Appendix F

Cyrus Brame/USFWS

Sunrise on the James River

Federal Consistency Determination

FEDERAL CONSISTENCY DETERMINATION

Draft Comprehensive Conservation Plan and Environmental Assessment

for

James River National Wildlife Refuge
Prince George County, Virginia

U.S. Fish and Wildlife Service
Department of the Interior

This Federal consistency determination (FCD) provides the Commonwealth of Virginia with the U.S. Fish and Wildlife Service's (the Service, we, our) Consistency Determination under the Coastal Zone Management Act Section 307(c)(1) and Title 15 Code of Federal Regulations (CFR) Part 930, Subpart C, for implementing the draft Comprehensive Conservation Plan and Environmental Assessment (draft CCP and EA) for James River National Wildlife Refuge (NWR), located in Prince George County, Virginia. This CCP would guide management of James River NWR over the next 15 years. The information in this Consistency Determination is provided pursuant to 15 CFR §930.39. The Service seeks concurrence from the Virginia Coastal Management Program (VCP) that alternative B (the Service-preferred alternative) as detailed in the draft CCP and EA is consistent, to the maximum extent practicable, with the enforceable policies of the VCP.

To streamline the administrative requirements of the CCP development process and environmental review, the Service prepared a combined document that evaluates the potential environmental impacts from implementing a CCP. The draft CCP and EA were prepared in accordance with the National Environmental Policy Act of 1969 (NEPA), as amended (42 USC §§ 4321-4347); the Council on Environmental Quality regulations for implementing NEPA (40 CFR §§ 1500-1508); and the Department of the Interior (516 DM 8) and Service (550 FW 3) policies. The draft CCP and EA also complies with Section 106 of the National Historic Preservation Act of 1966, as amended. Refer to section 1.3 of the draft CCP and EA for additional information regarding regulatory compliance.

Background

James River NWR is located in Prince George County, Virginia and is approximately 24 miles southeast of Richmond. The regional context of the project area is defined by the interactions of the nearby metropolitan area, the James River watershed, and the Chesapeake Bay Estuary (maps 1.1 through 1.3 in the draft CCP and EA). The refuge encompasses 4,324 acres of pine-dominated, moist hardwood, and floodplain forests; freshwater marsh and shrub swamp; aquatic habitats; erosional bluff habitats; and non-forested upland. The refuge is bounded to the north by the James River, to the west by Powell Creek, to the southeast by Flowerdew Hundred Creek, and to the south by Route 10.

Project Description

As detailed in chapter 3 of the draft CCP and EA, alternative B (the Service-preferred alternative) emphasizes the management of specific refuge habitats to support priority refuge species whose habitat needs benefit other species of conservation concern that are found around the refuge and in the larger landscape of the lower James River, such as the brown-headed nuthatch and wood thrush. The process we used to select priority refuge species whose habitat needs benefit other species of conservation concern is detailed in appendix A of the draft CCP and EA.

Under alternative B (the Service-preferred alternative), we would:

- Convert up to 2,651 of the refuge's pine-dominated forest habitat to mature pine savanna with open midstory and understory to increase resident brown-headed nuthatch populations and breeding populations of Chuck-will's-widow.

- Maintain 755 acres of moist hardwood forest to ensure its integrity is maintained or increased, as well as to protect year-round habitat for eastern box turtle and nesting habitat for breeding red-shouldered hawks and wood thrushes.

- Maintain 633 acres of floodplain forest to promote forest health and to protect nesting and roosting bald eagles, breeding prothonotary warblers, and resident spotted salamander populations.

- Support efforts of partners to improve 17 acres of aquatic habitat to benefit native species (e.g., Atlantic sturgeon, alewife, blueback herring) and protect this habitat from being degraded.

- Maintain and promote native vegetation on 3 miles of shoreline to help stabilize bluffs, reduce erosion, and benefit breeding bank swallows.

- Maintain and promote native species in 82 acres of freshwater marsh and shrub swamp and investigate the hydrology of this habitat to protect resident marsh wren populations and breeding least bitterns.

- Maintain 15 acres of non-forested upland managed for administrative purposes.

- Use more precise information about archaeological sites to protect known archaeological sites and better inform refuge management decisions.

- Provide high quality recreational hunting opportunities and complete all the administrative requirements to expand the existing deer hunt, add new hunts, and promote youth hunt involvement.

- Provide infrastructure within a designated area to support opportunities for visitors to participate in wildlife observation, photography, environmental education, and interpretation to improve the quality of visitor experiences.

- Open the refuge to year-round fishing at up to two designated locations to accommodate up to 1,460 anglers annually.

Enhance existing partnerships and develop new partnerships with Federal, State, and local government agencies, non-government organizations, academic institutions, conservation organizations, and volunteers to fulfill mutual natural resource conservation mandates and help meet wildlife, habitat, and visitor services objectives.

We identified that coordination and consultation with various State agency offices responsible for enforcing the policies of the VCP is an important action to be implemented by the refuge as it implements the CCP. The following list identifies strategies that would subject to the VCP enforceable policies:

- Protect and maintain the characteristics on refuge lands that contributed to the area's special designation as Summer and Winter Bald Eagle Concentration Areas, the Lower James River Important Bird Area, Anadromous Fish Use Area, as well as its contribution to other special area designations.

- Continue working toward stabilization and restoration of the refuge's shoreline in partnership with others for the benefit of natural and cultural resources, as well as by designating two small areas along Powell Creek for recreational fishing (see appendix B).

- Participate in partnerships with communities and partners in the Chesapeake Bay watershed to implement the Strategy for Protecting and Restoring the Chesapeake Bay Watershed (Executive Order 13508) at the refuge, with an emphasis on land conservation and public access, and citizen stewardship.

- Implement the established partnership with the National Park Service, fulfilling the MOU in regards to the promotion of the Captain John Smith Chesapeake National Historic Trail and Chesapeake Bay Gateways and Watertrails Network, at the refuge by enhancing place-based interpretation, providing public access, and fostering conservation and restoration of natural and cultural resources related to the Chesapeake Bay through programming, outreach, and citizen involvement.

- Restore native vegetation, with priority action given to the most degraded sites.

- Reduce the carbon footprint of facilities, vehicles, workforce, and operations by using energy efficient equipment, where feasible, and maintaining and constructing facilities using sustainable green building technologies (see appendix C of the draft CCP and EA).

The draft CCP and EA was developed with sufficient detail to account for the greatest potential impacts that could result from the proposed actions identified under both alternatives. However, additional NEPA analysis will be necessary for certain types of actions, even once we adopt a final CCP. Where decisions have not been made in the draft CCP and EA, but must be made later, we analyze the impacts of the possible range of alternatives in this document. During the planning process for those plans and actions, we will consult with the Virginia Department of Environmental Quality (VDEQ) to determine if additional FCDs are needed.

Examples of proposed actions that may require further analysis include:

- Developing a Land Protection Plan with appropriate NEPA documentation to meet habitat needs for trust species and to contribute to the network of conservation lands and wildlife resources in the regional landscape by expanding the refuge's acquisition boundary.

- Improving or removing existing facilities and construction of new facilities.

- Expanding the existing hunt program and adding new hunting opportunities for adults and youth.

- Removing nuisance wildlife through public hunting or trapping permits, if deemed necessary.

Effect on Resources

Implementation of the preferred alternative would impact the natural and human environments, varying in duration, context, type, and intensity. Chapter 4 and the summary table comparison of consequences (table 4.3) of the draft CCP and EA details impacts in the local, regional, and national contexts, over the short- and long-term, and identifies the intensity of beneficial and adverse impacts that would directly, indirectly, and cumulatively result from implementation of alternative B.

In summary, implementation of alternative B would affect the land or water uses or natural resources of Virginia in the following manner:

Air Quality—Moderate, indirect, long-term benefits of air filtering and carbon sequestration would result from managing more than 4,000 acres of forested habitats to improve the health and vigor of trees. Negligible, direct, short-term impacts would result from more frequent use of fuel-burning engines of forest management equipment. None of our actions would violate EPA standards, and all actions would be undertaken to ensure compliance with the Clean Air Act.

To reduce potential adverse impacts on local air quality, we would follow guidance provided State agencies regarding refuge activities that have the potential to adversely impact air quality in the vicinity, including the minimization of vehicle idling, use of precautionary measures to restrict emissions of volatile organic compounds and oxides of nitrogen, and minimization of fugitive dust.

Water Resources—Long-term, minor to moderate, direct and indirect beneficial impacts on water resources in the refuge vicinity would result from the continued protection of soils, wetlands, and waterways within the refuge boundary. Our increased efforts to inventory and monitor aquatic resources would inform specific refuge management decisions that have the potential to impact water resources in the refuge vicinity. Land-disturbing activities on the refuge, such as forest management and dike enhancement, have the potential to result in negligible to moderate, direct, short-term and indirect, long-term adverse impacts on local water quality.

To reduce potential adverse impacts on local hydrology and water quality, we would employ best management practices when conducting land-disturbing activities. As needed, we would consult with State offices regarding permitting applicability and requirements to ensure compliance with applicable Federal and State laws and regulations, as well as the Prince George County ordinance for the protection of Resource Management and Protection Areas.

Soils—Long-term, moderate, direct beneficial impacts on soils would result from maintaining the land cover with natural vegetation, minimizing soil disturbance to the maximum extent practicable, and allowing public use on a limited acreage and in designated areas. We would employ and maintain sediment and erosion control measures to minimize the potential for soils to migrate during land-disturbing activities (e.g., forest management, extending the nature trail). We would continue to maintain existing vegetation and employ erosion control measures as needed along the refuge's shoreline. We anticipate working with other Federal and State agencies to investigate options for reducing erosion of lands along the Powell Creek and the James River. In the long-term, increased refuge visitation in the designated public use area has the potential to result in negligible and direct adverse impact soils via compaction.

To reduce potential adverse impacts to soils, we would consult with State offices regarding permit applicability prior to conducting activities that have the potential to impact tidal wetlands, disturb land, or contaminate soils.

Forested Habitats—Long-term, minor to moderate, direct and indirect beneficial impacts on forested habitats would result from our transitioning of up to 2,651 acres of pine-dominated forest to pine savanna.

We would thin the dense pine stands, conduct prescribed burns, control nonnative plants, and reduce the potential for pine beetle infestation. Over time, the mature pine savanna would increase. We would maintain the ecological integrity of the refuge's pine-dominated, moist hardwood, and floodplain forest habitats through inventory, monitoring, and active habitat management.

Improvement of existing and creation of new refuge infrastructure to support visitor use on the refuge would result in minor, direct, short-term and negligible, direct, long-term impacts in the pine-dominated, moist hardwood, and floodplain forests. Through site planning and interpretive messaging, we would minimize the potential for impacts to refuge vegetation beyond the designated public use area including parking lots and nature trail. Appropriate public uses would continue to be conducted in designated areas in accordance with refuge-specific stipulations to ensure compatibility with the refuge's purpose (see appendix B).

Non-forested Habitats—Long-term, moderate, direct beneficial impacts on freshwater wetland habitats and vegetation would result from our continued protection and minimal intervention efforts to protect the ecological integrity of the refuge's freshwater marsh and swamp forest, as well as adjacent aquatic habitats. We would establish a long-term monitoring effort to serve as an early detection and inform a rapid response in habitats due to invasive species, global climate change, or storm events. Enhancing the culvert along the dike would have minor, direct, long-term impacts to freshwater marsh and shrub swamp of the refuge because the natural hydrologic flow between Powell Creek and the freshwater marsh and shrub swamp along the southwestern portion of the refuge would be investigated. Continuing to implement best management practices for land disturbing and herbicide application activities would provide moderate, indirect, short- and long-term impacts to aquatic habitats because these practices would help to prevent habitat degradation. We would partner with other Federal and State agencies to conduct biological monitoring, as well as to improve interagency coordination on actions with the potential to adversely impact known populations of plant and animal populations associated with the freshwater wetland habitats within and surrounding the refuge. In the long-term, beneficial impacts would result from continued efforts to protect the refuge's shoreline and designating areas for appropriate and compatible public uses.

Since wetlands management and protection is a Federal trust responsibility and our highest priority for the refuge, we would take all necessary precautions to avoid adverse impacts to wetlands. However, we would continue to conduct actions that have the potential to negligibly and adversely impact freshwater wetland habitats and vegetation, such as trail construction. To reduce potential adverse impacts to wetlands and vegetation, we would consult with State offices regarding best management practices to be employed on a project-specific basis and acquire permits prior to conducting activities as warranted.

Birds—Long-term, moderate, direct beneficial impacts on birds would result from implementation of the CCP. Promoting the transition of up to 2,651 acres of pine-dominated forest to pine savanna, maintaining 775 acres of moist hardwood forest, and maintaining 633 acres of floodplain forest would continue to provide important breeding and migratory stopover habitat for priority refuge resources of concern such as brown-headed nuthatch, Chuck-will's-widow, red-shouldered hawk, wood thrush, prothonotary warbler, and other forest breeding landbirds. We expect minimal disturbance to breeding and migrating birds from trail maintenance, invasive species control activities, mowing, and other management activities. A short-term, minor to moderate, adverse impact on ground or cavity nesting or songbird species would result from increased disturbance during the nesting season that would destroy nests or cause abandonment. Impacts would increase in alternative B because prescribed burning would not cease on April 15 but would continue as weather, soils, and resources dictate. Prescribed burns during the growing season (late spring through summer) are shown to increase the knock back of hardwood species and increase seeding and growth response in herbaceous vegetation. Although neotropical migratory birds would be impacted by removal of hardwoods, our moist hardwood and floodplain forest (which are more preferred habitat for neotropical migratory birds) would still provide stopover habitat for these species.

Maintenance and promotion of native species in 82 acres of freshwater marsh and shrub swamp, along with restoration of the natural hydrology along Powell Creek, would protect resident marsh wren populations

and breeding least bitterns. We would continue to coordinate with State agencies by sharing information about wildlife populations and habitat management strategies, especially regarding protection of State endangered species. We would increase inventory and monitoring activities to collect information on priority refuge species and habitats. We would continue to support efforts by our partners to improve 17 acres of aquatic habitat to benefit native species (e.g., Atlantic sturgeon, alewife, blueback herring) and protect this habitat from being degraded.

Since some disturbance to breeding birds is likely from public use of the refuge, we would continue to allow appropriate and compatible public uses in designated areas and in accordance with stipulations to ensure compatibility (see appendix B). Birds that occupy the designated public use area of the refuge may be more likely affected by human activity and associated noise. We believe constructing a 3-mile trail, a wildlife observation platform, and fishing platform would have minor, indirect, short-term impacts to nesting bald eagles, raptors, ground and cavity nesters, and songbirds. Best management practices, the short duration, and limited area of the construction should limit effects on nesting species.

Fisheries—Long-term, moderate, indirect beneficial impacts on fisheries would result from our efforts to protect, maintain, and restore habitats for native wildlife; protect water quality minimizing erosion of the refuge's shoreline and sediment deposition loads in waterways; and improved interagency coordination and partnership support for fisheries monitoring and management. Investigation of the hydrology between wetlands in the southwestern portion of the refuge and Powell Creek will help us understand potential impacts on fisheries. Opening the refuge to recreational fishing, as well as kayaking and canoeing on Powell Creek, throughout the year from sunrise to sunset without a refuge-issued permit would increase public access to waterway and may result in negligible, indirect, short-term impacts on fisheries. Our continued efforts to minimize the existing issue of shoreline erosion would reduce the refuge's adverse impacts on adjacent waterways and fish habitat. These efforts to would contribute beneficially to fisheries adjacent to, and down river from, the refuge.

Mammals—Short- and long-term, minor, direct adverse impacts to mammals would result from noise disturbance and the reduction of food and cover caused by thinning the pine-dominated forest. However, we expect impacts to mammal populations would be minimized because oaks are present in the neighboring mature moist hardwood and floodplain forest would continue to provide food resources. Long-term, moderate, direct beneficial impacts to larger mammals would result from continuing to protect the refuge's mature moist hardwood forest and floodplain forest. Expansion of a 3-mile trail, construction of a wildlife observation and photography blind and a fishing platform, improvement of the existing canoe/kayak launch, and increase in refuge visitation in the designated public use area would have negligible, indirect, long-term adverse impacts to mammals. We also emphasize interagency coordination to ensure that the refuge offers a quality hunting program.

Amphibians and Reptiles—Long-term, moderate, direct beneficial impacts to amphibian and reptile populations would result from thinning and prescribed burning in the pine-dominated forest. Thinning, prescribed burning, and ground disturbing activities in the pine-dominated forest would result in minor, direct, short term impacts to amphibians and reptiles because equipment would compact the soil while these activities were taking place. Long-term, moderate, direct beneficial impacts to amphibian and reptile populations would result from preserving the mature moist hardwood forest and floodplain forest. Invasive plant species control in mature moist hardwood forest, floodplain forest, and freshwater marsh and shrub swamp would have negligible, indirect, short- and long-term impacts to amphibians and reptiles because the natural hydrology of these habitats would be protected and native plant species, which are important food resources for amphibians and reptiles, would remain undisturbed. Expansion of a 2-mile trail, construction of a wildlife observation and photography blind and a fishing platform, improvement of the existing canoe/kayak launch, and increase in refuge visitation in the designated public use area would result in negligible, direct, short term impacts to amphibians and reptiles. Trampling and harassment by refuge visitors using the 3-mile trail and walkways to and from other public use areas would be the largest potential impact to amphibians and reptiles. We would require visitors to stay on the trail to minimize impacts and limit foot traffic to a designated area.

Invertebrates—Long-term, moderate, direct adverse impacts to invertebrates that inhabit the pine-dominated forest would result during the transition to pine savanna. Protection of the mature moist hardwood forest and floodplain forest would continue to provide minor to moderate, direct, long-term impacts to invertebrates. Limiting disturbance and management activities would increase the number of snags and woody debris available as the forests continue to age. Protection of freshwater marsh, shrub swamp, and aquatic habitats would have moderate, direct long-term impacts on invertebrate populations.

Public Uses and Access—Long-term, minor to moderate, direct beneficial impacts would result from expanding the refuge's deer hunting program, opening the refuge to new hunting opportunities, and promoting hunting opportunities for youth. Opening James River NWR to recreational fishing at two designated locations for up to 1,460 anglers annually would result in moderate, direct, long-term impacts to the recreational fishing community by increasing recreational fishing opportunities and access to fishing information along the Lower James River. We would coordinate closely with VDGIF to keep informed about State fishing regulations, trends in fish populations, and disease outbreaks in fish to most effectively manage the fishing program at the refuge.

Until signage and visitor support facility improvements are completed, require participants to request a refuge-issued permit three business days in advance of proposed visit. Once completed, we would eliminate the need for visitors to obtain a permit in advance of their visit, which would have moderate, direct, long-term impacts as it would allow for the public to visit the refuge at their convenience. Opening the refuge to less restrictive entry is one way that the refuge staff can help increase public access to wildlife observation, photography, environmental education, and interpretation opportunities and programs. Targeting urban audiences would attract new participants to the facilities associated with the public use program, especially in refuge- and partner-sponsored programs and events. We anticipate the impacts from promoting to an urban audience to be negligible, direct, and long-term. Through our partnerships, our potential to achieve the goal of inspiring appreciation and stewardship of the refuge in relation to the James River watershed, Chesapeake Bay Estuary, and the National Wildlife Refuge System would increase. By telling a more complete story of the area's significance to Native Indians and early European settlers, our efforts would promote a deeper understanding and appreciation of America's diverse peoples and inspire refuge stewardship.

Consistency Determination

The VCP contains the following applicable enforceable policies. For each enforceable policy, specific actions to be implemented under alternative B are described.

Fisheries Management—Administered by Marine Resources Commission (MRC) and VDGIF, this program stresses the conservation and enhancement of shellfish and finfish resources and the promotion of commercial and recreational fisheries (Code of Virginia §28.2-200 through §28.2-713, §29.1-100 through §29.1-570, or §3.1-249.59 through §3.1-249.62).

> We anticipate conducting additional investigation, assessment, and analysis of management alternatives to reduce adverse impacts to shellfish and finfish habitat currently resulting from refuge shoreline erosion and sediment deposition in the James River conservation and enhancement of shellfish and finfish resources. In an effort to limit any additional erosion of the refuge's banks, we would designate two areas for recreational fishing, and we may construct new facilities on the refuge to support this use.

Subaqueous Lands Management—Administered by MRC, this program establishes conditions for granting permits for encroachments in, on, or over state-owned submerged lands throughout the Commonwealth (Code of Virginia §28.2-1200 through §28.2-1213).

> We anticipate conducting additional consultation with the MRC prior to implementing actions that would affect subaqueous lands or qualify as channel-ward encroachments on tidal waterways. Actions with the potential to adversely affect subaqueous lands are the potential to construct

facilities near Powell Creek to support public uses (e.g., wildlife observation/waterfowl hunting blind, fishing platform); install new and maintain existing shoreline stabilization features; and/or alter existing or construct new water-based transportation facilities. We would consult with State agencies early in the project planning phase to ensure consistency with the enforceable policies of the VCP. Permitting and site plan approvals would be acquired prior to implementing construction activities with the potential to adversely impact subaqueous lands.

Wetlands Management—Administered by MRC and VDEQ, the wetlands management program preserves and protects tidal wetlands (Code of Virginia §28.2-1301 through §28.2-1320 or § 62.1-44.15.5).

The protection of wetlands is of high management priority for our agency and at this refuge. We strive to avoid adverse impacts on wetlands and surface waters. However, where avoidance cannot be achieved, we strive to minimize adverse impacts by minimizing land disturbance and impervious cover.

As identified in our draft CCP and EA, we would establish a long-term monitoring program to inform management actions aimed to protect wetlands on the refuge and adjacent to the refuge. In the future, we anticipate consulting with the State for individual projects for which site-specific planning has not yet been completed. Future projects with the potential to impact wetlands and waterways include the proposed construction of facilities near Powell Creek to support public uses (e.g., wildlife observation/waterfowl hunting blind, fishing platform); installation of new and maintenance of existing shoreline stabilization features; and/or alteration of existing canoe/kayak launch. Early in the planning phase for each of these projects, we would consult with MRC and VDEQ to identify the most appropriate best management practices to be employed to ensure the protection of wetlands and surface waters, as well as identify permitting or plan approvals required prior to project implementation.

Dunes Management—Administered by MRC, the purpose of this program is to prevent the destruction and/or alteration of primary dunes (Code of Virginia §28.2-1400 through §28.2-1420).

None of the actions to be implemented under alternative B would alter dunes in Virginia because dunes do not occur on the refuge or in the refuge vicinity.

Non-point Source Pollution Control—Administered by the Virginia Department of Conservation and Recreation (DCR), the Virginia Erosion and Sediment Control Law and Regulations are intended to minimize non-point source pollution entering Virginia's waterways (Code of Virginia §10.1-560 et seq).

As identified in our draft CCP and EA, we would manage nonnative plant species using herbicides. We would take all appropriate steps to minimize the potential to contaminate soils or cause runoff into the river when applying herbicide, including using the minimum effective dosage, using application methods that minimize non-target effects, applying during optimal growth stage for effectiveness, applying in optimal weather conditions, and adhering to licensing requirements and other Federal, State, and local regulations. We would minimize the potential for adverse impacts to the environment and humans by using only approved herbicides, developing and following a spill plan, and using the herbicide as instructed by the manufacturer and according to pesticide use plans approved by our regional contaminants coordinator.

Hazardous materials and wastes would be stored, transported, and disposed of in accordance with applicable laws and regulations. We would consult with VDEQ regarding identification of approved solid waste and hazardous waste disposal sites, as well as opportunities to reuse and recycle non-hazardous materials.

Early in the planning phase for facility maintenance and construction projects, we would consult with DCR to identify the most appropriate best management practices to limit potential for non-

point source pollution generation, as well as identify permitting or plan approvals required prior to project implementation. Actions with the potential to disturb 2,500 square feet or more of land and/or generate non-point source pollution include the maintenance of existing, or construction of new, shoreline stabilization features and water-based transportation facilities.

Point Source Pollution Control—Administered by the State Water Control Board, the National Pollutant Discharge Elimination System permit program regulates point source discharges to Virginia's waterways (Code of Virginia §62.1-44.15).

None of the actions proposed in our draft CCP and EA would generate a new point source discharge, or alter of any existing point source discharge, into Virginia's waterways. We would consult with DEQ regarding future maintenance or construction projects to determine which actions would be considered a new point source discharge and proceed with permitting and project approvals as needed.

Shoreline Sanitation—Administered by the Department of Health (VDH), this program regulates the installation of septic tanks to protect public health and the environment (Code of Virginia §32.1-164 through §32.1-165).

We anticipate conducting regular maintenance on the existing septic system serving the refuge's visitor contact station to ensure its proper functioning. We anticipate consulting with VDH regarding septic system maintenance, groundwater well operation, and potential upgrades to ensure protection of public health and the environment.

Air Pollution Control—Administered by the State Air Pollution Control Board, this program implements the Federal Clean Air Act through a legally enforceable State Implementation Plan (Code of Virginia §10.1-1300 through 10.1-1320).

As identified in our draft CCP and EA, none of our actions would violate EPA standards for air quality. All actions would be undertaken to ensure compliance with the Clean Air Act. To reduce potential adverse impacts on local air quality, we would follow guidance provided the VDEQ regarding construction project design and implementation, including the minimization of vehicle idling, use of precautionary measures to restrict emissions of volatile organic compounds and oxides of nitrogen, and minimization of fugitive dust. On a project-specific basis, we would consult with State agencies regarding permit requirements for boilers or fuel-burning equipment that may be used during facility maintenance or construction activities. We would continue to coordinate with State offices regarding prescribed burning as needed.

Coastal Lands Management—Administered by the DCR's Division of Stormwater Management, Local Implementation (DSM-LI) administers the coastal lands management enforceable policy of the VCP which is governed by the Chesapeake Bay Preservation Act and Chesapeake Bay Preservation Area Designation and Management Regulations (Code of Virginia §§ 10.1-2100 through 10.1-2114, the Chesapeake Bay Preservation Area Designation and Management Regulations, or 9 VAC10-20-10 et seq.).

Since the entire refuge is located within either the Chesapeake Bay Resource Protection Area (RPA) or the Resource Management Area (RMA), we would consult with State offices to ensure the protection of coastal lands. Actions to be undertaken within the RPA include maintenance and use of water-dependent features (e.g., maintenance of existing canoe/kayak launch and the dike, constructions of new facilities to support appropriate and compatible public uses). We would also conduct resource protection activities along the shoreline (e.g., nonnative plant management, planting of native trees and shrubs, documentation of archaeological resources). Actions that would occur within the RMA include conducting archaeological investigations, planting of native trees and shrubs, maintenance of a 3-mile nature trail, maintenance and/or upgrade of the septic system and groundwater well serving the visitor contact station, and the concentration of visitors in designated

public use areas. We would consult with DCR regarding best management practices, minimizing land disturbance and impervious cover, and the protection of native vegetation.

Although not required for the purposes of consistency, in accordance with 15 CFR §930.39(c), we considered the advisory policies of the VCP as well.

Geographical Areas of Particular Concern—Coastal natural resource areas (e.g., wetlands; aquatic spawning, nursery, and feeding grounds, significant wildlife habitat areas, public recreational areas, and underwater historic sites) are vital to estuarine and marine ecosystems and receive special attention from the Commonwealth because of their conservation, recreational, ecological, and aesthetic values. Coastal natural hazard areas are vulnerable to continuing and severe erosion and are susceptible to wind, tidal, and storm- related damage. Waterfront development areas are vital to the Commonwealth because of the limited number of areas suitable for waterfront activities.

The diversity of conservation, ecological, recreational, and aesthetic values associated with James River NWR are detailed in chapter 2 of the draft CCP and EA. As a unit of the National Wildlife Refuge System, the paramount purpose of this refuge is to serve as an inviolate sanctuary for migratory birds. We also support scientific research regarding the breeding of the federally endangered Atlantic sturgeon in the refuge vicinity. The refuge has been opened for six priority wildlife-dependent recreational uses, one general public use, and one specialized use; each of these uses has been found to be compatible with the refuge's purpose (see appendix B).

As discussed earlier in this FCD, we anticipate consulting with VDEQ regarding shoreline structures on the refuge in the future. We aim design and site facilities where the potential for property damage due to storms or shoreline erosion can be minimized.

Implementation of alternative B would have no direct impact on commercial ports, commercial fishing piers, or community waterfronts in the refuge vicinity.

Shorefront Access Planning and Protection—The Commonwealth values maintenance of shorefront access for public recreational uses, while protecting the historic features of waterfront properties.

Implementation of alternative B would have no direct impact on Virginia's 25 miles of public beaches.

Implementation of alternative B would be consistent, to the maximum extent practicable, with the 2007 Virginia Outdoors Plan. Our partnership efforts with the James River Association, National Park Service, and others exemplify our commitment to accommodate public uses of the refuge that are appropriate and compatible. We would increase the availability and quality of wildlife-dependent recreational uses on the refuge, as well as increase our outreach efforts through partners with shared conservation goals.

Implementation of alternative B would have direct impacts on recreational uses and values associated with James River NWR and the Captain John Smith Chesapeake National Historic Trail. Through our continued coordination and collaboration, we would maintain and protect recreational values associated with the refuge and the Captain John Smith Chesapeake National Historic Trail while protecting natural and cultural resources for the enjoyment of future generations.

Implementation of alternative B would have no direct impact on waterfront recreational land acquisition opportunities in the Commonwealth.

As discussed earlier in this FCD, we anticipate consulting with VDEQ regarding water-based transportation facility improvements and shoreline structures on the refuge. Refuge facilities would

be designed, constructed, and maintained to provide points of water access in support of refuge operations and visitor access when conducted in accordance with the stipulations identified for specific, appropriate, and compatible public uses (see appendix B).

As detailed in chapter 2 of the draft CCP and EA, the refuge has a long history of human settlement and development. We would use a proactive approach to interagency coordination for the protection of the refuge's cultural resources. Through our partnerships, we would promote cultural resource stewardship and appreciation both on and off the refuge in educational programs and interpretive media.

Finding
Based on this information, data, and analysis, the Service finds that alternative B (the Service-preferred alternative) of the draft CCP and EA for James River NWR is consistent, to the maximum extent practicable, with the enforceable policies of the VCP. Although not required for the purposes of consistency, we find that alternative B is in line with the VCP advisory policies when following them will not materially interfere with, or detract from, the fulfillment of the National Wildlife Refuge System mission or the purposes for which the refuge was established.

Concurrence Request
Pursuant to 15 CFR §930.41, the VCP has 60 days from the receipt of this letter in which to concur with or object to this Consistency Determination, or to request an extension under 15 CFR §930.41(b). Virginia's concurrence will be presumed if its response is not received by the Service on the 60th day from receipt of this determination. The State's response should be sent to:

Andy Hofmann, Refuge Manager
Eastern Virginia Rivers NWR Complex
336 Wilna Rd
P.O. Box 1030
Warsaw, VA 22572

The Service would implement alternative B (the Service-preferred Alternative) upon adoption of the CCP by the Northeast Regional Director of the U.S. Fish and Wildlife Service. Adoption of the CCP would be documented in a Finding of No Significant Impact, if appropriate, to satisfy NEPA requirements. To complete the CCP development process, we will produce a final CCP.