

**CENAO-REG
08-LOP-01**

LETTER OF PERMISSION

Effective date: August 14, 2008

Expiration Date: August 14, 2013

I. AUTHORITIES:

08-LOP-01, Letter of Permission 1 (“LOP”), 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).

The Virginia Department of Transportation (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 the waters of the United States of the Commonwealth of Virginia. The maximum impacts allowed under LOP-01 will be two (2) acres of wetlands and 1,000 linear feet of stream bed per impact area.

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

Activities receiving written authorization under this letter of permission do not require further authorization under the provisions contained in 33 CFR 325 unless the District Engineer determines, on a case-by-case basis, that additional review is necessary in the public interest. This letter of permission 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.

II. 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. To assure preservation of water quality, VDOT must apply for and obtain a waiver or an individual §401 Water Quality Certification through a Virginia Water Protection General or Individual Permit pursuant to 9VAC25-210-10 et seq., with the following exception as noted in 9VAC25-210-220 B: The board may waive the requirement for a VWP individual permit when the proposed activity qualifies for a permit issued by the USACE and receives a permit from the VMRC, pursuant to Chapter 12 (Section 28.2-1200 et seq.) or Chapter 13 (Section 28.2-1200 et seq.) of Title 28,2 of the Code of Virginia, and the activity does not impact instream flows.
3. 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 (Virginia

Code 10.1-2100 *et seq.*) and the Chesapeake Bay Preservation Area Designation and Management Regulations (9 VAC 10-20-10 *et seq.*). Authorization under this letter of permission does not supersede state or local government authority or responsibilities pursuant to the Act.

III. SPECIAL CONDITIONS:

1. Projects proposed by VDOT will be discussed at a regularly scheduled permit coordination meeting 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 LOP-01 can be issued at the end of the fifteen-day comment period. However, a project will be authorized by this LOP only after final design sketches have been presented which are acceptable to the aforementioned agencies.
2. In those cases where objections other than those concerning compensatory mitigation ratios cannot be resolved, the project will be processed as an individual permit in accordance with 33 CFR 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 LOP. The Corps can issue the LOP-01 even if agency objections regarding mitigation ratios are unresolved. However, this exception applies only to mitigation ratios and not to other mitigation issues.
3. The District Commander will require that the project be processed for an individual Department of the Army permit for any project which he/she determines to have greater than minimal individual or cumulative impacts.
4. All State and local requirements and regulations pertaining to the project will remain applicable, in addition to the Virginia Sedimentation and Erosion Control Handbook.
5. Any modification to the project plans, made after final permit coordination, must be re-coordinated at a permit coordination meeting. The project modification must be acceptable to the aforementioned agencies in order for it to qualify under this LOP. 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.
6. Prior to the commencement of any work authorized by this letter of permission, VDOT shall advise the Norfolk District, 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 Norfolk District upon completion of the project, including any required mitigation.

7. 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, including that it can only be used for placement of dredged material from certain waterways.)
8. 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.
9. 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.
10. If the display of lights and signals on any structure or work authorized by this LOP is not otherwise provided for by law, such lights and signals as may be prescribed by the USCG shall be installed and maintained by and at the expense of VDOT. The USCG may be reached at the following address and telephone number: Commander (oan), Fifth Coast Guard District, Federal Building, 431 Crawford Street, Portsmouth, Virginia 23704, ATTN: Mr. John Walters, telephone number (757) 398-6230.
11. VDOT hereby recognizes the possibility that the structure permitted herein may be subject to damage by waves from passing vessels. The issuance of this LOP does not relieve VDOT from taking all proper steps to insure the integrity of the structure permitted herein and the safety of boats moored thereto from damage by wave wash.
12. 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.
13. 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 230.
14. No discharge of dredged or fill material may occur in the proximity of a public water supply intake except where the discharge is for adjacent bank stabilization and/or the Corps has provided specific authorization under the permit.
15. No discharge of dredged or fill material may consist of unsuitable material (e.g.: trash, debris, car bodies, asphalt, etc.) and material discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

16. Discharges in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Authorizations for discharges of dredged or fill material into native trout waters or anadromous fish use areas may be conditioned to limit in-stream work within timeframes recommended by the DGIF (trout and anadromous fish) and/or NOAA Fisheries (anadromous fish).
17. If the discharge creates an impoundment of water, adverse impacts on the aquatic system caused by the accelerated passage of water and/or the restriction of its flow shall be minimized to the maximum extent practicable. Compensation maybe required for wetlands with altered hydrology as a result of impoundment.
18. Discharges into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.
19. All temporarily disturbed waters and wetlands must be restored to preconstruction contours as soon as these areas are no longer needed for their authorized purpose, and not later than completion of project construction. Following restoration of contours, the soil in wetlands must be seeded, and re-vegetation with sprigging may be required.
20. Any structure or fill authorized shall be properly maintained, including maintenance to ensure public safety.

VI. GENERAL CONDITIONS:

The following conditions apply to all activities authorized under this Letter of Permission (LOP).

1. **Geographic jurisdiction.** This Letter of Permission will authorize work undertaken within the geographical limits of the Commonwealth of Virginia under the regulatory jurisdiction of the Norfolk District.
2. **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 23510-1096 within 30 days of completion of the project.
3. **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.
4. **Minimal effects.** Projects authorized shall have no more than minimal individual or cumulative adverse environmental impacts, as determined by the Norfolk District.
5. **Discretionary authority.** The Norfolk District Corps of Engineers 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.
6. **Single and complete projects.** This LOP shall only be applied to single and complete projects. For purposes of this LOP, a single and complete project means the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers and which has 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 single and complete projects with independent utility. For linear transportation projects with multiple crossings, the “single and complete” project (i.e., single and complete crossing) will typically apply to each crossing of a separate water of the United States (i.e., single waterbody) at separate and distinct locations. However, in cases where there are many

crossings in close proximity, numerous crossings of the same waterbody, or multiple crossings that otherwise may have more than minimal individual or cumulative impacts, the Norfolk District has the discretion, on a case-by-case basis, to consider all of the crossings cumulatively as one single and complete project.

7. **Permit on-site.** The permittee shall ensure that a copy of the LOP and the accompanying authorization letter are at the work site at all times. 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 this Letter of Permission.

General Conditions Related to National Concerns:

8. **Historic properties.** (a) In cases where it is determined that the activity may affect properties listed, or eligible for listing on, the National Register of Historic Places, the activity is not authorized until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied. (b) Applicant must submit a statement to the Corps regarding the authorized activity's potential to cause effects to any historic properties listed, or determined to be eligible for listing on, the National Register of Historic Places, including previously unidentified properties. The statement must say which historic properties may be affected by the proposed work 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 or potential for the presence of historic resources can be sought from the Virginia Department of Historic Resources and the National Register of Historic Places. Where the applicant has identified historic properties which the proposed activity may have the potential to affect, the applicant shall not begin the activity until notified by the Norfolk District that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed. (c) Prospective permittee should be aware that Section 110(k) of the NHPA (16 U.S.C. § 470(h)-2(k)) 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 effects created or permitted by the applicant. If circumstances justify granting the assistance, the Norfolk District is required to notify the ACHP and provide documentation specifying the circumstances, explaining 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, State Historic Preservation Officer, Tribal Historic Preservation Officer, appropriate Indian tribes if the undertaking occurs on or affect historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have legitimate interest in the impacts to the permitted activity on historic properties. If the permittee, during construction or work authorized herein, encounters a previously unidentified archaeological or other cultural resource, he/she must immediately stop work and notify the Norfolk District of what has been found. Coordination with the Virginia Department of Historic Resources will commence and the permittee will subsequently be advised when he/she may recommence work.
9. **Tribal rights.** No activity authorized may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.
10. **National 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 FWS, U.S. Forest Service, or National Park Service.
11. **Endangered species.** No activity is authorized which:

- Is likely to jeopardize the continuing existence of a threatened or endangered species, or species proposed for such designation, as identified under the ESA, or which will destroy or adversely modify the critical habitat of such species
- “may affect” a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.
- involves the “take” of a threatened or endangered species as defined under the ESA without separate authorization (e.g., a Biological Opinion with “incidental take” provisions) from the U.S. FWS or the NMFS.

Applicants shall include, in their permit applications, information regarding the presence of any Federally listed threatened or endangered species or designated critical habitat in the vicinity of the project site that might be affected by the proposed work. Information regarding threatened or endangered species may be obtained directly from the FWS’ Virginia Field Office at 6669 Short Lane, Gloucester, VA 23061 and/or NOAA Fisheries Habitat Conservation Division, P.O. Box 1346, 7580 Spencer Road, Gloucester Point, VA 23062.

- 12. 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 on all actions, or proposed actions, permitted, funded, or undertaken by the agency that may adversely effect 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, the applicant shall not begin work until the Corps has provided notification that the EFH consultation has concluded.
- 13. Wild and Scenic Rivers.** Currently, there are no designated Wild and Scenic Rivers in the Commonwealth of Virginia; however, the portion of the Upper New River from Glen Lyn, Virginia to the West Virginia/Virginia state line was designated a “study river” by Congress on October 26, 1992. 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, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service). Impacts that occur in these resource areas will require coordination with the appropriate Federal agency.
- 14. Federal navigation project.** Authorized activities may not interfere with any existing or proposed Federal navigation projects.
- 15. Navigation.** (a) No authorized activity may cause more than a minimal adverse effect on navigation. (b) 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 Norfolk District, 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.** All practicable efforts shall be made to conduct the work authorized by this LOP in a manner so as to avoid any adverse impact on the Federal Emergency Management Agency (FEMA) designated 100-year floodplain.
- 17. Real estate.** Activities authorized under this LOP do not grant any Corps real estate rights. If real estate rights are needed from the Corps, you must contact the Corps Real Estate Office at (757) 201-7736 or at the address listed on the front page of this permit.

- 18. Environmental Justice.** Activities authorized under this LOP must comply with Executive Order 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations”.
- 19. Federal liability.** In issuing this LOP, 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 LOP; (d) design or construction deficiencies associated with the permitted work; (e) damage claims associated with any future modification, suspension, or revocation of this permit.

General Conditions Related to Minimizing Environmental Impacts:

- 20. Avoidance and minimization.** Discharges of dredged or fill material into waters of the United States shall be avoided and impacts minimized to the maximum extent practicable.
- 21. Heavy equipment in wetlands.** Heavy equipment working in wetlands must be placed on mats or other measures must be taken to minimize soil disturbance.
- 22. Sedimentation and erosion control.** Appropriate erosion and sediment controls must be employed 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, must be permanently stabilized at the earliest practicable date.
- 23. Aquatic life movements.** No authorized activities may substantially disrupt the movement 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. The Norfolk District has determined that fish and wildlife are most often present in any stream being crossed, in the absence of evidence to the contrary.
- 24. Obstruction of high flows.** Discharges of dredged or fill material must not permanently restrict or impede the passage of normal or expected high flows.
- 25. Waterbird breeding areas.** Discharges of dredged or fill material into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.

General Procedural Conditions:

- 26. Inspections.** A copy of this permit and any verification letter must be provided to the contractor and made available at the project site to any regulatory representative. The permittee shall allow the Norfolk District 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 Norfolk District reserves the right to require post-construction engineering drawings and/or surveys of any work authorized under this LOP, as deemed necessary on a case-by-case basis.
- 27. Maintenance.** The permittee shall maintain the work authorized herein in good condition and in conformance with all terms and conditions of this permit. All fills shall be properly maintained to ensure public safety.
- 28. Property rights.** This General Permit 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.
- 29. Modification, suspension, and revocation.** This LOP may be either modified, 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.
- 30. Restoration directive.** The permittee, upon receipt of a restoration directive, shall restore the waters of the United States 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 waters of the United States to their former conditions, by contract or otherwise, and recover the cost from the permittee.

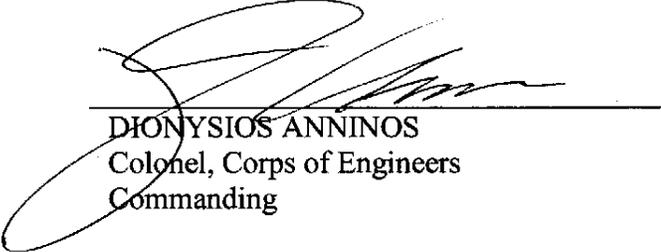
- 31. Special conditions.** The Norfolk District may impose other special conditions on a project authorized pursuant to this LOP that are determined necessary to minimize adverse navigational and/or environmental effects or based on any other factor of the public interest. Failure to comply with all general conditions of the authorization, including additional special conditions, constitutes a permit violation and may subject the permittee, or his/her contractor, to criminal, civil, or administrative penalties and/or restoration.
- 32. False or incomplete information.** In granting authorization pursuant to this permit, the Norfolk District has relied upon information and data provided by the permittee. If, subsequent to notification by the Norfolk District that a project qualifies for this permit, such information and data prove to be materially false or materially incomplete, the authorization may be suspended or revoked, in whole or in part, and/or the United States may institute appropriate legal proceedings.
- 33. Abandonment.** If the permittee decides to abandon the activity authorized under this general permit, unless such abandonment is merely the transfer of property to a third party, he/she may be required to restore the area to the satisfaction of the Norfolk District.

General Conditions Regarding Duration of Authorizations, Time Extensions for Authorizations, and Permit Expiration:

- 34. Duration of Activity's Authorization.** Activities authorized under 08-LOP-01 must be completed by August 14, 2013. If this LOP 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 LOP; then the project will continue to be authorized. The Norfolk District will issue a special public notice announcing any changes to this Letter of Permission when they occur; however, it is incumbent upon you to remain informed of changes to the LOPs. Activities which have commenced (i.e., are under construction) or are under contract to commence in reliance upon this LOP that do not meet the terms and conditions of the revalidated LOP will remain authorized provided the activity is completed within twelve months of the date of this LOP's expiration (i.e. August 14, 2014), 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 14, 2014, you must reapply for separate permit authorization in order to meet current permit criteria.
- 35. Expiration of 08-LOP-01.** Unless further modified, suspended, or revoked, this permit will be in effect until August 14, 2013. Upon expiration, it may be considered for revalidation. Activities completed under the authorization of a LOP which was in effect at the time the activity was completed continue to be authorized by that LOP.

14 Aug 2008

Date



DIONYSIOS ANNINOS
Colonel, Corps of Engineers
Commanding