

# ENVIRONMENTAL REVIEW RECORD

FINAL 7.24.23

GRANT NUMBER: **DHCD CONTRACT # 22-PW-01A**

PROJECT NAME:  
**Dick & Willie Passage Trail 6A Completion**

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REVIEW RECORD

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PROJECT DESCRIPTION:

The proposed project is a mile-long segment of the final 2.96-mile gap in the Dick & Willie Passage Trail segment. Phase 6A entails 10,742' of new Dick & Willie Passage Trail segment and 1,461' sidewalk connection. This new trail section will extend from Dick & Willie Passage Trail Phase 5 (to the north) to the Spruce Street trailhead (to the south).

The ARC funding is for the last mile of the 2.96-mile gap, now called Phase 6A-2. A portion of Phase 6A (called Phase 6A-1) will be completed this coming year using VDOT and local funds. But significant inflationary measures have resulted in a funding deficit to complete the last mile.

To help minimize impacts and maintenance issues, the alignment for Phase 6A, determined during the evaluation of various options in a 2015 Preliminary Engineering Report, will be located primarily within an existing cleared sanitary sewer line easement along the east side of Mulberry Creek. Due to its location within the Mulberry Creek floodplain, some culvert/piping (and culvert outlet riprap apron) impacts to tributaries and small adjacent wetland areas will be unavoidable. One aerial bridge crossing of Mulberry Creek is also planned near the southern / downstream terminus of this trail segment. The adjacent first-order tributary streams all have drainage areas less than 0.1 square mile each, and third-order Mulberry Creek has an approximate watershed area of 2.6 square miles.

Phase 6A-2 picks up at the southern terminus of Phase 6A-1, crossing over Mulberry Creek with a 12-foot wide single span bridge, and connecting to the existing sidewalk along the west side of Spruce Street with the incorporation of a new crosswalk. The existing sidewalk extends in a southerly direction to Hunting Ridge Road (approximately 0.63 miles), and will include minor upgrades to private entrances and curb ramps for ADA accessibility. From Hunting Ridge Road, approximately 0.28 miles of new sidewalk is proposed to connect to the existing Phase 6B trailhead on the west side of Spruce Street near Mulberry Creek.

Phase 6A-2 is the mile-long section to be funded by ARC POWER and NPS LWCF funds. The entire Phase 6A is being put into permanent conservancy according to LWCF regulations. This status assists with some of the ARC-funded requirements.

The existing sanitary sewer line was installed in approximately 2007. The sewer line easement is approximately 50-100' wide, is regularly maintained/mowed, and is offset 20-50'

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east of Mulberry Creek. The 1,442' portion of the new trail corridor between the new Mulberry Creek trail bridge and Spruce Street is mature hardwood forest. Spruce Street itself is an existing roadway.

This project has undergone extensive environmental review, agency engagement, and has passed all reviews with a Categorical Exclusion (CE) designation received by VDOT in accordance with 23 CFR 771.117, Category c03, last revised in 10/16/2017.

As designated by VDOT, the project meets criteria for a Programmatic Categorical Exclusion in accordance with 23 CFR 771.117. VDOT Salem District Environmental Staff completed the review.

All required federal, state, and local permits/approvals have been secured except for the local land disturbance permit that the contractor will have to obtain.

Request for a Non-Tidal Joint Permit Application was submitted to the Corps of Engineers on 4/1/2022. An approval of this application (related to wetlands and floodplains) was received on 4/20/2022. This approval included Specific Conditions to be met during project construction.

In addition, due to funding from the Land and Water Conservation Fund secured in 2022, this project was approved by the National Park Service. As a federally funded program all Land and Water Conservation Fund grants are considered federal actions. Therefore, applicants must be able to demonstrate compliance with the National Environmental Policy Act; Section 106 of the Historic Preservation Act; Section 7 of the Endangered Species Act; and Executive Orders 11988 and 11990 (Floodplain Management and Wetland Protection,) and where applicable, consistency with the Coastal Zone Management Act. All compliance activity including a 30-day public comment period, conducted in June-July 2022, were completed. The project was approved for funding by NPS on 9/21/22 and a contract with NPS was finalized on 1/30/23.

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# PART 1

## **Statutory Checklist for Compliance with 24 CFR §58.5 – NEPA Related Federal Laws and Authorities**

(Must be completed for each individual addressed included under overall project description)

Use this worksheet for projects that are Categorically Excluded Subject to 24 CFR §58.5 listed at 24 CFR §58.35(a) and for projects that require an Environmental Assessment.

Project Name: **Dick & Willie Passage Trail 6A Completion**

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**Definitions:**

<b>A:</b>	The project is in compliance.
<b>B:</b>	The project requires an additional compliance step or action.

Statute, Authority, Executive Order Cited at 24 CFR §58.5	A	B	COMPLIANCE FINDING	SOURCE DOCUMENTATION
1. 58.5(a) Historic Properties [36 CFR 800]	X		<p>No impacts on properties protected by Section 4(f) or Section 106 per Salem District Environmental Staff review.</p> <p>The Virginia DCR conducted tribal consultation on behalf of the project due to requirement associated with LWCF match funding.</p> <p>Further analysis was sought and provided by DHR due to request from tribal body:</p> <p>“No previously recorded archaeological sites are located within the project area of potential effect (APE). Shovel testing was negative for archaeological material. Additionally, no architectural resources were determined to be within the APE of this project. Based on this information, DHR concludes that no historic properties will be affected by this project.”</p> <p>Final clearance provided by VDHR on 12/22/22.</p>	<p>Per the attached PCE, this project will have “no effect” on historic properties pursuant to Section 106 per the Cultural Resources Summary Report, dated 02/04/2020.</p> <p>Additional review and clearance provided by VDHR on 12/22/22.</p> <p>See APPENDIX 1</p>
2. 58.5(b)(1) Floodplain Management [24 CFR 55, Executive Order 11988]		<p>X</p> <p>Agency letters issued</p>	<p>The Federal Emergency Management Agency (FEMA) online Flood Insurance Rate Map (FIRM) FIRMette mapping system indicates the presence of a mapped 80-100’ wide Flood</p>	<p>Joint Permit Application, 9/24/20, revised 4/1/22.</p> <p>Joint Permit Application approval, 4/20/2022.</p>

		<p>8/4/23</p> <p>Early Floodplain Notice published</p> <p>8/5/23</p> <p>Final Comment Period Complete</p> <p>9/5/23</p>	<p>Hazard Area Zone A (100-year floodplain) along Mulberry Creek (per FEMA FIRMette Map Panel 51089C0162C, dated 9/26/2008).</p> <p>Complete study conducted by Hurt &amp; Proffitt and submitted as part of Joint Permit Application in 9/24/20.</p> <p>Revised application submitted in 4/1/22.</p> <p>Joint Permit application approval contingent upon special conditions cited within 4/20/22 correspondence from US Army COE.</p> <p>This project was further subject to review of Executive Orders 11988 and 11990 by virtue of matching funding received by the National Park Service thru the Virginia Department of Conservation and Recreation. DCR completed the required agency correspondence and received NPS approval necessary to meet E.O. 11988 for floodplain impact.</p> <p>NPS/DCR review required public notification period, completed June 11, 2022 through July 11, 2022 in accordance with these requirements.</p>	<p>See APPENDIX 2 for all associated documentation.</p>
3. 58.5(b)(2) Wetland Protection [24 CFR 55, Executive Order 11990]	X		<p>Per Non-Tidal Joint Permit Application (revised 4/1/22)</p> <p>Total proposed stream and wetland impacts for Phase 6A-1 will require some action, but there are NO wetlands in Phase 6A-2, which is the section to be funded by ARC.</p> <p>LWCF award in 9/21/22 confirms compliance with all NEPA and E.O. 11988 requirements.</p>	<p>Clarification on limits of wetlands in 7/19/23 email from Hurt &amp; Proffitt and NEPAAssist map.</p> <p>See APPENDIX 3.</p>
4. 58.5(c) Coastal Zone Management [Coastal Zone	X		<p>No land in Henry County is within an area covered by a</p>	<p>Virginia Costal Zone Management Program map along</p>

Management Act sections 307(c) & (d)]			federally approved CZM Program. Project area is located in Henry County.	with list of CZM counties. (List does NOT include Henry.)  See APPENDIX 4 for map.
5. 58.5(d) Sole Source Aquifers [40 CFR 149]	X		The project area is not located within a sole source aquifer (SSA). The nearest SSA is 193 miles away in Winchester, VA.	NEPAssist map is attached.  See APPENDIX 5.
6. 58.5(e) Endangered Species [50 CFR 402]		X	<p>This project was determined to have “no effect” on federally listed species and critical habitat with the exception of the Northern Long-eared Bat per the Threatened and Endangered Clearance Form, dated 10/29/20. It was determined that the project “may effect” the Northern Long-eared Bat; however, the project is relying upon the findings of the Programmatic Biological Opinion on Findal 4(d) Rule for the Northern Long-eared Bat and Activities Exempted from Take Prohibitions, dated 01/05/2016, to fulfill the project-specific Section 7 responsibilities.</p> <p>“To help minimize the potential for impacting these species, no tree clearing is proposed during the typical April 15-September 15 bat-time-of-year restriction (TOYR) period which also includes avian breeding season.” From the JPA letter.</p>	<p>CPE from VDOT, no effect and may effect, 12/15/20, Joint Permit Application, 9/24/20, revised 4/1/22</p> <p>See APPENDIX 6 – 4/01/22 from U.S. Department of Interior.</p>
7. 58.5(f) Wild and Scenic Rivers [36 CFR 297]	X		The project area is not located within one mile of a designated Wild and Scenic River, a Study River, or any rivers on the National River Inventory (NRI). There are no designated Wild and Scenic Rivers in Virginia.	The Wild and Scenic River database indicated no designated rivers in Virginia. Map is attached. See APPENDIX 7.
8. 58.5(g) Air Quality [40 CFR parts 6, 51,61, 93]	X		The project area is not located within a nonattainment area.	<p>NEPAssist maps were created and assessed using the EPA Green Book.</p> <p>See APPENDIX 8.</p>
9. 58.5(h) Farmland Protection [7 CFR 658]	X		<p>The project area is zoned for Local Government use with a pending conservation easement on the site.</p> <p>Project activities will have no impact on previously undisturbed farmland.</p>	Henry County Zoning map showing project location and relevant zoning is provided in APPENDIX 9.

10. 58.5(i)(1) Noise Control and Abatement [24 CFR 51B]	X		The project does not involve a noise sensitive use. The project is a trail.	Since project does not involve a noise sensitive use. No attachment no attachment required per 24 CFR Pt 58 guidelines.
11. 58.5 (i) (1) Explosive and Flammable Operations [24 CFR 51C]	X		No above ground storage tanks are within sight distance.  There are no hazardous facilities located within the project area which could pose site contamination issues.	A NEPAAssist map is attached which shows the EPA facilities within approximately 1 mile.  See APPENDIX 11
12. 58.5(i)(1) Airport Hazards (Runway Clear Zones and Clear Zones/Accident Potential Zones) [24 CFR 51D]	X		The project area is not located within 5,000 feet of a civilian airport or within 15,000 feet of a military airport.	The nearest airport is the Blue Ridge Airport (12 miles away from the project site).  See APPENDIX 12 Map
13. 58.5(i)(2)(i-iv) Contamination and Toxic Substances [24 CFR 58.5(i)(2)]	X		The project area is not located within one mile any active emitters of environmental contamination sources.  There are eight residential USTs within a mile of the project site. But there are no state and tribal registered tanks.	See NEPAAssist Map APPENDIX 13 and Environmental Regulation Register.
14. 58.5(j) Environmental Justice [Executive Order 12898]	X		The project area does not currently have nor will the project create adverse health or environmental impacts. In fact, the project could mitigate existing poor health factors that are well-documented throughout Henry County by expanding the availability of a free trail for use by all.	See APPENDIX 14 showing location of map relative to low-income census tracts, affording new recreational opportunities for these areas.



**DETERMINATION:**

☐ **Box "A" has been checked for all authorities.** For Categorically Excluded actions pursuant to §58.35(a) [Does not apply to EA or EIS level of review which can never convert to Exempt], the project can convert to Exempt, per §58.34(a) (12), since the project does not require any compliance measures (e.g., consultation, mitigation, permit or approval) with respect to any law or authority cited at §58.5. The project is now made Exempt and **a contract may be issued by DHCD; OR**

☒ **Box "B" has been checked for one or more authority.** For Categorically Excluded actions pursuant to §58.35(a), the project cannot convert to Exempt since one or more authority requires compliance, including but not limited to consultation with or approval from an oversight agency, performance of a study or analysis, completion of remediation or mitigation measure, or obtaining of license or permit. **Complete pertinent compliance requirement(s), publish NOI/RROF, request release of funds (HUD-7105.15), and wait for DHCD to issue a formal contract before committing funds; OR**

☐ This project is not a Categorically Excluded action pursuant to §58.35(a), or may result in a significant environmental impact to the environment, and requires preparation of an Environmental Assessment (EA). Prepare the EA according to 24 CFR Part 58 Subpart E.

**MITIGATION MEASURES AND CONDITIONS FOR PROJECT APPROVAL:** (If Box B is checked, provide details regarding further consultation, mitigation, permit requirements or approvals required to be incorporated into public notices and project requirements such as contracts, grants, loan conditions, etc. as described in the Statutory Worksheet). Ensure required measures are included in 7015.15 Project Description Section.

PREPARER: Catherine Van Noy, Mill Creek Creative (in consultation with Tim Pace, P.E., Director of Engineering)



8.25.23

Preparer's Signature

Date

Catherine Van Noy  
Preparer's Name (printed)

Owner, Partnership Specialist  
Title (printed)

**AUTHORIZED RESPONSIBLE ENTITY OFFICIAL:**



8.25.23

Authorized Responsible Entity Signature

Date

Dale Wagoner  
Authorized Responsible Entity Name (printed)

County Administrator  
Title (printed)

## **ADDITIONAL STUDIES PERFORMED**

During approval process of the LWCF funds (match to the ARC grant), the program officers from VA DCR provided comprehensive analysis to ensure compliance the National Environmental Policy Act; Section 106 of the Historic Preservation Act; Section 7 of the Endangered Species Act; and Executive Orders 11988 and 11990 (Floodplain Management and Wetland Protection,) and where applicable, consistency with the Coastal Zone Management Act. This included request for an additional cultural resource analysis during the tribal national engagement.

Even though the CPE had a determination of no potential cultural resource impact, the Virginia Department of Natural Resources recommended we complete an archaeological survey since preliminary consultation with the Delaware Nation included a request for more information.

Henry County worked with a DHR-approved consultant to complete an archaeological survey in September 2022. Per the report: “As no historic properties are present, no further archaeological work is recommended. The project should be allowed to move forward without further encumbrance from the Section 106 process.”

A 12/22/2022 letter from the Virginia Department of Historic Resources reports that a review of the 9/20/2022 report concludes “that no historic properties will be affected by this project.”

Concurrence with this finding was requested from the Delaware Nation in a 2/9/2023 letter from DCR. An email sent from Katelyn Lewis, Delaware Nation Tribal Historic Preservation Officer, on 2/10/2023 indicated concurrence and had no further concerns on the matter.

All compliance activity including a 30-day public comment period, conducted in June-July 2022, was completed. The project was approved for funding by NPS on 9/21/22 and a contract with NPS was finalized on 1/30/23.

## **MITIGATION MEASURES NEEDED**

Mitigation measures to avoid impact to the floodplain were noted during the Joint Permit Application process. These measures were recognized and included in the original Preliminary Engineering Report (2015). Final construction documents will contain detailed Erosion & Sedimentation Control instructions.

As noted in the JRA relative to the possible presence of the Long-eared Bat identified on the U.S. Fish and Wildlife Service (USFWS) ECOS-IPaC online system, the Virginia Department of Wildlife Resources (VDWR) VAFWIS online system, and the Virginia Department of Conservation and Recreation (VDCR) Natural Heritage Database Explorer (NHDE) online system. These databases indicated the potential presence of the following species in the surrounding area:

Three aquatic species (two fish, and one mussel) and five terrestrial species (three bats, and two birds) were noted by the VAFWIS database. USFWS records included only northern long-eared bat. VDCR records did not include any listed Threatened or Endangered species. The proposed

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project should avoid significant impacts to forested terrestrial habitat, and should have only limited impacts to small first-order stream aquatic habitat. The affected stream channels are generally small (less than three feet width, and generally less than four inches deep), and are unlikely to provide suitable habitat for the noted aquatic species. The existing sewer line corridor is actively mowed/maintained. While this is limiting the extent of forest canopy somewhat, the mowed corridor does help maintain an ecotone area between adjacent upland habitats (which can benefit many species). To help minimize the potential for impacting these species, no tree clearing is proposed during the typical April 15-September 15 bat time-of-year restriction (TOYR) period (which also includes typical avian breeding seasons).

## **SUMMARY OF FINDINGS AND CONCLUSIONS**

In order to address the impacts to the floodplain and wetlands, the nationwide permit verification is contingent upon the following project specific conditions. From the 4/20/22 JPA reverification letter:

### **SPECIAL CONDITIONS:**

1. You must provide proof of purchase of 0.05 acres of wetland mitigation credits from an approved wetland mitigation bank servicing the area of impact before any impacts to regulated aquatic resources occurs. (NOT part of Phase 6A-2 but noted here since it is the first of 2 Special conditions on the JPA reverification letter.)

2. All temporary stream impacts must be restored to preconstruction conditions upon completion of the work.

Provided the project specific conditions (above), Regional Conditions, and the Nationwide Permit General Conditions (enclosed) are met, an individual Department of the Army Permit will not be required. To assist in your compliance with NWP General Condition #30, enclosed is a "compliance certification" form, which must be signed and returned within 30 days of completion of the project, including any required compensatory mitigation.

To help minimize the potential for impacting these species, no tree clearing is proposed during the typical April 15-November 15 bat time-of-year restriction (TOYR) period (which also includes typical avian breeding seasons).

No adverse impact is anticipated for this project.

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