

## 6 STATE PROGRAMMATIC GENERAL PERMITS (SPGP)

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### 6.3 PURPOSE OF THE SPGP

The SPGP authorizes the discharge of dredged or fill material in nontidal waters of the United States, including wetlands, associated with certain residential, commercial, and institutional developments and linear transportation projects within the geographical limits of the Commonwealth of Virginia and under the regulatory jurisdiction of the US Army Corps of Engineers - Norfolk District (Corps).

The use of SPGP shall be restricted to those projects that have avoided and minimized impacts to waters of the United States (WOTUS), including wetlands, to the maximum extent practicable. The Clean Water Act (CWA) Section 404(b)(1) guidelines state that no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge that would have less adverse effect on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences.

Prior to issuance of any written SPGP verifications (including verifications of projects originally authorized under an expired SPGP) the project must be screened to ensure it meets all SPGP eligibility criteria, including all general conditions. Therefore Staff must follow the full application evaluation process, steps 1 through 4 below.

The intent of this permit is to authorize two categories of activities: residential, commercial and industrial developments and linear transportation projects. The SPGP was not intended to authorize small standalone projects (such as utilities, substations, and regional stormwater management) that are not associated with a proposed larger-scale development project.

### 6.4 SPGP PROCEDURES/COORDINATION OUTLINE

**Step 1:** Determine if the project qualifies for the SPGP using the most current SPGP SOP, including the eligibility criteria, exclusions from coverage, and all general conditions. Part of the eligibility criteria pertain to impact thresholds noted below.

**Figure 1. SPGP Permit Thresholds**

Project Type	Wetland Threshold	Stream Threshold
<b>Residential, Commercial, Institutional</b>	≤ 1 acre, cumulative loss including stream acreage	≤ 2,000 Linear Feet
<b>Linear Projects</b>	≤ 0.5 acre, cumulative loss including stream acreage	≤ 1,000 Linear Feet at any single impact site with independent utility

Projects proposing to impact greater than the above thresholds, as dependent on project type, will not qualify for coverage under the SPGP.

The following activities are not authorized under the 17-SPGP-01:

- The construction of a single stand-alone single family home and/or its attendant features;
- Golf courses that are not an integral component of a residential development; and,
- Construction of new ski areas.

If the project appears to be eligible for the SPGP based on the review of the above criteria, then move on to Step 2.

**Step 2:** Review if the permit application for completeness

VDEQ is the state agency responsible for ensuring permit applications meet the informational and technical requirements of the 17-SPGP-01 and for issuance of 17-SPGP-01 verifications for qualifying residential, commercial, and institutional and linear transportation projects.

Prior to initiating federal coordination, all necessary criteria and informational requirements of the 17-SPGP-01 must be met. Staff are to review the permit application for completeness, which at a minimum includes the following:

1. A complete and signed Standard Joint Permit Application (JPA). The applicant must utilize the most recent version. <http://www.nao.usace.army.mil/Missions/Regulatory/>.
2. A complete SPGP Complete Application Checklist form, and all applicable application components as indicated on the Checklist.
3. A Preliminary Jurisdictional Determination (JD) or an Approved JD.

If the VDEQ determines the application is incomplete, the DEQ will notify the applicant via an additional information request, indicating what additional items are required to complete the application.

**If the applicant does not respond within 60 days, DEQ will administratively withdraw the application and notify the applicant.**

**Step 3:** Coordinate permit application.

Residential, Commercial, and Institutional Development Activities

- Section 106 (Historic)
- Section 7 (Threatened and Endangered Species)
- Section 408 (USACE Civil Works Projects)
- Federal Coordination (impacts over 300 linear feet or 0.5 acre)

Linear projects (roads, runways, etc).

- Section 106 (Historic)
- Section 7 (Threatened and Endangered Species)
- Federal Coordination (impacts over 300 linear feet, if at any single impact area - or cumulatively - impacts exceed 0.5 acre and/or 300 linear feet; cumulative impact coordination is only applicable when multiple single and complete crossings are proposed)

**NOTE:** For linear projects only, the USACE Project Manager (PM) for the project is determined based on project funding. If you do not know if there is federal funding, contact the agent or applicant to inquire.

- Federal funding: Send appropriate coordination information to Ms. Regena Bronson at ([regena.d.bronson@usace.army.mil](mailto:regena.d.bronson@usace.army.mil)). If it is assigned the project to another PM, coordinate with the assigned USACE PM for subsequent coordination/information material.
- Non-federal funding: Send appropriate coordination information to the USACE PM for that county/locality.

**Step 4:** Draft permit. The 17-SPGP-01 verification may be issued at the same time as a VWP permit; however, the 17-SPGP verification letter is separate from any VWP authorization letter.

**The SPGP does not have mandated timeframe as to when it must be authorized.**

## 6.5 INITIAL REVIEW OF SPGP PROJECTS

### 6.5.1 CONFIRMATION OF DELINEATIONS (SOP SECTION II.A.)

The Corps and/or the Environmental Protection Agency (EPA) will be the lead agency on the confirmation of delineations. After receipt of a request for a delineation confirmation, the Corps will assign the project an ORM identification number. Section II.A. of the SPGP Standard Operating Procedures (SOP) outlines how the Corps will process delineation for the SPGP.

### 6.5.2 PRE-APPLICATION CONSULTATION (SOP SECTION II.B.)

The SPGP SOP indicates that the Corps will be the lead on pre-application consultations. Upon the receipt of a pre-application request, the Corps will assign the project an ORM identification number if one has not previously been assigned and should follow the SOP. However, if Staff directly receive a request for a pre-application meeting, Staff will direct the requestor to coordinate the dates and time of the pre-application with Corps staff. Depending on the scope of the project, it may be advantageous for Staff to attend the meeting as well.

## 6.6 APPLICATION SUBMITTAL (SOP SECTION III.A.)

An applicant must complete and submit the most recent version of the JPA to the Virginia Marine Resources Commission (VMRC) along with a confirmed delineation. The Virginia Department of Transportation (VDOT) may continue to use the Interagency JPA. Section 3 of *Initial Review of All 12-SPGP-01 Projects* chapter of the SOP provides specific instruction for submitting the application.

### 6.6.1 INCOMPLETE APPLICATIONS (SOP SECTION III.B.)

Staff is responsible for ensuring the application meets the informational and technical requirements of the SPGP.

If an incomplete application is submitted, Staff will send a letter to the applicant indicating all of the information lacking in the application package. To render an application complete for SPGP, all projects must contain a confirmed delineation, as well as meet the requirements set forth in the SPGP Complete Application Checklist. The additional information request for the SPGP will be included with any additional information requested for the VWP permit, if applicable. **Staff should be aware that the SPGP requires a JD letter for all permits, including those that fall under the reporting only threshold.**

### 6.6.2 CULVERTS (17-SPGP-01 SECTIONS III.A. AND IV.B.24.)

All culverted stream crossings are to be countersunk in accordance with Section IV.B.24. of the 17-SPGP-01.

Impacts associated with existing culverts are to be permitted as below:

**Replacement of existing culvert:** The existing culvert length is considered a permanent impact (17SPGP III A 3). Compensation is required for permanent impacts in accordance with the 17SPGP (V 20). However, if the culvert is to be upgraded in size, compensation may be required for impacts to surface waters beyond the original culvert

length and/or original structure, if total project impacts exceed the 300 linear feet threshold. The length of the proposed impact is measured along the length of the stream at its preconstruction location, rather than along the location of the new culvert, and is to include any rip rap or stabilization measures within the surface water.

**Extension of existing culvert without replacement:** The existing culvert proposed to be left in place but extended and/or stabilization measures implemented is not considered a permanent impact. The extension and any stabilization measures are to be included as proposed permanent impacts; and compensation provided if the 300 linear feet threshold for the project is exceeded.

### 6.6.3 UTILITY CORRIDORS

The 17-SPGP-01 includes utility lines as an attendant feature of residential developments. Impacts and compensation for utility corridors are considered as follows:

- No compensation is required by any VWP permit type for impacts to wetlands that occur within a 20-foot total width as positioned over the center line of the corridor (that is, 10 feet on either side of the center line of the corridor). Impacts to wetlands outside of this 20-foot width require compensation.
- Support and/or staging areas that are not maintained permanently are considered to be temporary impacts.

## 6.7 VDEQ/CORPS COORDINATION PROCEDURES (SOP SECTION IV)

Figure 2. SPGP Coordination Timeframes

Agency	Section 106	Section 7	Federal Review (>300 linear feet and >0.5 acre or 1/3 acre for linear projects)
VDEQ Regional Office	<b>15 Days</b> with complete application to initiate coordination w/ USACE	<b>15 Days</b> with complete application to initiate coordination w/ FWS	<b>15 Days</b> with complete application to initiate coordination w/ FWS, EPA, and the USACE
FWS	NA	<b>30 Days</b>	<b>15 Days</b> – each informational review phase
EPA	NA	NA	<b>15 Days</b> – each informational review phase
USACE	<b>*15 Days</b> to advise DEQ if further coordination with SHPO or other agencies required No further deadlines exist	NA	<b>15 Days</b> – each informational review phase
Applicant	<b>30 Days</b> – to respond to each information request/coordination phase	<b>30 Days</b> – to respond to each information request/coordination phase	<b>30 Days</b> – to respond to each information request/coordination phase

\*Recommended timeframes that are not binding

Staff will send the required information as explained in the subsections below. The **Corps 15 calendar day project review** timeframe begins when the Corps receives all required information for the project. Coordination may be sent via one of 3 sources:

- Via email: Corps' 15 calendar day review begins on the date the coordination email is sent.
- Via FTP website: Corps' 15 calendar day review begins on the date the coordination email is sent.
- Via postal mail: Corps' 15 calendar day review begins three days after the post mark date.

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#### 6.7.1 17-SPGP-01 COORDINATION (SOP SECTIONS IV.A.1-5. AND IV.B.1-5.)

For projects with permanent impacts less than or equal to ½ acre of wetlands or open waters and less than or equal to 300 linear feet of stream channel, or linear transportation projects with impacts less than or equal to 300 linear feet at any single impact area, or cumulative impacts less than or equal to 0.5 acre and/or 300 linear feet Staff will provide the Corps, and if applicable U.S. Fish and Wildlife Service:

- A copy of the JPA.
- A map of the project site with the boundaries clearly marked.
- A copy of the Impacts Map.
- Any historic resources surveys pertinent to Section 106 review (Phase I, II, or III).
- If Section 7 Coordination Required (NLAA or May Affect): A copy of the Information, Planning and Conservation System (IPAC) report, Species Conclusion Table (SCT), and all Threatened/Endangered (T/E) species surveys that have been performed.
- See **SPGP Coordination email template** for coordination email.

For projects with permanent impacts that exceed ½ acre of wetlands or open waters and/or exceed 300 linear feet of stream channel, or linear transportation projects with impacts greater than 300 linear feet at any single impact area, or cumulative impacts greater than 0.5 acre and/or 300 linear feet, Staff will provide the Corps with the following information:

- A copy of the JPA.
- A map of the project site with the boundaries clearly marked.
- A copy of the Impacts Map.
- A copy of all additional information requests and responses.
- Any historic resources surveys pertinent to Section 106 review (Phase I, II, or III).
- If Section 7 Coordination Required (NLAA or May Affect): A copy of the IPAC report, SCT and T/E surveys.
- See **SPGP Coordination email template** for coordination email.

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#### 6.7.2 TIDAL WATERS (SOP SECTION I)

The SPGP does not authorize tidal impacts; therefore, if a JPA for tidal impacts is marked SPGP, Staff should notify the applicant that the application may not qualify for the SPGP. Staff must forward the application material to the Corps for this determination. Staff should complete the appropriate VWP permit action for the JPA.

### 6.7.3 COMPLETING FEDERAL COORDINATION (SOP SECTIONS IV.A.1-5. AND IV.B.1-5.)

To facilitate the completion of federal coordination for the 17-SPGP-01, the Corps will provide the DEQ with the following information:

- Notification, in writing, that the Section 106 process has been fulfilled.
- Notification that formal Section 7 consultation has been completed (if applicable).
- Any comments or objections regarding the project and compensation (if the DEQ does not receive comments within the 15- day review period they can assume the Corps has no comments).
- If the DEQ does not agree with the Corps' comments the DEQ and Corps will enter into the *Dispute Resolution Process*.
- Disagreements regarding avoidance and minimization will not delay the DEQ's authorization of the VWP permit or verification of the SPGP.
- A signed Special Conditions Form when applicable (i.e. Section 106 MOA, Section 7 MOA, financial assurances).

### 6.8 FEDERAL COORDINATION (SOP SECTIONS IV.A.5. AND IV.B.5.)

The following procedures apply to projects involving:

- Residential, commercial and institutional development activities with total permanent impacts that exceed ½ acre of wetlands or open waters and/or exceed 300 linear feet of stream channel.
- All linear transportation activities involving permanent impacts that:
  - Exceed 300 linear feet of stream channel at any single impact area; or
  - Contains multiple single and complete impacts on the same project that additively exceed 1/2 acre of permanent impact to waters, including wetlands, and/or exceed 300 linear feet of stream channel (lateral or crossing impact).

Staff shall forward a copy of the JPA, project location map(s), impact map(s), and any additional information requests/responses to the EPA and the FWS. These agencies shall have 15 calendar days from the receipt of the information package to review the project and provide any project-specific objections or concerns to the DEQ, providing courtesy copies of their letters to the Corps.

If the EPA or FWS respond within the 15 calendar day timeframe and submit project-specific objections, Staff will request that the applicant address the federal agency(ies) concerns. Staff will provide the applicant with a 30 day comment period. Staff will subsequently coordinate the applicant's response with the commenting agency for an additional 15 day comment period. There are several variations of how the coordination is concluded:

**Conclusion 1:** If the applicant addresses the objections to the satisfaction of the EPA and/or FWS, Staff will resume processing of the SPGP application.

**Conclusion 2:** If the applicant does not respond within the 60 days, processing of the SPGP application can be withdrawn. Processing may recommence once the applicant submits a response to agency comments.

**Conclusion 3:** If the applicant chooses not to address the agency(ies) objections or the federal agency is not satisfied with the response received from the applicant, Staff will not authorize the SPGP and will notify the Corps in writing, to elevate the project to the Corps for resolution.



Once elevated, the Corps will notify the VDEQ, in writing of the following determinations:

1. notify the VDEQ PM that the Corps review has been completed;
2. provide all supporting documentation that documents the Corps decision;
3. provide the VDEQ with any special conditions, if required; or, notification that the project will be processed under an alternative Corps review

**Conclusion 4:** If EPA and/or FWS respond with no comments or do not respond within the 15 calendar day timeframe, Staff will assume those agencies have no objections and will continue processing of the application.

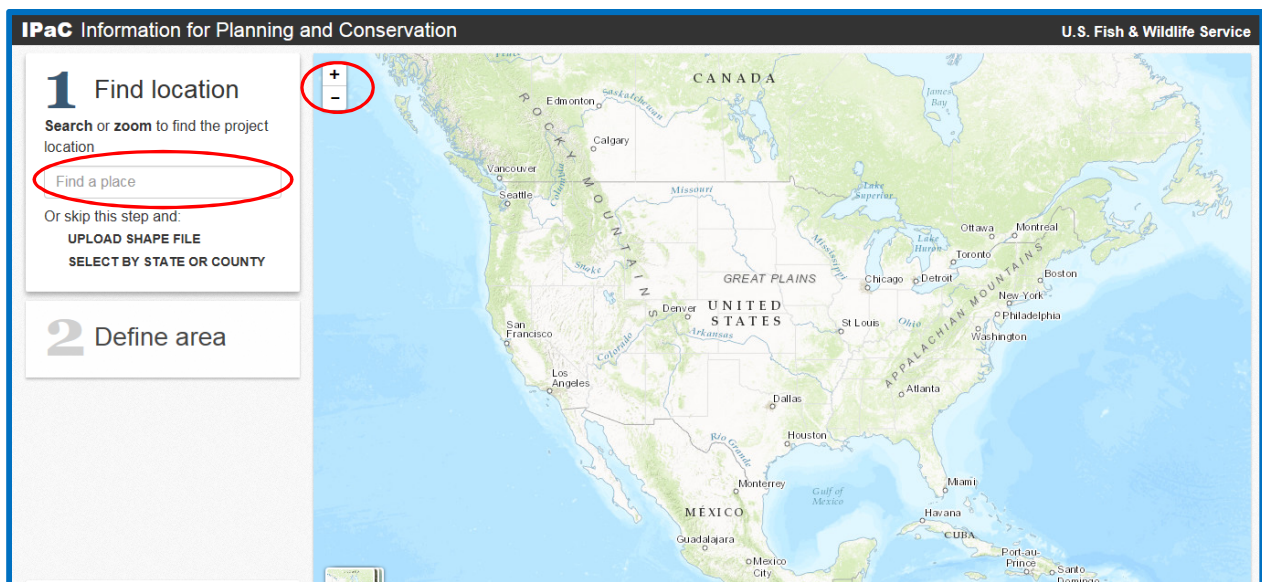
## 6.9 SECTION 7 - ESA SCREENING/COORDINATION (SOP SECTIONS IV.A.3-4. AND IV.B.3-4.)

The DEQ will perform informal Section 7 Endangered Species Act coordination in accordance with the most recent “NAO ESA Project Review Process” located in the SPGP SOP. The coordination process is intended to determine whether federally proposed/listed species or federally proposed/designated critical habitat may be affected by the proposed project.

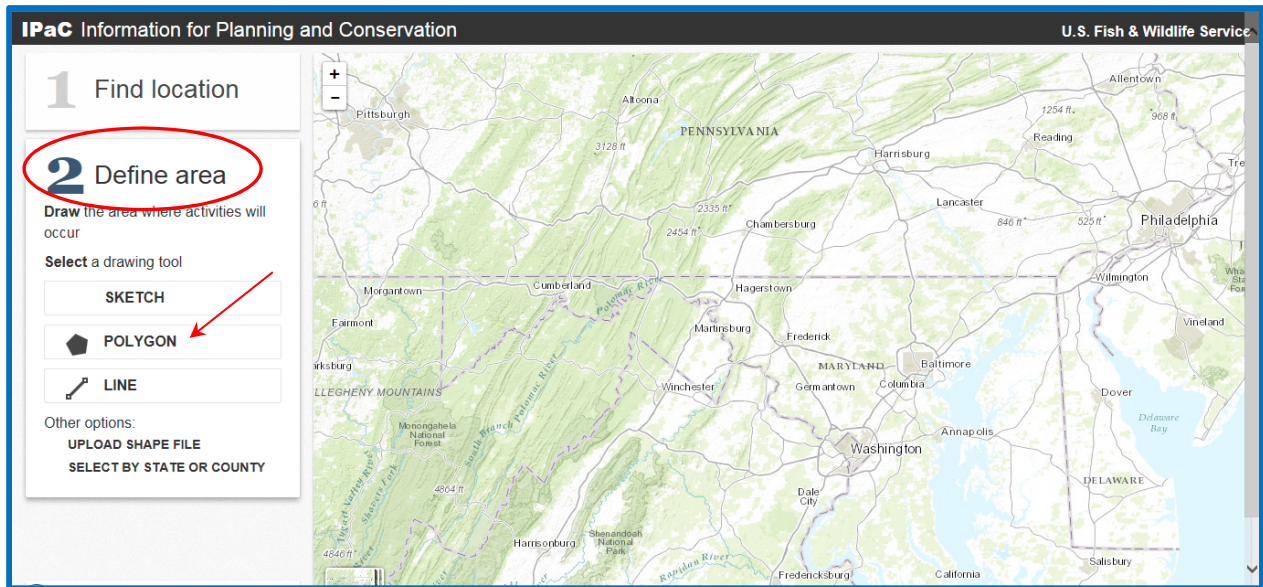
### 6.9.1 SECTION 7 COORDINATION GUIDELINES

#### 6.9.1.1 OFFICIAL SPECIES LIST

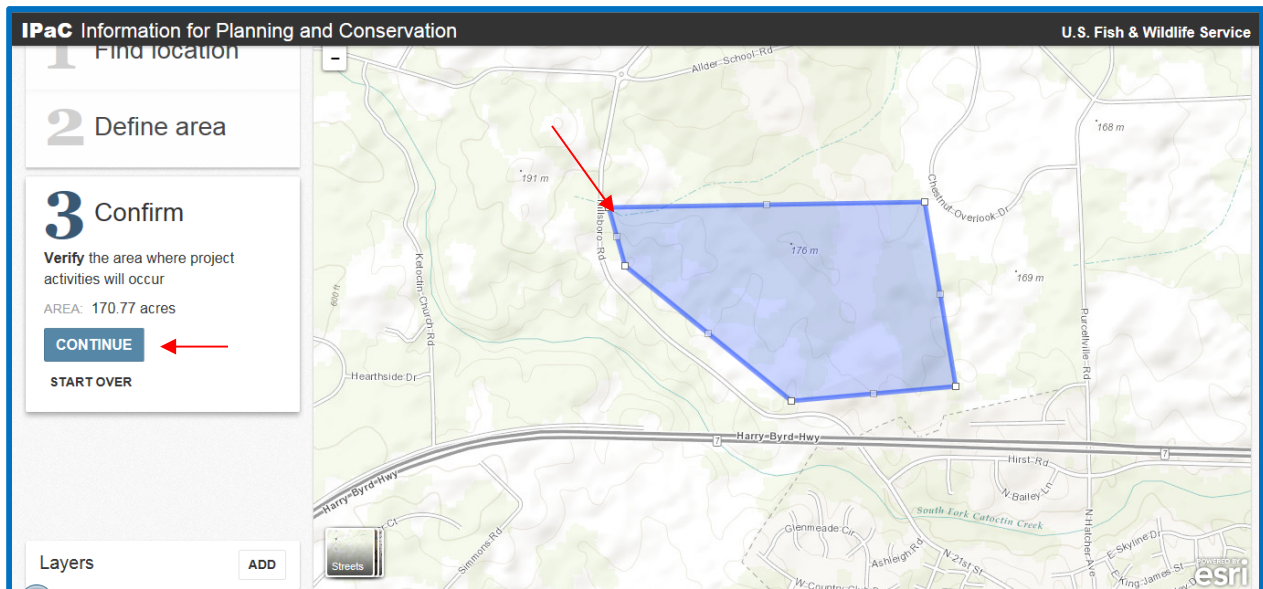
1. Obtain vicinity map of the project site
2. Utilize the FWS Information, Planning, and Consultation System (IPaC) by clicking on the following link: <http://ecos.fws.gov/ipac/>
3. Click on **Log In** and enter credentials
4. Click on **Create New Project**. This will take Staff to a map where the project site can be located.
5. **Finding the project site:** The project site can be located by zooming in on the map or by clicking on **Find location** located in the left corner of the screen.



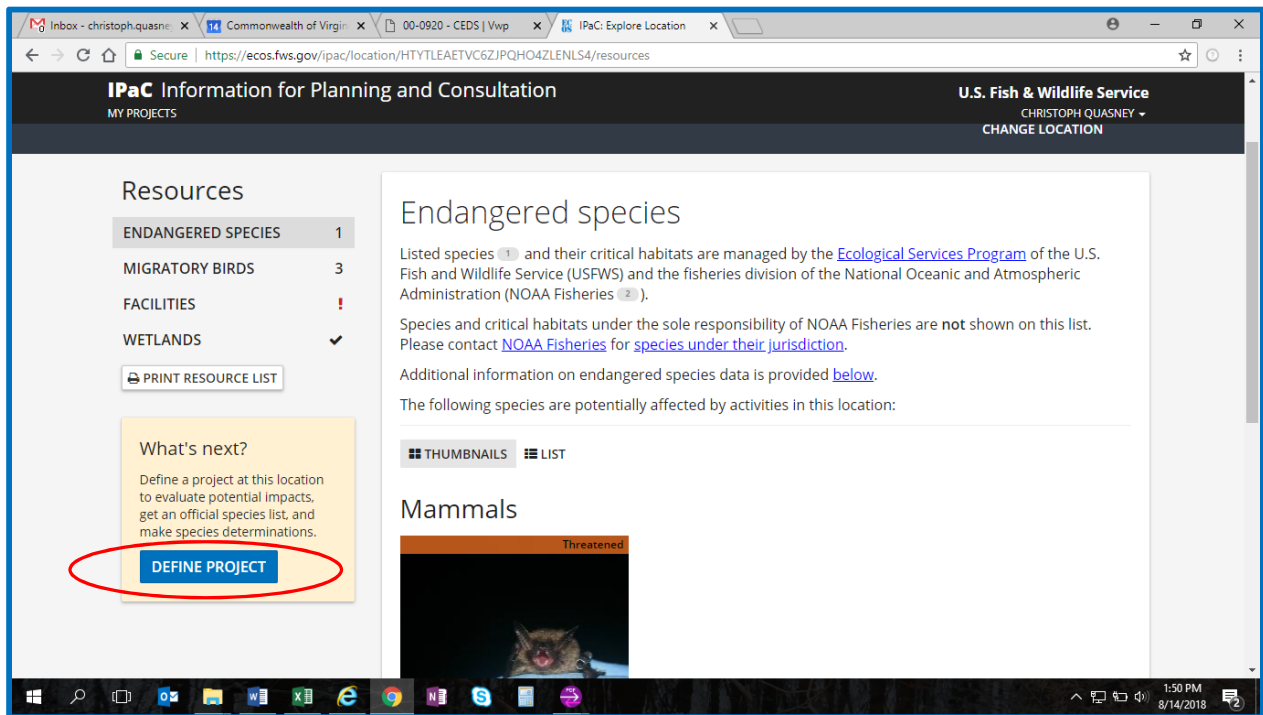
- Draw the project boundary polygon. Once the project site has been located, click **Define area**, and select the **Polygon** tool. Begin drawing the project boundary polygon by clicking on the map and continue until the entire boundary is drawn.



- Double click on last point to set polygon. **Do not cross the line of the polygon.** The polygon can also be edited by moving the aqua squares and green dots. Click the **Continue** button on the left-hand side.



- Once the **Continue** button is clicked from the map page, the below page appears. Click **Define Project**.



9. Fill out project information, including JPA number, name, and brief project description and click **Save**.
10. Click **Request Species List**
11. Click **Yes, Request a Species List**
12. Enter your contact information with VDEQ, under lead agency click on the check box stating **Use my contact agency / organization above**, select **Development** under the **Classification drop-down menu**.
13. Click **Submit Official Species List Request**
14. After the request completes processing, the icon will change to a green check mark. Click on the Species List: Virginia Ecological Services Field Office link.
15. Save the **Official Species List** pdf to the permit folder.

#### 6.9.1.2 SPECIES CONCLUSION TABLE

1. Gather the DCR and DGIF reports, and FWS Official Species List generated through your review, and any threatened and endangered species information from the JPA.
2. Open Species Conclusion Table. Find the species located on the Official Species List in the drop down menu of the Species Conclusion Table.

## Endangered Species Act Species List

There are a total of 2 threatened or endangered species on your species list. Species on this list should be considered in an effects analysis for your project and could include species that exist in another geographic area. For example, certain fish may appear on the species list because a project could affect downstream species. Critical habitats listed under the **Has Critical Habitat** column may or may not lie within your project area. See the **Critical habitats within your project area** section further below for critical habitat that lies within your project. Please contact the designated FWS office if you have questions.

Clams	Status	Has Critical Habitat	Condition(s)
Dwarf wedgemussel ( <i>Alasmidonta heterodon</i> ) Population: Entire	Endangered		
Flowering Plants			
harperella ( <i>Ptilimnium nodosum</i> )	Endangered		

### Species Conclusions Table

Project Name: WP4-16-0034 Giles Overlook

Date: January 13, 2016

Auto populated once conclusion is selected

Auto populated once species is selected

Species/Resource Name	Conclusion	ESA Section 7 Determination	Species Info / Habitat Description	Notes / Determination
Small whorled pogonia ( <i>Isotria medeoloides</i> )	Suitable habitat present, species not present	Not likely to adversely affect	"Small whorled pogonia is an herbaceous perennial orchid found in ordinary looking third-growth upland forests with an open understory and a closed canopy where the topography 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 applicant conducted a small whorled pogonia survey in June 2015. The results of this survey found suitable habitat but no species present. Informal USFWS coordination necessary
Northern long-eared Bat ( <i>Myotis septentrionalis</i> )	Potential habitat present and no current survey conducted	Auto populated once conclusion is selected Not likely to adversely affect	During summer, northern long-eared bats roost singly or in colonies underneath bark, in cavities, or in crevices of both live and dead trees. This bat seems opportunistic in selecting roosts, using tree species based on suitability in bark or provide cavities or crevices. It has been found, rarely, roosting in structures like barns and sheds. Northern long-eared bats spend winter hibernating in caves, called hibernacula. Specific areas where they hibernate have very high humidity.	Informal USFWS coordination necessary
Eagles ( <i>Haliaeetus leucocephalus</i> )				
Eagle Nests	Unlikely to disturb nesting bald eagles	No Eagle Act permit required		
Eagle Concentration Areas	Does not intersect with bald eagle concentration area	No Eagle Act permit required		
Critical Habitat				
N/A	present	No effect		
Other (other species not listed above or required coordination for NOAA, DCR, & VDGI)				
Wood Turtle ( <i>Glyptemys insculpta</i> )				State level coordination with DGIF

- Once the species is selected, the **Species info/Habitat Description** column will auto populate. Use this information and information located in the JPA to determine if habitat is present. Use the dropdown menu in

the **Conclusion** column to select the appropriate determination. **The NAO ESA Project Review Procedure** can be used to assist in the determination. The **ESA Section 7** column will auto populate once a conclusion is selected in the **Conclusion** column. Insert any supportive information for the determination in the **Notes/Determination** column.

4. Add any federally listed and proposed species listed in the DCR and DGIF searches in the **Other** section of the form and determine conclusion and determination. This section will not auto populate and must be manually entered.
5. See **ESA Agency Coordination Procedures** and **NAO Fish and Wildlife Coordination Act Project Review Process** of the SPGP SOP to determine if further coordination is needed.

If further coordination is required, include the following in the coordination package:

1. Action area on USGS
2. Official Species List from IPaC
3. DCR and DGIF database search results
4. Habitat Assessment or Species surveys (if applicable)
5. Species Conclusion Table
6. Self Certification Letter (if applicable)
7. Any other information that supports conclusions

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#### 6.9.2 NORTHERN LONG-EARED BAT COORDINATION PROCEDURES

The northern long-eared Bat (NLEB) requires a specific coordination procedure under Project Review Step 7b of the U.S. Fish and Wildlife Service (the Service) online project review process. The below address provides the step-wise directions in order to conduct NLEB review and subsequent coordination.

[http://www.fws.gov/northeast/virginiafield/endangered/projectreviews\\_step7b.html](http://www.fws.gov/northeast/virginiafield/endangered/projectreviews_step7b.html)

If the SPGP permit application requires Section 7 coordination with the Service for the federally threatened NLEB, in accordance with the final 4(d) rule (81 Federal Register 1900-1922), published January 14, 2016, projects will require the implementation of a time of year restriction (TOYR) with a 15-day consultation with the Service, or 30 day consultation with the Service and adherence to the formal programmatic biological opinion for the final 4(d) rule. The applicant is to provide the acreage of tree clearance associated with the proposed project.

**The applicant is to inform DEQ as to which of the following two options they wish to pursue (choosing option 1 eliminates the need to pursue option 2):**

##### **Option 1: Time-of-Year Restriction**

Applicant is to complete the self-certification letter and a TOYR will be incorporated into the VWP permit as a condition in the VWP permit coverage letter.

Furthermore, permittees are encouraged to implement the voluntary conservation measures.

##### **Option 2: Consultation and Adherence to the Programmatic Biological Opinion**

DEQ will initiate consultation with the Service once the applicant has provided DEQ the **written self-certification letter with the project name and date filled-out, and confirmation of understanding of and adherence to the programmatic biological opinion for the final 4(d) rule.** The DEQ will indicate a "may effect" determination on the



*Species Conclusion Table, along with the applicant's statement regarding adherence to the programmatic biological opinion.* The Service has 30 days to review and respond to the consultation request. In the event that the Service requests additional information or specific permit conditions, further coordination may be necessary. If no response from the Service is received within 30 days, coordination is complete and DEQ will move forward with the permit application. Note that the applicant is responsible for implementing the programmatic biological opinion for the final 4(d) rule.

**The Programmatic Biological Opinion is located here:**

<http://www.fws.gov/midwest/endangered/mammals/nleb/pdf/8OnlebFinal4d.pdf>

## 6.10 SECTION 106 COORDINATION

The JPA will include questions for permit applicants regarding their knowledge of the presence of historic sites (known historic properties (listed or eligible for listing on the National Register) or potentially eligible properties (properties that may be eligible but that have not been evaluated) on or near the project site. In addition, the JPA will advise applicants of Section 110(k) of the NHPA which addresses actions involving anticipatory demolition of historic sites.

Staff and the Corps will follow the Standard Operating Procedures for the SPGP.

### 6.10.1 THE SECTION 106 REVIEW PROCESS (SOP SECTIONS IV.A.1. AND IV.B.1.)

Within the fifteen (15) calendar days of receiving a complete SPGP application or additional information completing an application, Staff will forward the application and associated materials to the Corps via postal service, email or FTP site. Staff may also request that the applicant suspend processing of their VWP application, see [Section 4.5.3 of Chapter 4](#) of this manual for details.

All coordination materials should be forwarded together in one coordination package from Staff to the Corps PM:

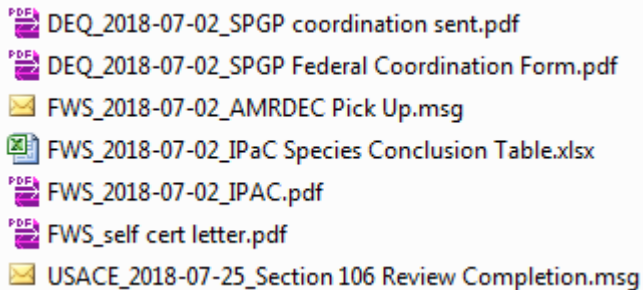
- Within 15 calendar days of receipt of Staff's coordination package, unless a time extension is requested by the Corps project manager, the Corps will advise Staff whether or not additional Section 106 coordination is necessary.
- If Section 106 coordination is not required the Corps will notify Staff. Staff will document the project file and move forward with processing of the SPGP permit application, provided all other requirements have been met.
- If Section 106 coordination is required then the Corps will begin the coordination process with VDHR.
- Staff will move forward with issuance of the SPGP only upon receipt of written notification that Section 106 has been fulfilled from the Corps.

Upon completion of the Section 106 coordination process, the Corps will notify Staff and advise them of any project specific conditions necessary to ensure Section 106 compliance (i.e. landscape buffers, consulting party coordination, required compliance with Memoranda of Agreement, etc.) via the SPGP Special Conditions Form. Staff will include the SPGP Special Conditions in the SPGP verification letter.

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## 6.10.2 FILE DOCUMENTATION

The 17-SPGP SOP notes that the Corps will provide various coordination documents to DEQ staff for record keeping on SPGP actions. Below is a suggested list of documents for DEQ staff to maintain for each 17-SPGP-01 action, as a minimum. See the most recent VWP CEDS Manual for completing SPGP-related CEDS data entry.



- If applicable, the SPGP Special Conditions Form; and,
- Other applicable information including, but not limited to: surveys, VDHR Data Sharing System (DSS) printouts and/or aerial, MOA's, etc.

## 6.11 SPECIAL CONDITIONS

If the Corps determines that special conditions are necessary to ensure compliance with Section 106 of the NHPA, Section 7 of the ESA, Section 408, or for financial assurances, the Corps PM will send Staff the 17- SPGP Special Conditions to insert into DEQ's SPGP verification letter. These special conditions will be considered enforceable conditions of the SPGP verification. Note: An exception to this procedure is NLEB requirements, as they are contained within DEQ's permit authorizations.

## 6.12 DEED RESTRICTIONS

Staff and the Virginia Attorney General's office, when necessary, will review and approve deed restriction language. If mitigation credit is given for deed-restricted land, the applicant must use the Corps-approved deed restriction template. If the applicant proposes deed restriction language that substantially deviates from the template, the Corps Office of Counsel must be provided the opportunity to review and approve the proposed language.

## 6.13 PERMIT DECISIONS

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### 6.13.1 PERMIT ISSUANCE (SOP SECTION V.1.)

Staff will determine, through the processes outlined above, whether the work proposed satisfies the terms and conditions of SPGP. Final verification requires Staff to complete the 17-SPGP-01 Verification Letter and attach it to the 17-SPGP-01 permit.

### 6.13.2 DENIAL (SOP SECTION V.2.)

Staff should advise the Corps if the project does not qualify for a VWP permit, informal resolution, letter of agreement, executive compliance agreement or consent order from the DEQ and/or SPGP permit. If a project does not qualify for the above, then it does not meet the terms and conditions of the SPGP. In these situations, the Corps PM should send a letter to the applicant allowing them to either:

- Revise their proposal so that it qualifies for a VWP permit, informal resolution, letter of agreement, executive compliance agreement or consent order from the DEQ and/or SPGP; or
- Go through the Corps individual permit process (in which case they would still need to obtain a separate § 401 certification from the DEQ).

### 6.14 MODIFICATIONS OF THE SPGP (SOP SECTION VI)

Modifications of an authorized SPGP can occur in accordance with the SPGP SOP.

- All proposed modifications resulting in an increase in permanent and/or temporary impacts, will require re-coordination under Sections IV.A. and IV.B. of the SPGP SOP.
- All projects that have associated special conditions, an MOA regarding Section 106 of the NHPA and/or require formal consultation under Section 7 of the ESA must be coordinated with the Corps regardless of the newly proposed impact totals.
  - **Except** re-coordination under Federal Coordination procedures as defined by Sections IV.A.5. and IV.B.5. when proposed impact changes are less than ¼ acre of surface waters or 100 linear feet of stream channel.
- The following re-verifications do not require re-coordination but do require the issuance of a new 17-SPGP Verification Letter:
  - a. change in ownership/project name
  - b. decrease in impacts
  - c. modification to the development plan but no additional impacts
  - d. change in use of bank/in-lieu fee
  - e. clerical revisions

If the proposed re-verification cumulatively exceeds the thresholds of the 17-SPGP the VDEQ PM should send correspondence to the applicant notifying them to either:

- a. Revise their proposal so that it qualifies for a 17-SPGP verification.
- b. Submit their application directly to the Corps for processing under a different Corps permit.

Once re-coordination is completed in accordance with the SPGP SOP Sections IV.A. and IV.B., the SPGP verification letter is to be modified to account for the proposed changes, and the SPGP permit package re-authorized.

The following should apply to all permit modification requests for SPGP projects that were issued by the DEQ.

- A. In cases where the total original impacts were less than/equal to ½ acre of wetlands or open waters or less than/equal to 300 linear feet of stream channel, and the additional impacts result in these limits being exceeded, the modification must be coordinated for federal review with the EPA, FWS and Corps in accordance with SPGP SOP Sections IV.A.5. and IV.B.5 .
- B. In cases where the total original impacts were less than/equal to 1 acre of wetlands or open waters or less than/equal to 2000 linear feet of stream channel, and the additional impacts result in these limits being exceeded, the project no longer qualifies for an SPGP and must be forwarded to the Corps to be processed as an Individual permit.



- C. When a modification request does not qualify for a Notice of Planned Change per DEQ regulation 9VAC25(-660, -670, -680, -690)-80, a new VWP permit will be required, and subsequently a new SPGP will be required. Coordination of the new SPGP will be performed in accordance with the application review procedures (SPGP SOP Sections IV.A. and IV.B.).

**Exceptions:** All projects that have associated special conditions or an MOA regarding Section 106 of the NHPA and/or Section 7 of the ESA must be coordinated with the Corps regardless of their impact totals.

Staff will provide the Corps with a copy of all final VWP permit modification authorizations.