

Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

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**MEMORANDUM OF AGREEMENT
BETWEEN
THE VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY
AND
THE SOUTHWEST REGIONAL RECREATION AUTHORITY
APRIL 29, 2021**

SECTION A – PURPOSE:

This Memorandum of Agreement (“MOA”) establishes guidelines for cooperation and coordination between the Virginia Department of Environmental Quality (“DEQ”) and the Southwest Regional Recreation Authority (“SRRA”) related to activities associated with the construction, maintenance, and operation/use of recreational trails and related support facilities. These activities may or may not normally require State Water Control Board (“SWCB”), United States Army Corps of Engineers (“USACE”), Virginia Marine Resources Commission (“VMRC”) permits and/or local Virginia Erosion and Sediment Control Program (“VESC”) authority approval. However, these activities may be potential or actual contributors of pollution to state waters and may have potential or actual impacts to state waters and/or adjacent properties.

This memorandum **does not** supersede or negate SRRA’s obligation to obtain SWCB and/or USACE permit coverage and local VESC authority approval for those construction, maintenance, and operation activities that would ordinarily require such permits and approvals.

SECTION B – BACKGROUND:

SRRA operates and maintains an extensive network of multi-use trails across the southwest Virginia area, collectively known as the Spearhead Trails. Trail uses include ATV/UTV, dirt bike, Jeep/4x4, equestrian and hiking. Trail related activities that may result in potential or actual impacts to state waters and/or adjacent properties include regulated construction and

maintenance activities, non-regulated construction and maintenance activities, and routine trail use.

Described below are the events leading to development of this Memorandum of Agreement.

To date, DEQ-Southwest Regional Office staff have conducted several site visits to various portions of the SRRA Spearhead Trails system. The site visits were conducted in order to provide compliance assistance to SRRA staff, to provide regulatory assistance to landowners, or in response to formal complaints submitted to DEQ. Specific site visit dates, detailed observations and relevant State Water Control Law and Regulation references, along with representative photographs, are summarized in the attached DEQ-Water Division Memorandum, dated September 9, 2020. During the site visits, DEQ staff observed the following:

1. Land-disturbing activities, as defined under the Code of Virginia (1950), as amended ("Va. Code") § 62.1-44.15:51, equaling or exceeding 10,000 square feet in total area without an approved erosion and sediment control ("ESC") plan.
2. Land-disturbing activities, as defined under Va. Code § 62.1-44.15:24 and the Virginia Administrative Code ("VAC" or "Regulation"), at 9 VAC 25-870-10, equaling or exceeding one acre in total area without an approved stormwater management ("SWM") plan and without submittal of a registration statement to DEQ for coverage under the General Virginia Pollutant Discharge Elimination System ("VPDES") Permit for Discharges of Stormwater from Construction Activities.
3. Areas of land disturbance without perimeter controls in place for filtering of sediment laden stormwater flows.
4. ESC measures that had been installed, but had not been maintained in an effective operating condition.
5. Areas of land disturbance which appeared to have exceeded the regulatory timeframe for application of temporary or permanent stabilization measures.
6. Areas of land disturbance located outside of the travelled lane of the trails where a permanent vegetative cover had not been established.
7. Areas of land disturbance where cut and fill slopes had not been adequately stabilized to prevent excessive erosion.
8. Areas where cut and fill slopes had not been designed and constructed in a manner to minimize erosion.
9. Areas where construction, maintenance and routine trail use activities had resulted in concentrated discharges of stormwater runoff that did not discharge to adequate receiving conveyances and that had not been converted back to sheet flow prior to discharge.

10. Locations where concentrated stormwater runoff was being discharged down fill slopes without containment of the flows within adequate slope conveyance structures.
11. Locations where stormwater conveyances did not have adequate outlet protection to prevent erosion and locations where stormwater conveyance channels did not have adequate permanent linings to prevent erosion.
12. Trail users operating UTVs/ATVs on a section of trail, located within a streambed, that was marked with "Trail Closed" signs at both entrances, but that did not have physical barriers to aid in deterring use of the trail.
13. Areas of trails where culverts had been installed in order to facilitate crossing of surface waters that are potentially jurisdictional waters. SRRA was unable to provide DEQ staff with evidence of acquisition of applicable permits for the instream construction activities or documentation of jurisdictional determinations indicating that permits were not required.
14. Areas where culverts within surface waters did not appear to be properly installed. DEQ staff observed culverts that had not been countersunk to maintain low flow conditions and that did not have adequate inlet protection to prevent scouring and undercutting of the streambed.
15. Areas of sediment deposition outside the footprint of the trails. In some areas, off-site sediment deposition was observed to have occurred on down gradient properties, outside the boundaries of properties under the control of SRRA.
16. Areas where trail related activities had resulted in sediment deposition into surface waters.

SECTION C – AGREEMENT:

Accordingly, SRRA agrees to:

1. Develop and implement policies and procedures to ensure compliance with all applicable State Water Control Laws and attendant regulations (ESC, SWM and Virginia Water Protection ("VWP")) and Section 404 of the Clean Water Act and attendant regulations, hereinafter collectively referred to as "Water Control Laws and Regulations".
2. Provide notification to DEQ, in writing, ten days prior to commencement of any land-disturbing activities exceeding 10,000 square feet in total area.
3. Consult with DEQ prior to acquisition of any new additions to the trail system in order to more effectively evaluate and plan for anticipated permitting requirements and

- construction/maintenance challenges in regard to Water Control Laws and Regulations. It is recommended that SRRA consult with DEQ prior to acquisition of trail additions, even in instances where no construction or maintenance activities are initially anticipated.
4. For proposed construction and/or maintenance activities within the footprint of existing roads, trails, surface mine benches, etc., consult with DEQ staff to determine if the proposed land disturbing activities will require Virginia Stormwater Management Program (“VSMP”) permit coverage, or will be considered exempt under the routine maintenance provision (pursuant to Va. Code § 62.1-44.15:34(C)(7)).
 5. For proposed construction and/or maintenance activities within streams, wetlands or other state waters (as defined under Va. Code § 62.1-44.3) or waters of the United States (as defined under 40 CFR § 120.2), consult with DEQ and USACE staff in order to determine applicable permit requirements. SRRA agrees to provide DEQ evidence of acquisition of all applicable permits for construction and maintenance activities within state waters or waters of the United States prior to initiation of instream work activities.
 6. Prepare and submit an ESC plan to the appropriate local VESCP authority for any proposed land-disturbing (construction, maintenance, etc.) activity exceeding 10,000 square feet in area. Pursuant to Va. Code § 62.1-44.15:55, an ESC plan must be submitted to the appropriate local VESCP authority for review and approval prior to commencement of land disturbance. SRRA shall submit ESC plans to the appropriate local VESCP authority until such time that SRRA has obtained approved Annual Standards and Specifications (“AS&S”) with DEQ, at which time DEQ will become the VESCP authority for all SRRA projects covered by the approved AS&S. The Virginia Erosion and Sediment Control Law and Regulations do not allow exemptions for land disturbance associated with routine maintenance activities.
 7. Prepare and submit an application for coverage under the General VPDES Permit for Discharges of Stormwater from Construction Activities to the appropriate VSMP authority for any proposed land-disturbing (construction, maintenance, etc.) activity exceeding one acre in area. Pursuant to Va. Code § 62.1-44.15:34, a permit application and SWM plan must be submitted to the appropriate VSMP authority, and VSMP authority approval must be obtained, prior to commencement of land disturbance. SRRA shall submit permit applications and SWM plans to the appropriate VSMP authority until such time that SRRA has obtained approved AS&S with DEQ, at which time DEQ will become the VSMP authority for all SRRA projects covered by the approved AS&S.
 8. Develop and implement appropriate policies and practices to address the observations, as referenced in the Background section of this MOA (above) and as detailed in the attached DEQ-Water Division Memorandum, dated September 9, 2020, in order to comply with all applicable Water Control Laws and Regulations. Upon the date of SRRA signature on this MOA, begin providing bi-monthly updates, in writing, to DEQ-SWRO regarding progress made toward addressing the observations.

9. Develop and construct more robust physical barriers to enhance exclusion of trail users from areas that are closed to traffic. SRRA agrees to submit proposed physical barrier specifications to DEQ for review and concurrence prior to construction.
10. Revise the trail rules to include more comprehensive rules regarding environmental protection, and incorporate these rules into the trail permit application and online Rules & FAQs. Provide additional signage prominently displaying the trail rules, detailing the consequences associated with disobeying the rules, and advising that trail activities are monitored by cameras. Provide educational materials, such as pamphlets and/or online videos, which outline the negative environmental impacts resulting from prohibited trail activities and describe the trail enforcement process and associated penalties.
11. Provide proposed solutions for trails or portions of trails with the greatest potential for adverse environmental impacts. Examples of proposed solutions include relocation or regrading of selected portions of trails, installation of best management practices ("BMPs"), permanent closure of selected portions of trails, armoring of approaches to stream crossings, etc. Appropriate permits may still be needed in conjunction with these solutions and BMP activities.
12. For problematic portions of trail, regardless of requirement for permit coverage, identify and install appropriate BMPs to minimize sediment loss to state waters and adjacent properties from construction, maintenance, and routine trail use activities. SRRA is encouraged to consult with DEQ for assistance with selection of appropriate BMPs.
13. Within six months of the execution date of this MOA, submit proposed AS&S for ESC (pursuant to Va. Code § 62.1-44.15:55(D)) and SWM (pursuant to Va. Code § 62.1-44.15:31) to DEQ for review and approval. The AS&S should include all specific BMPs that SRRA proposes to utilize in order to comply with ESC and SWM laws and regulations.

Accordingly, DEQ agrees to:

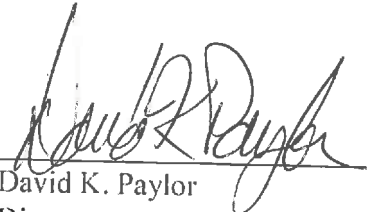
1. Respond to SRRA requests for consultation within thirty (30) days of any such request.
2. Provide comments regarding submittals (e.g.; proposed BMP designs, proposed trail addition schematics, etc.) within sixty (60) days of receipt.
3. Assist with selection of appropriate BMPs for areas of concern that may not be easily addressed by standard BMPs.
4. Assist with evaluation of BMP effectiveness after installation and provide suggestions for alternatives in instances where in-place BMPs are found to be inadequate.

SECTION D – LIMITATION AND THIRD PARTY RIGHTS:

This MOA is a voluntary agreement not a binding contract, does not create any contractual obligations and its provisions shall not be enforceable against either signatory party. This MOA does not bestow any benefit upon any other persons or entities and shall give rise to no legal right to such other persons or entities.

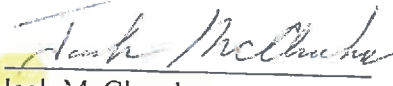
SECTION E – TERM AND MODIFICATION OF THE MOA:

This MOA shall become effective upon execution by both parties. The MOA shall remain in effect unless terminated 30 calendar days after written notice by either party or until it is superseded by a newly agreed upon MOA. This MOA may be modified when necessary, to reflect experiences in implementation, as well as to acknowledge revisions to guidance, policies, permits, regulations, and statutes. This MOA may be modified only by written mutual agreement of SRRA and DEQ.



David K. Paylor
Director
Commonwealth of Virginia
Virginia Department of Environmental Quality

5/3/2021
Date



Jack McClanahan
Chair
Southwest Regional Recreation Authority,
Board of Directors

4/29/21
Date