



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

Fort Norfolk, 803 Front Street  
Norfolk, VA 23510-1011

**CENAO-WRR  
23-RP-22**

## **REGIONAL PERMIT**

**Effective Date: TBD**

**Expiration Date: TBD**

### **I. AUTHORIZED ACTIVITIES:**

23-RP-22, Regional Permit 22 (RP), authorizes the following activities in waters of the United States (WOTUS), including wetlands within the Virginia portion of Lake Gaston, subject to strict compliance with all conditions and limitations further set out herein:

1. Construction of piers, boat docks, jetties, breakwaters structures, dolphins, boat ramps and boathouses using materials commonly acceptable for their construction such as unsinkable flotation materials, pressure treated lumber, pilings, and concrete.
2. Construction and backfilling of bulkheads and placement of riprap or appropriate bioengineering technique along eroding shorelines for shoreline stabilization and erosion control.
3. New and maintenance dredging of boat slips and channels (channelward of the normal high pool elevation) for recreational boating, where dredged material is placed in a dredged material disposal site or an upland disposal site approved by the Corps.
4. Installation of submerged and aerial power lines and utility lines where U. S. Coast Guard requirements for aerial lines are met and pre-project elevation contours are restored.
5. Maintenance of existing water intake and outfall structures provided all State and Federal required authorization have been obtained. Construction of new water intake and outfall structures is not authorized under this general permit.
6. Structures and work in navigable waters of the United States and discharges of dredged or fill material into waters of the United States for the construction and maintenance of living shorelines to stabilize banks along shores with small fetch and gentle slopes that are subject to low- to mid-energy waves.

## **II. AUTHORITIES:**

For projects located within Mecklenburg and Brunswick Counties, Virginia, project proponents are hereby authorized by the Secretary of the Army and the Chief of Engineers pursuant to Section 10 of the Rivers and Harbors Act of March 3, 1989 (33 U.S.C. 403) and Section 404 of the Clean Water Act (33 U.S.C.1344) to perform certain work within the Virginia portion of Lake Gaston as described herein.

Activities receiving written authorization under this RP do not require further authorization under the provisions contained in 33 CFR Part 325 unless the District Engineer determines, on a case-by-case basis, that additional review is in the public interest. All work undertaken outside the following conditions, terms, and limitations will require separate Department of the Army authorization.

This RP does not obviate the need for any approvals which may be required under law or regulations administered by the Federal Energy Regulatory Commission (FERC) or by the FERC licenses.

## **III. STATE AND LOCAL APPROVALS:**

1. Prospective permittees may be required to obtain additional state and/or local approvals prior to commencement of work in waters of the U.S. from the Virginia Department of Environmental Quality (DEQ), the Virginia Marine Resources Commission (VMRC) and/or the local wetlands board. You may contact the DEQ at (804) 698-4000, the VMRC at (757) 247-2200, and/or your local government office for further information concerning their permit requirements.

**Section 401 Water Quality Certification Conditions will be added in this section once that process is complete.**

2. Authorizations under this RP do not supersede State or Local government authority or responsibilities pursuant to the Chesapeake Bay Preservation Act, the Virginia Tidal Wetlands Act, or to any State or Local laws or regulations.
3. Prospective permittees are required to obtain authorization from Dominion Energy North Carolina Power, at the address below, prior to commencing work.

Reservoir Program Manager  
Dominion Energy North Carolina Power  
100 Oakwood Avenue  
Roanoke Rapids, North Carolina 27870  
Phone: (252) 535-6161

#### **IV. PROCEDURES:**

##### **A. For Activities #1, #2, #5 and #6 on Page 1:**

1. For actions (a), (b) and (c) below, prospective permittees must submit a pre-construction notification (PCN) in accordance with the procedures outlined in *General Condition 48: Pre-construction Notification* and must receive written authorization from the Corps before any work may begin. This RP shall not be interpreted as authorizing any work other than which is outlined above and which strictly meet all terms and conditions set out herein. All work undertaken that does not strictly comply with the following terms, condition, standards and limitations will require separate Department of the Army authorization.
  - a. Construction of more than 10 boat slips; or
  - b. Construction of boat ramps exceeding 20 feet in width.
  - c. Construction of living shorelines
2. Within Virginia, the U.S. Army Corps of Engineers, Norfolk District encourages perspective permittees to utilize the Joint Permit Application (JPA) as the pre-construction notification. The JPA is also used to apply for corresponding permits from the Virginia Marine Resources Commission, the Virginia Department of Environmental Quality, and/or Local Wetlands Boards. The JPA process and JPA forms are used by the Corps, the VMRC, the DEQ, and the LWB for permitting purposes involving tidal and/or non-tidal water, tidal and/or non-tidal wetlands, and/or dune/beach resources, including, but not limited to, construction, dredging, filling, or excavation. Read the directions on the application carefully to determine how many copies must be submitted to the VMRC, who acts as the clearinghouse for permit applications. Prospective permittees may obtain paper copies of the Joint Permit Applications by calling the Corps at 757-201-7652, or by downloading and using the standard JPA on the Norfolk District Regulatory Webpage:  
<http://www.nao.usace.army.mil/Missions/Regulatory/JPA.aspx>.
3. For all other actions described in Activities #1, #2, and #5, written authorization from the Norfolk District Corps of Engineers Regulatory Branch is not required provided the prospective permittees adhere to all terms and conditions of this RP.

## **B. For Activities #3 and #4 on Page 1:**

1. For actions (a) and (b) below, prospective permittees must submit a pre-construction notification in accordance with the procedures outlined in *General Condition 48: Pre-construction Notification*, and must receive written authorization from the Corps before any work may begin. This RP shall not be interpreted as authorizing any work other than which is outlined above and which strictly meet all terms and conditions set out herein. All work undertaken that does not strictly comply with the following terms, condition, standards and limitations will require separate Department of the Army authorization.
  - a. Any new dredging activities exceeding 1/10 acre of open water; or
  - b. Installation of fueling facilities on previously authorized structures.
2. Within Virginia, the U.S. Army Corps of Engineers, Norfolk District encourages perspective permittees to utilize the Joint Permit Application (JPA) as the pre-construction notification. The JPA is also used to apply for corresponding permits from the Virginia Marine Resources Commission, the Virginia Department of Environmental Quality, and/or Local Wetlands Boards. The JPA process and JPA forms are used by the Corps, the VMRC, the DEQ, and the LWB for permitting purposes involving tidal and/or non-tidal water, tidal and/or non-tidal wetlands, and/or dune/beach resources, including, but not limited to, construction, dredging, filling, or excavation. Read the directions on the application carefully to determine how many copies must be submitted to the VMRC, who acts as the clearinghouse for permit applications. Prospective permittees may obtain paper copies of the Joint Permit Applications by calling the Corps at 757-201-7652, or by downloading and using the standard JPA on the Norfolk District Regulatory Webpage:  
<http://www.nao.usace.army.mil/Missions/Regulatory/JPA.aspx>.
3. For all other actions described in Activities #3 and #4, written authorization from the Norfolk District Corps of Engineers Regulator Branch is not required provided the prospective permittees adhere to all terms and conditions of this RP.

## **C. Dominion Reporting Requirements**

**Dominion Energy North Carolina Power will provide an annual report to the Norfolk District Corps of Engineers Regulatory Branch by September 30<sup>th</sup> of each year for all projects described in Sections IV.A.3 and IV.B.3.**

## **V. PERMIT SPECIFIC CONDITIONS:**

1. The permittee must maintain any structure or work authorized under this permit in good condition and in conformance with the terms and conditions of this permit. The permittee is not relieved of this requirement if the permittee abandons the structure or work. If the permit is transferred as outlined in General Condition 44, the terms and conditions of this permit are binding on the

transferee should the structures or work authorized by this permit exist and/or is serviceable. The permittee must inform any subsequent permittee that the activities undertaken under the authority of this permit and provide the subsequent owner with a copy of the terms and conditions of this permit.

2. For construction of piers, boat docks, boat ramps and boathouses:

- a. For all floating facilities, flotation units shall be constructed of materials which will not become waterlogged or sink when punctured. Floating piers or boathouses are not permitted in or over vegetated wetland areas.
  - b. The permittee must install and maintain, at their expense, any safety lights and signals prescribed by the United States Coast Guard (USCG), through regulations or otherwise, on the authorized facilities. The USCG may be reached at the following address: Commander (oan), Fifth Coast Guard District, Federal Building, 431 Crawford Street, Portsmouth, Virginia 23704-5004 <http://www.atlanticarea.uscg.mil/Our-Organization/District-5>.
  - c. By accepting this RP, the permittee accepts all of the terms and conditions of this permit, including the limits on Federal liability contained herein. The permittee acknowledges that the structures permitted herein may be exposed to waves caused by passing vessels and that the permittee is solely responsible for the integrity of the structures permitted herein and the exposure of such structures and vessels moored to such structures to damage from waves. The permittee accepts that the United States is not liable in any way for such damage and that it shall not seek to involve the U.S. in any actions or claims regarding such damage.
  - d. The pouring of concrete for the construction of boat ramps must be accomplished within a temporary cofferdam unless the activity can be performed completely in the dry, such as during lake drawdown periods. The introduction of uncured concrete into surface waters is prohibited. Cofferdams left in place after construction is completed require a Section 10 permit if located in navigable waters of the U.S.
  - e. Piers may not extend more than one-fourth of the distance across the open water measured from ordinary low water or the channelward edge of the wetlands. Those proposed piers that will extend more than 300 feet from ordinary high water do not qualify for this RP but may qualify for a separate Norfolk District RP.
  - f. A pier may be constructed in and over wetland areas to allow access. Such piers shall be attached to the upland at a point landward of ordinary high water. All piers that cross wetland vegetation shall be an open-pile design, up to five (5) feet wide and have minimum elevation of at least four (4) feet between the decking and the wetland substrate. The required 4-foot elevation must be achieved at or above the ordinary high-water mark.
3. For construction of bulkhead and backfill and placement of riprap:

- a. The structure alignments shall not extend farther than an average of 2 feet channelward of the normal high pool elevation. Under this RP, no portion of the structure shall extend farther than five (5) feet from the normal high pool elevation or exceed a total length of 500 feet along the shoreline.
- b. All structures must be placed as closely to the shoreline as is practicable. No material may be placed in excess of the minimum necessary for erosion protection.
- c. The total amount of vegetated wetlands which may be filled, in square feet, cannot exceed the length of the activity along the shoreline in linear feet (e.g. 100 square feet maximum for a 100-foot-long bulkhead).
- d. All backfill material will be obtained from an upland source and confined landward of the permitted structure. The temporary placement or double-handling of excavated or fill material channelward of the normal high pool elevation is not authorized by this RP.
- e. Riprap material must consist of clean rock or masonry materials. The use of metal products, petroleum-based materials, or concrete with re-bar is prohibited.
- f. Native plants appropriate for current site conditions must be used for bioengineering or vegetative bank stabilization.

4. For excavation of boat slips and channels:

- a. All dredging will be limited to channelward of the normal high pool elevation. All dredged areas are to connect to existing lake bottom contours. Dead end canals are not authorized under this RP.
- b. All excavated materials must be removed entirely to uplands and/or retained behind suitable retention structures to prevent their reentering the water and creating excess turbidity. The temporary placement or double-handling of excavated or fill material channelward of the normal high pool elevation is not authorized by this RP.

5. For installation of submerged and aerial power lines and utility lines:

Submerged utility lines and associated dredging or excavation:

- a. No submerged utility line installation which involves either temporary or permanent stream channelization is authorized by this RP. Such work does not qualify for this RP and will require an individual Department of the Army permit.
- b. Utility lines should be routed to avoid disturbance to vegetated wetlands.

Wetlands unavoidably impacted during the installation of the pipeline must be restored to their preconstruction contours and seeded or sprigged with appropriate native wetland vegetation upon completion of construction activities.

- c. The pouring of concrete for backfill of utility line trenches must be accomplished within a temporary cofferdam unless the activity can be performed completely in the dry, such as during lake drawdown periods. The introduction of uncured concrete into surface waters is prohibited. Cofferdams left in place after construction is completed require a Section 10 permit if located in navigable waters of the U.S.
- d. Note that the discharge of material for backfill or bedding, or the construction of footings may require separate authorization from the Corps.
- e. For linear pipeline projects, the applicant must supply the U. S. Fish and Wildlife Service with information concerning the intended route of the entire project so that they may, if necessary, exercise their authority under the Endangered Species Act.

Aerial transmission lines and other overhead lines:

- a. The following minimum clearances are required for aerial electric power transmission lines crossing navigable waters of the U.S. These clearances are related to the clearances over the navigable channel provided by existing fixed bridges, or the clearances which would be required by the U.S. Coast Guard for new fixed bridges, in the vicinity of the proposed power line crossing. The clearances are based on the low point of the line under conditions which produce the greatest sag, taking into consideration temperature, load, wind, length of span, and type of supports as outlined in the National Electrical Safety Code. The US Coast Guard can be contacted at:

Commander Fifth Coast Guard District  
 431 Crawford Street  
 Portsmouth, Virginia 23704  
 Portsmouth Federal Building Staff Status:  
 (757) 398-6441 or (800) 334-8377

Minimum additional clearance above clearance required for bridges

Nominal system voltage (kilovolt): Feet	
115 and below .....	20
138 .....	22
161 .....	24
230 .....	26
350 .....	30
500 .....	35
700 .....	42



- b. The minimum clearance for aerial communication lines and any other lines not transmitting electrical power will be a minimum of ten feet above the clearance required for bridges in the vicinity. Overhead lines which require fill may need separate authorization from the Corps. Projects which require dredging for construction access will not qualify for this RP.
- c. For linear aerial transmission line projects, the applicant must supply the U.S. Fish and Wildlife Service with information concerning the intended route of the entire project so that they may, if necessary, exercise their authority under the Endangered Species Act.
- d. The Federal Aviation Administration has responsibility for the marking of aerial transmission lines. Therefore, for those projects involving such work, an appropriate application should be submitted to the Federal Aviation Administration Eastern Region Airports Division (AEA-600) 1 Aviation Plaza, Jamaica, New York 11434 (Telephone (718) 553-3330).

**6. For installation of Living Shorelines:**

- a. The structures and fill area, including sand fills, sills, or breakwaters, cannot extend into the waterbody more than 30 feet from the ordinary high water mark unless the district engineer waives this criterion by making a written determination concluding that the activity will result in no more than minimal adverse environmental effects.
- b. The activity is no more than 500 feet in length along the bank, unless the district engineer waives this criterion by making a written determination concluding that the activity will result in no more than minimal adverse environmental effects.
- c. Coir logs, coir mats, stone, native wood debris, and other structural materials must be adequately anchored, of sufficient weight, or installed in a manner that prevents relocation in most wave action or water flow conditions, except for extremely severe storms.
- d. For living shorelines consisting of lacustrine fringe wetlands (lakes), native plants appropriate for current site conditions, including elevation, must be used if the site is planted by the permittee.
- e. Discharges of dredged or fill material into waters of the United States must be the minimum necessary for the establishment and maintenance of living shorelines.
- f. If sills, breakwaters, or other structures must be constructed to protect fringe wetlands for the living shoreline, those structures must be the minimum size necessary to protect those fringe wetlands.

- g. The activity must be designed, constructed and maintained so that it has no more than minimal adverse effects on water movement between the waterbody and the shore and the movement of aquatic organisms between the waterbody and the shore.
- h. The living shoreline must be properly maintained, which may require periodic repair of sills, breakwaters, or replacing sand fills after severe storms or erosion events. Vegetation may be replanted to maintain the living shoreline. The RP authorizes those maintenance and repair activities, including any minor deviations to address changing environmental conditions.
- i. This RP does not authorize beach nourishment or land reclamation activities.
- j. Living shoreline activities cannot result in a net loss of vegetated wetlands.

## **VI. GENERAL CONDITIONS:**

The following conditions apply to all activities authorized under 23-RP-22. Work that does not meet one or more of the terms or general conditions of 23-RP-22, including work that has been determined to be more than minimal in nature (at any impact level), will require consideration under a different type of Corps permit.

1. Other permits: Authorization does not obviate the need to obtain other federal, state, or local authorizations required by law or to comply with all federal, state, or local laws.
2. Minimal effects: Projects authorized shall have no more than minimal individual or cumulative adverse environmental impacts.
3. Discretionary authority: The Corps District Commander retains discretionary authority to require processing of an individual permit based on concerns for the aquatic environment or for any other factor of the public interest (33 C.F.R. § 320.4(a)). This authority is exercised on a case-by-case basis.
4. Single and complete non-linear projects: The activity must be a single and complete project. For non-linear projects, the term “single and complete project” is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete non-linear project must have independent utility (see definition of “independent utility”). Single and complete non-linear projects may not be “piecemealed” to avoid the limits of a 23-RP-22 authorization.
5. Single and complete linear projects: The activity must be a single and complete project. A linear project is a project constructed for the purpose of getting people, goods, or services from a point of origin to a terminal point, which often involves multiple crossings of one or more waterbodies at separate and distant locations. The term “single and complete project” is defined as that portion of the total linear project proposed or accomplished by one owner/developer or partnership or other association of owners/developers that includes all crossings of a single water of the United States

(i.e., a single waterbody) at a specific location. For linear projects crossing a single or multiple waterbodies several times at separate and distant locations, each crossing is considered a single and complete project for purposes of 23-RP-22 authorization. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately.

6. Independent utility: A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.
7. Multiple general permit authorizations: The 23-RP-22 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 23-RP-22.
8. Permit on-site: The permittee shall ensure that a copy of 23-RP-22 and the accompanying authorization letter are always at the work site. These copies must be made available to any regulatory representative upon request. Although the permittee may assign various aspects of the work to different contractors or sub-contractors, all contractors and sub-contractors shall be expected to comply with all conditions of any 23-RP-22 verification.
9. Historic properties:
  - a. No activity is authorized under the 23-RP-22 which may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.
  - b. Federal permittees: should follow their own procedures for complying with the requirements of section 106 of the NHPA (see 33 CFR 330.4(g)(1)). The federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation is not submitted, then additional consultation under section 106 may be necessary. The respective federal agency is responsible for fulfilling its obligation to comply with section 106.
  - c. Non-federal permittees: must state which historic properties might have the potential to be affected by the proposed 23-RP-22 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 (SHPO), Tribal Historic Preservation Officer (THPO), 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 23-RP-22 activity has the potential to cause effects on the historic properties. Section 106 consultation is not required when the district engineer determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). Section 106 consultation is required when the district engineer determines that the activity has the potential to cause effects on historic properties. The district engineer will conduct consultation with consulting parties identified under 36 CFR 800.2(c) when he or she makes any of the following effect determinations for the purposes of section 106 of the NHPA: no historic properties affected, no adverse effect, or adverse effect.

- d. Where the non-federal applicant has identified historic properties on which the proposed 23-RP-22 activity might have the potential to cause effects and has so notified the Corps, the non-federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects to historic properties or that NHPA section 106 consultation has been completed. If NHPA section 106 consultation is required, the district engineer will notify the non-federal applicant that he or she cannot begin the activity until section 106 consultation is completed.
- e. Prospective permittees should be aware that section 110k of the NHPA (54 U.S.C. 306113) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.
- f. Discovery of previously unknown remains and artifacts. Permittees who discover any previously unknown historic, cultural, or archeological remains and artifacts while accomplishing the activity authorized by 23-RP-22, 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 23-RP-22 verification.**

10. Tribal rights: No activity or its operation may impair reserved Tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.
11. Federal lands: Authorized activities shall not impinge upon the value of any National Wildlife Refuge, National Forest, National Park, or any other area administered by the United States Fish and Wildlife Service (USFWS), U.S. Forest Service, or National Park Service unless approval from the applicable land management agency is provided with the permit application.
12. Endangered species: No activity is authorized under any 23-RP-22 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 23-RP-22 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 23-RP-22 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 23-RP-22 verification.**

Authorization of an activity by a 23-RP-22 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 actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Information on the location of threatened and

endangered species and their critical habitat can be obtained directly from the offices of the USFWS and NMFS or their World Wide Web pages at <http://www.fws.gov/> or <http://www.fws.gov/ipac> and <http://www.noaa.gov/fisheries.html> respectively.

13. Migratory birds and bald and golden eagles: 23-RP-22 complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting the appropriate local office of the USFWS to determine what measures, if any, are necessary or appropriate to reduce adverse effects to migratory birds or eagles, including whether "incidental take" permits are necessary and available under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for a particular activity.
14. Wild and scenic rivers: Currently, there are no designated Wild and Scenic Rivers in Virginia. No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system, while the river is in an official study status, unless the appropriate federal agency with direct management responsibility for such river has determined, in writing, that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate federal land management agency in the area (e.g., National Park Service (NPS), U.S. Forest Service (USFS), Bureau of Land Management (BLM), and USFWS). Impacts that occur in these resource areas will require coordination with the appropriate Federal agency.
15. Navigation:
  - a. No activity may cause more than a minimal adverse effect on navigation.
  - b. Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable WOTUS.
  - c. The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.
16. Floodplains: The activity must comply with applicable Federal Emergency Management Agency (FEMA) approved state or local floodplain management requirements.
17. 408 certification: Under 33 USC 408, no activity may temporarily or permanently alter or make use of a U.S. Army Corps of Engineers civil works project unless reviewed and permitted by the Secretary of the Army. The Corps may grant this permission if

the work does not impair the usefulness of the project and is not injurious to the public interest.

18. Environmental justice: Activities authorized under 23-RP-22 must comply with Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.
19. Federal liability: In issuing 23-RP-22, 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 23-RP-22.
  - d. design or construction deficiencies associated with the permitted work.
  - e. damage claims associated with any future modification, suspension, or revocation of this permit.
20. Avoidance and minimization: Except as provided under section 404(b)(2), no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences. (40 CFR 230.10(a)-(d) Section 404 (b)(1) Guidelines).
21. Compensatory mitigation: Mitigation will generally be required for all projects where permanent loss exceeds 0.10 acre of wetlands, and/or 0.03 acre of stream bed, or 300 linear feet of stream bed. Stream channel loss must be reported in acres 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 palustrine open waters
      - 1:1 for emergent wetlands
      - 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 recommended 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 acres 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 DEQ 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 are minimal.

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

23. Temporary fills: The soils of any temporarily impacted areas located in wetlands that are cleared, grubbed, and/or filled, must be restored once these areas are no longer needed for their authorized purpose, no later than completion of project construction, and not to exceed 12 months after commencing the temporary impacts. To restore, temporary fill must be removed in its entirety and the affected areas returned to preconstruction elevations, the soil surface loosened by ripping or chisel plowing to a depth of 8-12", and then seeded using native wetland species.

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

24. Sedimentation and erosion control: Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, and any work below the ordinary high-water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within WOTUS during periods of low-flow or no-flow.

25. Countersinking of pipes and culverts: Based on consultation with Virginia Department of Wildlife Resources (VDWR), the Corps has determined that fish and other aquatic



organisms are most likely present in any nontidal stream being crossed, in the absence of site-specific evidence to the contrary. The following conditions will apply in nontidal waters:

a. All pipes and culverts placed in streams will be countersunk at both the inlet and outlet ends, unless indicated otherwise by the Corps on a case-by-case basis (see below). Pipes that are 24" or less in diameter shall be countersunk 3" below the natural stream bottom. Pipes that are greater than 24" in diameter shall be countersunk 6" below the natural stream bottom. The countersinking requirement does not apply to bottomless pipes/culverts or pipe arches. All single pipes or culverts (with bottoms) shall be depressed (countersunk) below the natural streambed at both the inlet and outlet of the structure. In sets of multiple pipes or culverts (with bottoms) at least one pipe or culvert shall be depressed (countersunk) at both the inlet and outlet to convey low flows.

b. When countersinking culverts, permittees must ensure reestablishment of a surface water channel (within 15 days post construction) that allows for the movement of aquatic organisms and maintains the same hydrologic regime that was present preconstruction (i.e., the depth of surface water through the permit area should match the upstream and downstream depths). This may require the addition of finer materials to choke the larger stone and/or placement of riprap to allow for a low flow channel.

c. The requirement to countersink does not apply to extensions of existing pipes or culverts that are not countersunk, or to maintenance of pipes/culverts that do not involve replacing the pipe/culvert (e.g., repairing cracks 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 23-RP-22 application. The permittee must provide documentation of measures evaluated to minimize disruption of the movement of aquatic life as well as documentation of the cost, engineering factors, and site conditions that prohibit countersinking the pipe/culvert. Options that must be considered include partial countersinking (such as less than 3" of countersinking, or countersinking of one end of the pipe), and constructing stone step pools, low rock weirs downstream, or other measures to provide for the movement of aquatic organisms. The permit application must also include photographs documenting site conditions. NOTE: Blasting of stream bottoms through the use of explosives is not acceptable as a means of providing for countersinking of pipes on bedrock.

g. Pipes on steep terrain: Pipes being placed on steep terrain (slope of 5% or greater) must be countersunk in accordance with the conditions above and will in most cases be non-reporting. It is recommended that on slopes greater than 5%, a larger pipe than required be installed to allow for the passage of ordinary high water in order to increase the likelihood that natural velocities can be maintained. There may be situations where countersinking both the inlet and outlet may result in a slope in the pipe that results in flow velocities that cause excessive scour at the outlet and/or prohibit some fish movement. This type of situation could occur on the side of a mountain where falls and drop pools occur along a stream. Should this be the case, or should the permittee not want to countersink the pipe/culvert for other reasons, justification must be provided in the 23-RP-22 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. 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 Corps (contact by telephone and/or email is acceptable). The permittee must provide the Corps with specific information concerning site conditions and limitations. The Corps 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 Corps could determine that the work will not qualify for a 23-RP-22 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 replace and countersink the pipe/culvert and at a later time 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 Corps must be notified of all pipes/culverts that are replaced without countersinking at the time that it occurs, even if it is an otherwise non-reporting activity, and must provide the permittee's planned schedule for installing a countersunk replacement (it is acceptable to submit such notification by email). The permittee should anticipate whether bedrock or steep terrain will limit countersinking, and if so, should follow the procedures outlined in (f) and/or (g) above.

26. Discharge of pollutants: All authorized activities involving any discharge of pollutants into WOTUS shall be consistent with applicable water quality standards, effluent limitations, standards of performance, prohibitions, and pretreatment standards and management practices established pursuant to the CWA (33 U.S.C. § 1251 et seq.) and applicable state and local laws.
27. Suitable material: No activity may use unsuitable material (e.g., trash, debris, car bodies, 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).
28. Obstruction of high flows: Discharges of dredged or fill material must not permanently restrict or impede the passage of normal or expected high flows.
29. Aquatic life movements: No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species. If a bottomless culvert cannot be used, then the crossing should be designed and constructed to minimize adverse effects to aquatic life movements.
30. Spawning areas: Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical

destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

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

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

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

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

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

This condition applies to the following counties and cities: Albemarle, Allegheny, Amherst, Augusta, Bath, Bedford, Bland, Botetourt, Bristol, Buchanan, Buena Vista, Carroll, Clarke, Covington, Craig, Dickenson, Floyd, Franklin, Frederick, Giles, Grayson, Greene, Henry, Highland, Lee, Loudoun, Madison, Montgomery, Nelson, Page, Patrick, Pulaski, Rappahannock, Roanoke City, Roanoke Co., Rockbridge, Rockingham, Russell, Scott, Shenandoah, Smyth, Staunton, Tazewell, Warren, Washington, Waynesboro, Wise, and Wythe.

33. Anadromous fish use areas: Authorizations associated with the 23-RP-22 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/index.asp>.

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 VMRC.

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

34. Water supply intakes: No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.
35. Invasive species: Plant species listed in the most current Virginia Department of Conservation and Recreation's (DCR) Invasive Alien Plant List shall not be used for revegetation for activities authorized by the 23-RP-22. 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 re-vegetation as identified in the DCR Native Plants for Conservation, Restoration and Landscaping brochures for the coastal, piedmont and mountain regions <http://www.dcr.virginia.gov/natural-heritage/nativeplants#brochure> also see the DCR native plant finder: <https://www.dcr.virginia.gov/natural-heritage/native-plants-finder>.
36. Inspections: The permittee understands and agrees that the Corps is permitted and allowed to make periodic inspections at any time the Corps deems necessary to ensure 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 23-RP-22, as deemed necessary on a case-by-case basis.
37. Maintenance: Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable 23-RP-22 general conditions.
38. Property rights: 23-RP-22 does not convey any property rights, either in real estate or material, or convey any exclusive privileges, nor does it authorize any injury to property or invasion of rights or any infringement of federal, state, or local laws or regulations. If real estate rights are needed from the Corps, the permittee must contact the Corps Real Estate Office at (757) 201-7733 or at the address listed on the front page of this permit.
39. Suspension and revocation: 23-RP-22 and individual verifications under 23-RP-22 maybe either suspended or revoked in whole or in part pursuant to the policies and procedures of 33 C.F.R. § 325.7. Any such action shall not be the basis for any claim for damages against the United States.
40. Restoration directive: The permittee, upon receipt of a restoration directive, shall restore the WOTUS to their former conditions without expense to the United States and as directed by the Secretary of the Army or his/her authorized representative. If the permittee fails to comply with such a directive, the Secretary or his/her designee, may restore the WOTUS to their former conditions, by contract or otherwise, and recover the cost from the permittee.

41. Special conditions: The Corps may impose other special conditions on a project verified pursuant to 23-RP-22 that are determined necessary to minimize adverse navigational and/or environmental effects or based on any other factor of the public interest. Failure to comply with all conditions of the authorization/verification, including special conditions, constitutes a permit violation and may subject the permittee, or his/her contractor, to criminal, civil, or administrative penalties and/or restoration.
42. False or incomplete information: In granting authorization pursuant to this permit, the Corps has relied upon information and data provided by the permittee. If, subsequent to notification by the Corps that a project qualifies for this permit, such information and data prove to be false or incomplete, the Corps may suspend or revoke authorization, in whole or in part, and/or the United States or Corps may institute appropriate legal proceedings.
43. Abandonment: If the permittee decides to abandon the activity authorized under 23-RP-22, unless such abandonment is merely the transfer of property to a third party, they may be required to restore the area to the satisfaction of the Corps.
44. Transfer of verification: To transfer verification under 23-RP-22, the transferee and permittee must supply the Corps 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.
45. Binding effect. The provisions of the permit authorization shall be binding on any assignee or successor in interest of the original permittee.
46. Expiration of 23-RP-22: Unless further suspended or revoked, the 23-RP-22 will be in effect until TBD.
  - a. Activities which have commenced (i.e., are under construction) or are under contract to commence construction in reliance upon 23-RP-22 will remain authorized provided the activity is completed within 12 months of the date of this 23-RP-22's expiration of TBD, 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 TBD 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 TBD, expiration must apply for a new general and/or individual Corps permit authorization.

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(Transferee)

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(Date)

47. Compliance Certification: A Certificate of Compliance, enclosed with the Corps' written authorization for the activity, must be completed and a copy retained for your records. The original Certificate of Compliance shall be mailed to, U. S. Army Corps of Engineers, Regulatory Branch, 803 Front Street, Norfolk, Virginia 23510-1011, or to the Regulatory Field Office listed on the Certificate of Compliance, within 30 days of completion of the authorized activity.
48. Pre-Construction Notification: Prior to commencing the activity, prospective permittees ("permittees") must submit a Pre-construction Notification (PCN) to the District Engineer, unless otherwise specified in the RP, and must receive written notification from the Corps acknowledging that the project is authorized pursuant to this RP.

Notification to the Corps must be in writing (the Joint Permit Application may also be used, as described below) and must include the following information:

- Name, address and telephone number of the prospective permittee;
- Name, address and telephone number of the property owner, if different from the prospective permittee;
- Location of the project (including Tax Parcel ID Number, if available);
- Vicinity map, aerial photograph, and/or drawing accurately showing the extent of proposed activity and the extent of waters of the U.S., including wetlands. Drawings, plans and/or sketches should contain sufficient detail to project an illustrative description of the proposed activity;
- Identify the specific RP or RPs the prospective permittee wants to use to authorize the proposed activity;
- A description of the proposed activity; the activity's purpose; direct and indirect adverse environmental effects the activity would cause, including the anticipated amount of loss of wetlands, other special aquatic sites, and other waters expect to result from the RP activity, in acres, linear feet or other appropriate unit of measure; a description of any proposed mitigation measures; and any other Corps permit used or intended to be used to authorize any part of the proposed project or any related activity.
- A delineation of special aquatic sites and other waters of the U.S. on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters of the U.S., but there may be a delay if the Corps does the delineation.
- If compensatory mitigation is required, the prospective permittee must submit a statement describing how any required compensatory mitigation will be provided. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan. In accordance with 33 CFR 332.3

(a) the Corps will consider what is environmentally preferable. Factors considered will be likelihood of success, sustainability, location relative to the impact site and significance within the watershed, and the costs of the compensatory mitigation project. The Corps will require the most appropriate and practicable mitigation pursuant to 33 CFR 320.4(r).

A JPA may be obtained by writing to the U.S. Army Corps of Engineers, Norfolk District, Regulatory Branch, 803 Front Street, Norfolk, Virginia 23510-1011; by telephoning the Norfolk District Regulator of the Day at (757) 201-7652 or via the following link to the Norfolk District Regulatory Branch website:

<http://www.nao.usace.army.mil/Missions/Regulatory/JPA/>.

The Corps must determine if the PCN is complete. If the PCN is determined to be incomplete, the Corps will request the prospective permittee to provide the additional information necessary to make the request complete. The request must specify the information needed to make the PCN complete. As a general rule, the Corps will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the Corps will notify the prospective permittee that the PCN is still incomplete and the review process will not commence until all of the requested information has been received by the Corps. The prospective permittee shall not begin the activity until he or she is notified in writing by the Corps that the activity may proceed under the RP, subject to any additional conditions imposed by the Corps.

If, after reviewing the request, the Corps determines that the proposed activity would have more than minimal individual or cumulative adverse impacts on the aquatic environment or otherwise may be contrary to the public interest, then the Corps will notify the project proponent that the activity is not authorized by the regional permit and will provide instructions for seeking authorization under an individual permit. The Corps may revoke this Regional Permit for an individual activity by following the procedures set forth in 33 CFR 325.7.

## **VII. DISTRICT ENGINEER'S DECISION:**

1. In reviewing the PCN for the proposed activity, the District Engineer will determine whether the activity authorized by the RP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If a project proponent requests authorization by a specific RP, the District Engineer should issue the RP verification for that activity if it meets the terms and conditions of that RP, unless he or she determines, after considering mitigation, that the proposed activity will result in more than minimal individual or cumulative adverse effects on the aquatic environment and other aspects of the public interest and require an individual permit for the proposed activity.
2. When making minimal adverse environmental effects determinations the District



Engineer will consider the direct and indirect effects caused by the RP activity. He or she will also consider the cumulative adverse environmental effects caused by activities authorized by the RP and whether those cumulative adverse environmental effects are no more than minimal. The District Engineer will also consider site specific factors, such as the environmental setting in the vicinity of the RP activity, the type of resource that will be affected by the RP activity, the functions provided by the aquatic resources that will be affected by the RP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the RP activity (e.g., partial or complete loss), the duration of the adverse effects (temporary or permanent), the importance of the aquatic resource functions to the region (e.g., watershed or ecoregion), and mitigation required by the District Engineer. The District Engineer may add case-specific special conditions to the RP authorization to address site-specific environmental concerns.

3. If the District Engineer determines that the adverse environmental effects of the proposed activity are more than minimal, then the District Engineer will notify the permittee that the activity does not qualify for authorization under the RP and instruct the permittee on the procedures to seek authorization under an individual permit or process to modify the proposed activity and/or the mitigation plan to reduce the adverse environmental effects so that they are no more than minimal. In addition, if the District Engineer determines on a case-by-case basis that concerns for the aquatic environment so indicate, the District Engineer may exercise discretionary authority to override the Regional Permit and require an Individual Permit application and review.

#### **VIII. ADDITIONAL INFORMATION:**

1. District Engineers have the authority to determine if an activity complies with the terms and conditions of the RP.
2. Limits of This Authorization:
  - a. Regional permits do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.
  - b. Regional permits do not grant any property rights or exclusive privileges.
  - c. Regional permits do not authorize any injury to the property or rights of others.
  - d. Regional permits do not authorize interference with any existing or proposed Federal project (see General Condition 32).
  - e. Regional permits do not authorize the impingement upon Federal Lands.
  - f. Regional permits do not grant any Corps or Federal real estate rights. If real estate rights are needed from the Corps, you must contact the appropriate U.S. Army Corps of Engineers District's Real Estate Office.
3. Limits of Federal Liability: In issuing this RP, the Federal government does not assume any liability for the following:

- a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes;
  - b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest;
  - c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this RP;
  - d. Design or construction deficiencies associated with the permitted work;
  - e. Damage claims associated with any future modification, suspension, or revocation of this permit.
4. Reliance on Permittee's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.
5. Reevaluation of Permit Decision: The District Engineer may reevaluate the decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:
- a. The permittee fails to comply with the terms and conditions of this permit.
  - b. The information provided by the permittee in support of your PCN proves to have been false, incomplete, or inaccurate.
  - c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Binding Effect: The provisions of the permit authorization shall be binding on any assignee or successor in interest of the original permittee.
7. Expiration: Unless further modified, suspended, or revoked, this RP will be in effect until **TBD**. Activities which have commenced (i.e. under construction) or are under contract to commence in reliance upon this RP will remain authorized provided the activity is completed within twelve (12) months of the date of the RP's expiration, modification, or revocation, unless discretionary

authority has been exercised on a case-by-case basis to modify, suspend, or revoke the authorization. Activities completed under the authorization of the RP which was in effect at the time the activity was completed continue to be authorized by that RP.