

## 4 VIRGINIA WATER PROTECTION GENERAL PERMITS

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## 4.1 VWP GENERAL PERMITS

Virginia Water Protection (VWP) general permits are issued via the regulatory processes. Each project is evaluated on a case by case basis to determine if it may be covered under a VWP general permit. Coverage under general permits can only be provided for activities that meet all of the terms and conditions of applicable law, VWP regulations, and the coverage letter. The VWP Permit Program currently provides coverage under four general permits, each issued in regulation for certain nontidal surface water impacts: WP1, WP2, WP3, and WP4 (see Figure 1 below). The general permits have an effective date of August 2, 2016, and expire on August 1, 2026. Because general permits are contained in the regulation, effective and expiration dates do not change, regardless of when coverage is issued by DEQ staff. Therefore, some permittees may have a longer period of time in which to complete a project than others, based on the date coverage is granted by DEQ.

The general permit regulations must be read by staff. The intent of this chapter is to provide staff with necessary procedures to review, process and prepare general permit coverage in accordance with the applicable law, regulations, guidance, and policies. The general permit regulations are listed below and the complete regulations can viewed on the Virginia Legislative Information System website.

### 4.1.1 ACTIVITIES AUTHORIZED BY VWP GENERAL PERMITS

Each general permit authorizes specific types of activities and has specific impact thresholds, as shown in Figure 1 below.

General Permit WP1 is the least commonly used because it has an increased compensation ratio of 2:1. When the general permits were first developed in 2001, on-site permittee responsible compensation was the preferential requirement. This general permit provided the public the opportunity to buy credits without having to conduct an analysis to demonstrate that credits were ecologically preferable. However, since the 2008 Federal Mitigation Rule and 2016 VWP Regulations changes, credits are the ecologically preferred alternative and the benefits of the WP1 have been largely negated.

In general, WP1 should only be used for impacts meeting the “reporting-only” thresholds: those with permanent impacts less than or equal to 1/10 acre of wetlands or open water and less than or equal to 300 linear feet of stream channel. ***If this permit is used for impacts greater than 1/10 acre or 300 linear feet, a condition must be in the Letter of Coverage to require the proof of credit purchase be submitted prior to impacts.*** In certain instances, the WP1 may be the only option for coverage, provided that the impact thresholds are not exceeded.

**Figure 1. General Permit Summary**

General Permit	Type of Activity	Limitation of Impacts
WP1 ( <a href="#">9VAC25-660</a> ) General Permit for Impacts Less Than One-Half of an Acre	Not activity specific Staff should review details at <a href="#">9VAC25-660-30</a>	Permanent and temporary impacts less than one-half acre of nontidal waters or open water and less than or equal to 300 linear feet of nontidal stream bed
WP2( <a href="#">9VAC25-670</a> ) Facilities and Activities of Utility and Public Service Companies Regulated by the Federal Energy	Construction, maintenance or repair of: <ul style="list-style-type: none"> <li>• utility lines</li> <li>• outfalls</li> <li>• substation facilities</li> <li>• pumping stations</li> </ul>	Permanent and temporary impacts less than or equal to one acre of nontidal wetlands or open water and up to 1,500 linear feet of nontidal stream bed

General Permit	Type of Activity	Limitation of Impacts
Regulatory Commission or the State Corporation Commission and Other Utility Line Activities	<ul style="list-style-type: none"> <li>overhead utility line towers, poles or anchors</li> <li>associated access roads</li> </ul> <p>Staff should review details at <a href="#">9VAC25-670-30 B</a></p>	
WP3 ( <a href="#">9VAC25-680</a> ) Virginia Water Protection General Permit for Linear Transportation Projects	<p>Construction, expansion, modification or improvement of:</p> <ul style="list-style-type: none"> <li>linear transportation projects (roads)</li> <li>railways</li> <li>trails, bicycle and pedestrian</li> <li>airport runways and taxiways</li> <li>temporary and permanent attendant features</li> </ul> <p>Staff should review details at <a href="#">9VAC25-680-30 B</a></p>	Permanent and temporary impacts up to two acres of nontidal wetlands or open water and up to 1,500 linear feet of nontidal stream bed
WP4 ( <a href="#">9VAC25-690</a> ) Virginia Water Protection General Permit for Impacts from Development and Certain Mining Activities	<p>Construction, expansion or maintenance of:</p> <ul style="list-style-type: none"> <li>residential developments</li> <li>commercial developments</li> <li>institutional developments</li> <li>recreational facilities</li> <li>stormwater management facilities</li> <li>mining facilities</li> </ul> <p>Staff should review the details at <a href="#">9VAC25-690-30 B</a></p>	Permanent and temporary impacts up to two acres of nontidal wetlands or open water and up to 1,500 linear feet of nontidal stream bed

#### 4.1.2 ACTIVITIES NOT ALLOWABLE UNDER GENERAL PERMITS

The regulations identify specific activities that cannot be authorized under the general permits summarizes, as in the table below. Review the applicable regulation sections for exact language.

**Figure 2. Activities Not Authorized Under General Permits**

WP1	WP2	WP3	WP4	
X	X	X	X	Construction of a stormwater management facility in perennial streams or in waters designated as oxygen-impaired or temperature-impaired (does not include wetlands)
X		X	X	The construction of an irrigation impoundment on a perennial stream
X	X	X	X	Any water withdrawal activity
X		X	X	The location of animal feeding operations or waste storage facilities in state waters
X	X	X	X	The pouring of wet or uncured concrete in state waters, unless the area is contained within a cofferdam and the work is performed in the dry or unless approved by the Department of Environmental Quality

WP1	WP2	WP3	WP4	
X	X			Dredging or maintenance dredging
X		X	X	Return flow discharges from dredge disposal sites
		X	X	Overboard disposal of dredge materials
		X	X	Dredging in marinas
		X	X	Dredging of shellfish areas, submerged aquatic vegetation beds, or other highly productive areas
		X	X	Federal navigation projects
X			X	Construction of new ski areas
X				Construction of oil and gas wells
X	X	X	X	Any activity in surface waters that will impact federal or state listed threatened or endangered species or designated critical habitat, or taking of threatened or endangered species
	X	X	X	Any activity in wetlands composed of 10% or more, singularly or in combination, based upon either basal area or percent areal cover in the area of impact, in a vegetative stratum: Atlantic white cedar ( <i>Chamaecyparis thyoides</i> ), bald cypress ( <i>Taxodium distichum</i> ), water tupelo ( <i>Nyssa aquatica</i> ), or overcup oak ( <i>Quercus lyrata</i> )
X			X	Any activity in wetlands underlain by histosols
	X	X	X	Any activity in tidal waters
X				Any activity in nontidal wetlands adjacent to tidal waters
X				Any activity in 100-year floodplains, as identified by the Federal Emergency Management Agency's (FEMA) flood insurance rate maps or FEMA-approved local floodplain maps
X	X	X	X	In accordance with 9VAC25-210-130 B, the board may require an individual permit application rather than approving granting coverage under this VWP general permit
X	X	X	X	This VWP general permit does not authorize activities that cause more than minimal changes to the peak hydraulic flow characteristics, that significantly increase flooding, or that cause more than minimal degradation of the water quality of a stream
X	X	X	X	Multiple general permits issued for a single complete project that cumulatively exceed the general permit threshold
			X	Activity in a phased development which that would cause the aggregate total loss of nontidal wetlands or open water in the subdivision to exceed two acres, or to exceed 1,500 linear feet of nontidal stream bed
X	X	X	X	Activity prohibited by state law or regulations, nor shall it contravene applicable Water Quality Standards (9VAC25-260)
		X		This VWP general permit cannot be used for nonlinear features commonly associated with transportation projects, such as, but not limited to, vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangars
X	X	X	X	This VWP general permit shall not be granted for impacts to state waters for the construction of any natural gas transmission pipeline that is greater than 36 inches inside diameter pursuant to a certificate of public convenience and necessity under § 7c of the federal Natural Gas Act (15 U.S.C. § 717f(c)). <i>Note: while this language appears in -670 and -690 only, it is applicable to all VWP General Permits per 9VAC25-210-130.</i>

## 4.2 REVIEWING APPLICATIONS

Section 3.1 provides details for the review and processing of applications for general permit coverage.

In general, staff will complete the the steps below to process a general permit application.

- Review the application to verify eligibility for general permit coverage and completeness.
- If needed, request additional information.
- Coordinate the application with the Department of Game and Inland Fisheries (DGIF) and Department of Conservation and Recreation (DCR).
- Authorize or deny coverage under the general permit.
- Update CEDS in accordance with the VWP CEDS manual and save all documents in the appropriate file location.
- As applicable, Complete SPGP processing in accordance with Chapter 6 of this Manual.

## 4.3 COORDINATION WITH RESOURCE AGENCIES

The VWP General Permit process requires staff to coordinate with the Department of Game and Inland Fisheries (DGIF) and the Department of Conservation and Recreation (DCR). Both of the agencies have authority in the protection of threatened or endangered (T&E) species. DGIF has authorities over T&E animals and DCR, working in collaboration with the Department of Agricultural and Consumer Services, has authority over T&E plants and insects. The general premise for coordination is provided in the 2007 Memorandum of Understanding between DEQ, DGIF, and DCR. A copy of the MOU is entitled “Signed MOU with DCR and DGIF 2007”. The processes to complete the coordination are routinely updated and the current procedures are provided below.

- The coordination with resources agencies should typically begin within the initial 14 days of receiving the application, unless the application is so deficient it does not provide a general description of the project, impacts and site, nor provide adequate information or maps as to the project location.
- DGIF and DCR are provided 14 days to review the coordination information VWP staff provide and respond.
- Staff is required to complete the coordination process for all general permits.
- It is important to be aware that it is ultimately the VWP Permit Program’s responsibility to determine what additional actions are required (i.e. surveys) and what conditions are appropriate in the general permit coverage.

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### 4.3.1 DGIF COORDINATION

The DGIF coordination requires screening three databases:

- VaFWIS Website
- Northern Long-Eared Bat Winter Habitat & Roots Application
- Little Brown Bat and Tri-colored Winter Habitat & Roots Application

Staff will use the databases to determine if further coordination is required.

## WHAT YOU WILL NEED TO COMPLETE THE SCREENING:

- The latitude and longitude for the project site.
- The project location map, USGS Map of the project site, or any map provided that shows the project boundaries.
- A general understanding of the impacts that are proposed.
- The types of habitat features on the site, i.e. forested hardwood, recently clear cut, pasture, perennial streams, etc.

### 4.3.1.1 HOW TO COMPLETE VaFWIS WEBSITE SCREENING

Staff is required to obtain a species list for a 2-mile radius around the project.

1. Open DGIF's VaFWIS website using the link provided below:

<https://fwisweb1.dgif.virginia.gov/fwis/index.html>

**\*Note:** The website works best using Google Chrome or Firefox

Log in: Username: specific to your region

Password: specific to your region

2. In the menu on the left side of the screen select "By Coordinates"

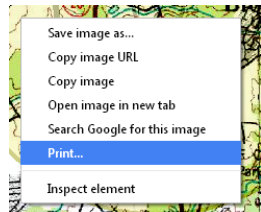
Enter the Lat/Long of the center of the project into the "Project Site Coordinates" Box within the Step 2 box using the format from the example.

The screenshot shows the VaFWIS website interface. The browser address bar displays the URL: [https://fwisweb1.dgif.virginia.gov/fwis/index.asp?Menu=Home\\_By+Coordinates](https://fwisweb1.dgif.virginia.gov/fwis/index.asp?Menu=Home_By+Coordinates). The page header includes the Virginia Department of Game and Inland Fisheries logo and navigation links. The left sidebar contains a menu with "By Coordinates" highlighted. The main content area is titled "Generate a list of species and other wildlife resources associated with a location by entering coordinates:" and includes a "Help" link. It outlines four steps: Step 1 (search distance), Step 2 (define project site location), Step 3 (verify coordinates), and Step 4 (get a report). Step 2 includes a "Project Site Coordinates" input field with the example coordinates "38, 53, 08 77, 26, 11" and a "Show Map" button. Step 3 includes a "Display Report" section with options for "IPA", "Complete", and "Options". At the bottom, a table titled "Project Site is near Place Names: (displaying 3 rows)" lists nearby locations.

Class	Name
Locale	Chantilly Industrial Park
Locale	Marbrook Centre
Locale	Mariah Business Center

3. Click on “Show Map” button.

- This will open another screen showing the location of the project on a topographic map and show the 1 and 2 mile radius from the lat/long. Use your project location map from the file to verify that the project lat/long was correct and check to see that the limits of your project fit within the inner most circle on the map generated.
  - **Note:** If your lat/long is incorrect you can use the tools on the map to pan to the project location or figure out the correct lat/long for the center of the project and try again.
  - **Note:** If your project is a linear project that does not fit within the 2-mile radius you can do multiple searches using multiple lat’s/long’s across the project, or you can contact the DGIF review coordinator for direction on submitting an electronic request for review.



4. Back on the main page, click on the “IPA” button located in the Step 4 box on the right side of the screen. This will generate the abbreviated VaFWIS Species Report for the area within the two mile radius on your map.

- At the bottom of the menu on the left hand side of the screen click on “Show This Page as Printer Friendly”
- Right click, select print, print to pdf, and save this document to the DGIF folder within the project file.

https://fwisweb1.dgif.virginia.gov/fwis/index.asp

**Virginia Department of Game and Inland Fisheries**

Home » **By Coordinates** » VaFWIS GeographicSelect Options **Fish and Wildlife Inform**

**VaFWIS Initial Project Assessment Report** Compiled on 10/3/2014, 7:01:26 PM

Known or likely to occur within a 2 mile radius around point 38,53,08.0 77,26,11.0  
in 059 Fairfax County, VA [View Map of Site Location](#)

705 Known or Likely Species ordered by Status Concern for Conservation  
(displaying first 35) (35 species with Status\* or Tier I\*\* or Tier II\*\*)

BOVA Code	Status*	Tier**	Common Name	Scientific Name	Confirmed	Database(s)
010032	FESE	II	Sturgeon, Atlantic	Acipenser oxyrinchus		BOVA
050112	FESE		Puma (= cougar), eastern	Puma concolor cougar		BOVA
060006	SE	II	Floater, brook	Alasmodonta varicosa		BOVA
030062	ST	I	Turtle, wood	Glyptemys insculpta	Yes	BOVA,TEWaters,Habitat
040096	ST	I	Falcon, peregrine	Falco peregrinus		BOVA
040129	ST	I	Sandpiper, upland	Bartramia longicauda		BOVA
040293	ST	I	Shrike, loggerhead	Lanius ludovicianus		BOVA
040385	ST	I	Sparrow, Bachman's	Aimophila aestivalis		BOVA
040379	ST	I	Sparrow, Henslow's	Ammodramus henslowii		BOVA
100155	FSST	I	Skipper, Appalachian grizzled	Pyrgus wyandot		BOVA
040292	ST		Shrike, migrant loggerhead	Lanius ludovicianus migrans		BOVA
050022	FP		Bat, northern long-eared	Myotis septentrionalis		BOVA
010038	FC	IV	Alewife	Alosa pseudoharengus		BOVA
010045	FC		Herring, blueback	Alosa aestivalis		BOVA
100248	FS	I	Fritillary, regal	Speyeria idalia idalia		BOVA
040093	FS	II	Eagle, bald	Haliaeetus leucocephalus		BOVA
100154	FS	II	Butterfly, Persius dusky-wing	Erynnis persius persius		BOVA
060029	FS	III	Lance, yellow	Elliptio tanceolata	Yes	BOVA,SppObs
080340	FS		Caddisfly, Buffalo Springs	Ceratopsyche etnieri		BOVA
030063	CC	III	Turtle, spotted	Clemmys guttata		BOVA
010077		I	Shiner, brook	Notropis bifrenatus		BOVA
040372		I	Crossbill, red	Loxia curvirostra		BOVA
040225		I	Sapsucker, yellow-bellied	Sphyrapicus varius		BOVA
040319		I	Warbler, black-throated green	Dendroica virens		BOVA
040306		I	Warbler, golden-winged	Vermivora chrysoptera		BOVA
040038		II	Bittern, American	Botaurus lentiginosus		BOVA
040052		II	Duck, American black	Anas rubripes		BOVA
040029		II	Heron, little blue	Egretta caerulea caerulea		BOVA
040036		II	Night-heron, yellow-crowned	Nyctanassa violacea violacea		BOVA

Options

Species Information

By Name

By Land Management

References

Geographic Search

By Map

**By Coordinates**

By Place Name

Database Search

Help

Logout

Show This Page as Printer Friendly

4.3.1.2 How to Review the Initial Project Assessment Report

Staff must review the Initial Project Assessment Report (Report) to determine if additional coordination with DGIF is required as a result of this database screening. The following results dictate additional coordination with DGIF:

- When the following three criteria apply to a species on the table:
  - the “status” column indicates state or federal threatened or endangered species ( FE, FT, SE, ST);
  - the “confirmed” column is Yes; and,
  - one of the following databases is listed under the “database(s)” column:
    - Species Observations (SppObs)
    - Colonial Waterbird (CWB)
    - Threatened and Endangered Species Waters (TEWaters)
- Presence of a Threatened and Endangered Species Waters (TEWaters), even if not associated with a specific species.
- Presence of Anadromous Fish Use Areas
- Presence of Cold Water Streams
- Presence Stocked Trout Waters
- Presence of Colonial Waterbird (CWB)
- Presence of DGIF Lands (boat ramps, WMA’s, Fish Hatcheries)

If you have determined that coordination **IS** required then move on to the coordinating your project with DGIF section below.

If coordination is **NOT** required from either the VaFWIS screening or the bat screening, then the DGIF coordination process is complete. The Report is to be saved in the permit file.

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#### 4.3.1.3 NORTHERN LONG-EARED BAT, TRI-COLORED BAT AND LITTLE BROWN BAT (BATS)

Staff will use the two links below to determine if the project area is within 2 mile radius of habitat feature (Hibernacula, Roost Tree, or Human Structures) identified on either of these applications. These searched can be completed by entering the property address or navigating to the project location.

[Northern Long-Eared Bat Winter Habitat & Roost Trees Application](#)

[Little Brown Bat and Tri-colored Bat Winter Habitat & Roosts Application](#)

- If the project is located within a 2-mile radius of a habitat feature, then coordination is required. See Coordinating your project with DGIF Section.
- If the project is not located within a 2-mile radius of a habitat feature, then no coordination is required for the bats. If no coordination was required from the VaFWIS screening, no further coordination is required. Save the screen shots of the project location on the two maps above in the permit file. The DGIF coordination is complete.
  - Staff is required to save screen shots documenting that the search resulted in no habitat features because the Bats Applications will be continually updated and documenting the information that lead to staff’s permit decision is important.

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#### 4.3.1.4 COORDINATING A PROJECT WITH PROJECT WITH DGIF

If the results of VaFWIS or the bat applications require coordination, staff will need the following information:

- VaFWIS Report
- Project Location/USGS Map
- T&E information provided in the application.



- Please do not send DGIF the entire application. Extract the applicable sections relating to T&E and/or habitat.
- A completed [DGIF coordination form](#). Fill out the DGIF coordination form.
  - Provide as much relevant information as you to the species or habitat for which you are coordinating. For example, it is more important that you identify the characteristics of on-site stream channels when you are coordinating for threatened or endangered mussels vs. the types of trees on-site. Similarly, if the receiving stream at the project site is physically isolated (i.e. dam or other structure downstream) it would be good to mention as it could affect some listed aquatic species' ability to access the project area. Also, if there are old structures like barns on the project site, it would be good to mention if bats are listed.
- Once you have all the above information together, determine if your information is too large to send to via email. In most cases it will be best to use the VitaShare system to send the coordination request due to size limitations.
- The subject line of the email should provide the project name and application number.
- In the body of either your email or your VitaShare, be sure to request a review and include the comment deadline, which is 14 Days (as indicated in the MOU).
- Send the coordination email or VitaShare to [ESSProjects@dgif.virginia.gov](mailto:ESSProjects@dgif.virginia.gov).
- Save your coordination email in the permit file.

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#### 4.3.2 COORDINATION WITH DEPARTMENT OF CONSERVATION AND RECREATION (DCR)

DCR regulates plants and insects. The requirement to coordinate is based on an MOU that was created in 2007 between DEQ, DGIF, and DCR. A copy of the MOU is entitled "Signed MOU with DCR and DGIF 2007" and can be found in the procedures folders for DGIF and DCR. Title 10.1 of the Code of Va (Law) governs DCR. Additionally, DCR provides comments on behalf of VDACS and will let staff know if direct coordination with VDACS is necessary.



What staff will need to conduct the review:

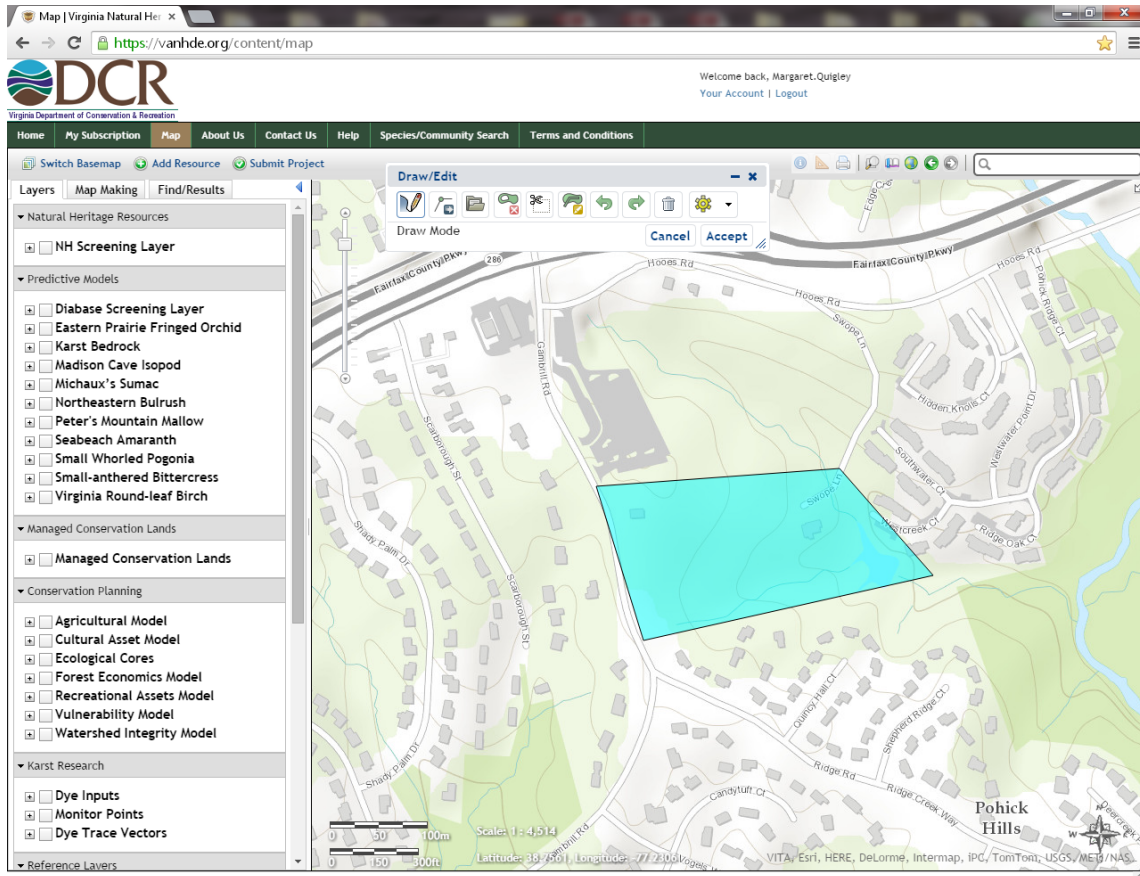
- The latitude and longitude for the project site. Usually found in Section 1 on page 7 of the Standard JPA Document.
- The project location map or USGS Map with the project outline of the project site. (Or any map provided that shows the project boundaries).
- An understanding of the impacts and compensation that are proposed (Ex. Are stream impacts proposed?)
- Any information provided in the JPA or observed during a site visit regarding the current site conditions that may be helpful in their review (ex. The site has been completely cleared within the last 5 years or is a previous forestry site).

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##### 4.3.2.1 OBTAINING YOUR INITIAL PROJECT REPORT

1. Open and log into the DCR's Natural Heritage Website using the below link. (Works best using Chrome or Firefox)  
<https://vanhde.org/home>  
**\*Note:** If this is your first time you will have to create a new account and be added by the administrator. A confirmation email will be automatically sent to the administrator when you create an account.
2. Select "Map" in the menu at the top of the page.

3. Select the  in the menu on the right side of the screen at the top of the map. For scale select anything smaller than 18,056 and enter your lat/long (which should be the center of the project). Finally select "Zoom." A red box will show up on your map around that point.  
**\*Note:** you must be zoomed into the map closer than 1:72,244 to draw your project area.
4. Once you have made sure that your point is in the right location close the lat/long box.
5. Click on "Submit Request" at the top of the map to the left and select . Now you can start drawing your project boundaries on the map. Try and stay as close to the limits of the project as possible. After you drop your first point on the map every next click will draw a line between those two points. On your last point double click to set your polygon. As in any GIS based system, try not to cross your boundary lines over one another. Also, you have the ability to edit your lines locations and move your polygon as a whole using the various tools in the Draw/Edit toolbar.
6. Now back in the "Draw/Edit" menu select "Accept." A window will pop up where you will enter the requested project information.  
**\*Note:** DCR tracks the project using the "Project Title" so make sure that the facility name that you use is the correct one for the project and the one that you use to further coordinate if needed in the future.
7. Make sure to provide as much information as is available regarding the proposed project and site. At the bottom of the pop up window, there is an option to upload attachments. At the minimum, attach the impacts map as well as any relevant T&E info from the JPA. You can also copy a VITASAHRE link into the comments section, so then are able to provide any large attachments such as T&E reports, ext.
8. Click "Save".



- The system will typically send an email notifying the user when the report is ready. DCR's initial report will be a link in this email. Save the .pdf instead of the email because others will not be able to view the report by clicking the provided link.
- On the main page hover over "My Subscription" and select "My Projects" when it pops up. Here you can see a list of and retrieve a report for every project that you have submitted into the system. Select your project and at the bottom of the report under "Attachment", there should be a "project review" file. This is your initial report for the project. Open the document and right click on the page outside of the USGS map area and select print from the drop down. Print the file to PDF and save it to the DCR Folder in your project folder on the network drive, naming it using the appropriate naming convention (See ECM Naming Convention Document) and close the page.
- If you don't receive the notification within an hour of submitting the review request, first make sure that you logged out of the system and then go ahead and log back in.

The last page of your automatically generated report is a generic letter that indicates if there are any natural heritage resources within the project vicinity.

DCR will automatically review and send you comments based on the project information that you submitted to the website. Thus, after submitting the online project review request and receiving DCR's initial report, wait for the final project comments from DCR sent via email.

#### 4.3.2.2 REVIEWING AND RESPONDING TO DGIF AND/OR DCR COMMENTS

The coordination processes for DGIF and DCR are separate and distinct; however, the response to their comments is the same; therefore, this section summarizes the various ways that the coordination process with either agency can be concluded.

- If 14 days has passed with no response, you may assume that the agency(ies) have no comments continue to process the permit.
- Note, if staff is aware of the presence of a T&E species but receives no comments from either agency, staff should discuss with their manager whether it is appropriate to contact the agencies directly to verify that they have no comment.

Common responses received from DGIF or DCR and how staff should respond:

- DGIF/DCR request additional information.
  - Staff must determine if there is conflict with the 45 day issuance clock which is discussed in the Processing Time Management Section below.
  - If staff has the information, provide it to DGIF and they have another 14 days to review the information.
  - If staff does not have the information, forward the request to the applicant/agent and send it to DGIF once it is received.
- Request for T&E Surveys. Forward to the applicant so that they may complete the survey.
  - Sometimes the applicant will submit additional information supporting why a survey should not be required. Generally, this information is provided to the requesting agency for their consideration.
- Comments or recommendations related to the protection of Threatened or Endangered Species.
  - Should be included as conditions of coverage. Examples of Coverage Conditions commonly included are provided in the Coverage Letter template. If this occurs staff should notify the applicant as soon as the comments are received so that they applicant is aware of the limitation to be placed in their permit. The applicant may choose to submit additional information to change a recommendation for a particular species, such as providing more details to support that habitat for that species is not present. In these cases, DEQ forwards the additional information to DGIF/DCR as appropriate, and wait for their updated recommendations.
  - Sometimes a staff may question the validity of recommended restrictions placed on the permit. Ideally the permit would include conditions of coverage that both the requesting agency and DEQ believes is sufficient to the protect T&E species; however, it ultimately the responsibility of the VWP Permit Program to determine what is appropriate as a condition of coverage. Staff should always discuss these unique situations with their supervisor.
- Comments or recommendations made that do not pertain to the protection of a T&E species.
  - These are not included in the permit authorization. However, these comments are provided to the applicant for their information. DEQ does not require a response from the applicant.
    - If there is a situation that staff believes may be an exception to this, they should discuss this with their supervisor. Examples of commonly received comments that are not included in the authorization are:
      - Recommendation for a TOYR for tree removal and ground clearing to protect resident and migratory song bird nesting. This recommendation would not be included in the permit as it does not specifically pertain to a T&E species.
- Comments that are already addressed by permit conditions.
  - These are not included in the permit because they would be duplicative.

- A recommendation that in-stream activities are conducted during low- or no-flow conditions, using non-erodible cofferdams, or that any culverts are countersunk.
  - DCR recommends “*strict adherence to applicable state and local erosion and sediment control/storm water management laws and regulations, establishment/enhancement of riparian buffers and native plant species and maintaining natural stream flow as efforts that can be undertaken to protect the significant Aquatic Natural Communities and the surrounding watershed.*” This is an example of a recommendation that is addressed by the permit process and conditions.
- DCR or DGIF recommends coordination with FWS or NOAA.
  - If the project is a SPGP then the FWS process will already be underway or completed by staff and no additional action would be required. However, if the project is not a SPGP and DCR recommends coordination with FWS then staff should coordinate with FWS using the FWS coordination procedures in the SPGP section of this manual. If staff feels there are relevant T&E aquatic species that are in NOAA’s purview, then staff should coordinate with NOAA as necessary.
- The coordination processes are concluded for each agency when following occurs:
  - The agency fails to provide comments within 14 days.
  - The agency recommends specific limitations be placed on the project to protect threatened or endangered species, even after additional information may have been provided to refute the recommendation.
  - The agency provides comments that are not related to threatened and endangered species and these are provided to the applicant for their information.
  - The agency provides comments that are already addressed by the permit.

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#### 4.3.3 PROCESSING TIME MANAGEMENT

Staff is required to complete all required steps and is responsible for managing potential conflicts as necessary to meet these 15 and 45 day timeframes set by the regulation and statute, respectively.

Several instances, not limited to the ones listed below, can arise which make meeting the 45 day processing time impossible.

- A survey to establish the presence or absence of T&E species is required but it cannot be completed and approved by the appropriate resources agency within the 45 days.
- The SPGP process will not be completed within the 45 days due to Section 106 or other coordination issues.
- Threatened or endangered species are on site and negotiations to prevent a take of this species are ongoing with DGIF, DCR or FWS are ongoing.
- The applicant intends to submit a minor change to the site plan and they ask that you wait to authorize the permit until they submit the updated plan.

When these situations arise the following options are available to stop the processing clock. It is necessary to stop the processing clock, otherwise, the permit will be automatically authorized on day 45.

- Suspension
  - The applicant may request to suspend the processing of their application. The regulation does not authorize DEQ staff to unilaterally suspend a complete application; it must be at the applicant’s request.
    - If the application process has stalled because the USACE SPGP has not been completed, staff may authorize coverage under the VWP General Permit without the SPGP if the applicant will not suspend the application process.

- Withdrawal of the Application
  - The applicant may elect to withdraw their application and resubmit the application when the items are resolved. This does not often occur because resubmittal requires a new permit number, recoordination and application fee.
  - This should not be used if the project is on hold solely for SPGP issues.
- Voluntarily Elevating the permit to an Individual Permit
  - The applicant may request to do this at any time. However, this is unlikely because the permit processing timeframes and administrative requirements are more significant in the IP process. (9VAC25[-660,-670,-680,-690]-30 A 4)
- DEQ requiring an individual permit application in lieu of coverage under a general permit (unilaterally elevate the project to an individual permit)
  - DEQ can only require that the project be processed as an individual permit in accordance 9VAC25-210-130 B. This situation can arise when the applicant refuses to suspend processing while they resolve DGIF, DCR or FWS concerns about T&E species, or when DEQ has concerns about other impacts to the aquatic environment.
  - This situation does not arise when the SPGP process is delayed due to Section 106 or other issues that are not also requirements of the VWPP Regulation.

Staff should always notify the applicant as soon as possible when these situations arise and explain the options.

#### 4.4 APPLICATIONS THAT DO NOT RESULT IN COVERAGE

Applications may not result in coverage under the general permit when:

- The applicant withdraws their application.
- The applicant does not respond at all or does not completely provide the additional information that has been requested by DEQ staff and is required to complete the application or make a permit decision. Accordingly, staff will administratively withdraw the application as described in Section 4.4.5 of this chapter.
- Staff, after getting approval from their supervisor, will notify the applicant that an individual permit is required for reasons consistent with 925VAC-210-130 B.

In any of these situations, staff must be sure to include all correspondence in the file and update the record in accordance with the CEDS manual.

#### 4.5 COVERAGE PACKAGE

The VWP Coverage Package consists of the following documents:

- Coverage Letter
- Copy of the applicable General Permit
- Construction Status Update Form
- Monthly Inspection Form
- SPGP Verification Letter, If applicable
- SPGP, if applicable
- Summary Sheet

This package must be reviewed and signed in accordance with the most recent DEQ Policy on Delegation of Authority. VWP General Permits are signed by the Regional VWP Program Manager.

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#### 4.5.1.1 COVERAGE LETTER

The Coverage Letter, on DEQ letterhead, includes the expiration date of the general permit, the date on which the coverage letter was signed, and other pertinent information as shown in the applicable Chapter 4 GP Coverage Letter template.

##### **Conditions of Coverage**

In accordance with 9VAC25[-660-60 C 2, -670-60 D 2, -680-60 D 2, -690-60 D 2] coverage may be granted with conditions/requirements consistent with the general permit regulations.

Staff must add conditions to the coverage letter specifically identifying the authorized impacts and compensation. *If permanent nontidal wetland or open water impacts are greater than one-tenth acre or permanent nontidal stream bed impacts are greater than 300 linear feet, a condition must be in the WP1 Coverage Letter to require the permittee to submit proof of credit purchase prior to impacts.*

Conditions to avoid any affect or potential effect on T&E species are often conditions of coverage. Examples of these conditions are provided in the template.

All conditions of coverage must be enforceable, using words such as “shall”, “shall not” or “must” to convey actions that are required or prohibited. In legal matters, the use of the term “will” causes a condition to be less easily enforced. (For example: “The project will impact no more than 0.35 acre of forested wetlands.”)

Prior to issuance of coverage, staff must ensure that DEQ has received an accurate and complete Property Access Agerement (See Chapter 3).

##### **Permit Conditions**

The permit is regulation and the conditions cannot be changed. Provide a copy of the applicable VWP General Permit to the permittee with the coverage letter.

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#### 4.5.1.2 MONTHLY CONSTRUCTION INSPECTION FORM AND SEMI-ANNUAL CONSTRUCTION STATUS FORM

The requirements to complete construction inspections and status updates is applicable to all General Permits. The templates, MONTHLY VWP PERMIT INSPECTION CHECKLIST and CONSTRUCTION STATUS UPDATE FORM, should be updated to include the project specific information. Staff may provide the permittee a word version of these forms if requested.

The MONTHLY VWP PERMIT INSPECTION CHECKLIST is intended to be used by the permittee during the inspections required by 9VAC25-690-100 Part II B 1.

The CONSTRUCTION STATUS UPDATE FORM is to be completed by the permittee and submitted twice per year, always by July 10<sup>th</sup> and January 10<sup>th</sup>, in accordance with Part II E 3.

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#### 4.5.1.3 PERMIT SUMMARY SHEET

The VWP General Permit Project Summary Sheet is the fact sheet that supports the agency's decision to provide coverage under a general permit. The summary sheet should be provided to the permittee as part of the VWP Coverage package.