

**PROGRAMMATIC AGREEMENT
BETWEEN
THE U.S. ARMY CORPS OF ENGINEERS, BALTIMORE DISTRICT
AND
THE VIRGINIA STATE HISTORIC PRESERVATION OFFICER
REGARDING
THE WOLF TRAP ALTERNATE PLACEMENT SITE NORTHERN EXTENSION
PROJECT**

WHEREAS, the U.S. Army Corps of Engineers, Baltimore District (USACE) proposes to establish the Wolf Trap Alternate Placement Site Northern Extension (WTAPSNE site) to place dredge material from routine operation and maintenance of the York Spit Channel located in the Chesapeake Bay approximately four (4) miles southeast of Bethel Beach, Mathews County, Virginia (Project; Department of Historic Resources [DHR] Review No. 2019-0196); and,

WHEREAS, the Project is a federally funded undertaking, and therefore subject to the requirements of Section 106 of the National Historic Preservation Act (54 U.S.C. § 306108; Section 106); and,

WHEREAS, the USACE has consulted about the Project with the DHR, which serves as the Virginia State Historic Preservation Office (SHPO), pursuant to 36 CFR Part 800, the regulations implementing Section 106; and,

WHEREAS, the USACE, in consultation with the SHPO, has established the Project's direct Area of Potential Effects (APE) as encompassing the WTAPSNE site, divided into six cells, (Appendix A);and,

WHEREAS, the USACE conducted a Phase I underwater archaeological survey of the Project's direct APE which identified ten (10) remote-sensing targets that have the potential to contain historic properties recorded as archaeological sites 44MT0175 through 44MT0184 inclusive, and two (2) potential relic channels indicative of potential pre-contact living surfaces; and,

WHEREAS, archaeological site 44MT0184 is located adjacent to Cell NE-5 and was identified as the former steam yacht Polynia, which was converted to a barge and sunk in 1917; and,

WHEREAS, Phase II Evaluation of the ten (10) identified archaeological sites cannot be conducted at this time due to schedule and contract constraints. Additionally, the Project cannot be limited to Cell NE-6 as this would eliminate flexibility for material placement needed for potential overwintering female blue crab population movement into the northern extension in the future; and,

WHEREAS, none of the identified archaeological sites have been evaluated for their eligibility for listing on the National Register of Historic Places (NRHP); and,

WHEREAS, the USACE, in consultation with the SHPO and other consulting parties, has determined that the ten (10) identified archaeological sites should be avoided by a minimum distance of fifty (50) meters (one hundred sixty-four [164] feet), and, if avoidance is not feasible, the USACE shall then conduct a Phase II archaeological investigations of any affected sites to assess their eligibility for the NRHP; and,

WHEREAS, the USACE has provided the SHPO and other consulting parties an opportunity to review and comment on the Phase I underwater archaeology report, and the SHPO concurred with its findings (letter dated September 6th, 2019); and,

WHEREAS, the USACE, in consultation with the SHPO and other consulting parties, has determined that the Project has the potential to cause adverse effects to recorded archaeological sites which may be eligible for listing in the NRHP; and,

WHEREAS, the USACE, in consultation with the SHPO and other consulting parties, has determined that Cell NE-6 (Appendix A) does not contain any submerged NRHP-eligible archaeological sites and no historic properties will be directly affected by the placement of dredge material in Cell NE-6; and,

WHEREAS, the USACE anticipates that any visual, auditory, or other indirect effects for the undertaking will be temporary and not adverse; and,

WHEREAS, the USACE intends to utilize Cell NE-6 for dredge material placement at this time; and,

WHEREAS, 36 CFR § 800.14(b)(1)[ii] allows federal agencies to fulfill their obligations under Section 106 through the development and implementation of programmatic agreements when effects on historic properties cannot be determined prior to approval of an undertaking; and,

WHEREAS, in accordance with 36 CFR § 800.14(b), the USACE has notified the Advisory Council on Historic Preservation (ACHP) of its intention to develop this Programmatic Agreement (Agreement), pursuant to 36 CFR § 800.14(b)(1)(ii) (e106 submission dated August 5th, 2019), and the ACHP has chosen not to participate in the consultation (letter dated August 20th, 2019); and,

WHEREAS, in accordance with 36 CFR § 800.14(b)(2)(i) the USACE has invited the Delaware Nation and the Pamunkey Indian Tribe to consult on and sign this Agreement as concurring parties and they have declined to participate or have not responded; and,

WHEREAS, in accordance with 36 CFR § 800.2(c)(3) the USACE has invited Mathews County to consult on and sign this Agreement as a concurring party and they have declined to participate or have not responded; and,

WHEREAS, in accordance with 36 CFR § 800.2(c)(5) the USACE has invited the Mathews County Historical Society to consult on and sign this Agreement as concurring parties and

they have accepted/declined to participate or have not responded; and,

WHEREAS, in accordance with 36 CFR § 800.2(c)(5) the USACE has invited the Naval History and Heritage Command and the Mariners' Museum and Park to consult on and sign this Agreement as a concurring party and they have elected to participate; and,

WHEREAS, in accordance with 36 CFR § 800.2(d), the USACE has solicited public comments on the Project through an Environmental Assessment that was submitted for public review in July 2019, and no comments were received regarding historic properties; and,

WHEREAS, the Project was advertised in the Newport News Daily Press on Sunday, July 21st, 2019, the Gloucester-Matthews Gazette-Journal on Thursday, July 25th, 2019, and the Hampton Daily Press on Saturday, September 14th, 2019, and no comments were received regarding historic properties.

NOW, THEREFORE, the USACE and the SHPO (Signatories) agree that the Project shall be implemented in accordance with the following stipulations in order to take into account the effects of the Project on historic properties:

STIPULATIONS

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

I. PLACEMENT OF DREDGED MATERIAL IN CELL NE-6

A. Cell NE-6

The USACE shall only place dredged material in Cell NE-6 (Appendix A) of the WTAPSNE site at this time. No historic properties have been documented within Cell NE-6; therefore, the placement of dredged material here will have no effect on historic properties.

B. Future Dredged Material Placement

If, in the future, the USACE proposes to place dredged material in the WTAPSNE site outside of Cell NE-6, the USACE shall adhere to Stipulation II below.

II. PLACEMENT OF DREDGED MATERIAL OUTSIDE CELL NE-6

A. Notification

If, in the future, the USACE proposes to place dredged material outside of Cell NE-6, USACE shall notify the SHPO and other consulting parties within thirty (30) days of the decision to do so.

B. Consultation Requirements

Prior to implementation of the proposed placement of dredge material outside of Cell NE-6, the USACE shall consult with the SHPO and other consulting parties to determine if the proposed placement will have an effect on any of the submerged archaeological sites within the Project's APE. If the proposed placement would affect the previously identified archaeological sites, and avoidance is not a practicable alternative, the USACE shall:

1. Prepare a Scope of Work (SOW) to submit to the SHPO and other consulting parties for review and comment. The SOW shall outline and describe Phase II underwater archaeological evaluation efforts to be conducted on any affected archaeological site. The SOW shall also describe reporting protocols in accordance with the guidelines set forth in Stipulation III.B of this Agreement. Pursuant to Stipulation III.B, the USACE shall provide the SHPO and other consulting parties an opportunity to review and comment on the SOW.
2. Conduct Phase II underwater archaeological evaluations on any affected archaeological site as outlined in the SOW discussed in Stipulation II.B.1, employing methods equivalent or superior to those used in SEARCH's 2019 survey of the WTAPSNE site. The evaluations shall be conducted by a qualified maritime archaeologist meeting the standards set forth in Stipulation VI.B, and shall be conducted in accordance with the guidelines set forth in Stipulations III.A and VI. If any affected archaeological site is associated with the NHHHC, the NHHHC Guidelines for Archaeological Field Practices will be utilized. The evaluations shall be conducted to determine the potential NRHP eligibility of any affected archaeological site.
3. Prepare a report that describes the findings and recommendations of the Phase II underwater archaeological evaluations. The report shall be prepared in accordance with Stipulations III.A and VI.C. Pursuant to Stipulation III. B, the USACE shall provide the SHPO and other consulting parties the opportunity to review and comment on the results.

C. Assessment of Effects

If archaeological sites meeting the criteria for listing on the NRHP are identified as a result of the activities described in Stipulation II.B.2, the USACE shall assess the effects of the Project on these sites in a manner consistent with 36 CFR §800.5, and submit its findings to the SHPO and other consulting parties for its review and concurrence pursuant to Stipulation III.B.

D. Treatment of Archaeological Sites Determined Eligible for Listing on the NRHP

1. If the USACE, in consultation with the SHPO and other consulting parties, determines that an archaeological site eligible for listing on the NRHP will be adversely affected by the Project, the USACE, in consultation with the SHPO and

- other consulting parties, shall determine whether avoidance or minimization of the adverse effects is practicable. If the adverse effects cannot be practicably avoided, the USACE, in consultation with the SHPO and other consulting parties, shall develop a treatment plan for the archaeological site. In a manner consistent with Stipulation III.B of this Agreement, the USACE shall provide the SHPO and other consulting parties the opportunity to review and concur with the treatment plan.
2. Any treatment plan the USACE develops for an archaeological site under the terms of this Stipulation shall be consistent with the requirements of Stipulation VI.A and shall include, at a minimum:
 - a. Information on the portion of the site where data recovery or controlled site burial, as appropriate, is to be carried out, and the context in which the site is eligible for the NRHP;
 - b. The results of previous research relevant to the Project;
 - c. Research problems or questions to be addressed, with an explanation of their relevance and importance;
 - d. The field and laboratory analysis methods to be used, with a justification of their cost-effectiveness and how they apply to this particular site and the research needs;
 - e. The methods to be used in artifact, data, and other records management;
 - f. Arrangements for presenting to the public the research findings, focusing particularly on the community or communities that may have interests in the results;
 - g. The curation of recovered materials and records resulting from the data recovery in accordance with 36 CFR Part 79;
 - h. The conservation of recovered materials, as applicable; and
 - i. Procedures for evaluating and treating discoveries of unexpected human remains during the course of the Project, including necessary consultation with other parties.
 3. The USACE shall ensure the treatment plan is implemented and that any agreed-upon data recovery field operations have been completed before dredged material placement activities associated with the Project are initiated at or near the affected site. The USACE shall notify the SHPO and other consulting parties once data recovery field operations have been completed so that a site visit may be scheduled, if the SHPO and other consulting parties find a visit appropriate. The USACE shall ensure that the archaeological site form on file in the SHPO's Virginia Cultural

Resources Information System (V-CRIS) is updated to reflect the implementation of the treatment plan for each affected site.

4. Pursuant to Stipulation III. B, the USACE shall provide the SHPO and other consulting parties the opportunity to review and comment on the results of the implementation of any treatment plan prepared under this Agreement via a technical report prepared in accordance with Stipulation III. A.

III. PREPARATION AND REVIEW OF DOCUMENTS

A. Technical Preparation

All archaeological studies, technical reports, and treatment plans prepared pursuant to this Agreement shall be consistent with the federal standards entitled *Archaeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines* (48 FR 44716-44742, September 29, 1983), the SHPO's *Guidelines for Conducting Historic Resources Survey in Virginia* (September 2017), and the ACHP's *Recommended Approach for Consultation on Recovery of Significant Information from Archaeological Sites* (1999), or subsequent revisions or replacements to these documents.

B. Review

The SHPO and other consulting parties agree to provide comments to the USACE on all technical materials, findings, and other documentation arising from this Agreement within thirty (30) calendar days of receipt unless otherwise specified. If no comments are received from the SHPO and other consulting parties within the thirty (30) calendar-day review period, the USACE may assume that the non-responsive party has no comment. The USACE shall take into consideration all comments received in writing from the SHPO and other consulting parties within the thirty (30) calendar-day review period.

C. Physical Documents

The USACE shall provide the SHPO two (2) copies, one (1) hard copy comb-bound on acid-free paper and one (1) in Adobe (R) Portable Document Format (.pdf) on compact disk of all final reports prepared pursuant to this Agreement. The USACE shall also provide the other consulting parties all final reports in a format of their choosing.

IV. CURATION STANDARDS

The USACE shall ensure that all original archaeological records (research notes, field records, maps, drawings, and photographic records) and all archaeological collections recovered from the USACE Project area produced as a result of implementing the Stipulations of this Agreement are provided to the SHPO for permanent curation. In exchange for its standard collections management fee as published in the *Virginia Department of Historic Resources State Collections Management Standards* (June 26, 2009), or subsequent revisions or replacements to that document, the SHPO agrees to maintain such

records and collections in accordance with 36 CFR 79, *Curation of Federally Owned and Administered Archaeological Collections*.

V. CHANGES IN PROJECT SCOPE

In the event of any changes to the Project scope that may alter the APE, the USACE shall consult with the SHPO and other consulting parties pursuant to 36 CFR § 800.2 through § 800.5.

VI. STANDARDS

A. Research Standards

All work carried out pursuant to this Agreement shall the *Secretary of the Interior's Standards for Archaeology and Historic Preservation* (SOI's Standards: http://www.nps.gov/history/local-law/arch_stnds_9.htm) and, if applicable, the NHHHC Guidelines for Archaeological Field Practices.

VII. PROFESSIONAL STANDARDS

The USACE shall ensure that all work carried out pursuant to this Agreement shall be done by or under the direct supervision of marine archaeology professionals who meet the *Secretary of Interior's Professional Qualifications Standards*. The USACE shall ensure that consultants retained for services pursuant to this Agreement meet these standards.

VIII. SUNKEN MILITARY CRAFT

If at any point in the Project, the USACE discovers or reasonably believes that a Department of the Navy sunken military craft or part thereof will be disturbed or otherwise affected in the course of the Project, the USACE shall immediately notify the NHHHC. The USACE shall provide the NHHHC with a reasonable opportunity to accomplish the following:

- A. In relation to Stipulation II.B, review and provide concurrence on the USACE identification of archaeological sites eligible for listing on the NRHP within the APE of the Project.
- B. In relation to Stipulation II.B(2), review and provide concurrence on the evaluation of any such historic property, as opposed to review and comment on a report of the USACE findings.
- C. In relation to Stipulation II.C, review and provide concurrence on the USACE assessment of effects of the Project, as opposed to review and comment on the USACE assessment.
- D. In relation to Stipulation II.D(1), in consultation with the USACE and with the SHPO, determine whether avoidance or minimization of the adverse effects on an archaeological

site eligible for listing on the NRHP that will be adversely affected by the Project is practicable.

- E. In relation to Stipulation II.D(1), review and provide concurrence on the treatment plan for archaeological sites that will be impacted by practicably unavoidable adverse effects, as opposed to review and comment on the treatment plan.
- F. The USACE further agrees to the following if impacts to Department of the Navy sunken military craft are unavoidable or have inadvertently occurred in the course of the Project:
 - 1. Any treatment plan developed pursuant to Stipulation II.D(2) for an archaeological property that is also a Department of the Navy sunken military craft will have to take into account the requirements otherwise imposed on permit applicants under 32 CFR § 767.6 (d).
 - 2. In relation to Stipulation II.D(3), the USACE will notify the NHHC once recovery field operations have been completed so that a site visit may be completed. One or more site visits may also be completed by the NHHC during recovery field operations.
 - 3. In relation to Stipulation III.C, the USACE will provide the NHHC with all final reports prepared pursuant to this Agreement pertaining to Department of the Navy sunken military craft – two (2) copies on acid-free paper and one (1) copy in pdf format on an archival compact disc.
 - 4. In relation to Stipulation IV, the USACE will transfer all original archaeological records (research notes, field records, maps, drawings, and photographic records) and all archaeological collections recovered and retained from Department of the Navy sunken military craft to the NHHC at the completion of the Project for curation.
 - 5. The USACE will fund the professional recovery, documentation, conservation, packaging, and transportation of the associated retained archaeological collections, as well as costs for certifying inert any associated ordnance in consultation with appropriate Department of Navy personnel. The NHHC will be afforded a determinative role should the USACE desire not to retain any part of an associated archaeological collection post-recovery and documentation, and agrees to maintain such records and collections in accordance with 36 CFR § 79, *Curation of Federally Owned and Administered Archaeological Collections*.
 - 6. In relation to Stipulation VIII.B, the USACE will address the treatment of any human remains associated with Department of the Navy sunken military craft in consultation with the NHHC.
 - 7. The aforementioned clauses supersede Appendix B with respect to Department of the Navy sunken military craft.

IX. POST-REVIEW DISCOVERIES

- A. Should any activity that takes place as a result of this Agreement result in unanticipated or post-review archaeological discoveries, the USACE shall ensure work in the area is immediately stopped, the area secured, and the SHPO and other consulting parties notified. The USACE shall implement the Post-Review Discovery Plan included as Appendix B of this Agreement. The USACE, in consultation with the SHPO and other consulting parties, shall determine if significant resources are present and, if so, may be adversely affected by the remaining work. If avoidance of the resources is not possible the USACE shall ensure appropriate minimization and/or mitigation measures are implemented in consultation with the SHPO and other consulting parties before activity in the location of the discovery resumes.
- B. Treatment of Human Remains
1. In the event human skeletal remains or burials are encountered during implementation of the Project, the USACE shall coordinate its compliance with Section 106 with other applicable federal, state, and local laws and reviews as appropriate.
 2. Historic and prehistoric human remains from non-federal, non-tribal lands are subject to protection under Virginia's burial/unmarked grave/cemetery law(s) that require a permit from the DHR before remains are removed. As such, if human remains are discovered, the USACE shall ensure work in that portion of the Project area is stopped immediately. The remains shall be covered and/or protected in place in such a way that minimizes further exposure of and damage to the remains and the USACE shall immediately notify the SHPO and other consulting parties. If the remains are found to be Native American, in accordance with applicable law, the USACE shall develop a treatment plan in consultation with the SHPO, other consulting parties, and appropriate federal and state recognized Indian tribes. The USACE shall ensure that any treatment and reburial plan is fully implemented. If the remains are not Native American, the appropriate local authority shall be consulted to determine final disposition of the remains. Avoidance and preservation in place is the preferred option for treating human remains.

X. COMMUNICATIONS

Electronic mail (email) may serve as the official correspondence method for all communications regarding this Agreement and its provisions. See Appendix C for a list of contacts and email addresses. Contact information in Appendix C may be updated as needed without an amendment to this Agreement. It is the responsibility of each party to the Agreement to immediately inform the USACE of any change in name, address, email address, or phone number of any point-of-contact. The USACE shall forward this information to all parties to this Agreement by email.

XI. ELECTRONIC COPIES

Within one (1) week of the last signature on this Agreement, the USACE shall provide the SHPO and other consulting parties with one (1) high-quality, legible, color, electronic copy of this fully-executed Agreement and all of its appendices fully integrated into one, single document. Internet links shall not be used as a means to provide copies of the appendices since web-based information often changes. If the electronic copy is too large to send by e-mail, the USACE shall provide the SHPO and other consulting parties with a copy of this Agreement on a compact disc or other appropriate means.

XII. MONITORING AND REPORTING

Each year on the anniversary of the execution of this Agreement until it expires or is terminated, the USACE shall provide all parties to this Agreement a summary report detailing work undertaken pursuant to its terms. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received in the USACE's efforts to carry out the terms of this Agreement. The reporting period shall be the fiscal year from October 1 to September 30.

XIII. DISPUTE RESOLUTION

Should any party to this Agreement object in writing to the USACE regarding any actions proposed under this Agreement, or the manner in which the terms of this Agreement are implemented, the USACE shall consult with the objecting party to resolve the objection. If the USACE determines that such objection cannot be resolved, the USACE shall:

A. Documentation

Forward all documentation relevant to the dispute, including the USACE's proposed resolution, to the ACHP. The ACHP shall provide the USACE with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the USACE shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories and consulting parties, and provide them with a copy of this written response. The USACE shall then proceed according to its final decision.

B. Resolution

If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, the USACE may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the USACE shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and consulting parties to the Agreement, and provide them and the ACHP with a copy of such a written response.

C. Continuity

The USACE's responsibility to carry out all other actions subject to the terms of this Agreement that are not the subject of the dispute remain unchanged.

XIV. AVAILABILITY OF FEDERAL FUNDS / ANTI-DEFICIENCY ACT

The obligations of the USACE under this Agreement are subject to the availability of appropriated funds, and the stipulations of this Agreement are subject to the provisions of the Anti-Deficiency Act and other applicable provisions of federal fiscal law. The USACE shall make a reasonable and good faith effort to secure the necessary funds to implement its obligations under this Agreement. If compliance with the Anti-Deficiency Act or other applicable provisions of federal fiscal law alters or impairs USACE's ability to implement its obligations under this Agreement, the USACE shall consult in accordance with Stipulation XIII (Amendments) and, if necessary, Stipulation XIV (Termination).

XV. AMENDMENTS

This Agreement may be amended when an amendment is agreed to in writing by both Signatories. The amendment shall be effective on the date a copy signed by both of the Signatories is filed with ACHP.

XVI. TERMINATION

If either Signatory to this Agreement determines that the terms of the Agreement cannot or are not being carried out, that objecting party shall so notify the other Signatory in writing and consult with them to seek amendment of the Agreement. If within sixty (60) days, an amendment cannot be reached, either Signatory may terminate the Agreement upon written notification to the other Signatory. Once the Agreement is terminated, and prior to work continuing on the Project, the USACE must (a) either execute a new programmatic agreement pursuant to 36 CFR 800.14.(b) or (b) comply with 36 CFR 800 for any uncompleted aspects of the Project. The USACE shall notify the SHPO and other consulting parties as to the course of the action it will pursue.

XVII. DURATION

This Agreement shall be in effect for a period of fifteen (15) years from the date of the last signature of a Signatory party on this Agreement. At any time in the six (6)-month period prior to such date, the USACE may request that the Signatories consider an extension of this Agreement. No extension shall be effective unless all Signatories to the Agreement have agreed with the extension in writing.

EXECUTION OF THIS AGREEMENT

Execution of this Agreement and implementation of its terms evidences that USACE has taken into account the effects of the Project on historic properties and afforded ACHP a reasonable opportunity to comment.

Appendix A – Area of Potential Effects

Appendix B – Procedures for Post-Review Discoveries

Appendix C – Contact Information

Signatures Follow on Separate Page

SIGNATORY:

U.S. Army Corps of Engineers




John T. Litz, PMP
Colonel, U.S. Army
Commander and District Engineer

05 DEC 17

Date

SIGNATORY:

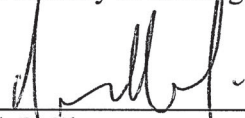
Virginia State Historic Preservation Officer


Julie V. Langan
Director, Department of Historic Resources

12-10-19
Date

CONCURRING PARTY:

Naval History & Heritage Command



Joseph B. Thomas
Assistant Director for Collection Management

10 DEC 2019

Date

CONCURRING PARTY:

Mariners' Museum and Park

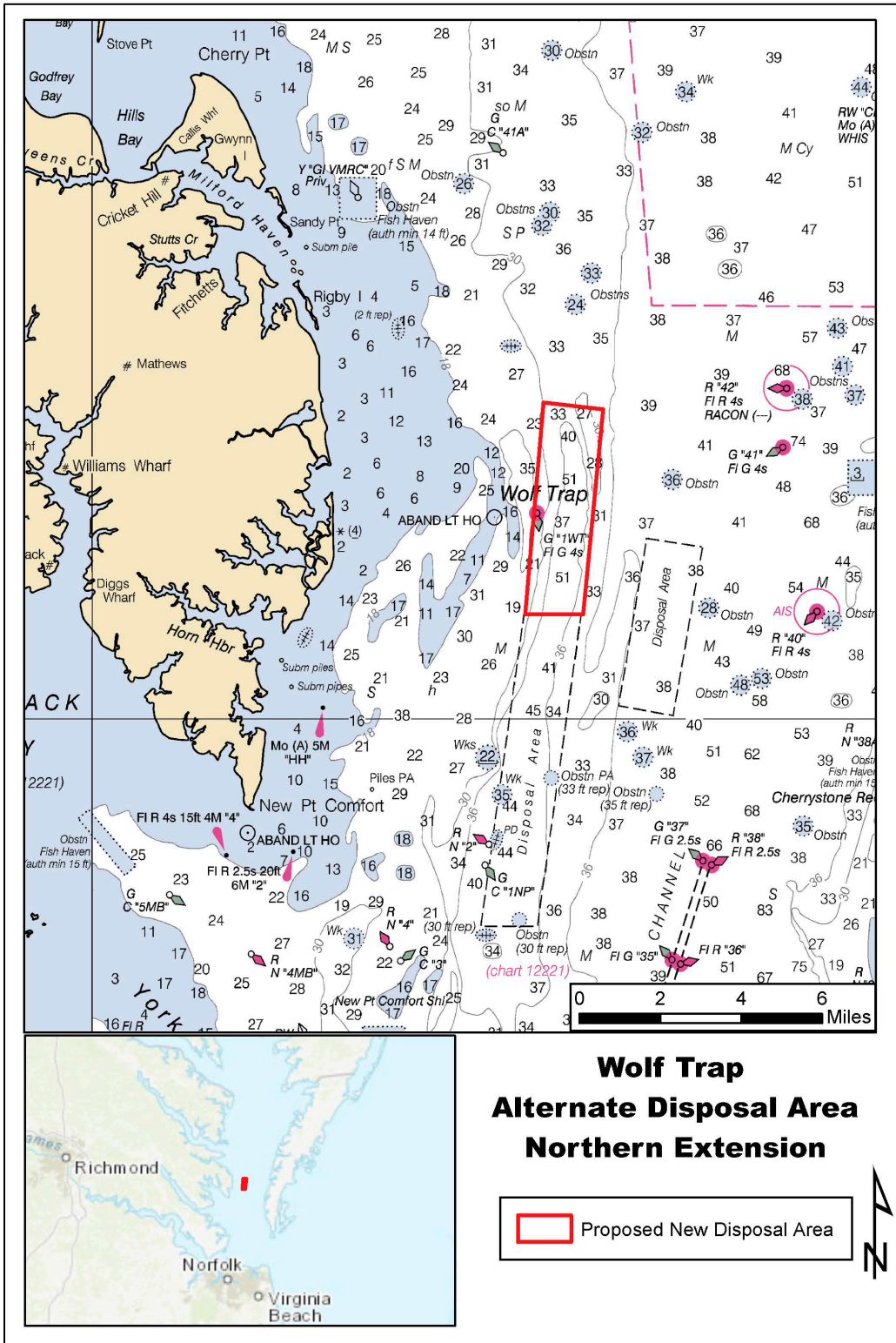


Hannah Fleming
Material Culture Specialist

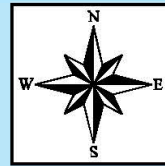
12/11/2019
Date

APPENDIX A

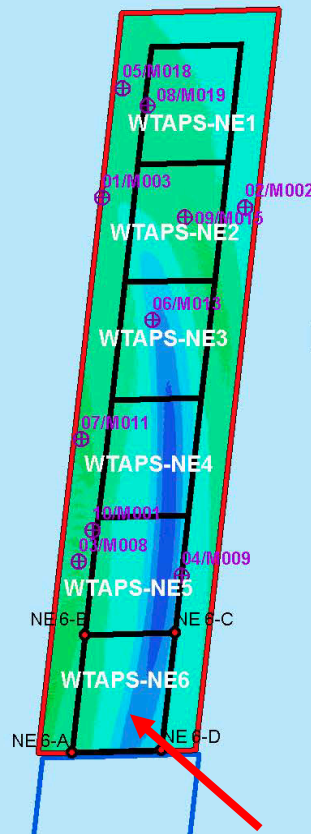
Area of Potential Effects



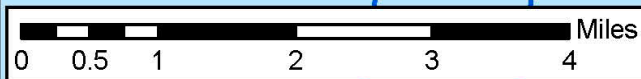
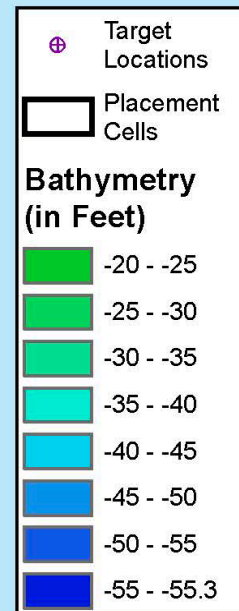
Wolf Trap Alternate Placement Site Northern Extension.



Cell Corner	Latitude	Longitude
NE 6-A	37° 21' 48.48" N	076° 10' 29.10" W
NE 6-B	37° 22' 32.60" N	076° 10' 21.43" W
NE 6-C	37° 22' 32.59" N	076° 09' 38.55" W
NE 6-D	37° 21' 48.48" N	076° 09' 46.24" W



Proposed Wolf Trap Northern Extension



Location of Cell NE-6.

APPENDIX B

Procedures for Post-Review Discoveries

PROCEDURES FOR POST-REVIEW DISCOVERIES

Post-Review Discoveries

If previously unidentified historic properties or unanticipated effects to historic properties are discovered during contract activities, the contractor shall immediately halt all activity within a minimum fifty (50) meter (one hundred sixty-four [164] feet) radius of the discovery, notify the USACE Project Manager and the USACE Archaeologist of the discovery and implement interim measures to protect the discovery from looting and vandalism. Work in all other areas not the subject of discovery may continue without interruption.

Immediately upon receipt of the notification from the contractor (see subparagraph immediately above), the USACE Archaeologist shall:

1. Inspect the site to determine the extent of the discovery and ensure that the Undertaking in that area is halted; and,
2. Clearly mark the area of the discovery; and,
3. Implement additional measures, as appropriate, to protect the discovery from looting and vandalism; and,
4. Determine the extent of the discovery and provide recommendations regarding its National Register of Historic Places (NRHP) eligibility and treatment; and,
5. Notify the USACE Project Manager, the SHPO and other consulting parties of the discovery describing the measures that have been implemented to comply with this Post-Review Discovery procedure.

Upon receipt of the information required in subparagraphs 1 – 5 above, the USACE shall provide the SHPO and other consulting parties with an assessment of the NRHP eligibility of the discovery and the measures proposed to resolve adverse effects. In making the evaluation, the USACE, in consultation with the SHPO, may assume the discovery to be eligible for the NRHP for the purposes of Section 106 pursuant to 36 CFR Part 800.13(c). The SHPO and other consulting parties shall respond to the USACE's assessment within forty-eight (48) hours of receipt.

The USACE shall take into account the SHPO and other consulting parties' recommendations on eligibility and treatment of the discovery and shall provide the SHPO and other consulting parties with a report on the actions when implemented. The Undertaking may proceed in area of the discovery, once the USACE has determined that the actions undertaken to address the discovery pursuant to this Stipulation are complete.

Treatment of Human Remains

The USACE shall make all reasonable efforts to avoid disturbing gravesites, including those containing Native American human remains and associated funerary objects. If human remains and/or associated funerary objects are encountered during the course of the Undertaking, the USACE shall immediately halt the Undertaking in the area and contact the USACE Archaeologist and the appropriate city Police Department.

The USACE shall treat all human remains in a manner consistent with the ACHPS's Policy Statement Regarding Treatment of Burial Sites, Human Remains and Funerary Objects (February 23, 2007; <http://www.achp.gov/docs/hrpolivy0207.pdf>)

The USACE shall make a good faith effort to ensure that the general public is excluded from viewing any Native American burial site or associated funerary objects. The Signatories to this PA agree to release no photographs of any Native American burial site or associated funerary objects to the press or general public. The USACE shall notify the Delaware Nation, the Pamunkey Indian Tribe, and other appropriate federally-recognized Tribe(s) if their interest(s) have been established, when Native American burials, human skeletal remains, or funerary objects are encountered during the Undertaking. Following consultation by the USACE, the SHPO, and identified Tribes with cultural affiliation, the USACE shall ensure that the proper steps are taken regarding the remains. This could include the delivery of any Native American human skeletal remains and associated funerary objects recovered pursuant to this PA to the appropriate Tribe.

If the remains are determined to be historic and not Native American, USACE shall consult with the SHPO and other appropriate consulting parties prior to any excavation by providing a treatment plan including the following information:

- The name of the property or archaeological site and specific location from which the recovery is proposed. If the recovery is from a known archaeological site, a state-issued site number must be included.
- Indication of whether a waiver of public notice is requested and why. If a waiver is not requested, a copy of the public notice to be published in a newspaper having general circulation in the Mathews County area for a minimum of four weeks prior to recovery.
- A copy of the curriculum vitae of the skeletal biologist who will perform the analysis of the remains.
- A statement that the treatment of human skeletal remains and associated artifacts will be respectful.
- An expected timetable for excavation, osteological analysis, preparation of a final report, and final disposition of remains.
- A statement of the goals and objectives of the removal of human remains (to include both excavation and osteological analysis).
- If a disposition other than reburial is proposed, a statement of justification for that decision.

The USACE Archaeologist shall submit the draft treatment plan to the SHPO and appropriate consulting parties for review and comment. All comments received within thirty (30) calendar days shall be addressed in the final treatment plan. Upon receipt of final approval in writing from the USACE Archaeologist, the treatment plan shall be implemented prior to those Undertaking activities that could affect the burial(s).

The USACE Archaeologist shall notify the USACE Project Manager and the SHPO in writing once the fieldwork portion of the removal of human remains is complete. The Undertaking in the area may proceed following this notification while the technical report is in preparation. The USACE Archaeologist may approve the implementation of Undertaking-related ground disturbing activities in the area of the discovery while the technical report is in preparation.

The USACE Archaeologist shall ensure that a draft report of the results of the recovery is prepared within one (1) year of the notification that archaeological fieldwork has been completed and submitted to the SHPO and other appropriate consulting parties for review and comment. All comments received within thirty (30) calendar days of receipt shall be addressed in the final report. When the final report has been approved by the USACE Archaeologist, two (2) copies of the document, bound and on acid-free paper and one (1) electronic copy in Adobe (R) Portable Document Format (.pdf) shall be provided to the SHPO.

The USACE Archaeologist shall notify the USACE Project Manager and the SHPO within fifteen (15) calendar days of final disposition of the human remains.

APPENDIX C
Contact Information

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