Attachment "C"

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

May 30, 2025

Eastern Virginia Regulatory Section
NAO-2016-00122 / VMRC#25-V0655 (James River)

VMRC, c/o Andrew Button
380 Fenwick Road, Building 96
Fort Monroe, VA 23651

Dear Mr. Button:

This is in reference to the Department of the Army application (NAO-2016-00122 / VMRC#25-V0655) you submitted to perform restoration and maintenance of public oyster beds in the Commonwealth. An estimated 30,000 – 60,000 cubic yards of fossil shell would be collected this year. The shell deposit would be collected via a cutterhead, and the shells would be separated and cleaned on the vessel. The remaining sediment would be placed back in the excavated area. VMRC has scheduled the 2025 project to start on June 1st, and they expect dredging to take no more than 6 weeks. Following the dredge process fossil shell will be transported via barge to existing oyster reefs throughout the Commonwealth for distribution. The purpose of the proposed work is to collect fossil shell material that would be used to supplement state managed oyster reefs. All work will be performed at these coordinates 36.95329 / -76.445373, in Newport News, Virginia. Your proposed project as described above and depicted on attached drawings entitled "Shell Dredge Location Newport News," received by our office on April 3, 2025 satisfies the terms and conditions of Norfolk District's Regional Permit 20 (23-RP-20). Provided that you follow the general and permit specific conditions of 23-RP-20, as well as the additional special conditions that have been included below; no further authorization will be required from the Corps.

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.

Incidents where any individuals of sea turtles, Atlantic sturgeon, or any species listed by NOAA Fisheries under the Endangered Species Act appear to be injured or killed as a result of discharges of fill material into waters of the United States or structures or work in navigable waters of the United States authorized by this RP shall be reported to NOAA Fisheries, Office of Protected Resources at (301) 713-1401 and the Regulatory Office of the Norfolk District of the U.S. Army Corps of Engineers at 757-201-7652. The

finder should leave the animal alone, make note of any circumstances likely causing the death or injury, note the location and number of individuals involved and, if possible, take photographs. Adult animals should not be disturbed unless circumstances arise where they are obviously injured or killed by discharge exposure, or some unnatural cause. The finder may be asked to carry out instructions provided by NOAA Fisheries, Office of Protected Resources, to collect specimens or take other measures to ensure that evidence intrinsic to the specimen is preserved.

If you suspect that your project may result in purposeful take of migratory birds, contact the U.S. Fish and Wildlife Service Migratory Bird Program at PermitsR5MB@fws.gov. If you are interested in voluntarily reducing impacts to migratory birds and their habitats, please consult https://fws.gov/birds/managment/project-assessment-tools-and-guidance/conservation-measures.php for conservation measures.

Please note that your project may require either a U.S. Fish and Wildlife Service (FWS) bald eagle take permit or a letter of concurrence from FWS indicating that a permit is not necessary prior to initiating construction activities. Please contact Thomas Wittig concerning this matter at 413-253-8577 or Thomas_wittig@fws.gov.

Special Conditions:

1. Dredge and discharge activity shall not take place within a 200 foot buffer radius from 36.939726, -76.4346142.

2. A Plan of Action (POA) for historical and archaeological finds is required. The contractor will implement measures to add additional awareness for the dredge operation to prevent damage in the event that there is an encounter with unidentified archaeological or cultural resources while dredging fossil oyster shell. The contractor will:

    1) Monitor the cutter head hydraulic pressure for spikes in pressure and set the hydraulic pressure relief value to stall the cutter head if it encounters debris.

    2) Alert the oiler on the top deck to watch where materials enter the shell shorting area for potential archeological debris.

    3) Alert the barge handlers to watch the conveyor deposits of shell on the barge for potential archeological debris.

    4) Should chain, metal, or wood be observed at any location, the shell dredging will be stopped at that location and the Virginia Marine Resources Commission, Conservation and Replenishment Department will be contacted immediately.

3. In accordance with federal regulations, should unexpected archaeological resources be encountered during project implementation, all work in the immediate area should cease and DHR contacted to provide guidance on the treatment of the discovery. The contractor should record the location of the finds, and the archaeological debris must be retained for evaluation. The federal agency that approved the undertaking should contact DHR within 48 hours of discovery.

4. No dredging shall occur between February 15 and June 1 of any given year.

Enclosed is a "compliance certification" form, which must be signed and returned within 30 days of completion of the project. Your signature on this form certifies that you have completed the work in accordance with the regional permit terms and conditions.

This verification is valid until 23-RP-20 is modified, reissued, or revoked. RP-20 is scheduled to be modified, reissued, or revoked on May 12, 2028. 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.

The State Water Control Board provided unconditional §401 Water Quality Certification for this RP. Therefore, the activities that qualify for this RP meet the requirements of the Department of Environmental Quality's (DEQ) Virginia Water Protection Permit Regulation, provided that the permittee abides by the conditions of this RP. You will not be required to obtain a separate §401 Water Quality Certification from DEQ. This authorization does not relieve your responsibility to comply with local requirements pursuant to the Chesapeake Bay Preservation Act (CBPA), nor does it supersede local government authority and responsibilities pursuant to the Act. You should contact your local government before you begin work to find out how the CBPA applies to your project.

Pursuant to the Coastal Zone Management Act (CZMA) of 1972, the Virginia Department of Environmental Quality Virginia Coastal Zone Management Program (VCP) completed its review of the Federal Consistency Determination (FCD) for this RP on August 16, 2018, and provided concurrence that this RP is consistent with the VCP. Therefore, no further coordination with the VCP is required. Authorizations under this RP do not supersede State or local government authority or responsibilities pursuant to any State or local laws or regulations.

In granting an authorization pursuant to this permit, the Norfolk District has relied on the 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 materially false or materially incomplete, the authorization may be suspended or revoked, in whole or in part, and/or the Government may institute appropriate legal proceedings. Please note that you should obtain all required State and local authorizations before you proceed with the project.

If you have any questions and/or concerns about this permit authorization, please contact Moira Meehan via telephone at (757) 708-3055 or via email at moira.e.meehan@usace.army.mil.

Sincerely,

MEEHAN.MOIRA.ELIZABETH.1614941851 Digitally signed by MEEHAN.MOIRA.ELIZABETH.1614941851 Date: 2025.05.30 15:42:21 -04'00'

Moira Meehan
Eastern Virginia Regulatory Section

Enclosure(s)

Cc: Agent
Virginia Marine Resources Commission

U.S. Army Corps
Of Engineers
Norfolk District

CERTIFICATE OF COMPLIANCE WITH ARMY CORPS OF ENGINEERS PERMIT

Permit Number:	NAO-2016-00122
VMRC Number:	25-V0655
Corps Contact:	Moira Meehan
Name of Permittee:	VMRC, c/o Andrew Button
Date of Verification:	May 30, 2025
Permit Type:	RP-20 (State Managed Artificial Oyster Reefs)

Within 30 days of completion of the activity authorized by this permit and any mitigation required by the permit, sign this certification and return it to the following address:

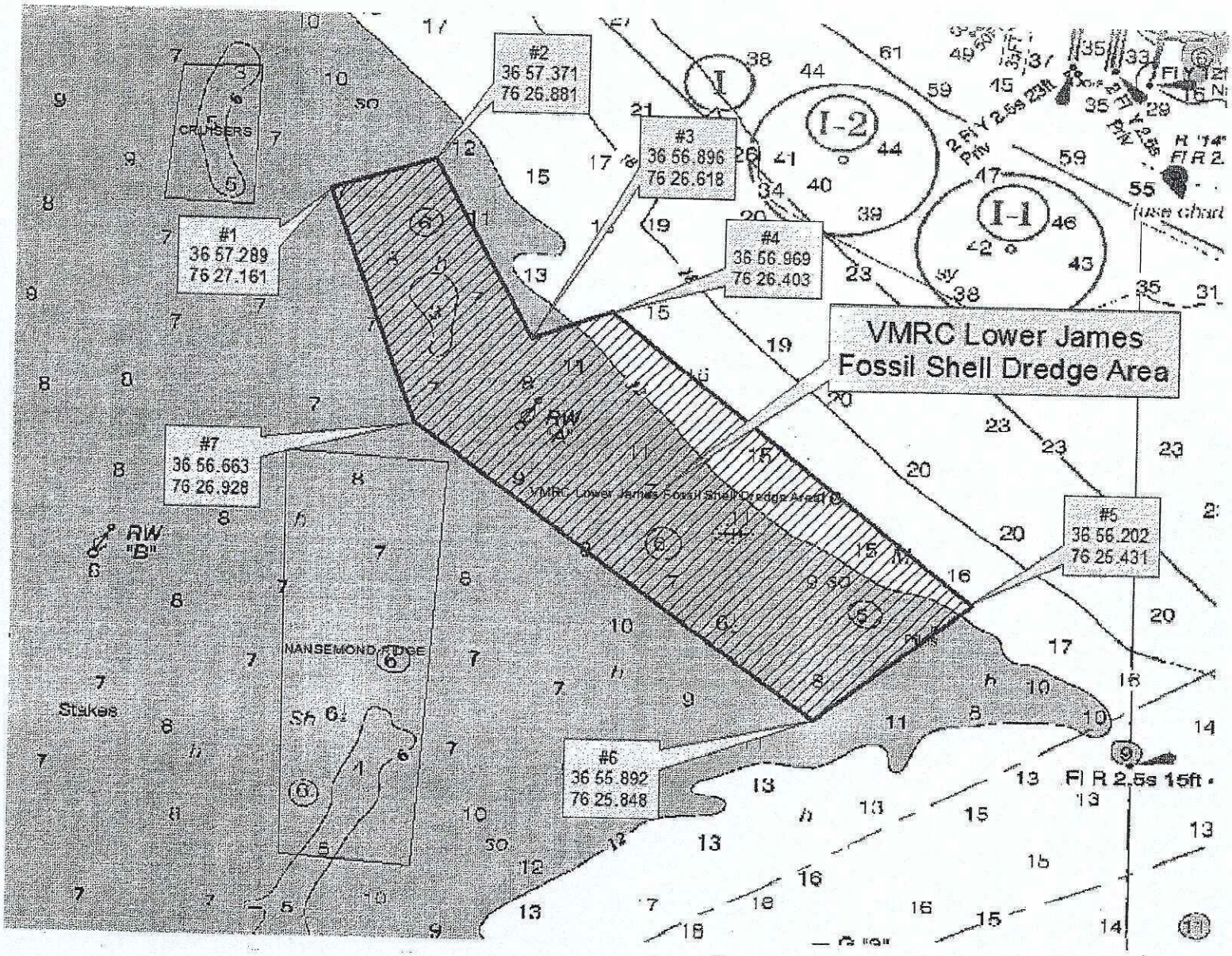
US Army Corps of Engineers - Norfolk District
CENAO-WR-R
Attn: Moira Meehan
803 Front Street
Norfolk, VA 23510-1096

Or scan and send via email to moira.e.meehan@usace.army.mil

Please note that your permitted activity is subject to a compliance inspection by a U.S. Army Corps of Engineers representative. If you fail to comply with this permit you are subject to permit suspension, modification or revocation.

I hereby certify that the work authorized by the above referenced permit has been completed in accordance with the terms and conditions of the said permit and required mitigation has been completed in accordance with the permit conditions.

_____ _____
Signature of Permittee Date


VMRC Lower James
Fossil Shell Dredge Area
#1
36 57.289
76 27.161
#2
36 57.371
76 26.881
#3
36 56.896
76 26.618
#4
36 56.969
76 26.403
#5
36 56.202
76 25.431
#6
36 55.892
76 25.848
#7
36 56.663
76 26.928
CRUISERS
NANSEMOND RIDGE
Stakes
RW
"B"
I
I-2
I-1
Fl R 2.5s 15ft

U.S. Army Corps
Of Engineers
Norfolk District

Fort Norfolk, 803 Front Street
Norfolk, Virginia 23510-1096

CENAO-WRR
23-RP-20

REGIONAL PERMIT

Effective Date: May 12, 2023 **Expiration Date: May 12, 2028**

I. AUTHORITIES:

23-RP-20, Regional Permit 20 (RP), authorizes the creation of artificial reefs (oyster and fish haven) and dredging of old shellfish reefs, when the material, dredge shell or structural, will be used to create new or enhance existing natural or artificial reefs owned, operated, or managed by the Commonwealth of Virginia.

The intent of this RP is to provide a streamlined permitting process for those activities listed in this paragraph that do not adversely affect general navigation and the aquatic environment.

This permit is authorized by the Secretary of the Army and the Chief of Engineers pursuant to Section 10 of the River and Harbors Act of 1899 (33 U.S.C. 403) and Section 404 of the Clean Water Act (33 U.S.C. 1344) to create artificial reefs or enhance existing natural or artificial reefs owned, operated, or managed by the Commonwealth of Virginia; and to dredge historical shellfish reefs (including the in-situ discharge of washed sediments) and as directed by the Virginia Marine Resources Commission to plant, use, or sell such shells or other materials in whatever manner the Commission deems to be in the best interest of the Commonwealth, provided the project complies with the provisions and conditions set forth below.

The placement of this structure material within designated offshore fish havens is excluded from regulation by Section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended (33 U.S.C. 1401) at 40 CFR 220.1 (c)(2), within the definition of dumping at 40 CFR 220.2(e) where the material is deposited for developing, maintaining, or harvesting fisheries resources.

NOT AUTHORIZED: This permit does not authorize the construction of reefs that will be used for the introduction of non-native species (shell or finfish).

Activities receiving written authorization under this RP do not require further authorization unless the District Engineer determines that overriding national factors of the public interest would require an individual permit (in accordance with 33 CFR 325)

for a particular project that might generally qualify for this RP. This RP covers only those activities that strictly comply with all descriptions, general and special conditions set out below. Any work that does not comply with the following terms, conditions, standards, and limitations does not qualify for this RP and will require separate Department of the Army authorization.

II. PROCEDURES:

Prospective permittees (permittees or applicants) must notify the Corps' District Engineer, via the submission of a Joint Permit Application (JPA) and must receive written notification from the Corps acknowledging that the project satisfies the criteria of this RP (the permit verification). No work is authorized unless and until the Corps issues a permit verification. A JPA can be obtained by writing to the District at the above address or telephoning (757) 201-7652. With internet access, an application may also be obtained by downloading a copy at the following link:

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

III. STATE AND LOCAL APPROVALS:

1. The State Water Control Board provided §401 Water Quality Certification for the 17-RP-20. Therefore, the activities that qualify for this RP meet the requirements of Department of Environmental Quality's (DEQ) Virginia Water Protection Permit (VWPP) Regulation, provided that the permittee abides by the conditions of 23-RP-20.

2. Pursuant to the Coastal Zone Management Act (CZMA) of 1972, the Virginia DEQ Virginia Coastal Zone Management Program (VCP) completed its review of the Federal Consistency Determination (FCD) for this RP and provided concurrence that this RP is consistent with the VCP.

3. Permittees should ensure that projects are designed and constructed in a manner consistent with all state and local requirements pursuant to the Chesapeake Bay Preservation Act (Virginia Code 10.1-2100 et seq.) and the Chesapeake Bay Preservation Area Designation and Management Regulations (9 VAC 10-20-10 et seq.).

4. Authorizations under this RP do not obviate state or local government authority or responsibilities pursuant to the Chesapeake Bay Preservation Act or to any State or local law or regulation.

IV. SPECIAL CONDITIONS:

1. No portion of the reef will be constructed in areas of known submerged aquatic vegetation (SAV) beds.

2. Any proposed new artificial reef (oyster or fish haven) shall be coordinated with and have no objection from U.S. Coast Guard (USCG) Sector Virginia, Waterways Management Chief, and USCG District Five Waterways Management Branch.

3. Vessels or mechanized vehicles shall be inspected by the USCG to ensure hazardous material will not enter the watershed.

4. If the display of lights and signals on the structure or work authorized herein is not otherwise provided for by law, such lights and signals as may be prescribed by the USCG shall be installed and maintained at the expense of the permittee. The USCG may be reached at the following address and telephone number: Commander (oan), Fifth Coast Guard District, Federal Building, 431 Crawford Street, Portsmouth, Virginia 23704-5004, telephone number (757) 398-6230.

5. If the 23-RP-20 activity also requires permission from the Corps pursuant to Section 14 off the Rivers and Harbors Act of 1899, 33 U.S.C. 408 (Section 408) because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers (USACE) federally authorized Civil Works project ("USACE project), the activity that requires Section 408 permission is not authorized until the Norfolk District Corps grants the Section 408 permission to alter, occupy, or use the USACE project, and the District Engineer issues a written 23-RP-20 verification. Contact a Norfolk District Regulatory Project Manager to assist in determining if your proposed activity might alter or temporarily or permanently occupy or use a Corps of Engineers Civil Works project.

Locations of the Norfolk District Civil Works projects can be found at: https://www.nao.usace.army.mil/408Review/ .

For projects located within the Civil Works boundary of the Baltimore, Huntington, Nashville, or Wilmington District, please contact a Norfolk District Project Manager for assistance.

6. Prior to authorization of artificial reefing for fish havens (*i.e.,* ocean sinking) of any ships, vessels, or mechanized vehicles and to ensure the project is conducted in an environmentally sound manner, such ships, vessels, and mechanized vehicles shall be prepared for reefing consistent with Environmental Protection Agency (EPA) guidance entitled *Best Management Practice for Preparing Vessels Intended to Create Artificial Reefs,* EPA842-B-06-002 (May 2006). The permittee must notify the United States EPA Region III Coastal Science Team Leader, Four Penn Center, 1600 John F. Kennedy Boulevard, Philadelphia, PA 19103-2029, 215-814-2137 at least 60 days prior to the proposed reefing activity and allow EPA reasonable opportunity upon request to inspect the ship, vessel, or mechanized vessel prior to reefing. This provision does not supersede any of EPA's existing statutory authorities to inspect the ship, vessel, or mechanized vessel.

a. Failure to comply with the Toxic Substances Control Act, 15 U.S.C. § 2601, et seq. (TSCA) is a violation of this permit.

b. All material used in the construction of the reefs shall be of clean suitable material and free of petroleum and other hydrocarbons (oil, grease, asphalt, and creosote), toxic residues (including but not limited to mercury, cadmium, and lead), and loose, free-floating material and other deleterious substances. Reefing preparations for all vessels and mechanized vehicles shall include the removal of: all liquid fuels, oils and greases; all asbestos that is loose or may become loose during vessel sinking; all manufactured products containing greater than or equal to (≥) 50 parts per million ppm) of solid PCBs, all liquid PCBs regardless of concentration and all materials contaminated by PCB spills where the concentration of the original PCB source is ≥50ppm; all harmful exterior hull anti-fouling systems that are determined to be active; all exfoliating (peeling) and exfoliated paint; all loose debris, including materials or equipment that are not permanently attached to the vessel that could be transported into the water column during a sinking event; and all other materials that may negatively impact the biological, physical, or chemical characteristics of the marine environment. Such preparation also shall include the removal, or sealing, of all accessible friable asbestos. Vessel owners must also document that no PCBs at concentrations greater than 50ppm remain on board the vessel. This may require representative PCB sampling by those intending to use this RP.

7. If the work involves hydraulic dredging of old shellfish reefs an automatic time of year restriction will apply for between February 15 and June 15 of any year unless consultation with the National Oceanic and Atmospheric Administration (NOAA) Fisheries confirms there will be no impact for protection of anadromous fish migration and spawning.

8. The Corps will coordinate all activities with NOAA Fisheries Service, Protected Species Division and Habitat Conservation Division (HCD); and/or the U.S. Fish and Wildlife, Virginia Field Office for the purpose of Endangered Species consultation and Essential Fish Habitat (EFH) assessment.

9. A proponent (permittee or applicant) of work proposed in portions of the following waterways may require an easement to be obtained from the Corps Real Estate Division to cross government property before any construction can take place:

a. James River

b. Lynnhaven Inlet and Connecting Waters

c. All Local Cooperation Agreement areas

d. Dismal Swamp Canal

e. Albemarle and Chesapeake Canal

f. Appomattox River

For further information on the need to obtain a government easement, please contact Norfolk District's Real Estate Office at the address on the first page of this RP or by telephone at (757) 201-7733.

10. If and when the permittee desires to abandon the authorized activity he or she must restore the area to a condition satisfactory to the District Engineer unless the permittee is transferring his or her interest to a third party. See general condition number 39.

11. The Secretary of the Army or his/her authorized representative may direct the permittee to restore the waterway to its former condition, with no expense to the United States. If the permittee fails to comply with the directive, the Secretary or his/her representative may restore the area to its former condition, by contract or otherwise, and recover the cost thereof from the permittee.

12. No activity is authorized pursuant to this RP if it causes more than a minimal adverse effect on an adjacent property owner's right of access to navigable waters or causes more than a minimal adverse effect on navigation, both commercially and recreationally. 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. In addition, unpermitted work or violation of permit conditions may result in civil, criminal, or administrative penalties (33 U.S.C. 406).

13. Any structure authorized shall be properly maintained, including maintenance to ensure public safety.

V. GENERAL CONDITIONS:

The following conditions apply to all activities authorized under RPs.

1. **Geographic jurisdiction.** This RP will authorize work undertaken within the geographical limits of the Commonwealth of Virginia under the regulatory jurisdiction of the Norfolk District.

2. **Compliance Certification**. A Certificate of Compliance must be completed, and a copy retained for your records. The original Certificate of Compliance shall be mailed to, U. S. Army Corps of Engineers, Regulatory Branch, 803 Front Street, Norfolk, Virginia 23510-1096 within 30 days of completion of the project.

3. **Other permits.** Authorization does not obviate the need to obtain other Federal, state, or local authorizations required by law or to comply with all Federal, state, or local laws.

4. **Minimal effects.** Projects authorized shall have no more than minimal individual or cumulative adverse environmental impacts, as determined by the Norfolk District.

5. **Discretionary authority.** The Norfolk District Corps of Engineers District Commander retains discretionary authority to require processing of an individual permit based on concerns for the aquatic environment or for any other factor of the public interest (33 C.F.R. § 320.4(a)). This authority is exercised on a case-by-case basis.

6. **Single and complete projects.** This RP shall only be applied to single and complete projects. For purposes of this RP, a single and complete project means the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers and which has independent utility.

7. **Independent Utility.** A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as single and complete projects with independent utility.

8. **Multiple general permit authorizations.** This RP may be combined with any Corps general permits (including Nationwide (NWP) or RPs for a single and complete project, as long as the acreage loss of waters of the United States authorized by the NWPs/RPs does not exceed the acreage limit of the NWP/RP with the highest specified acreage limit.

9. **Permit on-site.** The permittee shall ensure that a copy of the RP and the accompanying authorization letter are at the work site at all times. These copies must be made available to any regulatory representative upon request. Although the permittee may assign various aspects of the work to different contractors or sub-contractors, all contractors and sub-contractors shall be expected to comply with all conditions of any general permit authorization.

General Conditions Related to National Concerns:

10. **Historic properties.** (a) In cases where it is determined that the activity may affect properties listed, or eligible for listing on the National Register of Historic Places (NRHP), the activity is not authorized 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. Federal permittees must provide the Corps with the appropriate documentation to demonstrate compliance with those requirements. The Corps will review the documentation and determine whether it is sufficient to address Section 106 compliance for the RP activity, or whether additional Section 106 consultation is necessary. (c) Non-federal permittees must submit a statement to the Corps regarding the authorized activity's potential to cause effects to any historic properties listed or determined to be eligible for listing on the NRHP, including previously unidentified properties. The statement must say which historic properties may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location or potential for the presence of historic resources can be sought from the Virginia Department of Historic Resources at:

http://www.dhr.virginia.gov/

or Tribal Historic Preservation Officer (THPO), as appropriate, and the NRHP. Where an applicant has identified historic properties which the proposed activity may have the potential to affect, the applicant shall not begin the activity until notified by the Corps that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed. (d) Prospective permittees should be aware that Section 110(k) of the NHPA (16 U.S.C. § 470(h)-2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effects created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, explaining the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affect historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have legitimate interest in the impacts to the permitted activity on historic properties.

11. **Discovery of Previously Unknown Remains and Artifacts.** If you discover any previously unknown historic, cultural, or archaeological remains and artifacts while accomplishing activity authorized by this permit, you must immediately stop work and notify the Corps of what has been found, and to the maximum extent practicable, avoid

construction activities that may affect the remains and artifacts until the required coordination has been completed. The Corps will initiate Federal, Tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the NRHP.

12. **Tribal rights.** No activity authorized may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

13. **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 U.S. 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.

14. **Endangered species.**

a. No activity is authorized under any RP which is likely to 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 destroy or adversely modify the critical habitat of such species. No activity is authorized under any RP which "may affect" a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed;

b. 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.

c. Non-federal permittees shall notify the District Engineer if any proposed or listed species or proposed or designated critical habitat may be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, and shall not begin work on the activity until notified by the District Engineer that the requirements of the ESA have been satisfied and that the activity is authorized Information on the location proposed/listed species and proposed/designated critical habitat can be obtained directly from the USFWS online project review process at:

https://www.fws.gov/northeast/virginiafield/endangered/projectreviews.html

and from the NMFS at: http://www.nmfs.noaa.gov/pr/species/.

The District Engineer will determine whether the proposed activity "may affect" or will have "no effect" to proposed or listed species or proposed or designated critical habitat and will notify the non-Federal applicant of the Corps' determination within 45 days of receipt of a complete notification. In cases where the non-Federal applicant has identified proposed or listed species or proposed or designated critical habitat that might

be affected or is in the vicinity of the project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed activities will have "no effect" on proposed or listed species or proposed or designated critical habitat, or until Section 7 consultation has been completed.

d. As a result of formal or informal consultation with the USFWS or NOAA PRD the District Engineer may add species-specific regional endangered species conditions to the RP.

e. Authorization of an activity by a RP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the USFWS or NOAA PRD, both lethal and non-lethal "take" of protected species are in violation of the ESA.

15. **Essential Fish Habitat (EFH).** The Magnuson-Stevens Fishery Conservation and Management Act, as amended by the Sustainable Fisheries Act of 1996 (Public Law 104-297; 11 October 1996), requires all Federal agencies to consult with the NOAA Fisheries Service HCD on all actions, or proposed actions, permitted, funded, or undertaken by the agency that may adversely affect EFH. The EFH Designations within the Northeast Region (Maine to Virginia), dated May 1, 1999, has identified EFH for a number of species and their life stages within Virginia waters. If EFH consultation is required with NOAA HCD, the applicant shall not begin work until the Corps has provided notification that the EFH consultation has concluded.

16. **Migratory Birds and Bald and Golden Eagle Protection Act (BGEPA)**. The bald eagle (Haliaeetus leucocephalus) is no longer a federally listed threatened or endangered species; therefore, the ESA provisions are not applicable to this species. BGEPA does not require that a federal agency involved in permitting the proposed action conduct coordination. The permittee is responsible for obtaining any "take" permits required under the USFWS's regulations governing compliance with the Migratory Bird Treaty Act or the BGEPA. The applicant should either obtain "take" permit or a letter of concurrence from USFWS indicating that a permit is not necessary prior to initiating construction activities. You should contact USFWS concerning this matter at U.S. Fish and Wildlife Service, Virginia Field Office, ATTN: Kim Smith, 6669 Short Lane, Gloucester, VA 23061. Information on active bald eagle nests and concentration areas can be obtained in Step 6 of the USFWS's online project review system available at:

https://www.fws.gov/northeast/virginiafield/endangered/projectreviewprocess.html

17. **Wild and Scenic Rivers.** Currently, there are no designated Wild and Scenic Rivers in the Commonwealth of Virginia; however, the portion of the Upper New River from Glen Lyn, Virginia to the West Virginia/Virginia state line was designated a "study river" by Congress on October 26, 1992. No activity may occur in a component of the

National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system, while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river has determined, in writing, that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, USFWS). Impacts that occur in these resource areas will require coordination with the appropriate Federal agency.

18. **Federal navigation project.** Authorized activities may not interfere with any existing or proposed Federal navigation projects.

19. **Navigation.** (a) No authorized activity may cause more than a minimal adverse effect on navigation. (b) The permittee understands and agrees that if future operations by the United States require the removal, relocation, or other alteration of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his/her authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Norfolk District, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

20. **Floodplains.** All practicable efforts shall be made to conduct the work authorized by this RP in a manner so as to avoid any adverse impact on the Federal Emergency Management Agency designated 100-year floodplain.

21. **Real estate.** Activities authorized under this RP do not grant any Corps or Federal real estate rights. If real estate rights are needed from the Corps, you must contact the Corps Real Estate Office at (757) 201-7733 or at the address listed on the front page of this permit.

22. **Environmental Justice.** Activities authorized under this RP must comply with Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations";, E.O. 13985, "Advancing Racial Equity and Support for Underserved Communities"; E.O. 13990, "Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis"; and E.O. 14008, "Tackling the Climate Crisis at Home and Abroad"; E.O. 14096, "Revitalizing Our Nation's Commitment to Environmental Justice for All".

23. **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.

General Conditions Related to Minimizing Environmental Impacts:

24. **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 Part 230.10(a) Section 404 (b)(1) Guidelines).

25. **Mitigation.** Mitigation in all its forms (avoiding, minimizing, or compensating for resource losses) may be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal. The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site)."

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

27. **Temporary fills.** All temporarily disturbed waters and wetlands must be restored to preconstruction contours as soon as these areas are no longer needed for their authorized purpose, and not later than completion of project construction. Following restoration of contours, the soil in wetlands must be mechanically loosened to a depth of 12 inches, and the wetlands must then be seeded or sprigged with appropriate native wetland vegetation.

28. **Sedimentation and erosion control.** Appropriate erosion and sediment controls must be employed and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high-water mark, must be permanently stabilized at the earliest practicable date.

29. **Aquatic life movements.** No authorized activities may substantially disrupt the movement of aquatic life indigenous to the waterbody, including those species which normally migrate through the area, unless the activity's primary purpose is to impound water. The Norfolk District has determined that fish and wildlife are most often present in any stream being crossed, in the absence of evidence to the contrary.

30. **Discharge of pollutants.** All authorized activities involving any discharge of pollutants into waters of the United States shall be consistent with applicable water quality standards, effluent limitations, standards of performance, prohibitions, and pretreatment standards and management practices established pursuant to the CWA

(33 U.S.C. § 1251 *et seq.*) and applicable state and local laws. No discharge of dredged or fill material in association with this authorization may consist of unsuitable material such as trash, debris, car bodies, asphalt, etc.

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

32. **Waterbird breeding areas.** Discharges of dredged or fill material into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.

33. **Native trout and anadromous fishes.** Authorizations for discharges of dredged or fill material into native trout waters or anadromous fish use areas will be conditioned to limit in-stream work within timeframes recommended by the Department of Game and Inland Fisheries (DGIF) and/or NOAA Fisheries. Coordination with DGIF and/or NOAA Fisheries will be conducted by the Corps. The applicant shall not begin work until notification is received that all coordination has been completed and/or the Corps has provided the applicant with the appropriate time of year restrictions regarding work in native trout waters or anadromous fish use areas.

34. **Water supply intakes.** No discharge of dredged or fill material may occur in proximity of a public water supply intake except where the discharge is for adjacent bank stabilization.

General Procedural Conditions:

35. **Inspections.** A copy of this permit and any verification letter must be provided to the contractor and made available at the project site to any regulatory representative. The permittee shall allow the Norfolk District to make periodic inspections at any time deemed necessary in order to assure that the activities being performed under authority of this permit are in accordance with the terms and conditions prescribed herein. The Norfolk District reserves the right to require post-construction engineering drawings and/or surveys of any work authorized under this RP, as deemed necessary on a case-by-case basis.

36. **Maintenance.** The permittee shall maintain the work authorized herein in good condition and in conformance with all terms and conditions of this permit. All fills shall be properly maintained to ensure public safety.

37. **Property rights.** This RP 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.

38. **Modification, suspension, and revocation.** This RP may be either modified, suspended, or revoked in whole or in part pursuant to the policies and procedures of 33

C.F.R. § 325.7. Any such action shall not be the basis for any claim for damages against the United States.

39. **Restoration directive.** The permittee, upon receipt of a restoration directive, shall restore the waters of the United States to their former conditions without expense to the United States and as directed by the Secretary of the Army or his/her authorized representative. If the permittee fails to comply with such a directive, the Secretary or his/her designee, may restore the waters of the United States to their former conditions, by contract or otherwise, and recover the cost from the permittee.

40. **Special conditions.** The Norfolk District may impose other special conditions on a project authorized pursuant to this RP 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 special and general conditions of this permit, including any additional project specific special conditions, constitutes a permit violation and may subject the permittee, or his/her contractor, to criminal, civil, or administrative penalties and/or restoration.

41. **False or incomplete information.** In granting authorization pursuant to this permit, the Norfolk District has relied upon information and data provided by the permittee. If, subsequent to notification by the Norfolk District that a project qualifies for this permit, such information and data prove to be materially false or materially incomplete, the authorization may be suspended or revoked, in whole or in part, and/or the United States may institute appropriate legal proceedings.

42. **Abandonment.** If the permittee decides to abandon the activity authorized under this RP, unless such abandonment is merely the transfer of property to a third party, he/she may be required to restore the area to the satisfaction of the Norfolk District.

43. **Transfer of authorization.** In order to transfer authorization under this RP, the transferee or permittee must supply the Norfolk District with a written request. Such transfer is effective upon written approval by the Norfolk District of a transfer document signed by both parties evidencing that the transferee commits to assuming all responsibilities of the original permittee under the permit.

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

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

45. **Duration of Activity's Authorization.** Activities authorized under 23-RP-20 must be completed by May 12, 2028. If this RP is reissued at that time, and if this work has not been started or completed, but the project continues to meet the terms and conditions of the revalidated RP, then the project will continue to be authorized. The

Norfolk District will issue a special public notice announcing any changes to the RPs when they occur; however, it is incumbent upon you to remain informed of changes to the RPs. Activities which have commenced (i.e., are under construction) or are under contract to commence in reliance upon this RP that do not meet the terms and conditions of the revalidated RP will remain authorized provided the activity is completed within twelve months of the date of this RP's expiration (i.e. May 12, 2028), unless discretionary authority has been exercised on a case-by-case basis to modify, suspend, or revoke the authorization in accordance with 33 CFR 325.7(a-e). If work cannot be completed by May 12, 2029, you must reapply for separate permit authorization in order to meet current permit criteria.

46. **Expiration of 23-RP-20.** Unless further modified, suspended, or revoked, this RP will be in effect until May 12, 2028. Upon expiration, it may be considered for revalidation. Activities completed under the authorization of an RP which was in effect at the time the activity was completed continue to be authorized by that RP.

12 May 2023

Date

P. Hallberg Digitally signed by Brian P. Hallberg Date: 2023.05.12 12:34:53 -04'00'

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