

DISCLAIMER

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MEMORANDUM OF AGREEMENT

The Department of Environmental Quality (“Department”), on behalf of the State Water Control Board (“Board”), and the State Corporation Commission (“Commission”) enter into this memorandum of agreement (“Agreement”), pursuant to § 62.1-44.155 D 2 of the Code of Virginia (“Code”), regarding consultation on wetland impacts (“Wetland Impacts Consultation”).

- 1 Section 62.1-44.155 D 2 of the Code requires the Board and the Commission to “develop a memorandum of agreement pursuant to §§ 56-46.1, 56-265.2, 56-265.2:1 and 56-580 [of the Code] to ensure that consultation on wetland impacts occurs prior to siting determinations” by the Commission for “[f]acilities and activities of utilities and public service companies.”
- 2 When the Commission receives an application for certification of facilities under §§ 56-46.1, 56-265.2, 56-265.2:1 or 56-580 of the Code, the Department will consult with appropriate governmental agencies, prepare a Wetland Impacts Consultation including a summary of findings and any recommendations for the Commission’s consideration that resulted from the Department’s consultation, and provide the Wetland Impacts Consultation to the Commission pursuant to this Agreement. Although not required, the applicant may initiate consultation with the Department prior to filing an application with the Commission.
- 3 The Commission’s Staff will notify the Department in writing within five (5) business days of receiving an application for certification of facilities pursuant to §§ 56-46.1, 56-265.2, 56-265.2:1 or 56-580 of the Code. No later than ten (10) business days after receipt of the wetland impact analysis information contained in the application, the Department will advise the Commission’s Staff and the applicant in writing as to:
 - A. the completeness of the information received necessary to conclude the Wetland Impacts Consultation (the Appendix to this Agreement provides guidance on the information the Department has determined it may need in order to conclude the Wetlands Impacts Consultation); and
 - B. the estimated length of time required to conclude the Wetland Impacts Consultation.

If the Department determines the wetland impacts analysis information contained in an application is incomplete, within ten (10) business days of notifying the applicant the Department will notify the Commission’s Staff in writing and include a listing of the information needed to initiate the Wetland Impacts Consultation. The Department and the Commission’s Staff may confer from time to time on these matters.

- 4 In accordance with the above:
 - A. No later than sixty (60) calendar days after receipt of the complete wetland impacts analysis information contained in the application, the Department will submit to the Commission’s Staff in writing:
 - (i) a notification that the Wetland Impacts Consultation has been completed; or
 - (ii) a notification that the Wetland Impacts Consultation has been suspended due to matters discovered during the review. The notification will include a description of the information needed to resume the review.

B. Enclosed in the written notification described in 4.A.(i), above, for all completed Wetland Impacts Consultations the Department will submit a written report to the Commission which includes:

(i) the Wetland Impacts Consultation, a summary of findings, and any recommendations for the Commission's consideration which resulted from the review; and

(ii) a list of any Virginia Water Protection permits and approvals required for the proposed facility, in accordance with § 62.1-44.155 of the Code, which were identified during the Wetland Impacts Consultation.

- 5 Consistent with § 62.1-44.155 of the Code, the Department and the Board may request assistance from agencies of the Commonwealth, including the Department of Game and Inland Fisheries, the Department of Conservation and Recreation, the Virginia Marine Resources Commission, the Department of Health, the Department of Historic Resources, and any other interested and affected parties, as well as federal agencies including the Norfolk District Corps of Engineers and the U.S. Fish and Wildlife Service, as needed to complete the Wetland Impacts Consultation.
- 6 If requested by the Commission's Staff, one or more members of the Department's Staff will appear as a witness at the Commission's evidentiary hearing to testify regarding the activities of the Department with respect to the Wetland Impacts Consultation.
- 7 If requested by the Commission's Staff, the Department will endeavor to provide, or seek to coordinate from other governmental entities, expert assistance to the Commission's Staff on issues regarding the Wetland Impacts Consultation.

Robert G. Burnley

Robert G. Burnley, Director
Department of Environmental Quality

07/15/2003

Hullihen Williams Moore

Hullihen Williams Moore, Chairman
State Corporation Commission

07/11/2003

Clinton Miller

Clinton Miller, Commissioner
State Corporation Commission

07/11/2003

Theodore V. Morrison, Jr.

Theodore V. Morrison, Jr., Commissioner
State Corporation Commission

07/11/2003

APPENDIX
GUIDANCE DOCUMENT

The following provides guidance on the information that will need to be submitted to the Department of Environmental Quality (“DEQ) in order for the DEQ to conclude the Wetland Impacts Consultation.

For all alternatives under consideration by the applicant: A desktop survey of actual and potential impacts to wetlands and streams must be conducted for all proposed routes and facility locations. Reference materials to be consulted include aerial photographs (infrared if available), U.S.G.S. topographic maps, USFWS National Wetland Inventory Maps, NRCS Soil Surveys, and any other pertinent available information. For each alternative, the type and extent of wetland and stream impacts, both permanent and temporary, should be summarized in the text of the report, and shown on maps. Based on the information provided, the applicant may be asked to field verify certain areas for one or more alternatives only if appropriate and feasible. A summary of why the proponent selected the preferred alternative and why the other alternatives were dismissed should be included.

Additional information for the preferred alternative only: In addition to the above information, documentation from the Department of Game and Inland Fisheries and the Department of Conservation and Recreation Natural Heritage Program concerning potential impacts to federal or state listed threatened or endangered species must be submitted, to include any recommendations for surveys that should be conducted. Documentation from the Department of Historic Resources concerning any historic properties that could be impacted must be submitted, to include any recommendations for surveys that should be conducted. Documentation from either the affected locality(ies) or directly from the Chesapeake Bay Local Assistance Department regarding any potential impacts to Chesapeake Bay Resource Protection Areas or Resource Management Areas, must be submitted only if the Chesapeake Bay ordinances of the affected locality(ies) are applicable to the project under consideration. Based on the information provided, DEQ may consult with and consider the comments of the Norfolk District Corps of Engineers and the U.S. Fish and Wildlife Service.

DEQ, in consultation with other federal and state resource agencies as appropriate, will provide recommendations to the proponent as to any additional avoidance and minimization measures that should be explored and their preliminary comments on the proponent’s preferred alternative.

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