR File

SUBJECT: EIR Project No. 12-150F- Repair and Stabilize the York River Shoreline to Protect the Colonial Parkway, Colonial National Historical Park – Review Comments

The Division of Land Protection & Revitalization has completed its review of the Environmental Impact Report regarding the project to Repair and Stabilize the York River Shoreline to Protect the Colonial Parkway, Colonial National Historical Park. The project scope includes repairs to existing means of shoreline defense and the installation of new structures within the park property.

We have provided comments below concerning potential waste issues and environmental resources that could be affected and which may be impacted by this proposed project. The submittal did not address potential solid and/or hazardous waste issues. The submittal did not include a search of waste-related databases. The DLPR staff has conducted a cursory review of its database files under zip code 23690, including a GIS database search (500 foot radius) of the project site and determined the information below.

Facility waste sites of concern were located within the same zip code of the proposed project under zip code 23690, and/or within the 500 foot radius from the project site. However, the proximity of identified waste sites to the project site and/or potential impact to the project should be further evaluated.

The staff's summary comments are as follows:

Hazardous Waste Facilities – nine identified by zip code, four in close proximity to project sites

The search of the RCRAInfo database under zip code 23690 and/or within 500 foot radius of the project site found four (4) facilities, but proximity to the work sites was not determined:

1) VAD980705743 – Accent General Inc, Naval Supply Center/Fuel Division, Yorktown, VA 23690. Contact: Mark Dwyer at 804-898-9418.
2) VA6170090017 – DPSP Yorktown Fuel Terminal, End of State Route 238, Yorktown, VA 23690. Contact: Khoa Nguyen at 757-445-6730.
3) VA3141707023 – U.S. Colonial National Historical Park, Rt 17 & Goosley Road, Yorktown, VA 23690. Contact: Laura Ethridge at 757-898-2406.
4) VA6690313055 – USCG Training Center Yorktown, End to State Route 238E, Yorktown, VA 23690. Contact: Richard D. Hylton at 757-856-2267.

CERCLA Sites – one

The following CERCLA facility site was found on the CERCLIS database under or near zip code 23690 and/or within 500 feet of the project sites found the following facilities:

> Naval Weapons Station, Yorktown. EPA IDs VA8170024170 (Final NPL status) and VA6170090017 (Not on the NPL). Proximity to the work sites was not determined.

The following websites may prove helpful in locating additional information for these identification numbers: http://www.epa.gov/superfund/sites/cursites/index.htm or http://www.epa.gov/enviro/html/rcris/rcris_query_java.html.

FUDs Sites – none

Solid Waste Facilities – None

VRP Sites - None

Petroleum Release Sites – six releases, 2 sites

The following petroleum release sites were found on the DEQ's Inventory under zip code 23690 and/or within 500 feet of the project sites:

1) #19910005 and #20005085– Watermen's Museum, 309 Water Street, Yorktown, VA 23690. Event Dates: 7/12/2006 and 6/6/2007. Status: Both Closed.
2) #19943734, #19931267, #19962359, #19931258 – USCG Reserve Training Center, Yorktown, VA 23690. Event Date, respectively, and Status: 12/4/2006 (Open), 9/29/2006 (Closed), 8/14/2007 (Closed), and 9/29/2006 (Closed).

(Note: Dates above are the latest PC Database edit dates of the specific PC Case Nos.)

Please note that the DEQ's petroleum contamination (PC) case files of the PC Case Nos., within 500 feet of the proposed project are identified above and these petroleum releases should be evaluated by the project engineer or manager to establish the exact location of the release and the nature and extent of the petroleum release and the potential to impact the proposed project. The facility representative should contact the DEQ's Tidewater Regional Office for further information and the administrative records of the PC cases which are in close proximity to the proposed project.

GENERAL COMMENTS

Soil, Sediment, and Waste Management

Any soil 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.

Asbestos and/or Lead-based Paint

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 Ms. Lisa Silvia at the Tidewater Regional Office (757-518-2175).

Pollution Prevention – Reuse - Recycling

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 Steve Coe, Environmental Specialist, at (804) 698-4029.

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COMMONWEALTH of VIRGINIA

Department of Health
DIVISION OF SHELLFISH SANITATION
109 Governor Street, Room 614-B
Richmond, VA 23219

Ph: 804-864-7487
Fax: 804-864-7481

MEMORANDUM

DATE: 8/10/2012

TO: John E. Fisher
Department of Environmental Quality

FROM: B. Keith Skiles, MPH, Classification Chief
Division of Shellfish Sanitation

SUBJECT: Repair/Stabilize York River Shoreline; Colonial Parkway National Historical

City / County: York

Waterbody: York River

Type: ☐ VPDES ☐ VMRC ☐ VPA ☐ VWP ☐ JPA ☑ Other: Federal Consistency Determination

Application / Permit Number: 12-150F

☐ The project will not affect shellfish growing waters.

☐ The project is located in approved shellfish growing waters, however, the activity as described will not require a change in classification.

☐ The project is located in condemned shellfish growing waters and the activity, as described, will not cause an increase in the size or type of the existing closure.

☐ The project will affect condemned shellfish waters and will not cause an increase in the size of the total condemnation. However, a prohibited area (an area from which shellfish relay to approved waters for self-purification is not allowed) will be required within a portion of the currently condemned area. See comments.

☐ A buffer zone (including a prohibited area) has been previously established in the vicinity of this discharge, however, the closure will have to be revised. Map attached.

☐ This project will affect approved shellfish waters. If this discharge is approved, a buffer zone (including a prohibited area) will be established in the vicinity of the discharge. Map attached.

☑ Other. The project is adjacent to both condemned and approved shellfish growing waters. The activity as described will not require expansion of the existing closure zones.

ADDITIONAL COMMENTS:

Area #: 52

bks

Fisher, John (DEQ)

From: Ewing, Amy (DGIF)
Sent: Friday, September 07, 2012 4:44 PM
To: Fisher, John (DEQ)
Cc: Cason, Gladys (DGIF); Greenlee, Bob (DGIF)
Subject: ESSLog# 33125_12-150F_York River shoreline stabilization

We have reviewed the subject project that proposes significant shoreline stabilization along the shore of Colonial National Historic Park in York County.

According to our records, the following listed species and resources under our jurisdiction have been documented from the project area: federal Endangered roseate terns, federal Endangered Kemp's Ridley sea turtles, federal Threatened loggerhead sea turtles, state Threatened peregrine falcons, state Threatened Mabee's salamanders, state Threatened bald eagles, and a colonial waterbird colony. However, based on the scope and location of the proposed work, we do not anticipate the project to result in adverse impacts upon these species and resources. We recommend coordination with the USFWS and NOAA Fisheries regarding possible impacts upon species under their jurisdictions.

The York River has been designated an Anadromous Fish Use Area. Therefore, we recommend that all instream work in this river adhere to a time of year restriction from February 15 through June 15 of any year. 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, 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.

Assuming adherence all applicable erosion and sediment controls, we find this project consistent with the Fisheries Management Section of the CZMA.

Thanks, Amy

Amy Ewing | Environmental Services Biologist | VDGIF - Richmond HQ | 4010 West Broad St. Richmond, VA 23230 | 804-367-2211 | www.dgif.virginia.gov

Fisher, John (DEQ)

From: Forsgren, Diedre (VDH)
Sent: Friday, August 24, 2012 3:04 PM
To: Fisher, John (DEQ)
Subject: (12-150F) CD: Repair and Stabilize the York River Shoreline

DEQ Project #: 12-150F
Name: Repair and Stabilize the York River Shoreline to Protect the Colonial Parkway, Colonial National Historical Park
Sponsor: DOI/National Park Service
Location: York County

The Department of Health has reviewed the above captioned project and the information provided.

The Office of Drinking Water has no comments.

The project is adjacent to both condemned and approved shellfish growing waters. The activity as described will not require expansion of the existing closure zones. (See attached Division of Shellfish Sanitation comments.)

(12-150F)_VDH-DSS.pdf

Diedre Forsgren
Office Services Specialist
VIRGINIA DEPARTMENT OF HEALTH
Office of Drinking Water, Room 622-A
109 Governor Street
Richmond, VA 23219
Phone: (804) 864-7241
email: diedre.forsgren@vdh.virginia.gov

United States Department of the Interior

FISH AND WILDLIFE SERVICE
Ecological Services
6669 Short Lane
Gloucester, Virginia 23061

Date: December 5, 2012

Online Project Review Certification Letter

Project Name: York River Shoreline Stabilization

Dear Applicant:

Thank you for using the U.S. Fish and Wildlife Service (Service) Virginia Field Office online project review process. By printing this letter in conjunction with your project review package, you are certifying that you have completed the online project review process for the referenced project in accordance with all instructions provided, using the best available information to reach your conclusions. This letter, and the enclosed project review package, completes the review of your project in accordance with the Endangered Species Act of 1973 (16 U.S.C. 1531-1544, 87 Stat. 884), as amended (ESA), and the Bald and Golden Eagle Protection Act (16 U.S.C. 668-668c, 54 Stat. 250), as amended (Eagle Act). This letter also provides information for your project review under the National Environmental Policy Act of 1969 (P.L. 91-190, 42 U.S.C. 4321-4347, 83 Stat. 852), as amended. A copy of this letter and the project review package must be submitted to this office for this certification to be valid. This letter and the project review package will be maintained in our records.

The species conclusions table in the enclosed project review package summarizes your ESA and Eagle Act conclusions. These conclusions resulted in "no effect" and/or "not likely to adversely affect" determinations for listed species and critical habitat and/or "no Eagle Act permit required" determinations for eagles regarding potential effects of your proposed project. We certify that the use of the online project review process in strict accordance with the instructions provided as documented in the enclosed project review package results in reaching the appropriate determinations. Therefore, we concur with the "no effect" and "not likely to adversely affect" determinations for listed species and critical habitat and "no Eagle Act permit required" determinations for eagles. Additional coordination with this office is not needed.

Candidate species are not legally protected pursuant to the ESA. However, the Service encourages consideration of these species by avoiding adverse impacts to them. Please contact this office for additional coordination if your project action area contains candidate species.

Should project plans change or if additional information on the distribution of listed species, critical habitat, or bald eagles becomes available, this determination may be reconsidered. This certification letter is valid for one year.

Applicant

Information about the online project review process including instructions and use, species information, and other information regarding project reviews within Virginia is available at our website http://www.fws.gov/northeast/virginiafield/endspecies/project_reviews.html. If you have any questions, please contact Kimberly Smith of this office at (804) 693-6694, extension 124.

Sincerely,

/s/ Cynthia A. Schulz

Cindy Schulz
Supervisor
Virginia Field Office

Enclosures - project review package