



**U.S. Army Corps  
of Engineers**

Baltimore District  
PN-22-32

# Public Notice

**In Reply to Application Number  
NAB-2022-00007-E03 (CALLC Consent Order After-the  
Fact Permitting/Section 106 Programmatic Agreement)**

Comment Period: November 14, 2022 to November 29, 2022

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## **THE PURPOSE OF THIS PUBLIC NOTICE IS TO INFORM INTERESTED PARTIES OF THE PROPOSED ACTIVITY AND TO SOLICIT COMMENTS.**

The Baltimore District has collaborated on a draft Programmatic Agreement (PA) to satisfy coordination and compliance requirements of the National Historic Preservation Act (NHPA) in the review of after-the-fact submissions by Chesapeake Appalachia Limited Liability Corporation (CALLC) for authorization of natural gas infrastructure projects within the Commonwealth of Pennsylvania. These after-the-fact authorization submissions are associated with the Consent Order and Agreement (COA) Civil Action No. 4:21-cv-00538) between the applicant, the Pennsylvania Department of Environmental Protection (PADEP) and the United States Environmental Protection Agency (EPA) filed on 20 May 2021. The Private entity and federal and state agencies signatory to this agreement include: the CALLC, Pennsylvania Historical and Museum Commission (PHMC), the PADEP, and the Baltimore and Pittsburgh Districts of the United State Army Corps of Engineers (USACE).

This PA represents a new agreement amount CALLC, and all the state agencies including PHMC and PADEP, and federal agencies, including the USACE Baltimore and Pittsburgh Districts as signatories.

### **DESCRIPTION:**

This draft PA sets forth the processes by which CALLC and/or the USACE will meet responsibilities under Section 106, with the assistance of PHMC, for natural gas infrastructure projects which require after-the-fact authorization under the terms and conditions of an executed consent order and agreement.

### **CORPS EVALUATION REQUIREMENTS:**

This draft will be evaluated pursuant to Corps Regulatory Program Regulations (33 CFR Parts 320-332). The decision whether to participate in the PA will be based on an evaluation of the probable impacts, including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important cultural resources. The benefit, which reasonably may be expected to accrue from the PA must be balanced against its reasonably foreseeable detriments. All factors, which may be relevant to the proposal will be considered. The Corps will consider all relevant comments from the public in reaching its decision.

## **HISTORIC RESOURCES:**

Pursuant to Section 106 of the NHPA of 1966 and applicable guidance, the Corps has reviewed the latest published version of the National Register of Historic Places and initially determined that implementation of the PA will not adversely affect registered properties listed as eligible for inclusion, therein. Participation in the PA will streamline coordination and review of projects that have no effect or no adverse effects on properties listed or eligible for listing on the National Register of Historic Places.

## **TRIBAL RESOURCES:**

Section 106 of the NHPA also requires federal agencies to consult with federally recognized American Indian Tribes that attach religious and cultural significance to historic properties that may be affected by the agency's undertaking. Corps Tribal Consultation Policy mandates an open, timely, meaningful, collaborative, and effective deliberative communication process that emphasizes trust, respect, and shared responsibility. The policy further emphasizes that, to the extent practicable and permitted by law, consultation works toward mutual consensus and begins at the earliest planning stages before decisions are made and actions taken. The Corps final eligibility and effect determination will be based on coordination with interested tribes, in accordance with the Corps current tribal standard operating procedures as appropriate and required, and with full consideration given to the proposed undertaking's potential direct and indirect effects on tribal resources. The Corps has contacted all federally recognized American Indian Tribes declaring an interest in resources located within the Commonwealth of Pennsylvania, regarding its participation in the PA and did not receive any comments in response to tribal notifications.

## **SUBMISSION OF COMMENTS:**

The Corps of Engineers is soliciting comments from the public; federal, state, and local agencies and officials; American Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this PA. Any comments received will be considered by the USACE to determine whether to amend, revise, and/or participate in this PA. To make this decision, comments are used to assess impacts on historic properties and the other public interest factors. Comments provided will become part of the public record for this action and are subject to release to the public through the Freedom of Information Act.

Written comments concerning the action described above related to the factors listed above or other pertinent factors must be received by the USACE, Baltimore District within the comment period specified above through postal mail at the address below or electronic submission to the project manager email address below. Written comments should reference the Application Number NAB-2022-00007 (CALLC Consent Order After-the-Fact Permitting/Section 106 Programmatic Agreement).

Any person who has an interest which may be adversely affected by the implementation of this agreement may request a public hearing. The request, which must be in writing, must be received within the comment period as specified above to receive consideration. Also, it must clearly set forth the interest which may be adversely affected by this activity and the manner in which the interest may be adversely affected. The public hearing request may be submitted by electronic mail or mailed to the following address:

Mr. Matthew Gall  
[matt.gall@usace.army.mil](mailto:matt.gall@usace.army.mil)  
U.S. Army Corps of Engineers, Baltimore District  
Regulatory Branch  
1631 South Atherton Street, Suite 101  
State College, Pennsylvania 16801

It is requested that you communicate this information concerning the proposed work to any persons known by you to be interested, who did not receive a copy of this notice.

General information regarding the Corps' permitting process can be found on our website at <https://www.nab.usace.army.mil/Missions/Regulatory.aspx>. This public notice has been prepared in accordance with Corps implementing regulations at 33 CFR 325.3. If you have any questions concerning this specific project or would like to request a paper copy of this public notice, please contact Mr. Matthew Gall at [matt.gall@usace.army.mil](mailto:matt.gall@usace.army.mil). This public notice is issued by the Chief, Regulatory Branch.

**PROGRAMMATIC AGREEMENT AMONG THE U.S. ARMY CORPS OF ENGINEERS, THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, THE PENNSYLVANIA STATE HISTORIC PRESERVATION OFFICER, THE PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION, AND CHESAPEAKE APPALACHIA, LLC, REGARDING NATIONAL HISTORIC PRESERVATION ACT COMPLIANCE FOR AFTER-THE-FACT PERMITTING ASSOCIATED WITH THE CHESAPEAKE APPALACHIA CONSENT DECREE**

WHEREAS, on May 20, 2021, the United States of America and the Commonwealth of Pennsylvania, Department of Environmental Protection (“PADEP”), filed a complaint (the “Complaint”) in the U.S. District Court for the District of Pennsylvania against Chesapeake Appalachia, LLC (“Chesapeake”), alleging violations of the federal Clean Water Act, 33 U.S.C. §§ 1311(a) & 1344; the Pennsylvania Clean Streams Law (“CSL”), Act of June 22, 1937, as amended, 35 P.S. §§ 691.1-691.1001; the Pennsylvania Dam Safety and Encroachments Act (“DSEA”), Act of November 26, 1978, P.L. 1375, as amended, 32 P.S. §§ 693.1-693.28; the Pennsylvania 2012 Oil and Gas Act (“O&G”), Act of February 14, 2012 P.L. 87 No.13, 58 Pa C.S. §§ 3201-3274; Section 1917-A of the Administrative Code of 1929, Act of April 9, 1929, P.L. 177, as amended, 71 P.S. § 510-17; and the rules and regulations promulgated thereunder (hereinafter collectively “Pennsylvania Law”);

WHEREAS, the Complaint alleged that Chesapeake violated the Clean Water Act and Pennsylvania Law by discharging pollutants, including dredged or fill material, and/or controlling and directing the discharge of pollutants, including dredged or fill material, into waters of the United States and/or waters of the Commonwealth, and by conducting earth disturbance activities, stormwater management, and constructing, operating, or maintaining encroachments and /or water obstructions, without prior authorization under State and/or federal law, at various locations throughout the Commonwealth of Pennsylvania counties of Beaver, Bradford, Sullivan, Susquehanna, and Wyoming (“Appendix A Impact Polygons”), as identified in Appendix A;

WHEREAS, on May 20, 2021, the United States of America, the PADEP, and Chesapeake entered into a consent decree, filed in the U.S. District Court for the Middle District of Pennsylvania, to resolve the violations alleged in the Complaint (the “Consent Decree”);

WHEREAS, in order to return to compliance with the Clean Water Act and Pennsylvania Law, the Consent Decree requires Chesapeake to restore certain Appendix A Impact Polygons to their pre-construction conditions, to obtain after-the-fact permits for certain Appendix A Impact Polygons, and requires a combination of restoration and after-the-fact permitting for certain Appendix A Impact Polygons;

WHEREAS, the U.S. Army Corps of Engineers (“Corps”) has determined that issuance of after-the-fact Clean Water Act Section 404 permits to authorize the discharge of dredged or fill material into waters of the United States will result in undertakings that may affect properties listed in or eligible for the National Register of Historic Places (“Historic Properties”), subject to Section 106 of the National Historic Preservation Act (“NHPA”) (54 U.S.C. § 306108) (“Section 106”);

WHEREAS, because Chesapeake did not seek permits before performing the work subject to Section 404 of the Clean Water Act at the Appendix A Impact Polygons, the Corps did not have the opportunity to comply with Section 106 before Chesapeake or its contractors placed dredged or fill material into waters of the United States at the Appendix A Impact Polygons;

WHEREAS, under Section 110(k) of the NHPA, the Corps may not grant a permit to an applicant who, with intent to avoid the requirements of Section 106, has intentionally significantly adversely affected a historic property to which the grant would relate, or having the legal power to prevent it, allowed such significant adverse effect to occur, unless the agency, after consultation with the Advisory Council for Historic Preservation Council, determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant;

WHEREAS, the record before the Corps contains no information that would suggest that Chesapeake's failure to obtain required permits was done with the intent to avoid the requirements of Section 106, and therefore, Chesapeake's failure to obtain required permits does not constitute a violation of Section 110(k);

WHEREAS, before issuing after-the-fact permits to Chesapeake for the placement of dredged or fill material into waters of the United States at the Appendix A Impact Polygons, the Corps must comply with Section 106 and 33 C.F.R. Part 325, Appendix C;

WHEREAS, 36 CFR Part 800 encourages Federal agencies to fulfill their obligations efficiently under Section 106 through the development and implementation of cooperative programmatic agreements;

WHEREAS, section 17(d) of the Dam Safety and Encroachments Act (32 P.S. § 693.17(d)) and 25 Pa. Code § 105.24 authorizes PADEP to coordinate with the Corps when possible relating to permitting.

WHEREAS, sections 508 and 510 of the Pennsylvania History Code (37 Pa.C.S. §§ 500 *et seq.*) and in accordance with the Consent Decree, require Chesapeake to provide and PADEP to consider an analysis of potential impacts to areas or structures of historic significance. See, also 25 Pa. Code §§ 105.13 and 105.14 ("Pennsylvania Historic Property Requirements").

WHEREAS, the Corps, the Pennsylvania Historic Preservation Officer ("SHPO"), the PADEP, and Chesapeake seek to expedite the process for determining section 106 compliance for the after-the-fact permits associated with the Consent Decree through this Programmatic Agreement. This procedure is an alternative to the foreclosure process ordinarily used by the PASHPO with the review of after-the-fact permits.

WHEREAS, in the development of this Programmatic Agreement, the Corps has consulted with the Pennsylvania SHPO and the Advisory Council for Historic Preservation (the "ACHP") on April 4, 2022 and March 28, 2022, respectively;

- a) WHEREAS, pursuant to 36 CFR §800.14(b)(2)(i), in the development of this Programmatic Agreement, on April 1, 2022 the Corps has contacted the following federally recognized tribes and nations with ancestral ties to Pennsylvania, which may attach religious or cultural significance to properties in Pennsylvania, and provided them the opportunity to consult and to concur with this Programmatic Agreement: Absentee-Shawnee Tribe of Indians of Oklahoma; Cayuga Nation; Delaware Nation, Oklahoma; Delaware Tribe of Indians; Eastern Shawnee Tribe of Oklahoma; Onondaga Nation; Osage Nation; Seneca Nation of Indians; Seneca-Cayuga Nation; Shawnee Tribe; Stockbridge Munsee Community, Wisconsin; Tonawanda Band of Seneca; and, Tuscarora Nation;

WHEREAS, the PADEP has been invited to be a party to the Programmatic Agreement;

WHEREAS, Chesapeake Appalachia, LLC, has participated in the consultation and has been invited to be a concurring party to this Programmatic Agreement;

WHEREAS, the Corps has invited other parties to participate in the development of the Programmatic Agreement, pursuant to 36 CFR § 800.2(c)(5), namely the Society for Pennsylvania Archaeology, the Pennsylvania Archaeological Council, and Preservation Pennsylvania;

WHEREAS, this Programmatic Agreement sets forth the process by which the Corps, PADEP and Chesapeake, will meet their responsibilities under Section 106 and/or Pennsylvania Historic Property Requirements for Chesapeake's after-the-fact permits associated with the Appendix A Impact Polygons;

WHEREAS, this Programmatic Agreement applies to any application associated with Appendix A Impact Polygon of the Consent Decree that are reporting to the Corps per the PASPGP-6;

WHEREAS, Appendix A provides a list of the Appendix A Impact Polygons, along with maps showing, among other things, the limits of disturbance for each polygon;

NOW, THEREFORE, the ACHP, Corps, SHPO, and PADEP agree that the after-the fact permitting of the Appendix A Impact Polygons, shall be administered in accordance with the following stipulations to satisfy the Corps' Section 106 responsibilities and PADEP's responsibilities under the Pennsylvania Historic Property Requirements.

### **STIPULATIONS**

The Corps shall ensure that the following measures are carried out:

## **I. General Requirements**

- A. Chesapeake will submit 4-5 projects weekly, to the SHPO, utilizing Pennsylvania's Historic & Archaeological Resource Exchange (PA-SHARE), to consult with the SHPO on each of the Appendix A Impact Polygons. Chesapeake will submit the following, as required for environmental review consultation in PA-SHARE: Project description, mapping, including limits of disturbance, and photograph of the project area.
- B. Based on the maps submitted by Chesapeake, the SHPO will perform an Environmental Review of the Area of Potential Effects (APE) associated with the Impact Polygons listed in Appendix A using PA-SHARE. Based on the review, the SHPO will provide one of the following responses, utilizing PA-SHARE, to Chesapeake, Corps, and PADEP, either:
  - 1. Finding opinion of no historic properties (those listed in or eligible for listing in the NRHP, including archaeological sites) present and/or no historic properties affected. Proceed to Stipulation C. Or:
  - 2. Finding opinion of historic properties affected and/or potential for archaeological resources (including previously recorded sites with undetermined eligibility). Proceed to Stipulation D.
- C. If the SHPO issues correspondence concluding that no historic properties were affected, then:
  - 1. If the project otherwise qualifies for a non-reporting Pennsylvania Statewide Programmatic General Permit ("PASPGP"), then PADEP may continue to process the authorization; or
  - 2. If the project does not qualify for a non-reporting PASPGP, then the Corps will make a finding that the proposed undertaking will not affect historic properties and proceed with processing the permit.
- D. If the SHPO finds that historic properties were or potentially are present within the area of potential effects, then the project is not eligible for a non-reporting PASPGP and may not be eligible for a Pennsylvania Chapter 105 general permit or waiver. In such an instance, Chesapeake should proceed in accordance with the Pennsylvania individual permit process and the application will be reporting to the Corps for processing of a federal permit if necessary.
  - 1. The Corps will determine the Corps Permit Area, in accordance with 33 C.F.R. Part 325, Appendix C. The Corps will provide the SHPO with a map of the Corps Permit Area along with an initial screening, utilizing PA-SHARE, of any historic properties within the Corps Permit Area or historic properties with a viewshed containing the Corps Permit Area .

2. If the Corps, in consultation with the SHPO, determines that no historic properties were present, that it is unlikely that historic resources potentially eligible for the NRHP were present within the Corps Permit Area, or that no historic properties are present outside the Corps Permit Area, then the Corps will make a finding that the proposed undertaking will not affect historic properties, and proceed with processing a permit.
3. If the Corps, in consultation with the SHPO, determines that it is likely that historic resources potentially eligible for the NRHP were present within the Corps Permit Area, then Chesapeake will perform the appropriate historic property investigations in consultation with the Corps, and the SHPO, and in accordance with the performance standards specified in Stipulation IV. Prior to all historic property investigations, Chesapeake will submit a scope of work to the Corps and the SHPO for review and comment. Historic property investigations will be designed to identify resources within the Corps Permit Area that are potentially eligible for inclusion in the NRHP that may have been affected by the project. Chesapeake will provide the results of any historic property investigations to the Corps, the SHPO, and PADEP for review and comment.
  - i. If the results of the historic property investigation(s) show that no historic properties were within the Corps Permit Area, then the Corps will make a finding that the proposed undertaking will not affect historic properties, and proceed with processing the permit.
  - ii. If the results of the historic property investigation(s) show that potential historic properties are within the Corps Permit Area, or that there are known historic properties outside the Corps Permit Area that may be adversely affected, then Chesapeake will adhere to the evaluation and assessment criteria specified in Stipulation 4.i.
4. If the Corps, in consultation with the SHPO, determines that historic properties may have been present, or that known historic properties are present outside the Corps Permit Area that may be affected, then Chesapeake will perform the appropriate historic property evaluations in consultation with the Corps, and the SHPO, and in accordance with the performance standards specified in Stipulation IV. Prior to all historic property evaluations, Chesapeake will submit a scope of work to the Corps and the SHPO for review and comment. Historic property evaluations will be designed to evaluate the resource's eligibility for listing in the NRHP, and to assess the effects the project may have had on historic properties within the Corps Permit Area or on known historic properties outside the Corps Permit Area. Chesapeake will provide the results of any historic property evaluations to the Corps, the SHPO, and PADEP for review and comment.
  - i. If the results of the historic property investigation(s) specified in Stipulation 3 show that potential historic properties are within the Corps Permit Area, then the Corps, in consultation with the SHPO



[and any other tribes or consulting parties], will evaluate each of the identified resources for their eligibility for listing in the NRHP by applying the NRHP criteria for evaluation in accordance with 36 CFR §60.4 (a-d) and 36 CFR §800.4 (c). The Corps will ensure that NRHP eligibility evaluations, through Chesapeake, are completed for each of the identified resources in accordance with the performance standards specified in Stipulation IV. The NRHP eligibility evaluations will include, as applicable, additional documentary research, field investigation, analysis, and reporting.

- ii. If the results of the historic property investigation(s) specified in Stipulations 3 and 4 show that historic properties were within the Corps permit area, or that known historic properties outside the Corps Permit Area may have been affected, then the Corps will consult with the SHPO, ACHP, and any interested tribes or consulting parties in accordance with 36 CFR §800.4 (d)(2) before making a formal effect determination.
- iii. In accordance with 36 CFR §800.5, if the Corps, in consultation with the SHPO, finds that Chesapeake adversely affected a historic property that is listed, or eligible for listing, in the NRHP, then the Corps, with the assistance of Chesapeake, will consult with the SHPO [and any other tribes or consulting parties] and enter into a project-specific Memorandum of Agreement (MOA) in accordance with 36 CFR §800.6 to resolve the adverse effect. The stipulations in the MOA will become conditions of the Corps' permit and the Title 25, Chapter 105 individual permit.

## **II. Treatment of Human Remains**

If human remains, graves, or grave-associated artifacts are encountered during any archaeological investigations conducted under this Programmatic Agreement all work shall cease in the area of the encounter and Chesapeake will ensure that the remains, graves, or grave-associated artifacts are secured and protected. Chesapeake will immediately notify PADEP and the Corps. The Corps, or Chesapeake, will concurrently notify the SHPO and any federally recognized tribes and nations that may attach religious or cultural significance to the affected property. The Corps, PADEP, and Chesapeake will also take into account the requirements of the Native American Graves Protection and Repatriation Act ("NAGPRA"), 25 U.S.C. §§ 3001 *et seq.*, any guidance provided by tribes, guidance in the National Register Bulletin 41, Guidelines for Evaluating and Registering Cemeteries and Burial Places, and the 1993 Pennsylvania Historical and Museum Commission (PHMC) Policy for the Treatment of Burials and Human Remains, as appropriate. No activities which might disturb or damage the remains, graves, or grave-associated artifacts, will be conducted until the Corps and PADEP, in consultation with the SHPO and other consulting parties, has determined an appropriate course of action. When Native American graves are discovered under this provision, the Corps will consult with the appropriate tribe or nation in determining an appropriate course of action.

### **III. Post-Review Discoveries**

If previously unidentified historic properties are discovered after the Corps has completed its review under this Programmatic Agreement, or if an undertaking affects previously known historic properties in an unanticipated manner, Chesapeake or its contractor shall immediately cease work in the area of the discovery and notify PADEP, the Corps and the SHPO. Construction shall not resume in the area of the discovery until PADEP and the Corps have completed consultation with the SHPO.

### **IV. PERFORMANCE STANDARDS**

#### **A. Professional Qualifications**

Chesapeake will ensure that all historic property investigations will be conducted under the supervision of a qualified individual or individuals who meet, at a minimum, the appropriate qualifications for the activity that they have been contracted to perform, established by the Secretary of the Interior's "Professional Qualifications Standards" in "Archeology and Historic Preservation: Standards and Guidelines," as amended and annotated (available at [https://www.nps.gov/history/local-law/arch\\_stnds\\_9.htm](https://www.nps.gov/history/local-law/arch_stnds_9.htm), previously published at 48 FR 44738-9 (September 29, 1983) and 36 CFR Part 61, Appendix A)) for the activity that they have been contracted to perform.

#### **B. Standards and Guidelines**

Chesapeake will ensure that all historic property investigations and work performed pursuant to this Programmatic Agreement will be conducted in a manner consistent with the principles and standards contained in the documents (and any subsequent revisions thereof) listed below:

1. Secretary of the Interior's Archeology and Historic Preservation: Standards and Guidelines, as amended and annotated (available at [https://www.nps.gov/history/local-law/arch\\_stnds\\_9.htm](https://www.nps.gov/history/local-law/arch_stnds_9.htm), 48 FR44716-44742);
2. Advisory Council on Historic Preservation - Section 106 Archeology Guidance (ACHP 2007);
3. Recommended Approach for Consultation on Recovery of Significant Information from Archeological Sites (ACHP 1999);
4. Secretary of the Interior's Standards for the Treatment of Historic Properties (36 CFR Part 68);
5. Guidelines for Archaeological Investigations in Pennsylvania (PA SHPO 2021); and
6. Guidelines for Projects with Potential Visual Effects (PA SHPO 2021)

### **C. Curation**

Chesapeake shall ensure that all materials and records resulting from historic properties investigations conducted within the project area will be curated in accordance with 36 CFR Part 79 at the State Museum of Pennsylvania's (SMPA) Section of Archaeology, using the SMPA Revised Curation Guidelines (2006), unless a signed Gift Agreement for the collection can be obtained.

### **D. Reports**

All historic property investigations performed pursuant to this Programmatic Agreement shall conclude with written reports. Chesapeake will submit a draft of each final report to the Corps and the SHPO (via PA-SHARE) for review and comment and shall ensure that the comments of the Corps and the SHPO are addressed in each final report. Chesapeake shall provide two copies of each final report to the Corps and PADEP and the PA SHPO.

### **V. SHPO Review and Comment**

The SHPO will review and provide written comments in PA-SHARE within thirty (30) calendar days after receipt of all plans and reports that Chesapeake submits for review pursuant to the terms of this Programmatic Agreement. If the SHPO fails to provide written comments on any item within thirty (30) calendar days of receipt, the Corps may assume that the SHPO agrees with the specific plan or report submitted for review.

### **VI. Dispute Resolution**

Except as provided below, should any party to this Programmatic Agreement, or a consulting party on an individual undertaking covered by this Programmatic Agreement, object within 30 days to any actions proposed or findings submitted for review, the Corps will continue to consult with the objecting party(ies) to resolve the objection. If the Corps determines that it cannot resolve the objection, then the Corps will:

- i. Forward all documentation relevant to the dispute to the ACHP in accordance with 36 CFR Section 800.2(b)(2). Upon receipt of adequate documentation, the ACHP shall review and advise the Corps on the resolution of the objection within 30 days. The Corps will take into account any comment provided by the ACHP, and all comments from the parties to this Programmatic Agreement, in reaching a final decision regarding the dispute.
- ii. If the ACHP does not provide comments regarding the dispute within 30 days after receipt of adequate documentation, the Corps may render a decision regarding the dispute. In reaching its decision, the Corps will take into account all comments regarding the dispute from the parties to this Programmatic Agreement.

- iii. The Corps' responsibility to carry out all other actions subject to the terms of this Programmatic Agreement that are not subject of the dispute remain unchanged. The Corps will notify all parties of its decision in writing before implementing that portion of the undertaking subject to dispute under this stipulation. The Corps' decision will be final.

If the SHPO objects to a National Register eligibility determination made by the Corps pursuant to this Programmatic Agreement, and that objection cannot be resolved through consultation among the Corps and the SHPO, or if the ACHP so requests, the Corps will obtain a determination of eligibility from the Keeper of the National Register in accordance with 36 CFR § 800.4(c)(2). If a consulting party or a member of the public objects to a National Register eligibility determination pursuant to this Programmatic Agreement and the objection cannot be resolved through consultation with that party, the Corps, in consultation with the SHPO, will determine whether to request a Determination of Eligibility from the Keeper of the National Register of Historic Places.

## **VII. Amendment**

Any party to this Programmatic Agreement, may request that it be amended, whereupon the signatories shall consult to consider such amendment. Authorized representatives of all the original signatories shall sign the amendment which shall be accomplished through a formal written document with the same formality as the original Agreement.

## **VIII. Duration**

This Programmatic Agreement shall not become legally binding and effective until all signatories, including those signing their approvals for form and legality, have signed the Agreement and the ACHP provides a fully signed copy to all signatories. For purposes of this Programmatic Agreement, the effective date shall be the date the last signing party has affixed their signature (the Effective Date). This agreement shall remain effective for 10 years from the date of execution. If all obligations have not been met within the 10-year timeframe all parties shall review the document and resign with necessary revisions.

## **IX. Severability**

The provisions of this Programmatic Agreement shall be severable. If any phrase, clause, sentence or provision of this Agreement is declared to be contrary to the Constitution of Pennsylvania or of the United States or to the laws of the Commonwealth or the United States, or if the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this Agreement and the applicability thereof to any other government, agency, person or circumstance shall not be affected thereby.

## **X. Assignment**

Except as provided herein, the responsibilities included in this Programmatic Agreement may

not be assigned by any party to this Agreement either in whole or in part, without the written consent of the Signatories.

**XI. Notices**

A. The contact person for each of the signatories of the PA shall be the following:

1. For SHPO: Deputy SHPO, 400 North Street, 2<sup>nd</sup> Floor, Harrisburg, PA 17120, Telephone number (717) 787-4215.
2. For the Corps: Matthew Gall, Chief, Enforcement and Compliance Section, U.S. Army Corps of Engineers, Baltimore District, 1631 S. Atherton Street, Suite 102, State College, PA 16870, Telephone Number: (814)235-1762, E-mail address: matt.gall@usace.army.mil
3. For Chesapeake: Eric Haskins, 14 Chesapeake Lane Sayre, PA 18440, E-mail address: [eric.haskins@chk.com](mailto:eric.haskins@chk.com)
4. For PADEP: Brian Bailey, Environmental Program Manager, Bureau of Oil and Gas Operations, PADEP, Northcentral Regional Office, 208 West Third Street, Suite 101, Williamsport, PA 17701-6448, E-mail address: [bribailey@pa.gov](mailto:bribailey@pa.gov)

B. Any signatory may change its designated contact person by providing written notice to the other signatories.

**XII. Counterparts**

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Execution and implementation of this agreement evidences that the Corps has afforded ACHP a reasonable opportunity to comment on the Chesapeake Appalachia Consent Decree and its individual undertakings in Pennsylvania, including undertakings that require a federal permit from the Corps; and that the Corps has taken into account the effects of the Consent Decree and its individual undertakings on historic properties.

SIGNATORIES:

UNITED STATES ARMY CORPS OF ENGINEERS, BALTIMORE DISTRICT

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

UNITED STATES ARMY CORPS OF ENGINEERS, PITTSBURGH DISTRICT

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

PENNSYLVANIA STATE HISTORIC PRESERVATION OFFICER

BY: \_\_\_\_\_  
Andrea MacDonald, Director  
State Historic Preservation Office

DATE: \_\_\_\_\_

PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: \_\_\_\_\_

DATE: \_\_\_\_\_

OTHER CONCURRING PARTIES:

CHESAPEAKE APPALACHIA, LLC

BY: \_\_\_\_\_

DATE: \_\_\_\_\_

APPROVED FOR LEGALITY AND FORM

\_\_\_\_\_  
Chief Counsel  
Department of Environmental Protection

DATE: \_\_\_\_\_

\_\_\_\_\_  
Office of General Counsel

DATE: \_\_\_\_\_

\_\_\_\_\_  
Office of Attorney General

DATE: \_\_\_\_\_