



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

Fort Norfolk, 803 Front Street
Norfolk, Virginia 23510-1096

**CENAO-WR-R
18-RP-01**

REGIONAL PERMIT

Effective Date: August 14, 2018

Expiration Date: August 14, 2023

I. AUTHORIZED ACTIVITIES:

18-RP-01, Regional Permit 01 (RP), authorizes certain Virginia Department of Transportation (VDOT) roadway and railway projects, 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).

VDOT is the only entity that may apply for authorization under RP-01. RP-01 authorization received by VDOT may not be transferred to any other entity.

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 proceed with roadway and railway projects involving work, structures, and filling (both temporary and permanent) in waters of the United States of the Commonwealth of Virginia. The maximum impacts allowed under RP-01 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 US, to include stream channel, wetlands, and open waters
AND
- b. the permanent loss of not more than 1,000 linear feet of stream channel.

II. AUTHORITIES:

Activities receiving written authorization under RP-01 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 necessary in the public interest. This Regional Permit 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. You may be required to obtain additional state and/or local approvals prior to commencement of work in waters of the United States from the Virginia Marine Resources Commission (VMRC).
2. *The Corps is coordinating separately with the Virginia Department of Environmental Quality (DEQ) regarding the requirements of the Virginia Water Protection Permit Regulation, which also serves as the Commonwealth's §401 Water Quality Certification. Individual §401 Water Quality Certifications will be detailed in this section once provided by DEQ.*
3. 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 Rivers.
4. *The Corps is coordinating separately with DEQ Coastal Zone Management Program (VCP) regarding its review of the Federal Consistency Determination pursuant to the Coastal Zone Management Act (CZMA) of 1972.*
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 Chesapeake Bay Preservation Act, the Virginia Tidal Wetlands Act, or to any State or local laws or regulations.

IV. SPECIAL CONDITIONS:

1. Following the submittal of a joint permit application (JPA), 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, the National Marine Fisheries Service, the Environmental Protection Agency, and the Corps of Engineers. 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.

2. The activity must be a single and complete project with independent utility.

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.

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.

3. 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.
4. 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.
5. 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.

6. All State and local requirements and regulations pertaining to the project are applicable, including the Virginia Sedimentation and Erosion Control Handbook.
7. 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.
8. Prior to the commencement of any work authorized by 18-RP-01, 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.
9. 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."
10. 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.)
11. 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.

12. 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.
13. 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.
14. VDOT must supply the U. S. Fish and Wildlife Service with information concerning the intended route of an entire roadway or railway so that, if necessary, they may exercise their authority under Section 9 of the Endangered Species Act.
15. 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.
16. 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."
17. 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 application for authorization under RP-01 must include a compensatory mitigation plan.
18. 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 Nontidal 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 nontidal 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. All single pipes or culverts (with bottoms) shall be depressed (countersunk) below the natural streambed at both the inlet and outlet of the structure. 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:

- i. 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.
 - ii. 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 DGIF, VDOT should provide the DGIF biologist with all available information such as location, flow rates, stream bottom features, description of proposed pipe(s), slopes, etc. Any recommendations from DGIF should be included in the application. 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

- h. 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.

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.

19.

For Nontidal 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:
 - i. 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.
 - ii. Otherwise, VDOT must submit the following information in the application:
 - 1) Photographs of the existing inlet and outlet;
 - 2) A measurement of the degree to which the work will raise the invert elevations of both the inlet and outlet of the existing pipe;
 - 3) The reasons why other methods of pipe maintenance are not practicable (such as metal sleeves or a countersunk pipe replacement);
 - 4) 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 Virginia Department of Game and Inland Fisheries.

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>

- iii. 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 ii).
 - iv. 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 the 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:

Note: To qualify for RP authorization, VDOT must comply with the following general conditions, as applicable, in addition to any case-specific conditions imposed by the district engineer.

1. Navigation.

- a) No activity may cause more than a minimal adverse effect on navigation.
- b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States. The U.S. Coast Guard 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.** 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. (Shellfish harvesting activities may qualify for Nationwide Permit 4 or 48 and shellfish seeding or habitat restoration may qualify for Nationwide Permit 27.)
6. **Submerged Aquatic Vegetation (SAV) Beds.** Activities in SAV beds must be avoided and minimized to the maximum extent practicable. A pre-construction notification is required for any proposed work or structures within an SAV bed. 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 water 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 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 regional permits. 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: <http://www.dcr.virginia.gov/natural-heritage/nativeplants#brochure>.
- 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. DCR recommends the use of regional native species for re-vegetation as identified in the DCR *Native Plants for Conservation, Restoration and Landscaping* brochures for the coastal, piedmont and mountain regions <http://www.dcr.virginia.gov/natural-heritage/nativeplants#brochure>. 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 a 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, U.S. Fish and Wildlife Service).

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 any 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 Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under any 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 this RP activity and are later in time, but still reasonably certain to occur.
- b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. If pre-construction notification is required for the proposed activity, 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 JPA to the district engineer and indicate if any listed species or designated critical habitat might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat, critical habitat waters, or one-mile upstream (including tributaries) of any designated critical habitat waters, 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 U.S. Fish and Wildlife (USFWS) online project review process at:

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

and from the National Marine Fisheries Service (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 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 applicant 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 the 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 the USFWS or NMFS the district engineer may add project-specific conditions to the written verification that the work qualifies for this RP.
- e) Authorization of an activity by a 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 the 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, VDOT should provide a copy of that ESA section 10(a)(1)(B) permit with the pre-construction notification. 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 Endangered Species Act 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 the U.S. Fish and Wildlife Service’s 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 U.S. Fish and Wildlife Service’s 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 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 these regional shall not adversely affect documented spawning habitat or a migratory pathways for anadromous fish. Areas of anadromous fish use are indicated on the Virginia Department of Game and Inland Fisheries (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 Virginia Marine Resources Commission (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; National Estuarine Research

Reserves. Pre-construction notification is required for any proposed work in 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/cbnerf/>.

These regional permits do not authorize the discharge of dredged or fill material into the Reserve.

24. Discovery of Previously Unknown Remains and Artifacts. If you discover any previously unknown historic, cultural, or archaeological remains and artifacts while accomplishing activity 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 9 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 United States to the maximum extent practicable at the project site (i.e., on site).

26. Multiple general permit authorizations. This Regional Permit may be combined with any Corps general permits (including Nationwide (NWP) or Regional Permits (RP) for a single and complete project, as long as the acreage loss of waters of the United States 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 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 U.S. Army Corps of Engineers (Corps) federally authorized Civil Works project (a “Corps 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 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 Corps 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 Corps boundary of the Baltimore, Huntington, Nashville or Wilmington District, please contact a Norfolk District project manager for assistance.

29. 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”.

30. Inspections. A copy of this permit and any verification letter must be provided 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.

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 exercises discretionary authority to require an individual permit for the proposed activity.
2. 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, as proposed, does not qualify for authorization under the RP. The district engineer will instruct the applicant on the procedures to seek authorization under an individual permit or modify the proposed activity and/or the mitigation plan to reduce the adverse environmental effects so that they are no more than minimal.

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) Regional permits do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.
 - b) Regional permits 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) Regional permits do not authorize interference with any existing or proposed Federal project (see General Condition 28).
 - e) Regional permits do not authorize the impingement upon Federal Lands.
 - f) Regional permits 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 its 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 permit application 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. **Duration of Activity's Authorization.** Activities authorized under 18-RP-01 must be completed by August 1, 2023. If the RP is reissued at that time, and if this work has not been started or completed, but the project continues to meet the terms and conditions of the revalidated RP, then the project will continue to be authorized. The Corps will issue a special public notice announcing any changes to the Regional Permits when they occur; however, it is incumbent upon you to remain informed of changes to the RPs. Activities which have commenced (i.e., are under construction) or are under contract to commence in reliance upon this RP that do not meet the terms and conditions of the revalidated RP will remain authorized provided the activity is completed within twelve months of the date of this RP's expiration, unless discretionary authority has been exercised on a case-by-case basis to modify, suspend, or revoke the authorization in accordance with 33 CFR 325.7(a-e). If work cannot be completed by August 1, 2024, you must reapply for separate permit authorization in order to meet current permit criteria.
- 8. **Expiration.** Unless further modified, suspended, or revoked, this RP will be in effect until August 1, 2023. Upon expiration, it may be considered for revalidation. Activities completed under the authorization of an RP which was in effect at the time the activity was completed continue to be authorized by that RP.