



**U.S. Army Corps
Of Engineers**
Norfolk District

Fort Norfolk, 803 Front Street
Norfolk, VA 23510-1011

**CENAO-WRR
19-RP-01**

REGIONAL PERMIT

Effective Date: April 15, 2019

Expiration Date: April 15, 2024

I. AUTHORIZED ACTIVITIES:

19-RP-01, Regional Permit 01 (RP), authorizes certain Virginia Department of Transportation (VDOT) roadway and railway projects involving work, structures, and filling (both temporary and permanent), in waters of the United States, within the geographical limits of the Commonwealth of Virginia under the regulatory jurisdiction of the Norfolk District Army Corps of Engineers (Corps). The maximum impacts allowed under this RP for projects that are single and complete with independent utility and purpose are:

- a. the TOTAL permanent loss of not more than one (1) acre of waters of the U.S., to include stream channel, wetlands, and open waters

AND

- b. the permanent loss of not more than 1,000 linear feet of stream channel.

VDOT is the only entity that may apply for authorization under this RP. Authorization received by VDOT under this RP may not be transferred to any other entity.

II. AUTHORITIES:

VDOT is hereby authorized by the Secretary of the Army and the Chief of Engineers pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 403) and Section 404 of the Clean Water Act (33 U.S.C. § 1344) to perform the aforementioned work in waters of the U.S. of the Commonwealth as further described herein and pursuant to the terms and conditions herein.

Activities receiving written authorization under this RP do not require further authorization under the provisions contained in 33 CFR Part 325 unless the District Engineer determines, on a case-by-case basis, that additional review is in the public interest. This RP shall not be interpreted as authorizing any work other than that which is outlined below. All work undertaken outside the following terms, conditions, standards, and limitations will require separate Department of the Army authorization.

III. STATE AND LOCAL APPROVALS:

1. A permit from the Virginia Marine Resources Commission (VMRC) to encroach upon state bottom and/or a local wetlands board permit may also be required for work authorized by this RP.
2. Those activities on the Potomac River extending beyond the mean low water line may require authorization by VMRC and/or the Maryland Department of Natural Resources. Authorization may also be needed from the Tennessee Valley Authority for projects constructed on the Clinch and Holston River.
3. To assure preservation of water quality, VDOT must apply for and obtain a 401 Water Quality Certification or waiver from the Virginia Department of Environmental Quality (DEQ) for all discharges of dredged or fill material.
4. Pursuant to the Coastal Zone Management Act (CZMA) of 1972, the Virginia DEQ, Virginia Coastal Zone Management Program completed its review of the Federal Consistency Determination and issued its conditional concurrence on August 16, 2018. Specifically, DEQ concurs that the RPs and General Conditions are consistent to the maximum extent practicable with the Virginia CZM Program provided that the following conditions are satisfied:
 - a. Prior to construction, applicants shall obtain all required permits and approvals for the activities to be performed that are applicable to the enforceable policies and that applicants adhere to all conditions contained therein.
 - b. The activities that qualify for the RPs meet the requirements of DEQ's Virginia Water Protection Permit Regulation, and the permittee abides by the conditions of the RP as certified under Section 401 of the Clean Water Act.
5. Unless otherwise exempt, permittees should ensure that their projects are designed and constructed in a manner consistent with all state and local requirements pursuant to the Chesapeake Bay Preservation Act (CBPA) (Virginia Code 10.1-2100 *et seq.*) and the Chesapeake Bay Preservation Area Designation and Management Regulations (9 VAC 10-20-10 *et seq.*).
6. Authorizations under this RP do not supersede state or local government authority or responsibilities pursuant to the CBPA, the Virginia Tidal Wetlands Act, or to any state or local laws or regulations.

IV. PROCEDURES:

VDOT must submit a pre-construction notification (PCN) in accordance with the procedures outlined below and in *General Condition 29: Pre-construction Notification*. No work is authorized under this RP until the Corps issues the permittee a written permit verification.

1. Within Virginia, the U.S. Army Corps of Engineers, Norfolk District encourages perspective permittees to utilize the Joint Permit Application (JPA) as the PCN. The JPA is also used to apply for corresponding permits from the Virginia Marine Resources Commission, the Virginia DEQ, and/or Local Wetlands Boards (LWB). The JPA process and JPA forms are used by the Corps, the VMRC, the DEQ, and the LWB for permitting purposes involving tidal and/or non-tidal water, tidal and/or non-tidal wetlands, and/or dune/beach resources, including, but not limited to, construction, dredging, filling, or excavation. Read the directions on the application carefully to determine how many copies must be submitted to the VMRC, who acts as the clearinghouse for permit applications. Permit applicants may obtain paper copies of the JPAs by calling the Corps at 757-201-7652, or by downloading and using one of the two versions of the JPA on the Norfolk District Regulatory Webpage:
<http://www.nao.usace.army.mil/Missions/Regulatory/JPA.aspx>.
2. Following the submittal of a PCN, projects proposed by VDOT will be discussed at a regularly scheduled interagency coordination meeting (IACM) attended by representatives of the U.S. Fish and Wildlife Service (USFWS), the National Marine Fisheries Service (NMFS), the Environmental Protection Agency (EPA), and the Corps. At the meeting, these agencies will comment on each of the projects. Five calendar days after the meeting, the aforementioned agencies will receive a copy of their comments from VDOT and will then have an additional fifteen calendar days to change their comments. VDOT will notify the Corps of any comment changes. For those projects where the Federal agencies do not object and VDOT agrees to incorporate agency recommendations into the final project plans, written notification indicating the project meets the terms and conditions of RP-01 can be issued by the Corps at the end of the fifteen-day comment period. However, a project will be authorized by this RP only after final permit sketches have been presented which are acceptable to the aforementioned agencies

V. CONDITIONS:

1. The activity must be a single and complete project with independent utility.
 - a. Single and complete linear transportation projects: For projects with multiple crossings or encroachments, a determination of "single and complete" will typically apply to each crossing of waters that occurs (i.e., single waterbody and/or wetlands) at separate and distinct locations and with independent utility. However, in cases where there are many crossings in close proximity, numerous crossings of the same waterbody, multiple crossings, or multiple encroachments that otherwise may have more than minimal individual or cumulative impacts, the Corps has the discretion to consider all the crossings cumulatively as one single and complete project.
 - b. Independent utility for linear transportation projects: Separate impact areas on a new location roadway are not considered to have independent

utility, and impacts would be considered cumulatively and eligible for a single RP-01 verification. However, separate impact areas on a roadway that is being widened or where pipes are being replaced at multiple crossings are considered to have independent utility, and each crossing would be considered eligible for a separate RP-01 verification.

2. In those cases where objections other than those concerning compensatory mitigation ratios cannot be resolved, the project will be processed as an Individual Permit in accordance with 33 CFR Part 325. Federal agency objections concerning appropriate mitigation ratios will be carefully considered by the Corps, and the Corps will determine the ratios required for authorization under this RP. The Corps can issue the RP-01 even if agency objections regarding mitigation ratios are unresolved. However, this exception applies only to mitigation ratios and not to other mitigation issues.
3. The District Engineer will require that the project be processed for an Individual Department of the Army Permit for any project which he/she determines to have greater than minimal individual or cumulative impacts.
4. Any waters of the U.S., including wetlands, that will not be impacted under this permit and that are located within 50 feet of any proposed clearing, excavation, or other construction activities must be clearly marked in the field with 4-foot high orange fencing prior to commencing work onsite to ensure that additional stream/wetland areas are not inadvertently impacted during construction.
5. All state and local requirements and regulations pertaining to the project are applicable, including the Virginia Sedimentation and Erosion Control Handbook.
6. Any necessary modification to the project plans, made after final permit coordination, must be re-coordinated at an IACM. The project modification must be acceptable to the aforementioned agencies in order for it to qualify under this RP. Excluded from this requirement are minor modifications which do not increase the project's total impacts and/or lessen the impacts (for example, changes in the dimensions of a causeway which do not result in increased fill quantities, provided that less than 50% of the width of the waterway is blocked and no additional wetlands are involved; the placement of a causeway on the upstream side of a bridge project rather than on the downstream side, provided that no additional wetlands are involved; any reductions in fill quantities, unless the purpose of the fill is erosion control). These minor modifications must be approved by the Corps prior to implementation.
7. Prior to the commencement of any work authorized by this RP, VDOT shall advise the Corps, in writing, of the time the authorized activity will be commenced. VDOT shall furnish appropriate VDOT staff and the contractor(s) a complete copy of this permit along with all drawings and any special conditions. Further, VDOT shall advise the Corps upon completion of the project, including any required mitigation.

8. For all projects authorized by this RP, VDOT shall follow and comply with the "Programmatic Agreement Among the Federal Highway Administration, the U.S. Army Corps of Engineers, Norfolk District, the Tennessee Valley Authority, the Advisory Council on Historic Preservation, the Virginia State Historic Preservation Officer, and the Virginia Department of Transportation Regarding Transportation Undertakings Subject to Section 106 of the National Historic Preservation Act of 1966."
9. VDOT is authorized to use the Craney Island Rehandling Basin and/or the Craney Island Dredged Material Management Area (DMMA) for placement of dredged material if the project meets the requirements for such use (see H.D.563, 79th Congress, 2nd Session, P.O. 79-525). Requirements include that the work must be related to the development or maintenance of navigation improvements in the port of Hampton Roads. The special conditions which must be adhered to and forms which must be completed in order to use Craney Island will be added to this permit for those projects where applicable. (Please note that there are restrictions on the use of Craney Island.)
10. The outer facing of temporary cofferdams must be installed first and must consist of non-erodible materials. Riverjack (i.e., rocks, cobbles and pebbles with small amounts of sand and silt) is considered suitable for the construction of temporary cofferdams. Causeways are to be constructed of non-erodible material. Projects may not block more than one-half of the width of the waterway unless the equivalent hydraulic opening is provided. Cofferdams and causeways must be completely removed from the waterway upon completion of the project for which they were constructed. All riprap material must consist of clean non-erodible material.
11. If the waterway affected is a "Navigable Waterway of the United States", over which the United States Coast Guard (USCG) asserts jurisdiction, the location and clearances of the bridge or structure must also be approved by the USCG. If the waterway affected is within the Tennessee River watershed over which the Tennessee Valley Authority (TVA) asserts jurisdiction, the bridge or structure must also be approved by TVA.
12. VDOT hereby recognizes the possibility that the structure permitted herein may be subject to damage by waves from passing vessels. The issuance of this RP does not relieve VDOT from taking all proper steps to ensure the integrity of the structure permitted herein and the safety of boats moored thereto from damage by wave wash. VDOT acknowledges and admits that the United States is not liable for any such damage and that it shall not seek to involve the U.S. in any actions or claims regarding such damages.
13. VDOT must supply the USFWS with information concerning the intended route of an entire roadway or railway so that, if necessary, they may exercise their authority under the Endangered Species Act (ESA).

14. If the activity involves a discharge of dredged or fill material, the discharge will be carried out in conformity with the goals and objectives of the EPA Guidelines established pursuant to Section 404(b) of the Clean Water Act and published in 40 CFR Part 230.
15. Work must be performed in accordance with the "Memorandum of Agreement for a Procedure for the Coordination of Virginia Department of Transportation (VDOT) Projects Located in Trout Waters."
16. For all impacts associated with transportation projects funded in part or in total by local, state or Federal funds, compensatory mitigation will generally be required for all permanent wetland impacts (including impacts less than 1/10 acre). Therefore, the VDOT PCN for authorization under this RP must include a compensatory mitigation plan.
17. Conditions Pertaining to Countersinking of Pipes and Culverts:

NOTE 1: COUNTERSINKING PER THE FOLLOWING GUIDELINES WILL BE REQUIRED. JUSTIFICATION MUST BE PROVIDED FOR CONSIDERATION BY THE CORPS FOR ANY PROJECT WHERE VDOT BELIEVES COUNTERSINKING IS NOT PRACTICABLE.

NOTE 2: COUNTERSINKING IS NOT REQUIRED IN TIDAL WATERS. However, replacement pipes/culverts in tidal waters must be installed with invert elevations no higher than the existing pipe/culvert invert elevation, and a new pipe/culvert must be installed with the invert no higher than the stream bottom elevation.

For Non-tidal Waters: Following consultation with the Virginia Department of Game and Inland Fisheries (VDGIF), the Norfolk District has determined that fish and other aquatic organisms are most likely present in any stream being crossed, in the absence of site-specific evidence to the contrary. Although VDOT has the option of providing such evidence, extensive efforts to collect such information is not encouraged, since countersinking will in most cases be required except as outlined in the conditions below. The following conditions will apply in Non-tidal waters:

- a. All pipes: All pipes and culverts placed in streams will be countersunk at both the inlet and outlet ends, unless indicated otherwise by the Norfolk District on a case-by-case basis (see below). Pipes that are 24" or less in diameter shall be countersunk 3" below the natural stream bottom. Pipes that are greater than 24" in diameter shall be countersunk 6" below the natural stream bottom. The countersinking requirement does not apply to bottomless pipes/culverts or pipe arches. Federal In sets of multiple pipes or culverts (with bottoms) at least one pipe or culvert shall be depressed (countersunk) at both the inlet and outlet to convey low flows.

- b. When countersinking culverts, permittees must ensure reestablishment of a surface water channel (within 15 days post construction) that allows for the movement of aquatic organisms and maintains the same hydrologic regime that was present pre-construction (i.e. the depth of surface water through the permit area should match the upstream and downstream depths). This may require the addition of finer materials to choke the larger stone and/or placement of riprap to allow for a low flow channel.
- c. Exemption for extensions and certain maintenance: The requirement to countersink does not apply to extensions of existing pipes or culverts that are not countersunk, or to maintenance to pipes/culverts that does not involve replacing the pipe/culvert (such as repairing cracks, adding material to prevent/correct scour, etc.).
- d. Floodplain pipes: The requirement to countersink does not apply to pipes or culverts that are being placed above ordinary high water, such as those placed to allow for floodplain flows. The placement of pipes above ordinary high water is not jurisdictional (provided no fill is discharged into wetlands).
- e. Hydraulic opening: Pipes should be adequately sized to allow for the passage of ordinary high water with the countersinking and invert restrictions taken into account.
- f. Pipes on bedrock or above existing utility lines: Different procedures will be followed for pipes or culverts to be placed on bedrock or above existing buried utility lines where it is not practicable to relocate the lines, depending on whether the work is for replacement of an existing pipe/culvert or a new pipe/culvert:
 - (1) Replacement of an existing pipe/culvert: Countersinking is not required provided the elevations of the inlet and outlet ends of the replacement pipe/culvert are no higher above the stream bottom than those of the existing pipe/culvert. Documentation (photographic or other evidence) must be maintained in VDOT's records showing the bedrock condition and the existing inlet and outlet elevations. That documentation will be available to the Norfolk District upon request, but notification or coordination with the Norfolk District is not otherwise required.
 - (2) A pipe/culvert is being placed in a new location: If VDOT determines that bedrock or an existing buried utility line that is not practicable to relocate prevents countersinking, VDOT should evaluate the use of a bottomless pipe/culvert, bottomless utility vault, span (bridge) or other bottomless structure to cross the waterway, and also evaluate alternative locations for the new pipe/culvert that will allow for countersinking. If VDOT determines that neither a bottomless structure nor an alternative location is practicable, then VDOT must

submit supporting documentation in their application. VDOT must provide documentation of measures evaluated to minimize disruption of the movement of aquatic life as well as documentation of the cost, engineering factors, and site conditions that prohibit countersinking the pipe/culvert. Options that must be considered include partial countersinking (such as less than 3" of countersinking, or countersinking of one end of the pipe), and constructing stone step pools, low rock weirs downstream, or other measures to provide for the movement of aquatic organisms. The application must also include photographs documenting site conditions. VDOT may find it helpful to contact the regional fishery biologist for the VDGIF, for recommendations about the measures to be taken to allow for fish movements. When seeking advice from VDGIF, VDOT should provide the VDGIF biologist with all available information such as location, flow rates, stream bottom features, description of proposed pipe(s), slopes, etc. Any recommendations from VDGIF should be included in the application. NOTE: Blasting of stream bottoms through the use of explosives is not acceptable as a means of providing for countersinking of pipes on bedrock.

- g. Pipes on steep terrain: Pipes being placed on steep terrain (slope of 5% or greater) must be countersunk in accordance with the conditions above and will in most cases be non-reporting. It is recommended that on slopes greater than 5%, a larger pipe than required be installed to allow for the passage of ordinary high water in order to increase the likelihood that natural velocities can be maintained. There may be situations where countersinking both the inlet and outlet may result in a slope in the pipe that results in flow velocities that cause excessive scour at the outlet and/or prohibit some fish movement. This type of situation could occur on the side of a mountain where falls and drop pools occur along a stream. Should this be the case, or should VDOT not propose to countersink the pipe/culvert for other reasons, VDOT must include documentation in their application. Documentation must include measures evaluated to minimize disruption of the movement of aquatic life as well as documentation of the cost, engineering factors, and site conditions that prohibit countersinking the pipe/culvert. VDOT should design the pipe to be placed at a slope as steep as stream characteristics allow, countersink the inlet 3-6", and implement measures to minimize any disruption of fish movement. These measures can include constructing a stone step/pool structure, preferably using river rock/native stone rather than riprap, constructing low rock weirs to create a pool or pools, or other structures to allow for fish movements in both directions. Stone structures should be designed with sufficient-sized stone to prevent erosion or washout and should include keying-in as appropriate. These structures should be designed both to allow for fish passage and to minimize scour at the outlet. The quantities of fill discharged below ordinary high water necessary to comply with these requirements (i.e., the cubic yards of stone, riprap or other fill placed below the plane of ordinary high water) must be included in project totals.

VDOT may find it helpful to contact the regional fishery biologist for the VDGIF for recommendations about the measures to be taken to allow for fish movements. When seeking advice from VDGIF, VDOT should provide the VDGIF biologist with all available information such as location, flow rates, stream bottom features, description of proposed pipe(s), slopes, etc. Any recommendations from VDGIF should be included in the application.

- h. Problems encountered during construction: When a pipe/culvert is being replaced, and the design calls for countersinking at both ends of the pipe/culvert, and during construction it is found that the streambed/banks are on bedrock, a utility line, or other documentable obstacle, then VDOT must stop work and contact the Norfolk District (contact by telephone and/or email is acceptable). VDOT must provide the Norfolk District with specific information concerning site conditions and limitations on countersinking. The Norfolk District will work with VDOT to determine an acceptable plan.
- i. Emergency pipe replacements: In the case of an emergency situation, such as when a pipe/culvert washes out during a flood, VDOT is encouraged to countersink the replacement pipe at the time of replacement, in accordance with the conditions above. However, if conditions or timeframes do not allow for countersinking, then the pipe can be replaced as it was before the washout, but the permittee will have to come back and replace the pipe/culvert and countersink it in accordance with the guidance above. In other words, the replacement of the washed out pipe is viewed as a temporary repair, and a countersunk replacement should be made at the earliest possible date. The Norfolk District must be notified of all pipes/culverts that are replaced without countersinking at the time that it occurs, even if it is an otherwise non-reporting activity, and must provide VDOT's planned schedule for installing a countersunk replacement (it is acceptable to submit such notification by email). VDOT should anticipate whether bedrock or steep terrain will limit countersinking, and if so, should follow the procedures outlined in (g) and/or (h) above.

18. Conditions for the Repair of Pipes:

NOTE 1: COUNTERSINKING PER THE FOLLOWING GUIDELINES WILL BE REQUIRED. JUSTIFICATION MUST BE PROVIDED FOR CONSIDERATION BY THE CORPS FOR ANY PROJECT WHERE VDOT BELIEVES COUNTERSINKING IS NOT PRACTICABLE.

NOTE 2: COUNTERSINKING IS NOT REQUIRED IN TIDAL WATERS. However, replacement pipes/culverts in tidal waters must be installed with invert elevations no higher than the existing pipe/culvert invert elevation, and a new pipe/culvert must be installed with the invert no higher than the stream bottom elevation.

For Non-tidal Waters: If any discharge of fill material will occur in conjunction with pipe maintenance, such as concrete being pumped over rebar into an existing deteriorated pipe for stabilization, then the following conditions apply:

- a. If the existing pipe or multi-barrel array of pipes are NOT currently countersunk:
 - (1) As long as the inlet and outlet invert elevations of at least one pipe located in the low flow channel are not being altered, and provided that no concrete apron is being constructed, then the work can be considered for authorization under RP-01.
 - (2) Otherwise, VDOT must submit the following information in the application:
 - (a) Photographs of the existing inlet and outlet;
 - (b) A measurement of the degree to which the work will raise the invert elevations of both the inlet and outlet of the existing pipe;
 - (c) The reasons why other methods of pipe maintenance are not practicable (such as metal sleeves or a countersunk pipe replacement);
 - (d) A vicinity map showing the pipe locations.

Depending on the specific case, the Norfolk District may discuss potential fish usage of the waterway with the VDGIF. The Norfolk District will assess all such pipe repair proposals in accordance with guidelines that can be found under "Pipe Repair Guidelines" at: <http://www.nao.usace.army.mil/Missions/Regulatory/GuidanceDocuments.aspx>.

- (3) If the Norfolk District determines that the work qualifies for RP-01, additional conditions will be placed on the authorization. Those conditions can be found at the web link above (in item 18a.(2)).
 - (4) It is anticipated that VDOT will be required to perform the work such that the waterway is not blocked or restricted to a greater degree than its current conditions.
- b. If the existing pipe or at least one pipe in the multi-barrel array of pipes IS countersunk and at least one pipe located in the low flow channel will continue to be countersunk, and no concrete aprons are proposed; the work can be authorized by RP-01.
 - c. If the existing pipe or at least one pipe in the multi-barrel array of pipes IS countersunk and no pipe will continue to be countersunk in the low flow

channel, it is anticipated that VDOT will still be required to perform the work such that the waterway is not blocked or restricted more so than its current conditions.

- d. In emergency situations, if conditions or timeframes do not allow for compliance with the procedure outlined herein, then the pipe can be temporarily repaired to the condition before the washout. VDOT must submit an application via the IACM at the earliest practicable date, but no longer than 30 days after the temporary repair.

VI. GENERAL CONDITIONS:

1. Navigation:

- a. No activity may cause more than a minimal adverse effect on navigation.
- b. Any safety lights and signals prescribed by the USCG, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the U.S. The USCG may be contacted at the following address: Commander (oan), Fifth Coast Guard District, Federal Building, 431 Crawford Street, Portsmouth, Virginia 23704 or by telephone: 757-398-6230.
- c. The permittee understands and agrees that if future operations by the United States require the removal, relocation, or other alteration of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his/her authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

2. **Aquatic Life Movements:** No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species which normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species. If a bottomless culvert cannot be used, then the crossing should be designed and constructed to minimize adverse effects to aquatic life movements.

3. **Spawning Areas:** Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

4. Migratory Bird Breeding Areas: Activities in waters of the U.S. that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.
5. Shellfish Beds: No activity may occur in areas of concentrated shellfish populations.
6. Submerged Aquatic Vegetation (SAV) Beds: Activities in SAV beds must be avoided and minimized to the maximum extent practicable. Avoidance and minimization measures, such as relocating a structure and/or the implementation of a time-of-year restriction for work in waters, may be required to reduce impacts to the SAV habitat. Information regarding SAV may be found at the Virginia Institute of Marine Science's website at: <http://web.vims.edu/bio/sav/>.
7. Suitable Material: No activity may use unsuitable material (e.g. trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).
8. Water Supply Intakes: No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public waters supply intake structures or adjacent bank stabilization.
9. Adverse Effects from Impoundments: If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.
10. Management of Water Flows: To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization, storm water management activities, and temporary and permanent road crossings, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound waters or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).
11. Fills Within 100-Year Floodplains: The activity must comply with applicable Federal Emergency Management Agency (FEMA)-approved state or local floodplain management requirements.
12. Equipment: Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.
13. Soil Erosion and Sediment Controls: Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the

earliest practicable date. Permittees are encouraged to perform work within waters of the U.S. during periods of low-flow or no-flow, or during low tides.

14. Invasive Species: Plant species listed by the most current version of Virginia Department of Conservation and Recreation's (DCR) Invasive Alien Plan List shall not be used for re-vegetation for activities authorized by these RPs. The list of invasive plants in Virginia may be found at: <http://www.dcr.virginia.gov/natural-heritage/invspdflist>. The DCR recommends the use of regional native species for re-vegetation as identified in the DCR Native Plants for Conservation, Restoration and Landscaping brochures, which can be found at: <http://www.dcr.virginia.gov/natural-heritage/nativeplants#brochure> or by using the DCR native plant finder: <http://www.dcr.virginia.gov/natural-heritage/native-plants-finder>.

15. Removal of Temporary Fills and Impacts: The soils of any temporarily impacted areas located in wetlands that are cleared, grubbed, and/or filled, must be restored once these areas are no longer needed for their authorized purpose, no later than completion of project construction, and not to exceed twelve (12) months after commencing the temporary impacts. To restore, temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations, the soil surface loosened by ripping or chisel plowing to a depth of 8-12", and then seeded using native wetland species. See *General Condition 14: Invasive Species* for more information on vegetation recommendations.

Fill or dredged material into waters of the U.S. that are not removed within the 12 month period will be considered a permanent impact, unless otherwise determined by the Corps. This additional impact to waters of the U.S. may result in the Corps initiating a permit non-compliance action which may include, but not limited to, a restoration order, after-the-fact permitting, and/or compensatory mitigation.

16. Proper Maintenance: Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable RP conditions, as well as any activity-specific conditions added by the District Engineer to an RP authorization.
17. Wild and Scenic Rivers: Currently, there are no designated Wild and Scenic Rivers in the Commonwealth of Virginia. No RP activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system, while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river has determined, in writing, that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area

(e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, USFWS).

18. Tribal Rights: No RP activity may cause more than minimal adverse effects on tribal rights (including treaty rights), protected tribal resources, or tribal lands.

19. Endangered Species:

- a. No activity is authorized under this RP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal ESA, or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under this RP which "may affect" a listed species or critical habitat, unless ESA Section 7 consultation addressing the effects of the proposed activity has been completed. Direct effects are the immediate effects on listed species and critical habitat caused by the RP activity. Indirect effects are those effects on listed species and critical habitat that are caused by the RP activity and are later in time, but still reasonably certain to occur.
- b. Federal permittees should follow their own procedures for complying with the requirements of the ESA. The Federal permittee must provide the District Engineer with the appropriate documentation to demonstrate compliance with those requirements. The District Engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation has not been submitted, additional ESA Section 7 consultation may be necessary for the activity and respective Federal agency would be responsible for fulfilling its obligation under Section 7 of the ESA.
- c. VDOT must submit a PCN to the District Engineer if any proposed or listed species or proposed or designated critical habitat may be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, and shall not begin work on the activity until notified by the District Engineer that the requirements of the ESA have been satisfied and that the activity is authorized. Information on the location proposed/listed species and proposed/designated critical habitat can be obtained directly from the USFWS online project review process at: <https://www.fws.gov/northeast/virginiafield/endangered/projectreviews.html> and from NMFS at: <http://www.nmfs.noaa.gov/pr/species/>.

The District Engineer, or lead Federal agency, will determine whether the proposed activity "may affect" or will have "no effect" to listed species or designated critical habitat and will notify VDOT of the Corps' determination. In cases where the Corps is the lead Federal agency and VDOT identified listed species or designated critical habitat that might be affected or is in the vicinity of the project, and has so notified the Corps,

the permittee shall not begin work until the Corps has provided notification the proposed activities will have "no effect" on listed species or designated critical habitat, or until Section 7 consultation has been completed. VDOT must wait for notification from the Corps to proceed.

If the Corps is the lead Federal agency and the District Engineer determines that the proposed activity may affect a listed species or designated critical habitat, the Corps will initiate consultation with the USFWS. The USFWS developed an online system to allow applicants and agencies to find information about sensitive resources that may occur within the vicinity of a proposed project. This system is named "Information, Planning and Conservation System," (IPaC), and is located at: <https://ecos.fws.gov/ipac/>.

Additional consultation may also be required with NMFS for species or critical habitat under their jurisdiction, including sea turtles, marine mammals, Shortnose Sturgeon, and Atlantic Sturgeon. For additional information about their jurisdiction in Virginia, please visit: <https://www.greateratlantic.fisheries.noaa.gov/protected/index.html>.

- d. As a result of formal or informal consultation with USFWS or NMFS, the District Engineer may add species-specific regional endangered species conditions to the RP.
- e. Authorization of an activity by this RP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from USFWS or NMFS, the ESA prohibits any person subject to the jurisdiction of the United States to take a listed species, where "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word "harm" in the definition of "take" means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering.
- f. If VDOT has a valid ESA Section 10(a)(B) incidental take permit with an approved Habitat Conservation Plan for a project or a group of projects that includes the proposed RP activity, the VDOT should provide a copy of that ESA Section 10(a)(1)(B) permit in the JPA. The District Engineer will coordinate with the agency that issued the ESA Section 10(a)(1)(B) permit to determine whether a separate ESA Section 7 consultation is needed.

20. Migratory Birds and Bald and Golden Eagle Protection Act: The Bald Eagle (*Haliaeetus leucocephalus*) is no longer a Federally listed threatened or endangered species; therefore, the ESA provisions are not applicable to this species. The Bald and Golden Eagle Protection Act (BGEPA) does not require

that a Federal agency involved in permitting the proposed action conduct coordination. The permittee is responsible for obtaining any "take" permits required under USFWS regulations governing compliance with the Migratory Bird Treaty Act or the BGEPA. The applicant should either obtain "take" permit or a letter of concurrence from USFWS indicating that a permit is not necessary prior to initiating construction activities. You should contact USFWS concerning this matter at U.S. Fish and Wildlife Service, Virginia Field Office, 6669 Short Lane, Gloucester, VA 23061. Information on active bald eagle nests and concentration areas can be obtained in Step 6 of the USFWS' online project review system available at:

<https://www.fws.gov/northeast/virginiafield/endangered/projectreviewprocess.html>.

21. Essential Fish Habitat: The Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), as amended by the Sustainable Fisheries Act of 1996 (Public Law 104-297; 11 October 1996), requires all Federal agencies to consult with the National Oceanic and Atmospheric Administration (NOAA) Fisheries Service Habitat Conservation Division (NOAA HCD) on all actions, or proposed actions, permitted, funded, or undertaken by the agency that may adversely affect Essential Fish Habitat (EFH). The EFH Designations within the Northeast Region (Maine to Virginia), dated March 1, 1999, has identified EFH for a number of species and their life stages within Virginia waters. If EFH consultation is required with NOAA HCD, the applicant shall not begin work until the Corps has provided notification that the EFH consultation has concluded.
22. Anadromous Fish: Authorizations associated with this RP shall not adversely affect documented spawning habitat or a migratory pathways for anadromous fish. Areas of anadromous fish use are indicated on the VDGIF information system at: <http://vafwis.org/fwis/>. If a project is located within an area documented as an anadromous fish use area (confirmed or potential), all in-stream work is prohibited from occurring between February 15 through June 30 of any given year or other time of year restriction (TOYR) specified by the VDGIF and/or the VMRC. Should the Norfolk District determine that the work is minimal and no TOYR is needed, the District will initiate consultation with NOAA Fisheries Service for their concurrence.

A TOYR is not required for dredging activities in the Elizabeth River upstream of the Mid-Town Tunnel on the main-stem and the West Norfolk Bridge (Route 164, Western Freeway) on the Western Branch of the Elizabeth River.

23. Designated Critical Resource Waters and National Estuarine Research Reserves: This RP does not authorize the discharge of dredged or fill material into the Chesapeake Bay National Estuarine Research Reserve (Reserve) in Virginia. This Reserve is a multi-site system along a salinity gradient of the York River, which includes Sweet Hall Marsh, Taskinas Creek, Catlett Islands, and Goodwin Islands. Additional information may be found at: <http://www.vims.edu/cbnerr/>.

24. Discovery of Previously Unknown Remains and Artifacts: If you discover any previously unknown historic, cultural, or archaeological remains and artifacts while accomplishing activities authorized by this permit, you must immediately stop work and notify the Corps of what has been found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. See Special Condition 10 above for treatment and procedures regarding recovery and coordination for any such remains or artifacts.
25. Mitigation: Mitigation in all its forms (avoiding, minimizing, or compensating for resource losses) may be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal. The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the U.S. to the maximum extent practicable at the project site (i.e., on site).
26. Use of Multiple Regional Permits: This RP may be combined with any Corps general permits (including Nationwide (NWP) or RP) for a single and complete project, as long as the acreage loss of waters of the U.S. authorized by the NWPs/RPs does not exceed the acreage limit of the NWP/RP with the highest specified acreage limit.
27. Compliance Certification: A Certificate of Compliance, enclosed with the Corps' written authorization for the activity, must be completed and a copy retained for your records. The original Certificate of Compliance shall be mailed to, U.S. Army Corps of Engineers, Regulatory Branch, 803 Front Street, Norfolk, Virginia 23510-1011, or to the Regulatory Field Office listed on the Certificate of Compliance, within 30 days of completion of the authorized activity.
28. Activities Affecting Structures or Works Built by the United States: If the RP activity also requires permission from the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a Corps Federally authorized Civil Works project, the activity that requires Section 408 permission is not authorized by the RP until the appropriate Corps District office issues the Section 408 permission to alter, occupy, or use the Corps Civil Works project, and the District Engineer issues a written RP verification.

Contact a Norfolk District Regulatory Project Manager to assist in determining if your proposed activity might alter or temporarily or permanently occupy or use a Corps project.

Locations of Norfolk District Civil Works projects can be found at:
http://www.nao.usace.army.mil/Portals/31/docs/regulatory/RPSPdocs/RP-17_Corps_Project_Maps.pdf.

For projects located within the Civil Works boundary of the Baltimore, Huntington, Nashville or Wilmington District, please contact a Norfolk District Project Manager for assistance.

29. Pre-Construction Notification: Prior to commencing the activity, prospective permittees (“permittees”) must submit a PCN to the District Engineer, unless otherwise specified in the RP, and must receive written notification from the Corps acknowledging that the project is authorized pursuant to this RP.

Notification to the Corps must be in writing (the JPA may also be used, as described below) and must include the following information:

- Name, address and telephone number of the prospective permittee.
- Name, address and telephone number of the property owner, if different from the prospective permittee.
- Location of the project (including Tax Parcel ID Number, if available).
- Vicinity map, aerial photograph, and/or drawing accurately showing the extent of proposed activity and the extent of waters of the U.S., including wetlands. Drawings, plans and/or sketches should contain sufficient detail to project an illustrative description of the proposed activity.
- Identify the specific RP or RPs the prospective permittee wants to use to authorize the proposed activity.
- A description of the proposed activity; the activity’s purpose; direct and indirect adverse environmental effects the activity would cause, including the anticipated amount of loss of wetlands, other special aquatic sites, and other waters expect to result from the RP activity, in acres, linear feet or other appropriate unit of measure; a description of any proposed mitigation measures; and any other Corps permit used or intended to be used to authorize any part of the proposed project or any related activity.
- A delineation of special aquatic sites and other waters of the U.S. on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters of the U.S., but there may be a delay if the Corps does the delineation.
- If compensatory mitigation is required, the prospective permittee must submit a statement describing how any required compensatory mitigation will be provided. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan. In accordance with 33 CFR 332.3 (a) the Corps will consider what is environmentally preferable. Factors considered will be likelihood of success, sustainability, location relative to the impact site and significance within the watershed, and the costs of the compensatory mitigation project. The Corps will require the most appropriate and practicable mitigation pursuant to 33 CFR 320.4(r).

A JPA may be obtained by writing to the U.S. Army Corps of Engineers, Norfolk District, Regulatory Branch, 803 Front Street, Norfolk, Virginia 23510-1011; by telephoning the Norfolk District Regulator of the Day at 757-201-7652 or via the following link to the Norfolk District Regulatory Branch website:

<http://www.nao.usace.army.mil/Missions/Regulatory/JPA/>.

The Corps must determine if the PCN is complete. If the PCN is determined to be incomplete, the Corps will request the prospective permittee to provide the additional information necessary to make the request complete. The request must specify the information needed to make the PCN complete. As a general rule, the Corps will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the Corps will notify the prospective permittee that the PCN is still incomplete and the review process will not commence until all of the requested information has been received by the Corps. The prospective permittee shall not begin the activity until he or she is notified in writing by the Corps that the activity may proceed under the RP, subject to any additional conditions imposed by the Corps.

If, after reviewing the request, the Corps determines that the proposed activity would have more than minimal individual or cumulative adverse impacts on the aquatic environment or otherwise may be contrary to the public interest, then the Corps will notify the project proponent that the activity is not authorized by the RP and will provide instructions for seeking authorization under an Individual Permit. The Corps may revoke this RP for an individual activity by following the procedures set forth in 33 CFR 325.7.

30. Environmental Justice: Activities authorized under this RP must comply with Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations."
31. Inspections: The permittee must provide a copy of this permit and any verification letter to the contractor(s) and made available at the project site to any regulatory representative. The permittee shall allow the Corps to make periodic inspections at any time deemed necessary in order to assure that the activities being performed under authority of this permit are in accordance with the terms and conditions prescribed herein. The Corps reserves the right to require post-construction engineering drawings and/or surveys of any work authorized under this RP, as deemed necessary on a case-by-case basis.

VII. DISTRICT ENGINEER'S DECISION:

1. In reviewing the JPA for the proposed activity, the District Engineer will determine whether the activity authorized by the RP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If a project proponent requests authorization by a specific RP, the District Engineer should issue the RP verification for that activity if it meets the terms and conditions of that RP, unless he or she determines, after considering mitigation, that the proposed activity will result in more than minimal individual or cumulative adverse effects on the aquatic environment and other aspects of the public interest and require an Individual Permit for the proposed activity.

2. When making minimal adverse environmental effects determinations the District Engineer will consider the direct and indirect effects caused by the RP activity. He or she will also consider the cumulative adverse environmental effects caused by activities authorized by the RP and whether those cumulative adverse environmental effects are no more than minimal. The District Engineer will also consider site specific factors, such as the environmental setting in the vicinity of the RP activity, the type of resource that will be affected by the RP activity, the functions provided by the aquatic resources that will be affected by the RP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the RP activity (e.g., partial or complete loss), the duration of the adverse effects (temporary or permanent), the importance of the aquatic resource functions to the region (e.g., watershed or ecoregion), and mitigation required by the District Engineer. The District Engineer may add case-specific special conditions to the RP authorization to address site-specific environmental concerns.
3. If the District Engineer determines that the adverse environmental effects of the proposed activity are more than minimal, then the District Engineer will notify the applicant that the activity does not qualify for authorization under the RP and instruct the applicant on the procedures to seek authorization under an Individual Permit or process to modify the proposed activity and/or the mitigation plan to reduce the adverse environmental effects so that they are no more than minimal. In addition, if the District Engineer determines on a case-by-case basis that concerns for the aquatic environment so indicate, the District Engineer may exercise discretionary authority to override the RP and require authorization under an Individual Permit.

VIII. ADDITIONAL INFORMATION:

1. District Engineers have the authority to determine if an activity complies with the terms and conditions of the RP.
2. Limits of This Authorization:
 - a. RPs do not obviate the need to obtain other Federal, state, or local permits, approvals, or authorizations required by law.
 - b. RPs do not grant any property rights or exclusive privileges.
 - c. Regional permits do not authorize any injury to the property or rights of others.
 - d. RPs do not authorize interference with any existing or proposed Federal project (see General Condition 32).
 - e. RPs do not authorize the impingement upon Federal Lands.

- f. RPs do not grant any Corps or Federal real estate rights. If real estate rights are needed from the Corps, you must contact the appropriate U.S. Army Corps of Engineers District's Real Estate Office.
3. Limits of Federal Liability: In issuing this RP, the Federal government does not assume any liability for the following:
 - a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes;
 - b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest;
 - c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this RP;
 - d. Design or construction deficiencies associated with the permitted work;
 - e. Damage claims associated with any future modification, suspension, or revocation of this permit.
4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.
5. Reevaluation of Permit Decision: The District Engineer may reevaluate the decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:
 - a. The permittee fails to comply with the terms and conditions of this permit.
 - b. The information provided by the permittee in support of your PCN proves to have been false, incomplete, or inaccurate.
 - c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Binding Effect: The provisions of the permit authorization shall be binding on any assignee or successor in interest of the original permittee.

7. Expiration: Unless further modified, suspended, or revoked, this RP will be in effect until April 15, 2024. Activities which have commenced (i.e. under construction) or are under contract to commence in reliance upon this RP will remain authorized provided the activity is completed within twelve (12) months of the date of the RP's expiration, modification, or revocation, unless discretionary authority has been exercised on a case-by-case basis to modify, suspend, or revoke the authorization. Activities completed under the authorization of the RP which was in effect at the time the activity was completed continue to be authorized by that RP.

Date

Fob!



Patrick V. Kinsman, PE
Colonel, U.S. Army
Commanding