



DEPARTMENT OF THE ARMY
US ARMY CORPS OF ENGINEERS
NORFOLK DISTRICT
FORT NORFOLK
803 FRONT STREET
NORFOLK VA 23510-1011

CENAO-WRR

STATE PROGRAMMATIC GENERAL PERMIT (SPGP)
Residential, Commercial, Institutional and Recreational Development (RCIR)
22-SPGP-RCIR

Effective Date: June 1, 2022 Expiration Date: August 1, 2026

I. **AUTHORITIES:**

- A. 22-SPGP-RCIR authorizes the discharge of dredged or fill material in non-tidal waters of the United States (WOTUS), including wetlands, associated with certain residential, commercial, institutional, and recreational development (RCIR) projects within the geographical limits of the Commonwealth of Virginia and under the regulatory jurisdiction of the U.S. Army Corps of Engineers, Norfolk District (Corps or Norfolk District).
- B. 22-SPGP-RCIR projects must have no more than minimal individual and cumulative impacts and must meet all the terms and conditions outlined herein.
- C. The use of 22-SPGP-RCIR is restricted to those projects that have avoided and minimized impacts to WOTUS, to the maximum extent practicable.
- D. The people of the Commonwealth of Virginia (Virginia or "the Commonwealth") are hereby authorized by the Secretary of the Army and the Chief of Engineers, under Section 404 of the Clean Water Act (CWA) (33 U.S.C. § 1344), to perform work in non-tidal waters, including wetlands, of the Commonwealth as described herein. The Corps' authority and guidance to develop general permits is contained in 33 U.S.C. § 1344(e), 33 C.F.R. § 325.2(e)(2), 33 C.F.R. § 325.3(b), and Corps Regulatory Guidance Letter (RGL) 83-7.

II. **PROCEDURES:**

- A. **DELINEATION CONFIRMATIONS/PRELIMINARY FEDERAL SCREENINGS:**
Prior to the submission of an application for activities covered by 22-SPGP-RCIR a proponent must first obtain one of the following from the Corps:
 - 1. A Corps preliminary federal screening that is approved for use with a permit.
 - 2. A Corps confirmed delineation that is approved for use with a permit application (Preliminary JD).
 - 3. A Corps confirmed jurisdictional determination (Approved JD or AJD) that includes the limits of all WOTUS, including wetlands, that are located within

the project boundaries AND confirmed under the governing jurisdictional rule in place at the time of receipt of the application, unless Corps guidance changes.

4. The applicant will contact the Corps to obtain a preliminary federal screening/delineation confirmation/jurisdictional determination. When appropriate, a separate delineation confirmation may also be required from the Environmental Protection Agency (EPA).

B. APPLICATION: The following information must be submitted as part of the 22-SPGP-RCIR permit application:

1. A completed and signed Standard Joint Permit Application (JPA). The applicant must utilize the most recent version which is located on the Norfolk District Regulatory website.
2. A JPA that is clearly marked 22-SPGP-RCIR.
3. A preliminary federal screening or Corps confirmed delineation completed in accordance with Section II.A of this permit.
4. A compensatory mitigation plan for all projects where the permanent loss exceeds 0.1 acre of wetlands and/or 0.03 acre of stream bed or 300 linear feet of stream bed. *Stream channel loss must be reported in acreage and linear feet.*

C. PROCESSING:

1. The VMRC will send the application link to the applicable Virginia Department of Environmental Quality (VDEQ) Region for processing.
2. Processing of the JPA is initiated when the VDEQ received the JPA link from the VMRC.
3. Once the VDEQ has deemed the application complete for federal review, AND when Corps coordination is required, the VDEQ will forward the complete application to the Corps.
4. The VDEQ is the agency responsible for ensuring permit applications meet the informational and technical requirements for issuance of 22-SPGP-RCIR verification letters and are in compliance with Virginia code and regulations

D. STATE APPROVALS: Prior to commencing work in WOTUS, and to receive a 22-SPGP-RCIR verification, permittees must obtain a VDEQ Virginia Water Protection (VWP) individual permit or general permit coverage for the project. When required, permittees must also obtain a VMRC permit prior to commencing work in WOTUS

E. 22-SPGP-RCIR VERIFICATIONS:

1. The VDEQ will issue all 22-SPGP-RCIR verification letters with special conditions (if applicable)
2. The permittee is required to submit a new 22-SPGP-RCIR permit application to the VDEQ when a permit verification has been issued AND

changes have been made to the project, including but not limited to: changes to the purpose, impact totals, impact type, jurisdiction, proposed compensation, etc.

3. For all commercial and institutional development projects that include the construction of wind energy generating structures, solar towers, or overhead powerlines the VDEQ must notify the DOD Clearinghouse of the permitted project. The VDEQ will send a copy of the joint permit application and SPGP verification letter to the following address: DOD Clearinghouse, 3400 Defense Pentagon, Room 5C646 or osd.dod-siting-clearinghouse@mail.mil
4. The 22-SPGP-RCIR may also be used for activities excluded from VWP permitting when those activities are associated with qualifying residential, commercial, institutional and/or recreational development projects that require a state VWP permit.

F. **EXCLUDED ACTIVITIES:** The 22-SPGP-RCIR may not be used to authorize projects that propose the following activities:

1. Mining activities and operations for new and existing mining operation
2. Standalone substations that are not associated with qualifying residential, commercial, institutional, and recreational projects.
3. Stand-alone stormwater management facilities that are not an attendant feature of a RCIR development.
4. Total Maximum Daily Loads (TMDL) projects.
5. Linear transportation projects that are not an attendant feature of a RCIR development.

III. **DEFINITIONS:**

- A. Loss of WOTUS that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. The loss of stream bed includes the acres of stream bed that are permanently adversely affected by filling or excavation because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of WOTUS is a threshold measurement of the impact to jurisdictional waters or wetlands for determining whether a project may qualify for a 22-SPGP-RCIR; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and services. WOTUS temporarily filled, flooded, excavated, or drained, but restored to pre-construction contours and elevations after construction, are not included in the measurement of loss of WOTUS. Impacts resulting from activities that do not require Department of the Army authorization, such as activities eligible for exemptions under section 404(f) of the Clean Water Act, are not considered when calculating the loss of WOTUS.

- B. Permittee: The responsible party in receipt of the 22-SPGP-RCIR verification from the VDEQ. The permittee will be the responsible party for complying with all 22-SPGP-RCIR general conditions as well as any additional special conditions required for each single and complete project.
- C. Residential developments: Construction or expansion of a multiple unit residential development or a residential subdivision including the construction of building foundations, building pads and attendant features that are necessary for the use of the residence or residential development. Attendant features may include but are not limited to roads, parking lots, garages, yards, utility lines, storm water management facilities, septic fields, and recreation facilities such as playgrounds, playing fields, and golf courses
- D. Commercial and Institutional Developments: Construction or expansion of commercial and institutional building foundations, building pads, and attendant features that are necessary for the use and maintenance of the structures. Attendant features may include, but are not limited to, roads, parking lots, garages, yards, utility lines, storm water management facilities, and recreation facilities such as playgrounds and playing fields. Examples of commercial developments include retail stores, industrial facilities, restaurants, business parks, and shopping centers. Examples of institutional developments include schools, fire stations, government office buildings, judicial buildings, public works buildings, libraries, hospitals, and places of worship.
- E. Stormwater Management Facilities: Construction of stormwater management facilities, including stormwater detention basins and retention basins and other stormwater management facilities; the construction of water control structures, outfall structures and emergency spillways; the construction of low impact development integrated management features such as bioretention facilities (e.g., rain gardens), vegetated filter strips, grassed swales, and infiltration trenches; and the construction of pollutant reduction green infrastructure features designed to reduce inputs of sediments, nutrients, and other pollutants into waters, such as features needed to meet reduction targets established under Total Maximum Daily Loads set under the Clean Water Act.
- F. Recreational Facilities: Construction or expansion of recreational facilities. Examples of recreational facilities include playing fields (e.g., football fields, baseball fields), basketball courts, tennis courts, hiking trails, bike paths, golf courses, ski areas, horse paths, nature centers, and campgrounds (excluding recreational vehicle parks).

IV. **AUTHORIZED ACTIVITIES**

Residential, Commercial, Institutional and Recreational Development Activities Eligibility Criteria:

1. The discharge must not cause the loss of greater than 1 acre of WOTUS (e.g., wetlands, open water, and stream channel). *Stream channel loss must be reported in acreage and linear feet.*
2. Activities are subject to Corps regulations.
3. Activities involve the discharge of dredged/fill material into WOTUS (e.g., wetlands, open water, and stream channel), associated with residential, commercial, institutional, and recreational projects
4. Activities meet the general and special conditions of 22-SPGP-RCIR listed in this document and any special conditions required of each project-specific verification.
5. All required compensatory mitigation follows the Mitigation Rule [Corps-EPA Compensatory Mitigation for Losses of Aquatic Resources, dated April 10, 2008, 33 CFR 325 and 332/40 CFR 230].
6. All applicable federal reviews, listed in the general conditions of this document, have been completed.
7. All required state approvals have been received.

V. **GENERAL CONDITIONS:**

The following conditions apply to all activities authorized under 22-SPGP-RCIR. Work that does not meet one or more of the terms or general conditions of 22-SPGP-RCIR, including work that has been determined to be more than minimal in nature (at any impact level), will require consideration under a different type of Corps permit.

1. Other permits: Authorization does not obviate the need to obtain other Federal, state, or local authorizations required by law or to comply with all Federal, state, or local laws.
2. Minimal effects: Projects authorized shall have no more than minimal individual or cumulative adverse environmental impacts.
3. Discretionary authority: The Corps District Commander retains discretionary authority to require processing of an individual permit based on concerns for the aquatic environment or for any other factor of the public interest (33 C.F.R. § 320.4(a)). This authority is exercised on a case-by-case basis.
4. Single and complete non-linear projects: The activity must be a single and complete project. For non-linear projects, the term “single and complete project” is defined at [33 CFR 330.2\(i\)](#) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete non-linear project must have independent utility (see

definition of “independent utility”). Single and complete non-linear projects may not be “piecemealed” to avoid the limits of a 22-SPGP-RCIR authorization.

5. Single and complete linear projects: The activity must be a single and complete project. A linear project is a project constructed for the purpose of getting people, goods, or services from a point of origin to a terminal point, which often involves multiple crossings of one or more waterbodies at separate and distant locations. The term “single and complete project” is defined as that portion of the total linear project proposed or accomplished by one owner/developer or partnership or other association of owners/developers that includes all crossings of a single water of the United States (i.e., a single waterbody) at a specific location. For linear projects crossing a single or multiple waterbodies several times at separate and distant locations, each crossing is considered a single and complete project for purposes of 22-SPGP-RCIR authorization. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately.
6. Independent utility: A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.
7. Multiple general permit authorizations.: The 22-SPGP-RCIR may be combined with other Corps general permits (including Nationwide, Regional or other programmatic general permits) if the impacts are considered cumulatively and do not exceed the acreage limit or linear footage limits of the 22-SPGP-RCIR.
8. Permit on-site: The permittee shall ensure that a copy of 22-SPGP-RCIR and the accompanying authorization letter are always at the work site. These copies must be made available to any regulatory representative upon request. Although the permittee may assign various aspects of the work to different contractors or sub-contractors, all contractors and sub-contractors shall be expected to comply with all conditions of any 22-SPGP-RCIR verification.
9. Historic Properties:
 - a. No activity is authorized under the 22-SPGP-RCIR which may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.
 - b. Federal permittees: should follow their own procedures for complying with the requirements of section 106 of the NHPA (see 33 CFR 330.4(g)(1)). 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 is not submitted, then additional consultation under section 106 may be necessary. The respective federal agency is responsible for fulfilling its obligation to comply with section 106.

- c. Non-federal permittees: must state which historic properties might have the potential to be affected by the proposed 22-SPGP-RCIR activity or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of, or potential for, the presence of historic properties can be sought from the State Historic Preservation Officer, Tribal Historic Preservation Officer, or designated tribal representative, as appropriate, and the NHPA (see 33 CFR 330.4(g)). When reviewing permit applications, district engineers will comply with the current procedures for addressing the requirements of section 106 of the NHPA. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts commensurate with potential impacts, which may include background research, consultation, oral history interviews, sample field investigation, and/or field survey. Based on the information submitted in the permit application and these identification efforts, the district engineer shall determine whether the proposed SPGP activity has the potential to cause effects on the historic properties. Section 106 consultation is not required when the district engineer determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). Section 106 consultation is required when the district engineer determines that the activity has the potential to cause effects on historic properties. The district engineer will conduct consultation with consulting parties identified under 36 CFR 800.2(c) when he or she makes any of the following effect determinations for the purposes of section 106 of the NHPA: no historic properties affected, no adverse effect, or adverse effect.
- d. Where the non-Federal applicant has identified historic properties on which the proposed 22-SPGP-RCIR activity might have the potential to cause effects and has so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects to historic properties or that NHPA section 106 consultation has been completed. If NHPA section 106 consultation is required, the district engineer will notify the non-Federal applicant that he or she cannot begin the activity until section 106 consultation is completed.
- e. Prospective permittees should be aware that section 110k of the NHPA (54 U.S.C. 306113) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of section 106 of the NHPA, has intentionally significantly adversely affected

a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

- f. Discovery of Previously Unknown Remains and Artifacts. Permittees that discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by 22-SPGP-RCIR, they must immediately notify the district engineer of what they have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal, and state coordination required to determine if the items or remains warrant a recovery.

Non-federal permittees shall not begin work on the activity until Section 106 review and/or consultation has been completed AND they have received their 22-SPGP-RCIR verification letter from the VDEQ.

10. Tribal Rights: No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.
11. Federal Lands: Authorized activities shall not impinge upon the value of any National Wildlife Refuge, National Forest, National Park, or any other area administered by the United States Fish and Wildlife Service (USFWS), U.S. Forest Service, or National Park Service unless approval from the applicable land management agency is provided with the permit application.
12. Endangered Species: No activity is authorized under any 22-SPGP-RCIR 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 22-SPGP-RCIR which "may affect" a listed

species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.

Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the District Engineer with the appropriate documentation to demonstrate compliance with those requirements. The District Engineer will review the documentation and determine whether it is sufficient to address ESA compliance for the 22-SPGP-RCIR activity, or whether additional ESA consultation is necessary.

Non-federal permittees shall not begin work on the activity until Section 7 review and/or consultation has been completed AND they have received their 22-SPGP-RCIR verification letter from the VDEQ.

Authorization of an activity by a 22-SPGP-RCIR 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 or a Biological Opinion with “incidental take” provisions, etc.) from the USFWS or the National Marine Fisheries Service (NMFS), The Endangered Species Act 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. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the USFWS and NMFS or their World Wide Web pages at <http://www.fws.gov/> or <http://www.fws.gov/ipac> and <http://www.noaa.gov/fisheries.html> respectively.

13. Migratory Birds and Bald and Golden Eagles: The permittee is responsible for ensuring that an action authorized by the 22-SPGP-RCIR complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting the appropriate local office of the USFWS to determine what measures, if any, are necessary or appropriate to reduce adverse effects to migratory birds or eagles, including whether “incidental take” permits are necessary and available under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for a particular activity.
14. Wild and Scenic Rivers: Currently, there are no designated Wild and Scenic Rivers in Virginia. No 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 (NPS), U.S. Forest Service (USFS), Bureau of Land Management (BLM), USFWS). Impacts that occur in these resource areas will require coordination with the appropriate Federal agency.

15. 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 WOTUS.
- 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 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 of Engineers, 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.

16. Floodplains: The activity must comply with applicable Federal Emergency Management Agency (FEMA)-approved state or local floodplain management requirements.

17. 408 Certification: Under 33 USC 408, no activity may temporarily or permanently alter or make use of a U.S. Army Corps of Engineers civil works project unless reviewed and permitted by the Secretary of the Army. The Corps may grant this permission if the work does not impair the usefulness of the project and is not injurious to the public interest.

18. Environmental justice: Activities authorized under 22-SPGP-RCIR must comply with Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations".

19. Federal liability: In issuing 22-SPGP-RCIR, 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 22-SPGP-RCIR.
 - d. design or construction deficiencies associated with the permitted work.
 - e. damage claims associated with any future modification, suspension, or revocation of this permit.
20. Avoidance and minimization: Except as provided under section 404(b)(2), no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences. (40 CFR 230.10(a)-(d) Section 404 (b)(1) Guidelines).
21. Compensatory Mitigation: Mitigation will be required for all projects where the permanent loss exceeds 0.1 acre of wetlands and/or 0.03 acre of stream bed and/or 300 linear feet of stream bed. *Stream channel loss must be reported in acreage and linear feet.*
- a. WETLANDS and OPEN WATERS:
 - i. All wetland mitigation will comply with the Mitigation Rule [Corps-EPA Compensatory Mitigation for Losses of Aquatic Resources, dated April 10, 2008, 33 CFR 325 and 332/40 CFR 230].
 - ii. Wetland mitigation: will generally be required for all projects where the total permanent impacts exceed 1/10 acre.
 - iii. Generally, the minimum required wetland mitigation ratios will be as follows:
 - 2:1 for forested wetlands
 - 1.5:1 for scrub-shrub wetlands
 - 1:1 for herbaceous emergent wetlands
 - 0.5:1 for permanent loss of open waters
 - 1:1 for conversion of forested wetlands to herbaceous emergent wetlands.
 - iv. On a case-by-case basis, additional compensatory mitigation may be required to ensure impacts are minimal:
 - For permanent or temporary conversion of one wetland type to another
 - For wetland impacts totaling less than 1/10 acre
 - At mitigation ratios beyond the generally recommend ratios
 - b. STREAMS: mitigation will generally be required for all projects where the permanent loss exceeds 0.03 acre or 300 linear feet of stream bed. *Stream channel loss must be reported in acreage and linear feet.*

- i. All stream mitigation will comply with the Mitigation Rule [Corps-EPA Compensatory Mitigation for Losses of Aquatic Resources, dated April 10, 2008, 33 CFR 325 and 332/40 CFR 230].
- ii. Minimum stream mitigation requirements will be determined using the current Corps and VDEQ endorsed assessment methodology.
- iii. On a case-by-case basis, additional compensatory mitigation may be required to ensure impacts are minimal:
 - For stream mitigation requirements that exceed the assessment methodology recommendation.
 - For mitigation for impacts totaling less than 0.03 acre or 300 linear feet of stream bed may be required on a case-by-case basis to ensure impacts minimal.

22. Heavy Equipment: Heavy equipment working in wetlands must be placed on mats, or other measures must be taken to minimize soil disturbance.

23. Temporary fills: 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 fill must be removed in its entirety and the affected areas returned to preconstruction elevations, the soil surface loosened by ripping or chisel plowing to a depth of 8-12", and then seeded using native wetland species

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

24. Sedimentation and erosion control: 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 WOTUS during periods of low-flow or no-flow.

25. Countersinking of Pipes and Culverts: Based on consultation with Virginia Department of Wildlife Resources (VDWR), the Corps has determined that fish and other aquatic organisms are most likely present in any nontidal stream being crossed, in the absence of site-specific evidence to the contrary. The following conditions will apply in nontidal waters:

- a. All pipes and culverts placed in streams will be countersunk at both the inlet and outlet ends, unless indicated otherwise by the Corps 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 preconstruction (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. The requirement to countersink does not apply to extensions of existing pipes or culverts that are not countersunk, or to maintenance of pipes/culverts that do not involve replacing the pipe/culvert (e.g., 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 the permittee's records showing the bedrock condition and the existing inlet and outlet elevations.

ii. A pipe/culvert is being placed in a new location: If the permittee determines that bedrock or an existing buried utility line that is not practicable to relocate prevents countersinking, they 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 the permittee determines that neither a bottomless structure nor an alternative location is practicable, justification must be provided in the 22-SPGP-RCIR application. The permittee 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 permit application must also include photographs documenting site conditions. 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 the permittee not want to countersink the pipe/culvert for other reasons, justification must be provided in the 22-SPGP-RCIR application. The permittee 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. The permittee 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.

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 the permittee must stop work and contact the VDEQ (contact by telephone and/or email is acceptable). The permittee must provide the VDEQ with specific information concerning site conditions and limitations. The VDEQ will work with the permittee to determine an acceptable plan, taking into consideration the information provided by the permittee, but the permittee should recognize that the VDEQ and/or Corps could determine that the work will not qualify for a 22-SPGP-RCIR permit.

i. Emergency pipe replacements: In the case of an emergency situation, such as when a pipe/culvert washes out during a flood, a permittee 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 VDEQ 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 the permittee's planned schedule for installing a countersunk replacement (it is acceptable to submit such notification by email). The permittee should anticipate whether bedrock or steep terrain will limit countersinking, and if so, should follow the procedures outlined in (f) and/or (g) above.

26. Discharge of pollutants: All authorized activities involving any discharge of pollutants into WOTUS shall be consistent with applicable water quality standards, effluent limitations, standards of performance, prohibitions, and pretreatment standards and management practices established pursuant to the CWA (33 U.S.C. § 1251 et seq.) and applicable state and local laws.

27. 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).

28. Obstruction of high flows: Discharges of dredged or fill material must not permanently restrict or impede the passage of normal or expected high flows.

29. 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 that 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.
30. 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.
31. Migratory Bird Breeding Areas: Activities in WOTUS that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.
32. Native Trout: Designated Trout Waters, are defined by the Virginia State Water Control Board and the VDWR. The waters, occurring specifically within the mountains of Virginia, are within the following river basins:

Potomac-Shenandoah River Basins
James River Basin
Roanoke River Basin
New River Basin
Tennessee and Big Sandy River Basins
Rappahannock River Basin

Information on designated trout streams can be obtained via VDWR's Virginia Fish and Wildlife Information Service's (VAFWIS's) Cold Water Stream Survey database. Basic access to the VAFWIS is available via <https://services.dwr.virginia.gov/fwis/>.

VDWR recommends the following time-of-year restrictions (TOYRs) for any in-stream work within streams identified as wild trout waters in its Cold-Water Stream Survey database. The recommended TOYRs for trout species are:

Brook Trout: October 1 through March 31
Brown Trout: October 1 through March 31
Rainbow Trout: March 15 through May 15

This condition applies to the following counties and cities: Albemarle, Allegheny, Amherst, Augusta, Bath, Bedford, Bland, Botetourt, Bristol, Buchanan, Buena Vista, Carroll, Clarke, Covington, Craig, Dickenson, Floyd, Franklin, Frederick,

Giles, Grayson, Greene, Henry, Highland, Lee, Loudoun, Madison, Montgomery, Nelson, Page, Patrick, Pulaski, Rappahannock, Roanoke City, Roanoke Co., Rockbridge, Rockingham, Russell, Scott, Shenandoah, Smyth, Staunton, Tazewell, Warren, Washington, Waynesboro, Wise, and Wythe.

33. Anadromous Fish Use Areas: Authorizations associated with the 22-SPGP-RCIR shall not adversely affect spawning habitat or a migratory pathway for anadromous fish. Areas of anadromous fish use are indicated on the VDWR information system at: <https://services.dwr.virginia.gov/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 VDWR and/or the Virginia Marine Resources Commission (VMRC).

Should the Corps determine that the work is minimal and no TOYR is needed, the Corps will initiate consultation with National Oceanic Atmospheric Administration (NOAA) Fisheries Service for their concurrence.

34. 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
35. Invasive Species: Plant species listed in the most current Virginia Department of Conservation and Recreation's (DCR) Invasive Alien Plant List shall not be used for revegetation for activities authorized by the 22-SPGP-RCIR. The list of invasive plants in Virginia is found at <https://www.dcr.virginia.gov/natural-heritage/invspdflist>. DCR recommends the use of regional native species for revegetation 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> also see the DCR native plant finder: <https://www.dcr.virginia.gov/natural-heritage/native-plants-finder>.
36. Inspections: The permittee understands and agrees that the Corps and/or the VDEQ are permitted and allowed to make periodic inspections at any time the Corps or VDEQ deems necessary 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 22-SPGP-RCIR, as deemed necessary on a case-by-case basis.

37. Maintenance: Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable 22-SPGP-RCIR general conditions.
38. Property rights: 22-SPGP-RCIR does not convey any property rights, either in real estate or material, or convey any exclusive privileges, nor does it authorize any injury to property or invasion of rights or any infringement of Federal, state, or local laws or regulations. If real estate rights are needed from the Corps, the permittee must contact the Corps Real Estate Office at (757) 201-7733 or at the address listed on the front page of this permit.
39. Suspension and revocation: 22-SPGP-RCIR and individual verifications under 22-SPGP-RCIR maybe either suspended or revoked in whole or in part pursuant to the policies and procedures of 33 C.F.R. § 325.7. Any such action shall not be the basis for any claim for damages against the United States.
40. Restoration directive: The permittee, upon receipt of a restoration directive, shall restore the WOTUS to their former conditions without expense to the United States and as directed by the Secretary of the Army or his/her authorized representative. If the permittee fails to comply with such a directive, the Secretary or his/her designee, may restore the WOTUS to their former conditions, by contract or otherwise, and recover the cost from the permittee.
41. Special conditions: The Corps may impose other special conditions on a project verified pursuant to 22-SPGP-RCIR that are determined necessary to minimize adverse navigational and/or environmental effects or based on any other factor of the public interest. Failure to comply with all conditions of the authorization/verification, including special conditions, constitutes a permit violation and may subject the permittee, or his/her contractor, to criminal, civil, or administrative penalties and/or restoration.
42. False or incomplete information: In granting authorization pursuant to this permit, the Corps and/or the VDEQ has relied upon information and data provided by the permittee. If, subsequent to notification by the Corps and/or the VDEQ that a project qualifies for this permit, such information and data prove to be false or incomplete, the Corps may suspend or revoke authorization, in whole or in part, and/or the United States or Corps may institute appropriate legal proceedings.
43. Abandonment: If the permittee decides to abandon the activity authorized under 22-SPGP-RCIR, unless such abandonment is merely the transfer of property to a third party, they may be required to restore the area to the satisfaction of the Corps.
44. Transfer of verification: To transfer verification under 22-SPGP-RCIR, the transferee and permittee must supply the Corps and the VDEQ with a written and

signed, by all appropriate parties, request to make such a transfer. Such transfer is not effective until written approval has been granted by the Corps or the VDEQ.

45. Binding effect. The provisions of the permit authorization shall be binding on any assignee or successor in interest of the original permittee.
46. Expiration of 22-SPGP-RCIR: Unless further suspended or revoked the 22-SPGP-RCIR will be in effect until August 1, 2026.
 - a. Activities which have commenced (i.e., are under construction) or are under contract to commence construction in reliance upon 22-SPGP-RCIR will remain authorized provided the activity is completed within twelve months of the date of this 22-SPGP-RCIR's expiration of August 1, 2026, 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). Activities qualifying for this extension that are not complete by August 2, 2027 must apply for new general and/or individual Corps permit authorization.
 - b. Activities which have NOT commenced and are NOT under contract to commence construction by the August 1, 2026, expiration must apply for a new general and/or individual Corps permit authorization/verification.

Brian P. Hallberg, PMP
Colonel, U.S. Army
Commanding