

MEMORANDUM FOR RECORD

SUBJECT: Department of the Army Environmental Assessment and Statement of Finding for State General Programmatic Permit – Residential, Commercial, Institutional and Recreational (22-SPGP-RCIR)

This document constitutes the Environmental Assessment, 404(b)(1) Guidelines Evaluation, as applicable, Public Interest Review, and Statement of Findings for the subject application.

1.0 Introduction and Overview: Information about the proposal subject to one or more of the Corps' regulatory authorities is provided in Section 1, detailed evaluation of the activity is found in Sections 2 through 11 and findings are documented in Section 12 of this memorandum. Further, summary information about the activity including administrative history of actions taken during project evaluation is attached (ORM2 Summary) and incorporated in this memorandum.

1.1 Applicant: General Public seeking to undertake work within the Commonwealth of Virginia.

1.2 Activity location: The permit authorizes the discharge of dredged and/or fill material in Waters of the United States (WOTUS), including wetlands, that are associated with certain residential, commercial, institutional, and recreational development (RCIR) projects within the geographical limits of the Commonwealth of Virginia and that are under the regulatory jurisdiction of the U.S. Army Corps of Engineers, Norfolk District (Corps or Norfolk District). This SPGP is not available for use in the Commonwealth of Virginia subwatersheds shared with the State of Tennessee.

1.3 Description of activity requiring permit: Section 404(e) of the Clean Water Act ("CWA") (33 U.S.C. § 1344) and Department of the Army (DA) regulations (33 C.F.R. § 325.2(e)(2), 322.2(f), and 323.2(h)) allow the Corps to issue general permits (GPs), on a statewide basis, that authorize, in accordance with Section 404 of the CWA, certain activities that are also regulated by a state regulatory authority. This type of GP is a state program general permit (SPGP). The SPGP identifies the terms, limits, and conditions under which specific activities authorized by the state regulatory authority may also be authorized under Section 404 of the CWA with limited case-by-case review by the Corps.

22-SPGP-RCIR authorizes the loss of no more than one (1) acre of non-tidal WOTUS, including wetlands, streams, and open-waters (e.g., lakes, ponds, and other nonlinear systems). This 22-SPGP-RCIR does not authorize work in Section 10 waters or tidal WOTUS. The work must be associated with residential,

commercial, institutional, or recreational development. 22-SPGP-RCIR may not be used for mining projects, standalone substations, total maximum daily load projects, standalone transportation projects, or any other project not associated with residential, commercial, institutional, or recreational developments.

1.3.1 **Proposed avoidance and minimization measures:** The 22-SPGP-RCIR applies to certain activities that are regulated by both the Corps and the Virginia Department of Environmental Quality (VDEQ). Work covered under the 22-SPGP-RCIR is activity specific to ensure that projects authorized will have no more than minimal individual and cumulative environmental impacts. Furthermore, each project will be evaluated individually and to ensure compliance with both state and federal avoidance and minimization regulations. The following conditions are written into the permit authorization for the 22-SPGP-RCIR:

- 22-SPGP-RCIR projects must have no more than minimal individual and cumulative impacts and must meet all the terms and conditions outlined here.
- The use of 22-SPGP-RCIR is restricted to those projects that have avoided and minimized impacts to WOTUS to the maximum extent practicable.
- 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 Virginia Marine Resources Commission (VMRC) permit prior to commencing work in WOTUS.

If a project does not meet these requirements, interferes with navigation, or is contrary to public interest, the District retains discretionary authority to review the application using other existing Corps' permitting procedures.

1.3.2 **Proposed compensatory mitigation:** For the 22-SPGP-RCIR 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) 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) Wetland mitigation will generally be required for all projects where the total permanent impacts exceed 1/10 acre.
- c) 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 emergent wetlands
 - 0.5:1 for permanent loss of open waters

- 1:1 for conversion of forested wetlands to herbaceous emergent wetlands.
- d) 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
- e) Stream 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.*
- f) 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].
- g) Minimum stream mitigation requirements will be determined using the current Corps and VDEQ endorsed assessment methodology.
- h) 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.

1.4 Existing conditions and any applicable project history: The SPGP for residential, commercial, and institutional development was first issued in 2007. Since that time, it has been renewed with revisions in 2012 and 2017. The 22-SPGP-RCIR has added activities associated with recreational and stormwater developments. The activities are consistent with, and often attendant features of, residential, commercial, and institutional developments. The 22-SPGP-RCIR is only applicable in Section 404 WOTUS and is not likely to alter or impact navigable WOTUS. While the 22-SPGP-RCIR authorizes impacts that will likely alter land use, the alterations are done with the approval and support of the localities to promote their economical and growth needs.

1.5 Permit Authority: Section 404 of the Clean Water Act (33 USC 1344).

2.0 Scope of review for National Environmental Policy Act (i.e. scope of analysis), Section 7 of the Endangered Species Act (i.e. action area), and Section 106 of the National Historic Preservation Act (i.e. permit area)

2.1 Determination of scope of analysis for National Environmental Policy Act (NEPA):

Final description of scope of analysis: The 22-SPGP-RCIR authorizes the discharge of dredged or fill material in non-tidal 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 Corps. This SPGP is not available for use in the Commonwealth of Virginia subwatersheds shared with the State of Tennessee.

Each project is evaluated individually, and the scope of review can range from just the footprint of the regulated activity within the delineated water to the entire property. Expansion of the scope may be done on a case-by-case basis. The scope of each project will be evaluated in accordance with the 33 CFR part 325, Appendix B.

2.2 Determination of the “Corps action area” for Section 7 of the Endangered Species Act (ESA): ESA review will be completed by the Corps. The Corps will determine the control and responsibility over the proposed project, activity, work (Action) and the resources to be evaluated for possible effects/benefits (Effects of the Action).

2.3 Determination of permit area for Section 106 of the National Historic Preservation Act (NHPA):

Final description of the permit area: This review will be completed by the Corps in compliance with Section 106 of the NHPA. The Corps will determine the permit area as set forth in Appendix C subparagraph (1) (g) (1) for each individual project. Permit area means those areas comprising waters of the U.S. that will be directly affected by the proposed work or structures and uplands directly affected as a result of authorizing the work or structures.

3.0 Purpose and Need

3.1 Purpose and need for the project as provided by the applicant and reviewed by the Corps: The Corps is evaluating proposals to re-issue with modifications, reissue without modification, or not to reissue the State Programmatic General Permit (SPGP). This environmental assessment, 401(b)(1) analysis, and Statement of Findings (SOF) documents our evaluation process and decision.

3.2 Basic project purpose, as determined by the Corps: The Corps proposes to reissue 17-SPGP, in part, with modifications, as 22-SPGP-RCIR, for a five-year period. The 22-SPGP-RCIR activities have been separated from the linear transportation permit, and recreational and stormwater activities have been added to the activities covered under the 22-SPGP-RCIR. Additionally, there have been changes made to the review and verification process. The remainder of 17-SPGP – covering linear transport activities – is evaluated for reissuance under a separate review for the proposed permit referred to as 22-SPGP-LT. The

22-SPGPs provide authorization for the construction of certain work proposing the discharge of dredge and/or fill material into non-tidal WOTUS provided the project meets the terms and conditions of the applicable 22-SPGP and a VWP Permit is issued by the VDEQ.

- 3.3 Water dependency determination: The construction of residential, commercial, institutional, and recreational projects is not, in most instances, considered a water dependent activity.
- 3.4 Overall project purpose, as determined by the Corps: The purpose of the 22-SPGP-RCIR is to issue a general permit for certain activities that will result in minimal individual and cumulative adverse effects on the aquatic environment. This GP will reduce duplicative review, simplify the authorization process, provide equivalent or enhanced environmental protection for aquatic resources, and promote more effective and efficient use of Corps and VDEQ resources.

4.0 Coordination

- 4.1 The results of coordinating the proposal on Public Notice (PN) are identified below, including a summary of issues raised, any applicant response and the Corps' evaluation of concerns.

Were comments received in response to the PN? **Yes**

Was a public meeting and/or hearing requested and, if so, was one conducted?
No, no public hearing or meeting was requested.

Comments received in response to public notice:

Comment 1: Cultural Heritage: The Tribes are concerned about the removal of the Complete Application Form from the list of application requirements. The removal of this requirement raises question about whether the application will contain sufficient information to allow an informed decision to be reached.

Corps Response: The state requirements for a complete application include the same requirements as the Corps permit. In addition, the Corp completes all federal review and coordination responsibilities for the 22-SPGP-RCIR and maintains the ability to request additional information when the information provided is not sufficient for project review and/or federal coordination.

Comment 2: Cultural Heritage: Historic Resources appears inconsistent with the National Historic Preservation Act ("NHPA"). The requirement that a district engineer make a reasonable and good faith effort to carry out identification of

historic properties “commensurate with potential impacts” is problematic. Prematurely limiting the district engineer’s identification responsibilities to be commensurate with potential impacts, could give the Corps justification to decline to identify certain historic properties. We are particularly concerned about historic properties that may experience adverse visual effects, which the Corps has already demonstrated that it has challenges appropriately identifying, as well as traditional cultural properties that are eligible for listing on the National Register of Historic Places. Section 106 of the NHPA requires that the Corps first identify historic properties that could be affected and then assess whether the project will have effects on those properties. General Condition 9 reverses the order required by the NHPA. The Tribes are accordingly concerned that this General Condition will result in the Corps failing to fulfill its responsibilities to comply with the NHPA and lead to further conflict with the Tribes when historic properties are not appropriately identified.

Corps Response: The Corps project managers will complete a full Section 106 review for all 22-SPGP projects. This review will be completed in accordance with the NHPA, Appendix C of the Clean Water Act, with both the Corps/State Historic Preservation Office standard operating procedures (SOP), and the Tribal coordination SOP. This process includes a good faith effort at identifying eligible and potentially eligible resources, making the appropriate effect determination, and coordinating or resolving our effect determination with the appropriate parties.

Comment 3: Environmental Protection Agency (EPA): EPA is concerned that relying solely on an area-based threshold may result in the SPGP authorizing significant impacts, especially for narrow stream systems. While EPA understands the desire for consistency with the 2020 and 2021 changes to Nationwide Permits 14, 29, 39, 42 and 43, EPA is also concerned about the potential lack of consistency in the Corps’ discretion to determine authorization under an Individual Standard Permit rather than an SPGP. Therefore, EPA recommends retaining the linear foot threshold for impacts to stream channel in addition to the acreage threshold for WOTUS. Additionally, to support this proposal, EPA recommends compiling and providing the average number of permits a year that exceed 2,000 LF (residential, commercial, institutional, and recreational) and 1,000 LF (linear transportation), but do not exceed 1acre (RCIR) or ½acre (LT) of impacts to WOTUS.

Corps Response: All 22-SPGP projects require the submittal of a permit application. This application is received and reviewed by the VDEQ for compliance with State and Federal regulations, including regulations specific to minimal cumulative adverse environmental effects. The Corps has regulatory authority to assert discretionary authority on projects that are less than minimal

and/or are not the Least Environmental Damaging Practicable Alternative (LEDPA). In addition to the full state review with Corps oversight, the EPA is afforded the opportunity to review and comment on all residential, commercial, institutional, and recreational projects that have permanent impacts that exceed ½ acre of WOTUS. .

Discharges of dredged or fill material into stream beds occur over areas; therefore, using acres or square feet to quantify losses of stream bed provides more information in determining whether the impacts are minimal and more reliable data in quantifying stream loss. The potential 12 losses of stream functions, and whether those losses are more than minimal, will be addressed and evaluated through the permit application review process.

Wetland Studies and Solutions, Inc (WSSI): We suggest striking the word “must” from this statement and clarify that one of the above actions is needed for a complete application. We offer the following revision, “*Prior to the submission of an application for activities covered by 22-SPGP-RCIR/LT a proponent ~~must first obtain~~ shall submit one of the following from the Corps, for consideration of a complete application...*”.

Corps Response: The current language in the permit is “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:” The language is worded in manner that best increases efficiencies and compliance with state and Corps regulations.

WSSI: What is the COE’s preferred manner of submitting the preliminary screening form?

Corps Response: All requests should be submitted in accordance with current Corps practices for the submittal of a delineation request.

WSSI: Does the preliminary screening form process require the “Norfolk District Regulatory Office Pre-Application and/or Jurisdictional Waters Determination Request Form” signed by the Property Owner?

Corps Response: Applicants should continue to submit a Pre-Application Request Form as it contains important contact information on the applicant the applicant and the consultant; information on the property; and grant the Corps permission to access the property.

WSSI: Define “*development plan*”

Corps Response: This is a common term used in the regulated community to describe the plans depicting the proposed work. Sometimes it is also called a

site plan. This plan should not be speculative and should contain all information needed to properly evaluate federal coordination requirements.

WSSI: Define “*development plan change*”

Corps Response: Development Plan change is the discrepancy between the development plan date referenced on the preliminary screening form and the date of the development plan that is submitted with the permit application. The development plan change will require that the permit application be coordinated with the Corps.

WSSI: If DEQ calls out a new secondary impact, after JPA submission, does that affect this process, given that it is a Department of Environmental Quality (DEQ) impact not a COE impact? (i.e., the secondary impact was not accounted for in the development plan included in the original JPA submittal for COE review?)

Corps Response: This is a project specific scenario and contingent on Corps jurisdiction of the resources. This question is best addressed during the preapplication review process for those projects where this scenario is applicable.

WSSI: Clarify if/when federal coordination will occur.

Corps Response: Federal coordination occurs during the permit application review process and in accordance with the applicable federal regulation (e.g., Endangered Species Act, and NHPA)

WSSI: If the initiation of federal coordination is meant to be optional by each COE project manager with the preliminary screening form, at what point will the Applicant be notified that coordination has been initiated?

Corps Response: The language for optional federal coordination during the preliminary screening process has been removed. Federal coordination will generally be completed during the permit application review.

WSSI: Is this coordination still held to the same timing standards as coordination initiated under a JPA (for example, 30-day review period for Department of Historic Resources)?

Corps Response: Coordination timeframes are regulation-based and do not change depending on the permit type. Timeframes will remain consistent with current regulations and Corps practices.

WSSI: Please note that many localities require a jurisdictional determination prior to approving various plans and permits. For example:

*Fairfax County will not approve a Resources Protection Area (RPA) plan without a JD. Many projects in Fairfax County require an RPA plan, even though a wetland permit may not be needed for the proposed action.

*Loudoun County requires a JD prior to site plan approval and for all grading permit applications.

*If Fauquier County suspects that wetlands may be present on a site, staff will require a JD prior to issuance of grading and building permit approval.

Therefore, unless it is determined that these counties will accept the preliminary federal screening form, any projects in these counties or other counties with similar requirements will still need to pursue a JD.

Corps Response: This is not a requirement specific to Corps permit authorization or verification requirements. While the Corps will work closely with the counties to help them understand the Corps process and address their concerns, applicants must work with localities to address their specific regulatory requirements.

WSSI: Given this, can an Applicant still pursue the federal screening form even if a JD has been requested in cases where it would be beneficial to initiate agency coordination early?

Corps Response: Applicants can still use the preliminary screening process when a jurisdiction determination has already been completed for the project.

WSSI: Can the issuance of a permit preclude the need for an AJD, PJD, or preliminary screening form?

Corps Response: No, the permit clearly states a preliminary screening form (which states that the delineation is acceptable for permitting), AJD, or PJD is required for a complete application.

WSSI: Will there be a SPGP renewal form, similar to that which was used in 2017?

Corps Response: At this time there is no proposal to create a renewal form and the Corps was unaware that the 2017 form had been created. DEQ has been notified that the creation of all forms related to the any SPGP must include Corps input.

Other comments provided: The mining community provided questions requesting why mining projects were excluded from the list of authorized

activities 22-SPGP permit when the SPGP has previously been used to authorize mining projects.

Corps response: The 22-SPGPs and the previous versions of the SPGP were developed to cover specific activities that correlated with the Nationwide Permits (NWP), issued by Headquarters. An SPGP was only authorized after a complete review was done and it was determined those specific regulated activities were determined to have minimal individual and cumulative effects on aquatic resources. The 17-SPGP was specific to activities that correlated with the NWP 14 linear transportation, 29-residential development and 39-commercial and institutional development.

The 22-SPGP is specific to regulated activities that correlate with the NWP 14 – Linear Transportation, NWP 29-Residential Development, NWP 39-Commercial and Institutional Development, NWP 42 – Recreational Facilities and the NWP43 – Stormwaters Facilities. The intent of the SPGP was never to cover mining activities as those activities are authorized through other NWPs, specifically NWPs 21-Surface Coal Mining Activities, 44-Mining Activities, 49-Coal Remining Activities, 50-Underground Coal Mining, in some instances the NWP 23-Categorical Exclusions and the individual permit review process. Therefore, the mining exclusion in the 22-SPGP permit was not removing a previously authorized activity from coverage it was clarifying the intent of the permit and those activities covered under the permit authorization.

- 4.2 Were additional issues raised by the Corps including any as a result of coordination with other Corps offices? No
- 4.3 Were comments raised that do not require further discussion because they address activities and/or effects outside of the Corps' purview? No

If yes, provide discussion: N/A

- 5.0 Alternatives Analysis** (33 CFR Part 325 Appendix B(7), 40 CFR 230.5(c) and 40 CFR 1502.14). An evaluation of alternatives is required under NEPA for all jurisdictional activities. An evaluation of alternatives is required under the Section 404(b) (1) Guidelines for projects that include the discharge of dredged or fill material. NEPA requires discussion of a reasonable range of alternatives, including the no action alternative, and the effects of those alternatives; under the Guidelines, practicability of alternatives is taken into consideration and no alternative may be permitted if there is a less environmentally damaging practicable alternative.

- 5.1 Site selection/screening criteria: In order to be practicable, an alternative must be available, achieve the overall project purpose (as defined by the Corps), and be feasible when considering cost, logistics and existing technology.

Criteria for evaluating alternatives as evaluated and determined by the Corps: While generally not required for general permits, as part of the least damaging/practicable alternative review, the VDEQ and Corps may request that an applicant provide the feasibility of using off-site locations. An onsite alternatives analysis is a requirement for a complete 22-SPGP-RCIR application and for a complete permit review. As part of the alternatives review, the VDEQ and Corps may request that the applicant provide additional alternative designs and discussions.

5.2 Description of alternatives

- 5.2.1 No action alternative: The Corps considered not reissuing this permit. However, a version of the SPGP has been in place since 2007 and upon each annual evaluation the Corps finds that these projects resulted, individually and cumulatively, in minimal impact and would likely have been authorized through the Standard Permit process. A Standard Permit process that would require duplicative review by both the VDEQ and the Corps for the same regulatory requirements and regulations. This duplicative review would result in increased workload for both agencies and delayed permitting for the regulated public with no demonstrable benefit to the aquatic environment.

- 5.2.2 Preferred alternative: Issuance of the 22-SPGP- RCIR (a revised version of the 12-SPGP) to authorize residential, commercial, institutional, and recreational projects that are proposed with the Commonwealth of Virginia (This SPGP is not available for use in the Commonwealth of Virginia subwatersheds shared with the State of Tennessee) and that proposes the discharge of fill/dredge material into WOTUS and that do not to exceed the loss of 1 acre of WOTUS (including wetlands, streams, and open waters). This process has demonstrated adequate protection of the Commonwealth's aquatic resources while reducing regulatory duplication.

5.2.3 Other alternatives:

Reinstatement of the Nationwide Permits (NWP) without a SPGP – The Corps has determined the reinstatement of the NWP for projects causing less than ½ acre of loss of WOTUS would simplify the permit process and avoid permit fees for some applicants and would avoid permit fees. In this situation, applicants would need to obtain NWP from the District for projects up to 1/2 acre of loss, and Standard Permits from both the Corps and DEQ for projects over 1/2 acre. As discussed in 5.2. the Standard Permit process would require duplicative

review by both the VDEQ and the Corps for the same regulatory requirements and regulations. This duplicative review would result in increased workload for both agencies and delayed permitting for the regulated public with no demonstrable benefit to the aquatic environment.

Reinstatement of the Nationwide Permits (NWP) with a SPGP for ½ to 1 acre: The Corps has determined the reinstatement of the NWPs for projects causing less than ½ acre of loss of WOTUS would simplify the permit process and avoid permit fees for some applicants. In this situation, applicants would need to obtain NWPs from the District for projects up to 1/2 acre of loss, an SPGP verification from the State for projects between ½ acre and 1 acre, and Standard Permits from both the Corps and DEQ for projects over 1/2 acre. The complexities of this type of system would be unnecessarily confusing for the regulated public and for both agencies. In addition, this would reduce regulatory oversight and minimize efforts for projects that involve multiple phases or that require changes during the construction process. This duplicative review would result in increased workload for both agencies and delayed permitting for the regulated public with no demonstrable benefit to the aquatic environment.

- 5.3 Evaluate alternatives and whether or not each is practicable under the Guidelines or reasonable under NEPA : The practicability of each alternative was considered and is detailed for each alternative in section 5.2. Alternatives discussed authorize residential, commercial, institutional, and recreational activities within the Commonwealth of Virginia (This SPGP is not available for use in the Commonwealth of Virginia subwatersheds shared with the State of Tennessee) were determined to be practicable; however, they do not accomplish the purpose and need to reduce duplicative regulatory oversight, reduce agency workload, and provide efficient processing. Each 22-SPGP-RCIR application will be reviewed on a case-by-case basis to ensure that the proposed impacts associated will remain minimal and propose the least damaging practicable alternative. It has been our experience that the terms and conditions of the previous SPGP versions for residential, commercial, and institutional projects in non-navigable waters result cumulatively in minor impacts. The 22-SPGP-RCIR will require permit applications, which will be reviewed individually to ensure that impacts are not greater than minimal.
- 5.4 Least environmentally damaging practicable alternative under the 404(b)(1) Guidelines (if applicable) and the environmentally preferable alternative under NEPA: Issuance of the 22-SPGP- RCIR (a revised version of the 12-SPGP) to authorize residential, commercial, institutional, and recreational projects that are proposed with the Commonwealth of Virginia (This SPGP is not available for use in the Commonwealth of Virginia subwatersheds shared with the State of Tennessee). The 22-SPGP-RCIR contains restrictions on the authorized

activities which minimize the impacts WOTUS and the aquatic environment in general. The 22-SPGP-RCIR encourages the regulated community to reduce impacts to the general permit thresholds, improves efficiency in permitting by issuing general permits for projects with minimal impacts, and allows the Corps to allocate additional resources to projects with significant environmental impacts.

6.0 Evaluation for Compliance with the Section 404(b)(1) Guidelines. The following sequence of evaluation is consistent with 40 CFR 230.5

6.1 Practicable alternatives to the proposed discharge consistent with 40 CFR 230.5(c) are evaluated in Section 5. The statements below summarize the analysis of alternatives.

In summary, the no action would not provide additional benefits to the aquatic environment. The no action alternative would simply require other permitting methods be implemented for those project that propose impacts that are individually and cumulatively minimal. These alternative permitting methods would result in the same regulatory outcome and permit issuance.

For those projects that will discharge into a special aquatic site and are not water dependent, the applicant will be required to demonstrate that there is no practicable alternative that would not involve impacts to special aquatic sites.

It has been determined that there are no alternatives to the proposed discharge that would be less environmentally damaging. (Subpart B, 40 CFR 230.10(a)). The proposed issuance of the 22-SPGP-RCIR is the practicable alternative with the least adverse impact on the aquatic ecosystem and does not have other significant environmental consequences.

6.3 Potential impacts on physical and chemical characteristics of the aquatic ecosystem (Subpart C 40 CFR 230.20). See Table 1:

Table 1 – Potential Impacts on Physical and Chemical Characteristics						
Physical and Chemical Characteristics	N/A	No Effect	Negligible Effect	Minor Effect (Short Term)	Minor Effect (Long Term)	Major Effect
Substrate				X		
Suspended particulates/ turbidity				X		
Water				X		

Table 1 – Potential Impacts on Physical and Chemical Characteristics						
Physical and Chemical Characteristics	N/A	No Effect	Negligible Effect	Minor Effect (Short Term)	Minor Effect (Long Term)	Major Effect
Current patterns and water circulation				X		
Normal water fluctuations				X		
Salinity gradients				X		

Discussion:

PHYSICAL SUBSTRATE: Projects authorized by this by the 22-SPGP are evaluated individually and the potential impacts on physical substrate are project specific. Projects that may result in alterations to the physical substrate of WOTUS, including wetlands, may require compensatory mitigation. Issuance of 22-SPGP-RCIR verification will only be done once it has been determined all appropriate and practicable measures to avoid and minimize those impacts have been incorporated into the applicant’s plans.

WATER CIRCULATION, FLUCTUATION AND SALINITY: Projects authorized by this 22-SPGP are evaluated individually and the potential impacts on water circulation, fluctuation, and salinity are project specific. However, for discharges associated with the discharge of fill/dredge in non-navigable waterways, water circulation and fluctuation should not be affected due to the limitations on the acreage of impact and the associated discharges; the salinity will not be affected by these activities as the work will take place in waterways with low salinity levels. Projects that may result in alterations to the physical substrate of WOTUS, including wetlands, may require compensatory mitigation. Issuance of 22-SPGP-RCIR verification will only be done once it has been determined all appropriate and practicable measures to avoid and minimize those impacts have been incorporated into the applicant’s plans and the project will have minimal impact on the aquatic resource as a whole.

SUSPENDED PARTICULATE/TURBIDITY: Projects authorized by this 22-SPGP-RCIR are evaluated individually and for potential impacts to suspended particulate/turbidity. Typically, these projects are evaluated at a local level to ensure there is no increase in the levels of suspended particles and turbidity. Potentially effects are often negated through the implementation of best management practices, erosion and sediment controls, stormwater management, and low-impact development. Overall, water quality impacts are evaluated at the federal, state, and local level to ensure minimal impact to water quality.

The 22-SPGP-RCIR contains the following general permit conditions to address potential impacts on chemical characteristics:

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, including 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.

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.

All projects are reviewed individually so the effect on these resources varies depending on the circumstances of the project. All 22-SPGP-RCIR application are reviewed to ensure compliance with all conditions of the 22-SPGP-Permit authorization and with federal regulations. No 22-SPGP-RCIR verification can be issued if the project does not meet all terms and conditions of the 22-SPGP-RCIR including those listed above. Therefore, the issuance of the 22-SPGP-RCIR permit to the Citizens of the Commonwealth should have minimal adverse effects on chemical characteristics.

6.4 Potential impacts on the living communities or human uses (Subparts D, E and F):

6.4.1 Potential impacts on the biological characteristics of the aquatic ecosystem (Subpart D 40 CFR 230.30). See Table 2:

Table 2 – Potential Impacts on Biological Characteristics						
Biological characteristics	N/A	No Effect	Negligible Effect	Minor Effect (Short Term)	Minor Effect (Long Term)	Major Effect
Threatened and endangered species				X		
Fish, crustaceans, mollusk, and other aquatic organisms				X		
Other wildlife				X		

Discussion:

The 22-SPGP-RCIR contains the following general permit conditions to address potential impacts on biological characteristics:

ESA: 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) from the USFWS or the National Marine Fisheries Service (NMFS), ESA prohibits any person subject to the jurisdiction of the United States to take a listed species, where “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word “harm” in the definition of “take” means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. 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.

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.

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.

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.

Migratory Bird Breeding Areas: Activities in WOTUS that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

Native Trout: Designated Trout Waters, are defined by the Virginia State Water Control Board and the Virginia Division of Wildlife Resources (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.

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 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.

All projects are reviewed individually so the effect on these resources varies depending on the circumstances of the project. All 22-SPGP-RCIR application are reviewed to ensure compliance with all conditions of the 22-SPGP-Permit authorization and with federal regulations. No 22-SPGP-RCIR verification can be issued if the project does not meet all terms and conditions of the 22-SPGP-RCIR including those listed above. Therefore, the issuance of the 22-SPGP-RCIR permit to the Citizens of the Commonwealth should have minimal adverse effects on biological characteristics.

6.4.2 Potential impacts on special aquatic sites (Subpart E 40 CFR 230.40). See Table 3:

Table 3 – Potential Impacts on Special Aquatic Sites						
Special Aquatic Sites	N/A	No Effect	Negligible Effect	Minor Effect (Short Term)	Minor Effect (Long Term)	Major Effect
Sanctuaries and refuges			X			
Wetlands			X			

Table 3 – Potential Impacts on Special Aquatic Sites						
Special Aquatic Sites	N/A	No Effect	Negligible Effect	Minor Effect (Short Term)	Minor Effect (Long Term)	Major Effect
Mud flats	X					
Vegetated shallows	X					
Coral reefs	X					

Discussion: The 22-SPGP-RCIR authorizes the discharge of fill and/or dredge material into special aquatic sites. Authorized activities are not to exceed the loss of more than 1 acre of WOTUS, including wetlands. While the affected wetlands may result in the permanent loss of aquatic resource functions and services, impacts to WOTUS are expected to be minimal since the permit conditions require on-site avoidance, minimization, and compensatory mitigation of impacts to maximum extent practicable.

For a project where the District Engineer (DE) determines the proposed impacts are not minimal or have not been avoided to the maximum extent practicable, the DE can exercise discretionary authority to require an individual permit or add case-specific special conditions if the work will result in more than minimal adverse effects on the aquatic environment.

General conditions have been placed in the 22-SPGP-RCIR to address

- 6.4.3 Potential impacts on human use characteristics (Subpart F 40 CFR 230.50). See Table 4:

Table 4 – Potential Impacts on Human Use Characteristics						
Human Use Characteristics	N/A	No Effect	Negligible Effect	Minor Effect (Short Term)	Minor Effect (Long Term)	Major Effect
Municipal and private water supplies		X				
Recreational and commercial fisheries			X			
Water-related recreation			X			
Aesthetics				X		
Parks, national and historical monuments, national seashores, wilderness areas,				X		

Table 4 – Potential Impacts on Human Use Characteristics						
Human Use Characteristics	N/A	No Effect	Negligible Effect	Minor Effect (Short Term)	Minor Effect (Long Term)	Major Effect
research sites, and similar preserves						

Discussion:

MUNICIPAL AND PRIVATE WATER SUPPLIES: While the 22-SPGP-RCIR does authorize activities that may increase the demand on/for additional municipal and private water supplies, water supply needs are often addressed at the local level and, when necessary, incorporated into the project design or locality proffers.

RECREATIONAL AND COMMERCIAL FISHERIES: Recreational activities are one type of the activity authorized by the 22-SPGP-RCIR and will likely have some beneficial effects on recreational uses. Recreational impacts should be minimized to the maximum extent practicable, and compensation provided for those impacts that cannot be avoided.

AESTHETICS: The construction of projects authorized by the 22-SPGP-RCIR will likely alter the visual character of some landscapes. The lateral extent and perception of these changes will vary, depending on the size and configuration of the project, the nature of the surrounding area, and the public uses of the area. Projects authorized by the 22-SPGP-RCIR could possibly modify some aesthetic characteristics and may increase human use of the project area and surrounding land. However, project placement is often controlled by localities through their local ordinance and zoning requirements. The requirements are often based on long-term and comprehensive planning that accounts for the needs and goals of the locality. Any impact to aesthetics is expected to be minimal.

PARKS, NATIONAL AND HISTORICAL MONUMENTS, NATIONAL SEASHORES, WILDERNESS AREAS, RESEARCH SITES, AND SIMILAR PRESERVES: Activities authorized by 22-SPGP-RCIR must comply with all federal regulations related to these resources including the National Historic Preservation Act. Ultimately, the primary responsibility and authority regarding land use decisions reside with the applicable state, local and Tribal governments; furthermore, the Corps' scope of analysis is limited to significant issues of overriding national importance, such as navigation and water quality (see 33 CFR 320.4(j)(2)).

6.5 Pre-testing evaluation (Subpart G, 40 CFR 230.60):

The following has been considered in evaluating the biological availability of possible contaminants in dredged or fill material. See Table 5:

Physical characteristics	X
Hydrography in relation to known or anticipated sources of contaminants	X
Results from previous testing of the material or similar material in the vicinity of the project	X
Known, significant sources of persistent pesticides from land runoff or percolation	X
Spill records for petroleum products or designated (Section 331 of CWA) hazardous substances	X
Other public records or significant introduction of contaminants from industries, municipalities, or other sources	X
Known existence of substantial material deposits of substances which could be released in harmful quantities to the aquatic environment by man-induced discharge activities	X

Discussion: [No activity may use unsuitable material \(e.g., trash, debris, car bodies, or asphalt, \). Material used for construction or discharged must be free from toxic pollutants in toxic amounts \(see Section 307 of the Clean Water Act\).](#)

6.6 Evaluation and testing (Subpart G, 40 CFR 230-61):

Discussion: [Generally testing is not required for projects authorized by the 22-SPGP-RCIR as the dredge/fill material is often obtained from the project site.](#)

6.7 Actions to minimize adverse impacts (Subpart H). The following actions, as appropriate, have been taken through application of 40 CFR 230.70-230.77 to ensure minimal adverse effects of the proposed discharge. See Table 6:

Actions concerning the location of the discharge	X
Actions concerning the material to be discharged	X
Actions controlling the material after discharge	X
Actions affecting the method of dispersion	X
Actions affecting plant and animal populations	X
Actions affecting human use	X

Discussion: The 22-SPGP-RCIR applies to certain activities that are regulated by both the Corps and the VDEQ. Work covered under the 22-SPGP-RCIR is activity specific to ensure that projects authorized will have no more than minimal individual and cumulative environmental impacts. Furthermore, each project will be evaluated individually and to ensure compliance with both state and federal avoidance and minimization regulations. The following conditions are written into the permit authorization for the 22-SPGP-RCIR:

- 22-SPGP-RCIR projects must have no more than minimal individual and cumulative impacts and must meet all the terms and conditions outlined here.
- The use of 22-SPGP-RCIR is restricted to those projects that have avoided and minimized impacts to WOTUS to the maximum extent practicable.
- 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 Virginia Marine Resources Commission (VMRC) permit prior to commencing work in WOTUS.

If a project does not meet these requirements, interferes with navigation, or is contrary to public interest, the District retains authority, at its discretion, to review the application using other existing Corps permitting procedures.

6.8 Factual Determinations (Subpart B, 40 CFR 230.11). The following determinations are made based on the applicable information above, including actions to minimize effects and consideration for contaminants. See Table 7:

Table 7 – Factual Determinations of Potential Impacts						
Site	N/A	No Effect	Negligible Effect	Minor Effect (Short Term)	Minor Effect (Long Term)	Major Effect
Physical substrate					X	
Water circulation, fluctuation and salinity				X		
Suspended particulates/turbidity				X		
Contaminants			X			
Aquatic ecosystem and organisms				X		
Proposed disposal site			X			

Table 7 – Factual Determinations of Potential Impacts						
Site	N/A	No Effect	Negligible Effect	Minor Effect (Short Term)	Minor Effect (Long Term)	Major Effect
Cumulative effects on the aquatic ecosystem					X	
Secondary effects on the aquatic ecosystem				X		

Discussion:

1. **Physical Substrate:** Projects authorized by the 22-SPGP-RCIR will not result in significant impacts to the physical substrate. Discharges related to the proposed project will result in minimal temporary effects, individually and cumulatively, on the characteristics of the substrate at each impact site. The duration and physical extent of substrate changes are project dependent; however, the possible loss of environmental values and actions to minimize impacts are also considered in making these determinations. All appropriate and practicable measures to avoid and minimize impacts shall be incorporated into the permit authorization. All fill/dredged material will be stabilized by appropriate erosion and sedimentation controls to minimize siltation and turbidity. No discharge of dredged material may consist of unsuitable material (e.g., trash, debris, or car bodies) and material discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the CWA). Any temporary fills must be removed in their entirety and the affected areas returned to their pre-existing elevation.
2. **Water circulation, fluctuation and salinity:** Projects authorized by the 22-SPGP are evaluated individually and the potential impacts on water circulation, fluctuation and salinity are project specific. However, for discharges associated with the discharge of fill/dredge in non-navigable waterways, water circulation and fluctuation should not be affected due to the limitations on the acreage of impact and the associated discharges. The salinity will not be affected by these activities as the work will take place in waterways with low salinity levels. Projects that may result in alterations to the physical substrate of WOTUS, including wetlands, may require compensatory mitigation. Issuance of 22-SPGP-RCIR verification will only be done once it has been determined all appropriate and practicable measures to avoid and minimize those impacts have been incorporated into the applicant's plans and the project will have minimal impact on the aquatic.

3. **Suspended particulate/turbidity:** Projects authorized by this by the 22-SPGP-RCIR are evaluated individually and for potential impacts to suspended particulate/turbidity. Typically, these projects are evaluated at a local level to ensure there is no increase in the levels of suspended particles and turbidity. Potentially effects are often negated through the implementation of best management practices, erosion and sediment controls, stormwater management, and low-impact development. Overall, water quality impacts are evaluated at the federal, state and local level to ensure minimal impact to water quality. The applicant will be required to comply with the state storm water and erosion and sediment control requirements, in order to minimize any downstream particulates or turbidity resulting from the authorized activities in terrestrial areas.
4. **Contaminate availability:** No activity may use unsuitable material (e.g., trash, debris, car bodies, or asphalt). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).
5. **Aquatic ecosystem and organisms:** All projects are reviewed individually so the effect on these resources varies depending on the circumstances of the project. All 22-SPGP-RCIR application are reviewed to ensure compliance with all conditions of the 22-SPGP-Permit authorization and with federal regulations. 22-SPGP-RCIR verifications can only be issued if the project does meet all terms and conditions of the 22-SPGP-RCIR, including those related to aquatic ecosystems and organism, and after review has determined the impacts will be minimal. Therefore, the issuance of the 22-SPGP-RCIR permit to the Citizens of the Commonwealth should have minimal adverse effects on biological characteristics including aquatic ecosystems and organisms.
6. **Proposed disposal site:** Projects authorized by the 22-SPGP-RCIR often involves onsite disposal. Disposal of all materials removed from the project site are strictly regulated by the state and locality. Therefore, the Corps is reliant on the state and local regulations and approvals for offsite disposal.
7. **Cumulative effects on the aquatic ecosystem:** The number of SPGP projects verified by the VDEQ, on behalf of the Corps, authorizes approximately 180 SPGPs per year. In comparison, the Corps issues approximately 3,000 permits on an annual basis. Thus, the SPGP verification account for roughly 6% of all projects issued by or on behalf of the Corps on an annual basis. The district engineer has the authority to require individual permits where the cumulative adverse effects are more than minimal or to add conditions to the 22-SPGP-RCIR to ensure that the individual and cumulative adverse effects

are minimal. The Corps expects that the 22-SPGP-RCIR will encourage applicants to design their projects within the scope of the 22-SPGP-RCIR rather than request individual permits for projects that could result in greater adverse impacts to the aquatic environment. The 22-SPGP-RCIR verification can only be issued for projects that have no more than minimal individual and cumulative impacts and that have avoided and minimized impacts to WOTUS to the maximum extent practicable.

The direct adverse impacts associated with the proposed 22-SPGP-RCIR are minimal. The most effective means to minimize cumulative impacts is to minimize the impacts of individual projects. The cumulative impacts of the 22-SPGP-RCIR will be minimized through the inclusion of limitations and special conditions. Therefore, we have determined that past, present, and future use of the 22-SPGP-RCIR will have only minimal individual and cumulative impacts.

8. Secondary effects on the aquatic ecosystem: Secondary effects on the aquatic ecosystem are evaluated as part of each permit application review. The 22-SPGP-RCIR may only be verified once it has been determined that all impacts, including secondary effects, have been minimized and when appropriate, compensated.

6.9 Findings of compliance or non-compliance with the restrictions on discharges (40 CFR 230.10(a-d) and 230.12). Based on the information above, including the factual determinations, the proposed discharge has been evaluated to determine whether any of the restrictions on discharge would occur. See Table 8:

Subject	Yes	No
1. Is there a practicable alternative to the proposed discharge that would be less damaging to the environment (any alternative with less aquatic resource effects, or an alternative with more aquatic resource effects that avoids other significant adverse environmental consequences?)		X
2. Will the discharge cause or contribute to violations of any applicable water quality standards?		X
3. Will the discharge violate any toxic effluent standards (under Section 307 of the Act)?		X
4. Will the discharge jeopardize the continued existence of endangered or threatened species or their critical habitat?		X
5. Will the discharge violate standards set by the Department of		X

Table 8 – Compliance with Restrictions on Discharge		
Subject	Yes	No
Commerce to protect marine sanctuaries?		
6. Will the discharge cause or contribute to significant degradation of waters of the U.S.?		X
7. Have all appropriate and practicable steps (Subpart H, 40 CFR 230.70) been taken to minimize the potential adverse impacts of the discharge on the aquatic ecosystem?	X	

Discussion: The issuance of the 22-SPGP-RCIR to the Citizens of the Commonwealth is only proposed after a full evaluation of the SPGP program has been evaluated. The activities authorized under the 22-SPGP-RCIR are minimal in nature on both a state and national level. In addition, each project will receive individual review to ensure the project meets all federal and state regulations regarding avoidance, minimization, and compensation for effects to aquatic resources.

The following conditions are written into the permit authorization for the 22-SPGP-RCIR:

- 22-SPGP-RCIR projects must have no more than minimal individual and cumulative impacts and must meet all the terms and conditions outlined here.
- The use of 22-SPGP-RCIR is restricted to those projects that have avoided and minimized impacts to WOTUS to the maximum extent practicable.
- 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 Virginia Marine Resources Commission (VMRC) permit prior to commencing work in WOTUS.

If a project does not meet these requirements, interferes with navigation, or is contrary to public interest, the District retains authority, at its discretion, to review the application using other existing Corps permitting procedures.

7.0 General Public Interest Review (33 CFR 320.4 and RGL 84-09)

The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity and its intended use on the public interest as stated at 33 CFR 320.4(a). To the extent appropriate, the public interest review below also includes consideration of additional policies as described in 33 CFR 320.4(b) through (r). The benefits

which reasonably may be expected to accrue from the proposal are balanced against its reasonably foreseeable detriments.

- 7.1 All public interest factors have been reviewed and those that are relevant to the proposal are considered and discussed in additional detail. See Table 9 and any discussion that follows.

Table 9: Public Interest Factors	Effects					
	None	Detrimental	Neutral (mitigated)	Negligible	Beneficial	Not Applicable
1. Conservation: See below for discussion.				X		
2. Economics: See below for discussion.					X	
3. Aesthetics: See below for discussion.				X		
4. General Environmental Concerns: See below for discussion.				X		
5. Wetlands: See below for discussion.				X		
6. Historic Properties: See below for discussion.				X		
7. Fish and Wildlife Values: See below for discussion.				X		
8. Flood Hazards: See below for discussion.				X		
9. Floodplain Values: See below for discussion.				X		
10. Land Use: See below for discussion.	X					
11. Navigation: See below for discussion.	X					
12. Shoreline Erosion and Accretion: See below for discussion.				X		
13. Recreation: See below for discussion.					X	
14. Water Supply and Conservation: See below for discussion.				X		
15. Water Quality: See below for discussion.				X		
16. Energy Needs: See below for discussion.				X		
17. Safety: See below for discussion.					X	

Table 9: Public Interest Factors	Effects					
	None	Detrimental	Neutral (mitigated)	Negligible	Beneficial	Not Applicable
18. Food and Fiber Production: See below for discussion.	X					
19. Mineral Needs: See below for discussion.	X					
20. Consideration of Property Ownership: See below for discussion.	X					
21. Needs and Welfare of the People: See below for discussion.					X	

Additional discussion of effects on factors above:

- a. **CONSERVATION:** The activities authorized by the 22-SPGP-RCIR may modify the natural resource characteristics of project areas. Compensatory mitigation, when required for activities authorized by the 22-SPGP-RCIR, will result in the restoration, enhancement, creation, or preservation of aquatic habitats that should offset losses to conservation values. The adverse effects of the activities authorized by the 22-SPGP-RCIR on conservation will be minor, since the 22-SPGP-RCIR authorizes only those activities with minimal adverse effects on the aquatic environment and the Corps' scope of analysis is usually limited to impacts to aquatic resources.

- b. **ECONOMICS:** The 22-SPGP-RCIR should have beneficial economic effects on the regulated public by streamlining the permitting process for projects approved and supported by the localities. No adverse effects are anticipated.

- c. **AESTHETICS:** The construction of projects authorized by the 22-SPGP-RCIR will likely alter the visual character of some landscapes. The lateral extent and perception of these changes will vary, depending on the size and configuration of the project, the nature of the surrounding area, and the public uses of the area. Projects authorized by the 22-SPGP-RCIR could possibly modify some aesthetic characteristics and may increase human use of the project area and surrounding land. However, project placement is often controlled by localities through their local ordinance and zoning requirements. The requirements are often based on long-term and comprehensive planning that accounts for the needs and goals of the locality. Any impact to aesthetics is expected to be minimal.

- d. **GENERAL ENVIRONMENTAL CONCERNS:** The discharge of fill/dredge material may impact some aquatic habitats by converting them to uplands which does constitute a loss of aquatic habitat. However, the 22-SPGP-RCIR work covered under the 22-SPGP-RCIR is activity specific to ensure that projects authorized will have no more than minimal individual and cumulative environmental impacts. Furthermore, each project will be evaluated individually and to ensure compliance with both state and federal avoidance and minimization regulations.

If a project does not meet these requirements, interferes with navigation, or is contrary to public interest, the District retains authority, at its discretion, to review the application using other existing Corps permitting procedures.

- e. **WETLANDS:** The 22-SPGP-RCIR verification may authorize temporary or permanent impacts to WOTUS. However, impacts to WOTUS, including wetlands, are expected to be minimal since the permit conditions require on-site avoidance, minimization, and compensatory mitigation of impacts to maximum extent practicable. The district engineer can exercise discretionary authority to require an individual permit or add case-specific permit conditions if the work will result in more than minimal adverse effects on the aquatic environment.
- f. **HISTORIC PROPERTIES:** 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.
 1. 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.
 2. 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.

3. 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.
4. 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.

5. 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, 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.

The procedures in place in the Norfolk District will ensure that activities authorized by this RP comply with the NHPA.

- g. **FISH AND WILDLIFE VALUES:** 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) from the USFWS or the National Marine Fisheries Service (NMFS), the ESA prohibits any person subject to the jurisdiction of the United States to take a listed species, where “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture,

or collect, or to attempt to engage in any such conduct. The word “harm” in the definition of “take” means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it 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.

- f. **FLOOD HAZARDS AND FLOODPLAIN VALUES:** No adverse effects are anticipated. General conditions of the 22-SPGP-RCIR required that all practicable efforts shall be made to conduct the work authorized in a manner to avoid any adverse impact on the Federal Emergency Management Agency designated 100-floodplain.
- g. **LAND USE:** Activities authorized by the 22-SPGP-RCIR are likely to alter the land use of the lands surrounding the projects. However, these projects will likely support continuation of current developmental and economic goals of the local community. The projects will facilitate ongoing economic growth and support of the local economy. The primary responsibility for land use decisions is held by state, local, and Tribal governments and the Corps scope of analysis is limited to significant issues of overriding national importance, such as navigation and water quality (see 33 CFR 320.40) (2)).
- h. **NAVIGATION:** There will be no adverse impacts to navigation. The 22-SPGP-RCIR does not authorize any work in Navigable waters subject to Section 10 of the Rivers and Harbors Act (33 U.S.C. 403).
- i. **SHORE EROSION AND ACCRETION:** The activities authorized by 22-SPGP-RCIR will have minor direct effects on shoreline erosion and accretion processes. Special condition 24 of the 22-SPGP-RCIR requires “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.”
- j. **RECREATION:** No adverse effects are anticipated. No adverse effects are anticipated. Recreational activities are one type of the activity authorized by the 22-SPGP-RCIR and will likely have some beneficial effects on recreational uses. Recreational impacts should be minimized to the

maximum extent practicable, and compensation provided for those impacts that cannot be avoided.

- k. **WATER SUPPLY AND CONSERVATION:** No adverse impacts are anticipated. While the 22-SPGP-RCIR does authorize activities that may increase the demand on/for additional municipal and private water supplies, water supply needs are often addressed at the local level and, when necessary, incorporated into the project design or locality proffers.
- l. **WATER QUALITY:** The 22-SPGP-RCIR does authorize activities that will cause a temporal decrease in downstream water quality. However, applicants are required to obtain a VDEQ Virginia Water Protection Permit and complete with all state and local erosion and sediment control laws. The State Water Control Board provided §401 Water Quality Certification for the 22-SPGP-RCIR. Therefore, the activities that qualify for the 22-SPGP-RCIR meet the requirements of Department of Environmental Quality's (DEQ) Virginia Water Protection Permit Regulation, provided that the permittee abides by the conditions of 22-SPGP-RCIR. Based on the above, the 22-SPGP-RCIR will have minimal adverse impacts on water quality.
- m. **ENERGY NEEDS:** The activities authorized by the 22-SPGP-RCIR may result in only a minor increase in energy consumption in the area. Any additional energy demand would be associated with providing electrical and water supplies to the proposed developments. This demand is likely to be relatively insignificant on a local or state-wide basis.
- n. **SAFETY:** The activities authorized by the 22-SPGP-RCIR will be subject to federal, state and local safety laws and regulation. state and local regulation requirements and compliance are typically governed by the localities and incorporated into the project development. Therefore, the 22-SPGP-RCIR will not adversely affect safety of the Commonwealth.
- o. **FOOD AND FIBER PRODUCTION:** The activities authorized by the 22-SPGP-RCIR will have no more than minor adverse effects on food and fiber production. Activities authorized under this permit may occur on or adjacent to existing agricultural land. However, these lands have typically been evaluated as part of an overall comprehensive plan, completed by the county, and zoned for the activities proposed for verification. The primary responsibility for land use decisions is held by state, local, and Tribal governments and the Corps scope of analysis is limited to significant issues of overriding national importance, such as navigation and water quality (see 33 CFR 320.40) (2)).

- p. **MINERAL NEEDS:** Activities authorized by the 22-SPGP-RCIR may increase demand for clay, aggregates, and stone, which are typically used in the construction of residential, commercial, institutional, and recreational developments. There may also be an increased demand for other building materials such as steel, plastic, concrete, piping, etc, when made from minerals and mineral ores. However, no long-term adverse effects are anticipated.
- q. **CONSIDERATION OF PROPERTY OWNERSHIP:** The 22-SPGP-RCIR complies with 33 CFR 320.4(g), which states that an inherent aspect of property ownership is a right to reasonable private use. In addition, general condition 38 of the 22-SPGP-RCIR states the 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. 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.”
- r. **NEEDS AND WELFARE OF THE PEOPLE:** Issuance of the 22-SPGP-RCIR should increase the effectiveness and timeliness of the Corps Regulatory Program with no loss in the protections provided to the aquatic resources of the US. Work authorized under the 22-SPGP-RCIR will not be on private property. No adverse effects are anticipated.

7.1.1 **Climate Change.** The proposed activities within the Corps federal control and responsibility likely will result in a negligible release of greenhouse gases into the atmosphere when compared to global greenhouse gas emissions. Greenhouse gas emissions have been shown to contribute to climate change. Aquatic resources can be sources and/or sinks of greenhouse gases. For instance, some aquatic resources sequester carbon dioxide whereas others release methane; therefore, authorized impacts to aquatic resources can result in either an increase or decrease in atmospheric greenhouse gas. These impacts are considered de minimis. Greenhouse gas emissions associated with the Corps federal action may also occur from the combustion of fossil fuels associated with the operation of construction equipment, increases in traffic, etc. The Corps has no authority to regulate emissions that result from the combustion of fossil fuels. These are subject to federal regulations under the Clean Air Act and/or the Corporate Average Fuel Economy (CAFE) Program. Greenhouse gas emissions from the Corps action have been weighed against national goals of energy independence, national security, and economic development and determined not contrary to the public interest.

7.2 The relative extent of the public and private need for the proposed structure or work: The nature and scope of the work authorized by the 22-SPGP-RCIR will most likely restrict the extent of the beneficial and detrimental effects to the area immediately surrounding the development. Activities authorized by 22-SPGP-RCIR will have minimal adverse effects on the aquatic environment. A provision of the 22-SPGP-LT requires that all temporary and permanent discharge of fill material be part of a single and complete project. As previously stated, the terms, conditions, and provisions of the 22-SPGP-RCIR were developed to ensure that individual and cumulative adverse environmental effects are minimal. Specifically, the 22-SPGP-RCIR does not obviate the need for the permittee to obtain other federal, state, or local authorizations required by law. 22-SPGP-RCIR does not grant any property rights or exclusive privileges. Additional conditions, limitations, restrictions, and provisions for discretionary authority, and the ability to add case-specific conditions to the 22-SPGP-RCIR will provide further safeguards to the aquatic environment and the overall public interest. There are also provisions to allow suspension, modification, or revocation of the 22-SPGP-RCIR. The 22-SPGP-RCIR will authorize unavoidable impacts to the aquatic environment and require all appropriate and practicable mitigation to compensation for those impacts. The issuance of the 22-SPGP-RCIR will result in efficient permit issuance and review for the regulated public while protecting the Commonwealth's aquatic resources and communities to the maximum extent practicable.

7.3 If there are unresolved conflicts as to resource use, explain how the practicability of using reasonable alternative locations and methods to accomplish the objective of the proposed structure or work was considered.

Discussion: There were no unresolved conflicts.

7.4 The extent and permanence of the beneficial and/or detrimental effects that the proposed work is likely to have on the public and private use to which the area is suited:

Detrimental effects are expected to be minimal and permanent.

Beneficial effects are expected to be minimal and permanent.

Detrimental impacts are expected to be minimal although they would be permanent in the construction area. The beneficial effects associated with utilization of the property would be permanent. As with any permit, impacts to the aquatic environment must be avoided and minimized to the maximum extent practicable. All unavoidable impacts will be compensated for to the extent

appropriate and practicable. This should minimize the impacts of the 22-SPGP-RCIR on the aquatic environment.

8.0 Mitigation(33 CFR 320.4(r), 33 CFR Part 332, 40 CFR 230.70-77, 40 CFR 1508.20 and 40 CFR 1502.14)

8.1 Avoidance and Minimization: When evaluating a proposal including regulated activities in WOTUS, consideration must be given to avoiding and minimizing effects to those waters. Avoidance and minimization measures are described above in Sections 1 and 3.

Activities authorized by the 22-SPGP-RCIR must result in minimal impact to the aquatic environment and be the least damaging practicable alternative. The permit applicant should take all appropriate and practicable steps to avoid and minimize adverse impacts to WOTUS. Should the specific activity result in unavoidable impacts, the Corps may further condition the specific authorization to require further minimizations and/or compensatory mitigation or require review under the Standard Permit process. A 404 permit can only be verified upon a determination that the proposed discharge complies with applicable provisions of 40 CFR Part 230, including those which require the permit applicant to take all appropriate and practicable steps to avoid and minimize adverse impacts to WOTUS. Per general condition 21 of the 22-SPGP-RCIR, compensatory mitigation for unavoidable impacts may be required to ensure that an activity requiring a Section 404 permit complies with the Section 404(b)(1) Guidelines.

9.0 Consideration of Cumulative Impacts

(40 CFR 230.11(g) and 40 CFR 1508.7, RGL 84-9) Cumulative impact is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor direct and indirect but collectively significant actions taking place over a period of time. A cumulative effects assessment should consider how the direct and indirect environmental effects caused by the proposed activity requiring DA authorization (i.e., the incremental impact of the action) contribute to cumulative effects, and whether that incremental contribution is significant or not.

9.1 Identify/describe the direct and indirect effects caused by the proposed activity: See Sections 6 and 7 above, as well as, Section 10 below.

9.2 The geographic scope for the cumulative effects assessment is: The permit authorizes the discharge of dredged and/or fill material into WOTUS, including wetlands, and that are associated with certain residential, commercial,

institutional, and recreational development (RCIR) projects within the geographical limits of the Commonwealth of Virginia and that under the regulatory jurisdiction of the U.S. Army Corps of Engineers, Norfolk District (Corps or Norfolk District). This SPGP is not available for use in the Commonwealth of Virginia subwatersheds shared with the State of Tennessee.

- 9.3 The temporal scope of this assessment covers: The 22-SPGP-RCIR authorizes permanent and temporary impacts to WOTUS. All temporary impacts are restored to preconstruction contours and conditions. When appropriate compensation will be required for all permanent impacts to offset the permanent loss and effect on the aquatic environment.
- 9.4 Describe the affected environment: The 22-SPGP-RCIR authorizes work in jurisdictional WOTUS throughout the Commonwealth of Virginia and that are regulated under Section 404 of the Clean Water Act (CWA) (33 U.S.C. § 1344). This SPGP is not available for use in the Commonwealth of Virginia subwatersheds shared with the State of Tennessee.
- 9.5 Determine the environmental consequences: See Section 6 and 7 above.
- 9.6 Discuss any mitigation to avoid, minimize or compensate for cumulative effects: See Section 1 and 5 above.
- 9.7 Conclusions regarding cumulative impacts:

When considering the overall impacts that will result from the issuance of the 22-SPGP-RCIR, in relation to the overall impacts from past, present, and reasonably foreseeable future activities, the incremental contribution of the proposed activity to cumulative impacts in the area described in section 9.2, are not considered to be significant. When impacts cannot be avoided, compensatory mitigation will generally as outlined in the 22-SPGP-RCIR general conditions and in Section 8 above.

10.0 Compliance with Other Laws, Policies, and Requirements

- 10.1 **Section 7(a)(2) of the Endangered Species Act (ESA):** Refer to Section 2.2 for description of the Corps action area for Section 7 and Section 11 for general conditions in the 22-SPGP-RCIR regarding Section 7 responsibilities.
- 10.2 **Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), Essential Fish Habitat (EFH):** Refer to Section 11 for general conditions in the 22-SPGP-RCIR regarding EFH responsibilities.

10.3 **Section 106 of the National Historic Preservation Act (Section 106):** Refer to Section 11 for general conditions in the 22-SPGP-RCIR regarding Section 106.

10.4 **Tribal Trust Responsibilities:**

Refer to Section 11 for general conditions in the 22-SPGP-RCIR regarding Tribal Trust Responsibilities.

10.5 **Section 401 of the Clean Water Act – Water Quality Certification (WQC)**

10.5.1 Is a Section 401 WQC required, and if so, has the certification been issued, waived or presumed? A general WQC has been issued for this permit.

On May 9, 2022, DEQ provided General WQC for both SPGPs.

On May 12, 2022, in accordance with CWA section 401(a)(2) and pursuant to 40 C.F.R. 121.12 & 121.13 (2018), the Corps sent the draft SPGP permits and the WQC received from the DEQ to the EPA to determine whether to notify any other State and the licensing or permitting agency pursuant to CWA section 401(a)(2).

On June 6, 2022, the EPA determined that one or more discharges authorized by SPGPs may affect the quality of waters within the following jurisdictions: Tennessee, North Carolina, Kentucky, West Virginia, Maryland, District of Columbia.

All jurisdictions responded with “no objection” except for Tennessee.

On July 13, 2022, Tennessee provided the following comments:

“As we have discussed with USACE Norfolk District, VA DEQ, and EPA Region 3 and 4 representatives, the State of Tennessee Department of Environment and Conservation (TDEC) would like to request changes to the proposed State Programmatic General Permits 22-SPGP-LT and 22-SPGP-RCIR to increase protection for waters flowing from Virginia into Tennessee. If incorporated into the SPGPs, we feel that our requested changes will provide TDEC with sufficient assurance that activities conducted under the SPGPs will not result in negative effects to waters of Tennessee.

We request that the following condition be incorporated into both SPGPs:

“Activities in the HUC-12 watersheds spanning VA-TN border (identified in the attached spreadsheet) that will directly or through compensatory mitigation activities result in stream bed impacts exceeding 200 linear feet, impoundment of

streams, or the diversion of streams into new channels, are not eligible for coverage under this SPGP.”

Our goal is to accomplish incorporation of this condition into each SPGP through an informal process, thereby allowing TDEC to respond to EPA Region 3’s email of 6May2022 with our determination that activities permitted under the SPGPs will not effect waters of Tennessee without requiring the more formal Public Hearing process under 401 (a) 2.

Please let us know if you have any questions, suggested changes to the list of HUC-12 watersheds, or if we can supply additional information.

Thank you for your assistance with this process.”

Based on a database report, nine (9) 17-SPGP projects were authorized in the Tennessee River basin, for the time period June 01, 2017 through May 31, 2022. Eight (8) of those projects fell under the thresholds of the NWP, and one (1) fell under the threshold of a Standard Permit (Individual Permit). Based on the limited use of the SPGP in this region, and to reduce confusion for the regulated public, the DEQ and the Corps agree that restricting the use of the SPGP within the specific watersheds identified by Tennessee is the preferable option.

On July 19, 2022, the Corps provided to the DEQ and EPA a modification to the current drafts of the SPGPs to exclude the subwatersheds shared with the State of Tennessee.

On July 27, 2022 the State of Tennessee responded:

“TDEC Division of Water Resources has reviewed the USACE Norfolk District proposed revisions to 22-SPGP-RCIR and 22-SPGP-LT discussed in the attached email.

We agree that excluding from coverage activities in the HUC-12 watersheds specified, though more restrictive than the revisions we actually requested, will be sufficiently protective of TN waters to address our concerns with implementation of these SPGPs. We also concur with the specific list and maps of watersheds proposed for inclusion in appendices of the SPGPs.

For these reasons, TDEC has determined that implementation of 22-SPGP-RCIR and 22-SPGP-LT and their utilization by VA DEQ is not likely to negatively impact quality of waters under TDEC jurisdiction. Further, we do not think that further discussion of these issues in Public Hearing or by formal response to EPA under 401 (a) 2 is warranted.”

On July 27, 2022, the EPA responded that the 401(a)(2) coordination process is complete.

On July 27, 2022, the EPA responded that the 401(a)(2) coordination process is complete.

10.6 Coastal Zone Management Act (CZMA)

10.6.1 Is a CZMA consistency concurrence required, and if so, has the concurrence been issued, waived or presumed? [A general CZMA consistency concurrence has been issued for this permit.](#)

10.7 Wild and Scenic Rivers Act

10.7.1 Is the project located 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? [No. Currently, there are no designated wild and scenic rivers or study rivers in the Commonwealth of Virginia. Therefore, no coordination is necessary. The Corps has determined that it has fulfilled its responsibilities under the Wild and Scenic Rivers Act.](#)

10.8 Effects on Corps Civil Works Projects (33 USC 408)

10.8.1 Does the applicant also require permission under Section 14 of the Rivers and Harbors Act (33 USC 408) because the activity, in whole or in part, would alter, occupy or use a Corps Civil Works project?

[The 22-SPGP-RCIR does not authorize work in waters that are regulated under the Rivers and Harbors Act. However, all projects are reviewed, through an independent evaluation, to ensure compliance Section 14 of the Rivers and Harbors Act \(33 U.S.C. 408\).](#)

10.9 Corps Wetland Policy (33 CFR 320.4(b))

10.9.1 Does the project propose to impact wetlands? Yes

10.9.2 [Based on the public interest review herein, the beneficial effects of the project to the regulated public outweigh the impacts of the work authorized.](#)

10.10 **Other (as needed):** No additional discussion are warranted.

11.0 General Conditions

11.1 Are special conditions required to protect the public interest, ensure effects are not significant and/or ensure compliance of the activity with any of the laws above? Yes

11.2 Required 22-SPGP-RCIR condition(s)

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.

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.

Minimal effects: Projects authorized shall have no more than minimal individual or cumulative adverse environmental impacts.

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.

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.

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 WOTUS (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.

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.

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.

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 Corps 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.

Historic Properties:

- g. 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.
- h. 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.
- i. 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.

- j. 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.
- k. 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.
- l. 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.

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.

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.

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) from the USFWS or the National Marine

Fisheries Service (NMFS), The ESA prohibits any person subject to the jurisdiction of the United States to take a listed species, where "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word "harm" in the definition of "take" means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it 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.

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.

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), or (USFWS)). Impacts that occur in these resource areas will require coordination with the appropriate Federal agency.

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.

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

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.

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".

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.

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).

Compensatory Mitigation: Mitigation will generally 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 emergent wetlands
 - 0.5:1 for permanent loss of open waters
 - 1:1 for conversion of forested wetlands to 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.

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

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 the area 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.

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, including 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.

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 or adding material to prevent/correct scour).

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, he/she 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 and documentation of the cost, engineering factors, and site conditions that prohibit countersinking the pipe/culvert. Options that must be considered include partial countersinking (e.g, fewer 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.

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.

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).

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

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.

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.

Migratory Bird Breeding Areas: Activities in WOTUS that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

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.

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.

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

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>.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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

Expiration of 22-SPGP-RCIR: Unless further suspended or revoked the 22-SPGP-RCIR will be in effect until August 1, 2026, to synch with the expiration of the Virginia DEQ VWP expiration.

- 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.

Rationale: General conditions have been incorporated into the 22-SPGP-RCIR to ensure that the effects of the project remain minimal.

12.0 Findings and Determinations

12.1 Section 176(c) of the Clean Air Act General Conformity Rule Review: The 22-SPGP-RCIR action has been analyzed for conformity applicability pursuant to regulations implementing Section 176(c) of the Clean Air Act. It has been determined that the activities proposed under this permit will not exceed de minimis levels of direct or indirect emissions of a criteria pollutant or its precursors and are exempted by 40 CFR Part 93.153. Any later indirect emissions are generally not within the Corps' continuing program responsibility and generally cannot be practicably controlled by the Corps. For these reasons a conformity determination is not required for this permit action.

12.2 Presidential Executive Orders (EO):

12.2.1 EO 13175, Consultation with Indian Tribes, Alaska Natives, and Native Hawaiians: The 22-SPGP-RCIR does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. However, each project is reviewed through an individual evaluation and when appropriate, the Norfolk District will coordinate with federally recognized tribes on a government-to-government basis to discuss potential tribal issues, including treaty lands, ethnographic claims, and traditional cultural properties to ensure that activities authorized by this 22-SPGP-RCIR comply with NHPA and other related laws, Executive Orders, Presidential Memos, and Corps Policy Guidance Letters and Memos related to Tribal Issues.

12.2.2 EO 11988, Floodplain Management: Alternatives, minimization, and compensation of the effects were considered above. Work performed under this 22-SPGP-RCIR should have no appreciable effects to floodplain functions or values.

12.2.3 EO 12898, Environmental Justice: In accordance with Title III of the Civil Right Act of 1964 and Executive Order 12898, it has been determined that the project would not directly or through contractual or other arrangements, use criteria,

methods, or practices that discriminate based on race, color, or national origin nor would it have a disproportionate effect on minority or low-income communities. The categories of activities authorized by this 22-SPGP-RCIR generally do not, by their nature, cause the kinds of adverse impacts addressed by the Executive Order.

12.2.4 EO 13112, Invasive Species: Any potential invasive species issues will be addressed with the review of individual project requests.

12.2.5 EO 13212 and EO 13302, Energy Supply and Availability: Any potential issues regarding the production, transmission, or conservation of energy, or strengthen pipeline safety will be addressed with the review of individual project requests.

12.3 Findings of No Significant Impact: Having reviewed the information regarding the 22-SPGP-RCIR, I find that the issuance of the 22-SPGP-RCIR permit action will not have a significant impact on the quality of the human environment. Therefore, an environmental impact statement will not be required.

12.4 Compliance with the Section 404(b)(1) Guidelines: Having completed the evaluation above, I have determined that the issuance of the 22-SPGP-RCIR complies with the 404(b)(1) Guidelines.

12.5 Public interest determination: Having reviewed and considered the information above, I find that the issuance of the 22-SPGP-RCIR is not contrary to the public interest.

PREPARED BY:

Anna Lawston
Environmental Scientist

Date: _____

REVIEWED AND APPROVED BY:



2022.07.28

15:00:44 -04'00'

Date: _____

Tucker Smith
Chief, Northern Virginia
Regulatory Section