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 17-SPGP-01

Effective Date: June 29, 2017 Expiration Date: May 31, 2022

I. **AUTHORITIES**:

A. 17-SPGP-01 authorizes the discharge of dredged or fill material in non-tidal waters, of the United States, including wetlands, associated with certain residential, commercial, and institutional developments and linear transportation 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). These projects must have no more than minimal individual and cumulative impacts and must meet all the terms and conditions outlined herein. The use of 17-SPGP-01 is restricted to those projects that have avoided and minimized impacts to waters of the U.S., including wetlands, to the maximum extent practicable.

B. 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 the aforementioned work in non-tidal waters and 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: Prior to the submission of an application for any Residential, Commercial, or Institutional Development Activity or Linear Transportation Activity covered by 17-SPGP-01, a proponent must first obtain a Corps confirmed delineation that is approved for use with a permit application (Preliminary JD) or a confirmed jurisdictional determination that includes the limits of all waters of the U.S., including wetlands that are located within the project boundaries (Approved JD). The applicant will contact the Corps to obtain a delineation confirmation/jurisdictional determination. When appropriate, a separate delineation confirmation may also be required from the Environmental Protection Agency (EPA).

B. Application: The application must be submitted to the Virginia Marine Resource Commission (VMRC) and clearly marked 17-SPGP-01. The following information must be submitted as part of the complete application package:
   1) A completed and signed Standard Joint Permit Application (JPA). The applicant must utilize the most recent version.

http://www.nao.usace.army.mil/Missions/Regulatory/

2) A completed SPGP Complete Application Checklist. The applicant must utilize the most recent version.
3) A Corps confirmed delineation that is approved for use with a permit application OR a confirmed jurisdictional determination that includes the limits of all waters of the U.S., including wetlands that are located within the project boundaries.

This information listed above will be required to render an application complete for 17-SPGP-01 purposes. The application package must be submitted to the Virginia Marine Resource Commission (VMRC) and clearly marked 17-SPGP-01. The VMRC will forward a copy of the application to the applicable VDEQ office. Once the VDEQ has deemed the application complete the VDEQ will forward the complete application to the appropriate federal agency when coordination is required.

For purposes of 17-SPGP-01, the VDEQ is the agency responsible for ensuring permit applications meet the informational and technical requirements of 17-SPGP-01 and for issuance of 17-SPGP-01 verification letters for qualifying Residential, Commercial, and Institutional and Linear Transportation projects.

C. State Approvals: In order for 17-SPGP-01 to be valid, permittees must obtain the following state approvals prior to commencement of work in waters of the U.S.:

1) Virginia Department of Environmental Quality (VDEQ) Virginia Water Protection (VWP) permit
2) VMRC permit, when required
3) VDEQ informal resolution, letter of agreement, executive compliance agreement or consent order when the 17-SPGP-01 is utilized for resolution of non-compliance and/or enforcement (at Corps discretion).

The 17-SPGP-01 may also be used for activities excluded from State VWP permitting when those activities are associated with a larger residential, commercial, institutional development and/or linear transportation project that requires state approval..

III. **DEFINITIONS**:

A. Loss of waters of the United States: Waters of the United States (WOUS), including wetlands that are permanently adversely affected by filling, flooding, excavation, or drainage 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/linear footage of the loss of WOUS is a threshold measurement of the impact to jurisdictional waters for determining whether a project may qualify for 17-SPGP-01; 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.

1) The loss of stream bed includes the linear feet of stream bed that is filled or excavated. WOUS 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 WOUS. Impacts resulting from activities eligible for exemptions under Section 404(f) of the Clean Water Act are not considered when calculating the loss of WOUS.
2) Per Norfolk District Pipe Repair Guidelines: pipe repair and replacement is considered a permanent impact
3) The length of any box culvert, pipe, or bridge that is being removed and replaced, whether in the same location or not, is considered a permanent impact. However, if a pipe/culvert/bridge is left in place and is extended or rip-rapped, then only the length and area of the extension or rip-rap is considered a permanent impact. [Based on Norfolk District letter guidance May 5, 2009 to VDOT]

B. Natural stream design: a stream channel design that mimics the dimension, pattern, and profile of a representative reference stream reach.

C. Permittee: the responsible party in receipt of the 17-SPGP-01 verification from the VDEQ. The permittee will be the responsible party for complying with all 17-SPGP-01 general conditions as well as any additional special conditions required of each project.

D. 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 (provided the golf course is an integral part of the residential development).

E. 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.

F. Linear transportation: the construction, expansion, modification, or improvement of linear transportation projects (e.g., roads, highways, railways, trails, airport runways, and taxi ways).

IV. AUTHORIZED ACTIVITIES

A. Residential, Commercial, and Institutional Development Activities Eligibility Criteria:

1) Activities are subject to Corps regulations;

2) Activities involve the discharge of dredged/fill material associated with residential, commercial, and institutional projects and propose:
   a. the TOTAL permanent loss of not more than 1 acre of non-tidal waters of the US, to include stream channel, wetlands and open waters.
      AND
   b. the permanent loss of not more than 2,000 linear feet of stream channel;

3) Activities meet the general and special conditions of 17-SPGP-01 listed in this document and any special conditions required of each project-specific verification;

4) Compensatory mitigation is provided in accordance with the mitigation standards and general conditions listed in this document.

5) Activities have received and completed all applicable federal review as listed in the general conditions of this document.

****The following activities are NOT authorized under the 17-SPGP-01:**

- The Construction of one stand-alone single family home and/or its attendant features.
- Golf courses that are not an integral part of a residential development.
- The construction of new ski areas.

B. Linear Transportation Activities Eligibility Criteria:

1) Activities are subject to Corps regulations;

2) Activities involve the discharge of dredged/ fill material associated with the construction, expansion, modification, or improvement of linear transportation projects that are single and complete with independent utility and propose:

a. the TOTAL permanent loss of not more than ½ acre of non-tidal 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 at any single impact site with independent utility.

3) Activities meet all general conditions of 17-SPGP-01 listed in this document and any special conditions required of each project-specific verification;

4) Compensatory mitigation is provided in accordance with the mitigation standards and general conditions listed in this document.

5) Activities have received and completed all applicable federal review as listed in the general conditions of this document.

6) Construction and/or relocation of utility lines by the applicant and within the right-of- way/easements of the project and performed in direct relation with the project are included in the project impact totals.

V. GENERAL CONDITIONS:

The following conditions apply to all activities authorized under 17-SPGP-01. Work that does not meet one or more of the terms or general conditions of 17-SPGP-01, 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 projects: The activity must be a single and complete project.
   a. 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 "independent utility" as defined in these general conditions). Single and complete non-linear projects may not be "piecemealed" to avoid the limits in a17-SPGP-01 authorization.

b. For linear transportation: For projects with multiple crossings or encroachments a determination of "single and complete" will typically apply to each crossing or encroachment 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.

5) 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. A phase of a project that would be constructed even if the other phases were not built can be considered as a separate, single and complete project with independent utility. For a linear transportation project, separate impact areas on a new location roadway are not considered to have independent utility and thus impacts would be considered cumulatively and eligible for a single 17-SPGP-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 17-SPGP-01 verification. Although such impacts are not considered cumulatively for permitting purposes, they are considered cumulatively when assessing the need for federal review.

6) Multiple general permit authorizations.: The 17-SPGP-01 may be combined with other Corps general permits (including Nationwide, Regional or Letters of Permission) as long as the impacts are considered cumulatively and do not exceed the acreage limit or linear footage limits of the 17-SPGP-01. Two separate activities (e.g. Residential and Linear, within 17-SPGP-01, may be combined as long as they do not exceed the acreage or linear footage threshold of the activity with the highest specified acreage or linear footage threshold).

7) Permit on-site: The permittee shall ensure that a copy of 17-SPGP-01 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 any 17-SPGP-01 verification.

8) Historic Properties: In cases where the Corps determines that the activity may affect properties listed, or eligible for listing, in 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.

Federal permittees should follow their own procedures for complying with the requirements of Section 106 of the National Historic Preservation Act. 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 section 106 compliance for the 17-SPGP-01 activity or whether additional section 106 consultation is necessary.

Non-federal permittees shall not begin work on the activity until Section 106 review and/or coordination has been completed AND they have received their 17-SPGP verification letter from the VDEQ.

Prospective permittees should be aware that section 110k of the NHPA (16 U.S.C. 470h-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 permit or assistance despite the adverse effect created or allowed 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.

Discovery of Previously Unknown Remains and Artifacts: If a permittee discovers any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by this permit, the permittee must immediately notify the District Engineer 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. The District Engineer will initiate the Federal, Tribal and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

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.

9) 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.

10) Endangered Species: No activity is authorized under any 17-SPGP-01 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 17-SPGP-01 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 17-SPGP-01 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 17-SPGP verification letter from the VDEQ.

    Authorization of an activity by a 17-SPGP-01 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 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.

11) Migratory Birds and Bald and Golden Eagles: The permittee is responsible for obtaining any "take" permits required under the USFWS regulations governing compliance with the Migratory Bird Treaty Act or the Bald and Golden Eagle Protection Act. The permittee should contact the appropriate local office of the USFWS to determine if such "take" permits are required for a particular activity. As of the issuance date of the 17-SPGP the current contact, concerning this matter, is at the U.S. Fish and Wildlife Service, Thomas Wittig at 413-253-8577 or Thomas_wittig@fws.gov. Information on active bald eagle nests in the project area can be obtained via The Center for Conservation Biology (CCB) Virginia Eagles Nest Locator: http://www.ccb-wm.org/virginiaeagles/index.htm.

12) 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.

13) Department of Defense (DOD) Siting Clearinghouse Coordination: 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, Attn: David Blalock, 101 Marietta St. NW, Suite 3120, Atlanta, Georgia 30303 or david.c.blalock2.civ@mail.mil

14) Navigation: No authorized activity may cause more than a minimal adverse effect on navigation.

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.

15) Floodplains: The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

16) 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.

17) Environmental justice: Activities authorized under 17-SPGP-01 must comply with Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations".

18) Federal liability: In issuing 17-SPGP-01, 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 17-SPGP-01; (d) design or construction deficiencies associated with the permitted work; (e) damage claims associated with any future modification, suspension, or revocation of this permit.

19) 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.l0(a)-(d) Section 404 (b)(l) Guidelines).

20) Compensatory Mitigation: Mitigation will be required for all permanent impacts, on a project site, once the compensatory mitigation threshold has been exceeded for waters OR wetland impacts.

    a. Wetland mitigation: will generally be required for all residential, commercial, and institutional development projects where the total permanent impacts exceed 1/10 acre AND for all wetland impacts on linear transportation projects that are funded in part or in total by local, state or federal funds.

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.

Compensatory mitigation may be required on a case-by-case basis to ensure impacts are minimal for:

- permanent or temporary conversion of one wetland type to another
- wetland impacts totaling less than 1/10 acre
- at mitigation ratios beyond the generally recommend ratios

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].

b. Stream mitigation: will generally be required for all residential, commercial, institutional developments AND linear transportation projects where the total permanent stream channel impacts exceed 300 linear feet.

Minimum stream mitigation requirements will be determined using the current Corps and VDEQ endorsed assessment methodology.

Stream mitigation that exceeds the assessment methodology recommendation and mitigation for impacts totaling less the 300 linear feet may be required on a case-by-case basis to ensure impacts are minimal.

All stream mitigation will comply with Mitigation Rule [Corps-EPA Compensatory Mitigation for Losses of Aquatic Resources dated April 10, 2008 33 CFR 325 and 332; 40 CFR 230].

Where local zoning ordinances provide for riparian and floodplain protection 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 1-20 et seq.), the use of buffers as a form of compensatory mitigation shall be allowed only:

- where the extent of the buffer exceeds the lateral extent already required by local ordinances pursuant to the Act and the regulations
- where the quality of the existing protected buffer area is enhanced to provide greater water quality protection benefits
- where the proposed compensatory mitigation is undertaken in

compliance with the Mitigation Rule [Corps-EPA Compensatory Mitigation for Losses of Aquatic Resources: Final Rule dated April 10, 2008 33 CFR 332.4(c)(2)-(14) and 33 CFR 332.3(h)]

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

22) Temporary fills: All temporarily disturbed waters and wetlands must be restored to their pre-construction contours within 12 months of commencing the temporary impact's construction. Impacts that will not be restored within 12 months (calculated from the start of the temporary impacts construction) will be considered permanent unless otherwise approved by the Corps, and compensatory mitigation may be required. Once restored to their natural contours, soil in these temporarily disturbed areas must be mechanically loosened to a depth of 12 inches and wetland areas must be seeded or sprigged with appropriate native vegetation.

23) 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 waters of the United States during periods of low-flow or no-flow.

24) Countersinking of Pipes and Culverts: Following consultation with the Virginia Department of Game and Inland Fisheries (VDGIF), the Norfolk District assumes there are fish and other aquatic organisms present in any stream being crossed, in the absence of site-specific evidence to the contrary. Although prospective permittees have 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:

   a. All pipes and culverts placed in streams will be countersunk at both the inlet and outlet ends, unless indicated otherwise by the VDEQ 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 at least 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 placement of pipes/culverts above ordinary high water, such as those placed to allow for flood plain flows, 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. 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 the prospective 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 prospective permittee determines that neither a bottomless structure nor an alternative location is practicable, then they must submit supporting documentation in the JPA. The prospective 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. The prospective permittee may find it helpful to contact his/her regional fishery biologist for the VDGIF, for recommendations about the measures to be taken to allow for fish movements. When seeking advice from VDGIF, the prospective permittee 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 JPA. The VDEQ will notify the prospective permittee whether the proposed work qualifies for the 17-SPGP-01. 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. 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 prospective permittee not want to countersink the pipe/culvert for other reasons, they 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 prospective 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. The prospective permittee 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, the applicant 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 DGIF should be included in the permit application. The VDEQ will notify the prospective permittee whether the proposed work qualifies for the 17-SPGP-01.

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 on countersinking. 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 17-SPGP-01 authorization.

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, 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 (g) and/or (h) above.

25) Discharge of pollutants: All authorized activities involving any discharge of pollutants into waters of the United States 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.

26) 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).

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

28) 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.

29) 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.

30) Migratory Bird Breeding Areas: Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

31) Native trout and anadromous fishes: Authorizations for discharges of dredged or fill material into native trout waters or anadromous fish spawning areas are conditioned to limit in-stream work within the timeframes recommended by the DGIF. http://206.16.194.16/environmental-programs/files/VDGIF-Time-of-Year-Restrictions-Table.pdf

32) 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

33) Invasive Species: Plant species on the most current Virginia Department of Conservation and Recreation's Invasive Plant Species List shall not be used for replanting activities authorized by the SPGP. The list of invasive plants in Virginia

may be found at: http://www.dcr.virginia.gov/natural-heritage/document/nh-invasive-plant-list-2014.pdf

34) 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 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 17- SPGP-01, as deemed necessary on a case-by-case basis.

35) 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.

36) Property rights: 17-SPGP-01 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, you must contact the Corps Real Estate Office at (757) 201-7735 or at the address listed on the front page of this permit.

37) Suspension and revocation: 17-SPGP-01 and individual verifications under 17-SPGP-01 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.

38) 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.

39) Special conditions: The Corps may impose other special conditions on a project verified pursuant to 17-SPGP-01 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.

40) False or incomplete information: In granting authorization pursuant to this permit, the Corps has relied upon information and data provided by the permittee. If,

subsequent to notification by the Corps or the VDEQ that a project qualifies for this permit, such information and data prove to be materially false or materially 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.

41) Abandonment: If the permittee decides to abandon the activity authorized under I7-SPGP-01, 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.

42) Transfer of verification: In order to transfer verification under 17-SPGP-01, 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.

43) Binding effect. The provisions of the permit authorization shall be binding on any assignee or successor in interest of the original permittee.

44) Expiration of 17-SPGP-01: Unless further suspended or revoked the 17-SPGP-01 will be in effect until May 31, 2022. Activities which have commenced (i.e., are under construction) or are under contract to commence construction in reliance upon 17-SPGP-01 will remain authorized provided the activity is completed within twelve months of the date of this 17-SPGP-01's expiration of May 31, 2022, 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).

Jason E. Kelly, PMP
Colonel, U.S. Army
Commanding