

EXHIBIT D
ADDRESSES FOR NOTICE

If to County:

Board of Supervisors of Fairfax County, Virginia
12000 Government Center Parkway
Fairfax, VA 22035
Attention: County Executive

With a copy to:

Office of the County Attorney
Attention: County Attorney
12000 Government Center Parkway, Suite 549
Fairfax, Virginia 22035-0064

And with a copy to:

Department of Public Works and Environmental Services
Building Design and Construction Division
Attention: Carey Needham, Director
12000 Government Center Parkway, Suite 449
Fairfax, Virginia 22035

If to Nugget:

Nugget Joint Venture, L.C.
Attention: Samuel A. Rocks
1960 Gallows Road, Suite 300
Vienna, Virginia 22182

And with a copy to:

Michael Rocks
c/o Rocks Co.
1960 Gallows Road, Suite 300
Vienna, Virginia 22182

And with a copy to:

Reed Smith LLP
3110 Fairview Park Drive
Suite 1400
Falls Church, Virginia 22042
Attention: James C. Brennan, Esq.

Either party may change the address(es) to which any such Notice is to be delivered by furnishing ten (10) days written notice of such change(s) to the other party in accordance with the provisions of this Section 15.

EXHIBIT G

Reserved

EXHIBIT H

Form of Deed of Boundary Line Adjustment

[SEE ATTACHED]

Prepared by/Return to:
Reed Smith LLP
3110 Fairview Park Drive, Suite 1400
Falls Church, VA 22042
Attn: James C. Brennan, Esq.
VSB: 45217

Tax Map Number: [REDACTED]

DEED OF BOUNDARY LINE ADJUSTMENT

THIS DEED OF BOUNDARY LINE ADJUSTMENT ("Deed") is made this day of _____, 2014, by and among **NUGGET JOINT VENTURE, L.C.**, a Virginia limited liability company ("**Nugget**"), Grantor and Grantee for indexing purposes, **H. CARTER LAND III, TRUSTEE, AND ANDREW CARROLL III**, Trustee, either of whom may act ("**Trustee**"), Grantor and Grantee for indexing purposes, **BURKE & HERBERT BANK & TRUST COMPANY**, a Virginia banking corporation ("**Beneficiary**"), Grantor and Grantee for indexing purposes, and **BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA**, a body corporate and politic, its successors and assigns ("**County**"), Grantor and Grantee for indexing purposes.

RECITALS

WHEREAS, Nugget is the owner of certain real property situate in Fairfax County, Virginia, with tax map number 015-2-01-0013 ("**Nugget Property**"), as further depicted on that plat dated [REDACTED], entitled ["REDACTED"] and prepared by [REDACTED], attached hereto as Exhibit "A" and incorporated herein (the "**Nugget Plat**"), having acquired the Nugget Property by a deed recorded in Deed Book 9500, Page 1070 [CONFIRM] recorded among the land records of Fairfax County, Virginia ("**Land Records**");

WHEREAS, County is the owner of certain real property situate in Fairfax County, Virginia, with tax map number [REDACTED] ("**County Property**"), as further depicted on that plat dated [REDACTED], entitled ["REDACTED"] and prepared by ["REDACTED"], attached hereto as Exhibit "B" and incorporated herein (the "**County Plat**"), having acquired the County Property by a deed recorded in Deed Book [REDACTED] recorded among the Land Records;

WHEREAS, the Nugget Property is subject to that certain Credit Line Deed of Trust, Assignment, Security Agreement and Fixture Filing dated November 12, 2013 recorded in Deed Book 23462, at Page 0574 in the Land Records (the "**Nugget Deed of Trust**") [CONFIRM];

WHEREAS, the County Property is not subject to a deed of trust;

WHEREAS, it is the desire of County to adjust the boundaries of the County Plat;
and

WHEREAS, it is the desire of Nugget, with the consent and approval of the Trustees and the Beneficiary, to adjust the boundaries of the Nugget Property as set forth on the Nugget Plat.

BOUNDARY LINE ADJUSTMENT

NOW, THEREFORE WITNESSETH, in consideration of the sum of Ten Dollars (\$10.00), cash in hand paid, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, County does hereby vacate the property line described as ["EX. PROPERTY LINE HEREBY VACATED"] on the County Plat. County does hereby create the property line described as ["NEW PROPERTY LINE HEREBY CREATED"] on the Plat. County does hereby GRANT, GIVE and CONVEY unto Nugget that portion of the County Property in fee simple, by special warranty, consisting of [INSERT AREA], described in Exhibit "C" attached hereto and [as shown on the County Plat] ("County Swap Property").

THIS DEED FURTHER WITNESSETH, in consideration of the sum of Ten Dollars (\$10.00), cash in hand paid, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Nugget, with the consent of the Trustees and Beneficiary, do hereby vacate the property line described as ["EX. PROPERTY LINE HEREBY VACATED"] on the Nugget Plat. Nugget, with the consent of the Trustees and Beneficiary, do hereby create the property line described as ["NEW PROPERTY LINE HEREBY CREATED"] on the Nugget Plat. Grantor, with the consent of the Trustees and Beneficiary, does hereby GRANT, GIVE and CONVEY unto County that portion of the Nugget Property, in fee simple, by special warranty, consisting of [INSERT NUGGET SWAP PORTION AREA], described in Exhibit "D" attached hereto and [as shown on the Nugget Plat] ("Nugget Swap Property").

RELEASE

THIS DEED FURTHER WITNESSETH that in consideration of the sum of Ten Dollars (\$10.00), cash in hand paid, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Trustees, as authorized to act by the Beneficiary, do hereby release from the lien of the Nugget Deed of Trust those portions of the Nugget Swap Property.

TO HAVE AND TO HOLD those portions of the Nugget Swap Property conveyed to County, fully released and discharged from the liens and obligations of the Nugget Deed of Trust.

TRUST MODIFICATION

THIS DEED FURTHER WITNESSETH that in consideration of the sum of Ten Dollars (\$10.00), cash in hand paid, and other valuable consideration, the receipt and

sufficiency of which are hereby acknowledged, the Nugget Deed of Trust is hereby amended to add the County Swap Property as acquired herein by Nugget from County, so that the lien of the Nugget Deed of Trust shall include, without limiting any other properties already subject to its lien, the County Swap Property. The Trustee has executed this Deed to evidence its consent to the modification herein. Nugget hereby grants and conveys, with Special Warranty of Title, in trust to the Trustees, the County Swap Property, as herein adjusted, subject to the terms and conditions of the Nugget Deed of Trust.

COVENANTS REAL

County declares that the agreements and covenants stated in this Deed are not covenants personal to the County, but are covenants real, running with the land.

FREE CONSENT AND DESIRE

This Deed is made with the free consent and in accordance with the desire of the undersigned County, trustees and proprietors, if any.

MISCELLANEOUS

Nugget and County will each execute such further assurances of the said County Swap Property or the Nugget Swap Property, as applicable, as may be reasonably requisite. This Deed is made subject to all covenants, conditions, easements, reservations, and matters of record, to the extent the same are valid and subsisting and applicable to the County Swap Property or the Nugget Swap Property or any part thereof. This Deed shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia. This Deed may be executed in counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument. This Deed is in accordance with the Statutes of Virginia and the ordinances in force in Fairfax County governing the platting and subdivision of land and is approved by the proper authorities as evidenced by their endorsement hereto and to the County Plat and the Nugget Plat.

ISIGNATURES APPEAR ON THE FOLLOWING PAGES.]

Witness the following signatures and seals:

NUGGET JOINT VENTURE, L.C., a
Virginia limited liability company

By: **ALLEN & ROCKS, INC.**, its
manager

By: _____
Name: _____
Vice President

COMMONWEALTH/STATE OF _____
COUNTY/CITY OF _____

The foregoing instrument was acknowledged before me this ___ day of _____, 2014, by _____, as _____ of **ALLEN & ROCKS, INC.**, manager of **NUGGET JOINT VENTURE, L.C.**, a Virginia limited liability company.

Notary Public

My commission expires: _____

Registration Number: _____

Witness the following signatures and seals:

TRUSTEE:

By: _____

COMMONWEALTH/STATE OF _____
COUNTY/CITY OF _____

The foregoing instrument was acknowledged before me this ___ day of _____
2014, by _____, trustee.

Notary Public

My commission expires: _____

Registration Number: _____

Witness the following signatures and seals:

BENEFICIARY:
Burke & Herbert Bank & Trust
Company, a Virginia banking
corporation

By: _____

Name: _____

Its: _____

COMMONWEALTH/STATE OF _____
COUNTY/CITY OF _____

The foregoing instrument was acknowledged before me this ___ day of _____,
2014, by _____, as _____ of Burke & Herbert Bank
& Trust Company, a Virginia banking corporation, beneficiary.

Notary Public

My commission expires: _____

Registration Number: _____

Executed and approved on behalf of the Board of Supervisors of Fairfax County, Virginia, by the authority granted by said Board.

APPROVED AS TO FORM:

Director, Department of Public Works & Environmental Services

Assistant County Attorney

By: _____
Manager
Site and Technical Services, LDS

Commonwealth of Virginia:
County of Fairfax, to wit:

The foregoing instrument was acknowledged before me this _____ day of _____, 2014, by _____, Manager, Site and Technical Services, Land Development Services, Department of Public Works & Environmental Services.

Notary Public

My commission expires:

[An affixed seal must be a photographically reproducible image.]

Notary Registration Number: _____

EXHIBIT "A"
Nugget Plat

[TO BE ATTACHED]

EXHIBIT "B"
County Plat

[TO BE ATTACHED]

EXHIBIT "C"
County Swap Property

[TO BE ATTACHED]

EXHIBIT "D"
Nugget Swap Property

[TO BE ATTACHED]

EXHIBIT I

Form of Deed of Dedication

[SEE ATTACHED]

Prepared by/Return to:
Reed Smith LLP
3110 Fairview Park Drive, Suite 1400
Falls Church, VA 22042
Attn: James C. Brennan, Esq.
VSB: 45217

Tax Map Number: [REDACTED]

DEED OF DEDICATION

THIS DEED OF DEDICATION ("Deed") is made this ____ day of _____, 2014, by and among NUGGET JOINT VENTURE, L.C., a Virginia limited liability company ("Grantor"), H. CARTER LAND III, TRUSTEE, AND ANDREW CARROLL III, Trustee, either of whom may act ("Trustee"), Grantor and Grantee for indexing purposes, BURKE & HERBERT BANK & TRUST COMPANY, a Virginia banking corporation ("Beneficiary") and BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA, a body corporate and politic, its successors and assigns ("Grantee").

RECITALS

WHEREAS, Grantor is the owner of certain real property situate in Fairfax County, Virginia, with tax map number 015-2-01-0013 ("Nugget Property"), as further depicted on that plat dated [REDACTED], entitled ["REDACTED"] and prepared by [REDACTED], attached hereto as Exhibit "A" and incorporated herein (the "Plat"), having acquired the Nugget Property by a deed recorded in Deed Book 9500, Page 1070 [CONFIRM] recorded among the land records of Fairfax County, Virginia ("Land Records");

WHEREAS, the Nugget Property is subject to that certain Credit Line Deed of Trust, Assignment, Security Agreement and Fixture Filing dated November 12, 2013 recorded in Deed Book 23462, at Page 0574 in the Land Records (the "Nugget Deed of Trust") [CONFIRM]; and

WHEREAS, it is the desire of Grantor, with the consent and approval of the Trustees and the Beneficiary, to dedicate a portion of the Nugget Property to the County.

DEDICATION

NOW, THEREFORE WITNESSETH, that in consideration of the sum of Ten Dollars (\$10.00), cash in hand paid, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantor, with the consent and approval of the Trustees and the Beneficiary, does hereby dedicate for public purposes and convey to Grantee, in fee simple, that [2.6] acres of the Nugget Property designated as ["REDACTED"] on the Plat ("Nugget Dedicated Property"). This dedication is subject to the reservation of density credit, to the maximum extent

permissible under Section 2-308 of the Fairfax County Zoning Ordinance or other applicable law.

RELEASE

THIS DEED FURTHER WITNESSETH that in consideration of the sum of Ten Dollars (\$10.00), cash in hand paid, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Trustees, as authorized to act by the Beneficiary, and the Beneficiary do hereby release from the lien of the Nugget Deed of Trust the Nugget Dedicated Property as further shown on the Plat.

TO HAVE AND TO HOLD those portions of the Nugget Dedicated Property dedicated for public purposes, fully released and discharged from the liens and obligations of the Nugget Deed of Trust.

COVENANTS REAL

Grantor declares that the agreements and covenants stated in this Deed are not covenants personal to the Grantor, but are covenants real, running with the land.

FREE CONSENT AND DESIRE

This Deed is made with the free consent and in accordance with the desire of the undersigned Grantor, trustees and proprietors, if any.

MISCELLANEOUS

Grantor covenants that Grantor will execute such further assurances of the said Nugget Dedicated Property as may be reasonably requisite. This Deed is made subject to all covenants, conditions, easements and matters of record, to the extent the same are valid and subsisting and applicable to the Nugget Dedicated Property, or any part thereof. This Deed shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia. This Deed may be executed in counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument. This Deed is in accordance with the Statutes of Virginia and the ordinances in force in Fairfax County governing the platting and subdivision of land and is approved by the proper authorities as evidenced by their endorsement hereto and to the Plat.

[SIGNATURES APPEAR ON THE FOLLOWING PAGES.]

Witness the following signatures and seals:

NUGGET JOINT VENTURE, L.C., a
Virginia limited liability company

By: **ALLEN & ROCKS, INC.**, its
manager

By: _____
Name: _____
Vice President

COMMONWEALTH/STATE OF _____
COUNTY/CITY OF _____

The foregoing instrument was acknowledged before me this ___ day of _____, 2014, by _____, as _____ of **ALLEN & ROCKS, INC.**, manager of **NUGGET JOINT VENTURE, L.C.**, a Virginia limited liability company.

Notary Public

My commission expires: _____

Registration Number: _____

Witness the following signatures and seals:

TRUSTEE:

By: _____

COMMONWEALTH/STATE OF _____
COUNTY/CITY OF _____

The foregoing instrument was acknowledged before me this ___ day of _____,
2014, by _____, trustee.

Notary Public

My commission expires: _____

Registration Number: _____

Witness the following signatures and seals:

BENEFICIARY:
Burke & Herbert Bank & Trust
Company, a Virginia banking
corporation

By: _____

Name: _____

Its: _____

COMMONWEALTH/STATE OF _____
COUNTY/CITY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____
2014, by _____, as _____ of Burke & Herbert Bank
& Trust Company, a Virginia banking corporation, beneficiary.

Notary Public

My commission expires: _____

Registration Number: _____

Executed and approved on behalf of the Board of Supervisors of Fairfax County, Virginia, by the authority granted by said Board.

APPROVED AS TO FORM:

Director, Department of Public Works & Environmental Services

Assistant County Attorney

By: _____
Manager
Site and Technical Services, LDS

Commonwealth of Virginia:
County of Fairfax, to wit:

The foregoing instrument was acknowledged before me this _____ day of _____, 2014, by _____
Manager, Site and Technical Services, Land Development Services, Department of Public Works & Environmental Services.

Notary Public

My commission expires:

[An affixed seal must be a photographically reproducible image.]

Notary Registration Number: _____

EXHIBIT "A"
Plat

[TO BE ATTACHED]

EXHIBIT J

Form of Bargain and Sale Deed

[SEE ATTACHED]

Prepared by/Return to:
Reed Smith LLP
3110 Fairview Park Drive, Suite 1400
Falls Church, VA 22042
Attn: James C. Brennan, Esq.
VSB: 45217

Tax Map Number: [REDACTED]

Consideration: \$ [REDACTED]

Exempt from tax under VA Code Section 58.1-802 pursuant to VA Code Section 58.1-811(C)(4) and Exempt from tax under VA Code Section 58.1-801 pursuant to VA Code Section 58.1-811(A)(5)

**BARGAIN AND SALE DEED WITHOUT
WARRANTY OR ENGLISH COVENANTS**

THIS BARGAIN AND SALE DEED WITHOUT WARRANTY OR ENGLISH COVENANTS is made this ____ day of _____, 2014, by the **BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA**, a political subdivision of the Commonwealth of Virginia, in its proprietary capacity and not in its governmental or regulatory capacity (“Grantor”) to **NUGGET JOINT VENTURE, L.C.**, a Virginia limited liability company (“Grantee”).

WITNESSETH

R-1. Grantor owns that certain parcel of real property located in Fairfax County, Virginia (“County Parcel”) consisting of [REDACTED] acres of land, as more fully described on “Exhibit A” attached hereto and incorporated herein by this reference, together with the improvements thereon.

R-2. Grantor desires to convey County Parcel to Grantee in fee simple together with all of Grantor’s right, title, and interests in and to all the improvements, appurtenances, rights, privileges, and/or easements (collectively, “Appurtenances”) benefiting, belonging, or pertaining to County Parcel (County Parcel and the Appurtenances are hereinafter referred to collectively as the “Property”).

THIS DEED WITNESSETH, that in consideration of the sum of Ten Dollars (\$10.00) paid by Grantee to Grantor, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Grantor does hereby grant, bargain and sell unto Grantee in fee simple by Bargain and Sale Deed Without Warranty or English Covenants of Title, all of the Property, as such term is defined above.

The conveyance hereunder is subject to all easements, restrictions, and covenants of record and all applicable proffers and development conditions, without limitation.

Grantor agrees hereafter to make such further assurances without covenants for the conveying of title to the Property as may be reasonably required.

[Signature appears on the following page.]

EXHIBIT K

Wetlands Permits

[SEE ATTACHED]



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN REGIONAL OFFICE

13901 Crown Court, Woodbridge, Virginia 22193

(703) 583-3800 Fax (703) 583-3801

www.deq.virginia.gov

David K. Paylor
Director

Thomas A. Faiba
Regional Director

Preston Bryant
Secretary of Natural Resources

April 1, 2008

Mr. Samuel A. Rocks
Rocks Engineering Company
1960 Gallows Road, Suite 300
Vienna, Virginia 22182

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Re: VWP General Permit Authorization Number WP4-08-0334
Nugget Joint Venture, Fairfax County, Virginia
Final VWP General Permit Authorization

Dear Mr. Rocks:

The Virginia Department of Environmental Quality (DEQ) has reviewed your application dated, received and deemed complete on February 20, 2008. Based on DEQ's review, the proposed Nugget Joint Venture project qualifies for the Virginia Water Protection (VWP) General Permit Number WP4. The enclosed copy of the VWP general permit authorization contains the applicable limits, reporting requirements, and other conditions for authorization. A Compliance Summary Sheet is attached for your convenience. Please note that you are responsible for compliance with all of the conditions of the authorization applicable to your project scope of work, not just the items on the summary sheet.

The work authorized by this permit also satisfies the terms and conditions contained in the Norfolk District, Corps of Engineers' State Program General Permit (07-SPGP-01), and no additional authorization from the Corps is required. You are required to adhere to all special conditions contained within the attached 07-SPGP-01 that are pertinent to your project. The 07-SPGP-01 authorization is effective as of the date of this letter and remains effective until June 1, 2012.

This authorization expires seven years from the Authorization Effective Date. Please note that this authorization may be extended at the State Water Control Board's discretion and as per the VWP permit regulations. If the authorized activity has not been completed and you wish to obtain an extension, in accordance with the general permit conditions, the applicant must request this extension no less than 60 days prior to the expiration date of the VWP general permit authorization, for the Board's decision, otherwise coverage will expire on the original date.

If you have any questions, please contact Melissa Andersen Kuskie at (703) 583-3892 or makuskie@deq.virginia.gov.

Respectfully,

Trisha M. Beasley
Regional VWPP Program Manager

Enclosures: VWP General Permit Authorization, Compliance Summary Sheet, 07-SPGP-01

cc: Mr. Dan Lucey, Wetland Studies & Solutions, Inc. – VIA EMAIL
Ms. Terri Crockett-Augustine, U.S. Army Corps of Engineers, Dumfries Field Office – VIA EMAIL



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

VWP General Permit No. WP4

VWP General Permit Authorization No. WP4-08-0334

Authorization Effective date: April 1, 2008

Authorization Expiration date: March 31, 2015

VWP GENERAL PERMIT FOR IMPACTS FROM DEVELOPMENT AND CERTAIN MINING ACTIVITIES UNDER THE VIRGINIA WATER PROTECTION PERMIT AND THE VIRGINIA STATE WATER CONTROL LAW

Based upon an examination of the information submitted by the applicant and in compliance with §401 of the Clean Water Act as amended (33 USC 1341) and the State Water Control Law and regulations adopted pursuant thereto, the board has determined that there is a reasonable assurance that the activity authorized by this VWP general permit, if conducted in accordance with the conditions set forth herein, will protect instream beneficial uses and will not violate applicable water quality standards. The board finds that the effect of the impact, together with other existing or proposed impacts to wetlands, will not cause or contribute to a significant impairment of state waters or fish and wildlife resources.

Subject to the provisions of the Clean Water Act, as amended, and pursuant to the State Water Control Law and regulations adopted pursuant to it, the permittee is authorized to permanently or temporarily impact up to two acres of nontidal wetlands or open water and up to 1,500 linear feet of nontidal stream bed.

Permittee: Rocks Engineering Company

Address: 1960 Gallows Road, Suite 300, Vienna, Virginia 22182

Activity Location: The project site is located south of the Washington Dulles Toll Road (Route 267), approximately 1,000 feet southeast of its intersection with Sully Road (Route 28) and south of Sunrise Valley Drive in Fairfax County, Virginia.

Activity Description: The applicant proposes to construct a commercial development known as "Nugget Joint Venture," on an 11 acre parcel. Activities will result in the permanent impact of 0.25 acre of palustrine forested wetland. Impacts are as denoted in the Joint Permit Application dated and received February 20, 2008. Compensation for wetland impacts shall consist of the purchase of 0.50 wetland mitigation credit (at a 2:1 compensation to loss ratio) from the North Fork Wetlands Bank in Prince William County, Virginia.

The work authorized by this permit also satisfies the terms and conditions contained in the Norfolk District, Corps of Engineers' State Program General Permit (07-SPGP-01) and no additional authorization from the Corps is required. The permittee is responsible for following all special conditions contained within the 07-SPGP-01 that are pertinent to the project.

The authorized activity shall be in accordance with this cover page, Part I - Special Conditions, Part II - Compensation, Monitoring, and Reporting, and Part III - Conditions Applicable to All VWP General Permits, as set forth herein.


Regional VWPP Program Manager, Department of Environmental Quality


Date

VWP General Permit Authorization No. WP4-08-0334
Nugget Joint Venture
Compliance Summary Sheet

The following summarizes typical notification, monitoring, and reporting requirements outlined in the authorization. The permittee should review each condition for specific details. Please note that you are responsible for compliance with all conditions of the authorization applicable to the project, not just the items listed below.

Construction Requirements

Flagging of Nonimpacted surface waters. Prior to construction surface waters within 50 feet of any permitted activities and within the project or right-of-way limits shall be clearly flagged or marked for the life of the construction activity at that location. (Part I C.10)

Temporary disturbances and temporarily stockpiled materials. All temporarily disturbed wetland areas shall be restored to pre-construction conditions within 30 days of completing work. All temporarily impacted streams and streambanks shall be restored to their original contours within 30 days following the construction at that stream segment. All materials temporarily stockpiled in wetlands shall be placed on mats or geotextile fabric, immediately stabilized to prevent entry into state waters, managed such that leachate does not enter state waters, and completely removed within 30 days following completion of that construction activity. Disturbed areas shall be returned to original contours, restored within 30 days following removal of the stockpile. Changes in temporary impacts shall require written notification to DEQ. (Parts I A.3 and I C.11-12)

Utility work in surface waters and temporary sidecasting of materials. All utility line work in surface waters shall be performed in a manner that minimizes disturbance, and the area must be returned to its original contours and restored within 30 days of completing work in the area. Material resulting from trench excavation may be temporarily sidecast into wetlands not to exceed a total of 90 days. (Part I E.1-2)

Construction Monitoring. Monitoring shall document the pre-existing conditions, activities during construction, and post-construction conditions and shall consist of one of the following options: (1) photographs taken at the end of the first, second and third months of construction, and then semi-annually for the remainder of the construction project; (2) an ortho-rectified photograph taken by a firm specializing in ortho-rectified photography prior to construction, and annually thereafter until all impacts are taken; or (3) submit a written narrative that summarizes site construction activities in impact areas. The narrative shall be submitted at the end of the first, second, and third months of construction in impact areas, and then semi-annually for the remainder of the construction activities in impact areas. (Parts II B.1-3 and II E.3.b)

Notification of Construction. Submit a written notification at least 10 calendar days prior to the start of construction activities at the first permitted site authorized by this VWP general permit authorization. (Part II E.2)

Construction Monitoring Reports. Submit not later than the 10th day of the month following the month in which the monitoring event specified in Part II D takes place. (Part II E.3)

Notification of End Construction. Submit a written notification within 30 calendar days following the completion of all authorized activities in all permitted impact areas. (Part II E.4)

Notice of Unusual or Potentially Complex Conditions. Written notification is required for unusual or potentially complex conditions that require debris removal or involve potentially toxic substances. (Part II E.7)

Notice of Fish Kills, or Oil or Fuel Spills. Immediate notification is required. (Part II E.8)

Notice of Violation of State Water Quality Standards. Notification is required within 24 hours. (Part II E.9)

Wetland Compensation Requirements

Modification of Compensation Requirements. Modification to compensation requirements may be approved at the request of the permittee when a decrease in the amount of authorized surface waters impacts occurs, provided that the adjusted compensation meets the initial authorization compensation goals. (Part I A.4)

Purchase of Mitigation Bank Credits or Contribution to In-Lieu Fee Fund. Submit documentation that the Corps has debited the required mitigation credits from the mitigation bank ledger or documentation that the fund contribution has been received prior to commencing activities in impact areas. (Part II A.4)

Requests for Authorization Changes

Notice of Planned Change. Submit request for additional surface water impacts, less surface water impacts, change in project plans that does not include a change in impacts, change from one mitigation bank to another, or typographical errors, prior to taking impacts. (Parts I.A.2 and III.I)

Continuation of Coverage. Submit request if all permit conditions cannot be completed by expiration date. The permittee should request the Continuation of Coverage no less than 60 days prior to the expiration date of the VWP general permit authorization to allow for processing. (Part I.B)

Termination by Consent. Authorization may be terminated by consent when all permitted activities have been completed and all compensatory mitigation have been completed, or when the authorized impacts will not occur. If a termination by consent is desired, the permittee shall submit a request for termination by consent within 30 days of project completion or project cancellation. (Part III.K)

General Permit Number: NAO-2007-2429
Applicant: General Public in Virginia

Effective Date: June 1, 2007
Expiration Date: June 1, 2012

**Department of the Army
State Program General Permit
Commonwealth of Virginia
07-SPGP-01**

I. AUTHORITIES:

07-SPGP-01 authorizes the discharge of dredged or fill material in nontidal waters of the United States associated with certain residential, commercial, and institutional developments and linear transportation projects within the geographical limits of the Commonwealth of Virginia under the regulatory jurisdiction of the Norfolk District Army Corps of Engineers (Corps). These projects must have minimal individual and cumulative impacts and meet the terms and conditions outlined herein. The use of 07-SPGP-01 shall be restricted to those projects that have avoided and minimized impacts to waters of the United States, including wetlands, to the maximum extent practicable. The Clean Water Act (CWA) Section 404(b)(1) guidelines state that no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge that would have less adverse effect on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences.

The people of the Commonwealth of Virginia 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 1899 (33 U.S.C. § 403) and Section 404 of the CWA (33 U.S.C. § 1344) to perform the aforementioned work in nontidal waters and wetlands of the Commonwealth as described herein. The Corps' authority and guidance to develop general permits is contained in 33 U.S.C. § 1344(e) and 33 C.F.R. § 325.2(e)(2), 33 C.F.R. § 325.3(b), and Corps Regulatory Guidance Letter 83-7.

II. PROCEDURES:

A. Delineation Confirmations:

For any Residential, Commercial, or Institutional Development Activity or Linear Transportation Activity covered by 07-SPGP-01, a proponent must first obtain a confirmed delineation of all waters of the United States on the property prior to submission of an application. The Corps must be contacted to obtain a delineation confirmation. A confirmed delineation is not required for VDOT linear transportation projects (these projects must adhere to a separate, but similar, procedure).

B. Application:

Applicants shall use the newest version of Joint Permit Applications (JPAs), and supply drawings required by the applicable JPA, and submit these applications to the Virginia Marine Resources Commission (VMRC). **Applicants must write the letters "SPGP" clearly across the top of the first page of the application form or processing of the application may be delayed.** The applicable VWP permit regulations define the information required for a complete VWP permit application (see 9 VAC 25-210-80, 9 VAC 25-660-50, 9 VAC 25-670-50, 9 VAC 25-680-50, and 9 VAC 25-690-50). This information (the completed JPA and associated required drawings) plus a confirmed delineation from the Corps will be required to render an application complete for 07-SPGP-01 purposes. (VDOT will continue to utilize the Inter-Agency Coordination Meeting JPA.)

C. State Approvals:

In order for 07-SPGP-01 to be valid, permittees must obtain the following state approvals prior to commencement of work in waters of the United States.

- (1) VWP permit from the DEQ
- (2) VMRC permit, when required

Authorizations under 07-SPGP-01 also require that permittees ensure that their projects are designed and constructed in a manner consistent with all state and local requirements pursuant to the Chesapeake Bay Preservation Act (Virginia Code 10.1-2100 *et seq.*) and the Chesapeake Bay Preservation Area Designation and Management Regulations (9 VAC 10-20-10 *et seq.*). Authorizations under 07-SPGP-01 do not supersede state or local government authority or responsibilities pursuant to the Act.

D. Definitions:

For purposes of 07-SPGP-01, "loss" of waters of the United States shall be defined as filling (including placement of pipes or other water conveyances in waters) as well as other permanent adverse effects, including mechanized landclearing, excavation (including channelization), flooding, draining, including temporary flooding and draining, etc. The acreage/linear footage of loss of waters of the United States is the threshold measurement of the impact to existing waters for determining whether a project may qualify for 07-SPGP-01; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and values.

For purposes of 07-SPGP-01, "natural stream design" means that the channel should mimic the dimension, pattern, and profile of a representative reference stream reach.

III. AUTHORIZED ACTIVITIES

A. Residential, Commercial, and Institutional Development Activities:

Eligibility Criteria:

- Activities that are subject to Corps jurisdiction
- Involves the discharge of dredged or fill material associated with residential, commercial, and institutional projects causing the loss of not more than one acre of nontidal wetlands or waters or the loss of not more than 2,000 linear feet of streams, unless otherwise excluded by 07-SPGP-01
- Meets the general conditions of 07-SPGP-01 listed on pages 6-13 and any special conditions required of each project-specific authorization
- Provides compensatory mitigation for unavoidable impacts to over 1/10 acre wetlands and to over 300 linear feet of stream (or mitigation for any lower level of impact if it is determined that it is necessary to ensure that a project's impacts are minimal in nature) in accordance with the mitigation standards general condition on pages 9 and 10

Discharges associated with residential, commercial, and institutional development activities include those outlined in DEQ's General Permits (see 9 VAC 25-660 *et seq.*, 9 VAC 25-670 *et seq.*, 9 VAC 25-680 *et seq.*, and 9 VAC 25-690 *et seq.*) and are associated with the following: construction or expansion of residential, commercial, or institutional building foundations, building pads, and attendant features that are necessary for the use and maintenance of the structures. Attendant features may include, but are not limited to, roads, parking lots, garages, yards, utility lines, stormwater management facilities, and recreational facilities such as playgrounds, playing fields, and golf courses (provided the golf course is an integral part of the residential development). Residential developments include multiple and single unit developments. Examples of commercial developments include retail stores, industrial facilities, restaurants, business parks, and shopping centers. Examples of institutional developments include schools, fire stations, government office buildings, judicial buildings, public works buildings, libraries, hospitals, and places of worship. For residential, commercial, and institutional developments, the aggregate total loss of waters of the United States cannot exceed one acre of nontidal wetlands or waters or 2,000 linear feet of streams.

Discharges of dredged or fill material associated with residential, commercial, and institutional activities causing the loss of more than one acre of nontidal wetlands or waters or over 2,000 linear feet of streams will require a Corps individual permit, including issuance of a public notice and full public interest review.

Proponents of residential, commercial, or institutional developments are subject to the Corps' subdivision guidance dated March 15, 1993 and June 2, 1999, or any subsequent guidance that supersedes or supplements those documents.

Federal Screening Procedures:

All residential, commercial, and institutional development activities containing impacts to over ½ acre of wetlands or waters or to over 300 linear feet of stream will be reviewed by the Corps, the U.S. Environmental Protection Agency (EPA), and the U.S. Fish and Wildlife Service (FWS).

If EPA or FWS determines that there are project specific concerns regarding avoidance and/or minimization of impacts to the aquatic environment or concerns regarding the amount

and/or type of compensatory mitigation being proposed, the applicant will be required to address those concerns. If the concerns are not addressed to the satisfaction of the objecting agency(ies), the Corps District Commander will exert his/her discretionary authority to require the project to be processed under the Corps' individual permit process.

Any Corps' concerns shall be relayed to the DEQ and addressed during the DEQ permitting process. If concerns are not satisfied through that process, the Corps District Commander may exert his/her discretionary authority to require the project to be processed under an alternate Corps permitting process, such as an individual permit.

B. Linear Transportation Activities:

Eligibility Criteria:

- Activities that are subject to Corps jurisdiction
- Involves the discharge of dredged or fill material associated with the construction, expansion, modification, or improvement of linear transportation projects not causing the loss of more than 1/3 acre of nontidal waters of the United States, including wetlands, unless otherwise excluded by 07-SPGP-01
- Meets the general conditions of 07-SPGP-01 listed on pages 6-13 and any special conditions required of each project-specific authorization
- Provides compensatory mitigation for all unavoidable impacts to wetlands and for all impacts to over 300 linear feet of stream (or mitigation for any lower level of impact if it is determined that it is necessary to ensure that a project's impacts are minimal in nature) in accordance with the mitigation standards general condition on pages 9 and 10. Stream relocation using natural stream design is considered to be self-mitigating.

Discharges associated with linear transportation projects include the construction, expansion, modification, or improvement of highways, roads, railways, trails, and airport runways and taxiways. All relocations of utility lines within the right-of-way/easements within the termini of the project are also covered under this Activity. The only lateral encroachments allowed are those that do not cause the loss of more than 1/3 acre of waters of the United States, including wetlands, involve only stream relocation (no piping or riprap of the stream bottom, etc.), and use natural stream design for the stream relocation.

Federal Screening Procedures:

All linear transportation activities involving impacts to over 300 linear feet of stream at any single impact area or containing multiple single and complete impact areas on the same project that additively exceed 1/3 acre of impact, or where lateral stream encroachments of a project cumulatively impact more than 300 linear feet will be reviewed by the Corps, the EPA, and the FWS.

If EPA or FWS determines that there are project specific concerns regarding avoidance and/or minimization of impacts to the aquatic environment or the amount and/or type of compensatory mitigation being proposed, the applicant will be required to address those concerns. If the concerns are not addressed to the satisfaction of the objecting agency(ies), the Corps District

Commander will exert his/her discretionary authority to require the project to be processed under the Corps' individual permit process.

Any Corps' concerns shall be relayed to the DEQ and addressed during the DEQ permitting process. If concerns are not satisfied through that process, the Corps District Commander may exert his/her discretionary authority to require the project to be processed under an alternate Corps permitting process, such as an individual permit.

C. Exclusions from Coverage:

The following activities and resources areas are excluded from coverage by 07-SPGP-01 and would require different types of Corps permits:

- Conversion of waters and/or wetlands for agricultural production and agriculture-related activities (crop fields or pasture); farm buildings; grain storage facilities; grassed waterways; low water crossings; impoundments for irrigation, livestock watering, and fire prevention purposes; animal feeding operations; waste storage facilities; and farm access roads
- Wetland areas composed of 10% or more of the following species (singly or in combination) in any stratum: Atlantic white cedar (*Chamaecyparis thyoides*), bald cypress (*Taxodium distichum*), water tupelo (*Nyssa aquatica*), or overcup oak (*Quercus lyrata*) (Percentages may be based on stem counts, basal area, or percent areal cover.)
- Wetland areas underlain by histosols (Histosols are organic soils that are often called mucks, peats, or mucky peats. The list of histosols includes, but is not limited to, the following soil series: Back Bay, Belhaven, Dorovan, Lanexa, Mattamuskeet, Mattan, Palms, Pamlico, Pungo, Pocaty, and Rappahannock.)
- Placement of septic tanks, establishment of drain fields, and construction of associated perimeter ditches
- Corps-regulated normal residential gardening, lawn, and landscape maintenance
- Construction of extended-detention basins and enhanced extended-detention basins designed, constructed, and maintained to function in accordance with the current Virginia Department of Conservation and Recreation (DCR) standards for such facilities or local standards that, at a minimum, meet the DCR standards, unless the area within the entire basin is considered impacted and is covered under a VWP permit
- Lateral encroachments on linear transportation projects that do not propose natural stream design to relocate impacted streams

D. Resource Areas of Special Concern:

Activities proposed in the following waters will automatically require consultation with the FWS due to Endangered Species Act (ESA) concerns:

- Powell River: From the Tennessee-Virginia state line upstream to the Route 58 bridge in Big Stone Gap and one mile upstream of the mouth of any tributary adjacent to this portion of the River

- Clinch River: From the Tennessee-Virginia state line upstream to Route 632 at Pisgah in Tazewell County and one mile upstream of the mouth of any tributary adjacent to this portion of the River (the Little River, a tributary to the Clinch River, requires consultation from its confluence with the Clinch River to its confluence with Maiden Spring Creek and one mile upstream of the mouth of any tributary adjacent to this portion of the Little River)
- North Fork, Holston River: From the Tennessee-Virginia state line to the Smyth County/Bland County line and one mile upstream of the mouth of any tributary adjacent to this portion of the River
- Copper Creek: From its junction with the Clinch River to the Route 58 bridge at Dickensonville in Russell County and one mile upstream of the mouth of any tributary adjacent to this portion of the Creek
- Indian Creek: From its junction with the Clinch River upstream to the fourth Norfolk and Western Railroad bridge at Van Dyke in Tazewell County and one mile upstream of the mouth of any tributary adjacent to this portion of the Creek
- Middle Fork, Holston River: From the Tennessee-Virginia state line to the confluence of Walker Creek in Smyth County near Marion, Virginia
- South Fork, Holston River: From the junction of the Middle Fork, Holston River upstream to the confluence of Beech Creek in Washington County

Activities proposed within the boundaries of the designated Upper New River Wild and Scenic River study area (from the Route 460 bridge over the New River near Glen Lyn, Virginia to the West Virginia/Virginia state line), and all adjacent lands subject to the study area, will require consultation with the Huntington District Corps of Engineers.

IV. INDIVIDUAL PERMIT:

Work that does not meet one or more of the terms and general conditions of 07-SPGP-01, including work that has been determined to be more than minimal in nature (at any impact level), will require consideration under a different type of Corps permit evaluation, such as an individual permit. If an individual permit is required, a public notice will be issued and a full public interest review will be conducted by the Corps.

V. GENERAL CONDITIONS:

The following conditions apply to all activities authorized under 07-SPGP-01.

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, as determined by the Corps.
3. **Discretionary authority.** The Corps District Commander retains discretionary authority to require processing of an individual permit based on concerns for the aquatic environment or for any other factor of the public interest (33 C.F.R. § 320.4(a)). This authority is exercised on a case-by-case basis.
4. **Single and complete projects.** 07-SPGP-01 shall only be applied to single and complete projects. For purposes of 07-SPGP-01, a single and complete project means the total project proposed or accomplished by one owner/developer or partnership or other

association of owners/developers and which has independent utility. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as single and complete projects with independent utility. For linear transportation projects with multiple crossings, the "single and complete" project (i.e., single and complete crossing) will typically apply to each crossing of a separate water of the United States (i.e., single waterbody) at separate and distinct locations. However, in cases where there are many crossings in close proximity, numerous crossings of the same waterbody, or multiple crossings that otherwise may have more than minimal individual or cumulative impacts, the Corps has the discretion, on a case-by-case basis, to consider all of the crossings cumulatively as one single and complete project.

5. **Multiple general permit authorizations.** 07-SPGP-01 may not be combined with any Corps general permit (including Nationwide or Regional permits) for a single and complete project. However, the Linear Transportation and Residential, Commercial, and Institutional Development Activities (detailed in Section II) within 07-SPGP-01 may be combined as long as they do not cumulatively exceed the acreage limit or stream length of the Activity with the highest specified acreage limit or stream length limit.
6. **Permit on-site.** The permittee shall ensure that a copy of 07-SPGP-01 and the accompanying authorization letter are at the work site at all times. These copies must be made available to any regulatory representative upon request. Although the permittee may assign various aspects of the work to different contractors or sub-contractors, all contractors and sub-contractors shall be expected to comply with all conditions of any 07-SPGP-01 authorization.

General Conditions Related to National Concerns:

7. **Historic properties.** (a) In cases where it is determined that the activity may affect properties listed, or eligible for listing on, the National Register of Historic Places, the activity is not authorized until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied. (b) Federal permittees should follow their own procedures for complying with the requirements of Section 106 of the National Historic Preservation Act. Federal permittees must provide the Corps and/or the DEQ with the appropriate documentation to demonstrate compliance with those requirements. (c) Non-federal permittees must submit a statement regarding the authorized activity's potential to cause effects to any historic properties listed, or determined to be eligible for listing on, the National Register of Historic Places, including previously unidentified properties. The statement must say which historic properties may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location or potential for the presence of historic resources can be sought from the Virginia Department of Historic Resources and the National Register of Historic Places. Where 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 or the DEQ 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, State Historic Preservation Officer, Tribal Historic Preservation Officer, appropriate Indian tribes if the undertaking occurs on or affect historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have legitimate interest in the impacts to the permitted activity on historic properties. If the permittee, during construction or work authorized herein, encounters a previously unidentified archaeological or other cultural resource, he/she must immediately stop work and notify the Corps and DEQ of what has been found. Coordination with the Virginia Department of Historic Resources will commence and the permittee will subsequently be advised when he/she may recommence work.

8. **Tribal rights.** No activity authorized may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.
9. **National lands.** Authorized activities shall not impinge upon the value of any National Wildlife Refuge, National Forest, National Park, or any other area administered by the FWS, U.S. Forest Service, or National Park Service.
10. **Endangered species.** No activity is authorized which:
 - Is likely to jeopardize the continuing existence of a threatened or endangered species, or a species proposed for such designation, as identified under the ESA, or which will destroy or adversely modify the critical habitat of such species
 - Would result in a lethal or non-lethal "take" of any threatened or endangered species of fish or wildlife without an incidental take statement from the FWS

Applicants shall include, in their permit applications, information regarding the presence of any Federally listed threatened or endangered species or designated critical habitat in the vicinity of the project site that might be affected by the proposed work. Information regarding threatened or endangered species may be obtained directly from the FWS' Virginia Field Office at 6669 Short Lane, Gloucester, VA 23061 and/or the National Marine Fisheries Service Habitat Conservation Division at James J. Howard Marine Sciences Laboratory, 74 Magruder Road, Highlands, NJ 07732.

11. **Wild and Scenic Rivers.** Currently, there are no designated Wild and Scenic Rivers in the Commonwealth of Virginia; however, the portion of the Upper New River from Glen Lyn, Virginia to the West Virginia/Virginia state line was designated a "study river" by Congress on October 26, 1992. No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system, while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river has determined, in writing, that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic

Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service). Impacts that occur in these resource areas will require coordination with the appropriate Federal agency.

12. **Federal navigation project.** Authorized activities may not interfere with any existing or proposed Federal navigation projects.
13. **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 Corps, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.
14. **Floodplains.** All practicable efforts shall be made to conduct the work authorized by 07-SPGP-01 in a manner so as to avoid any adverse impact on the Federal Emergency Management Agency (FEMA) designated 100-year floodplain.
15. **Real estate.** Activities authorized under 07-SPGP-01 do not grant any Corps real estate rights. If real estate rights are needed from the Corps, you must contact the Corps Real Estate Office at (757) 201-7735 or at the address listed on the front page of this permit.
16. **Environmental Justice.** Activities authorized under 07-SPGP-01 must comply with Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations".
17. **Federal liability.** In issuing 07-SPGP-01, the Federal government does not assume any liability for the following: (a) damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes; (b) damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest; (c) damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by 07-SPGP-01; (d) design or construction deficiencies associated with the permitted work; (e) damage claims associated with any future modification, suspension, or revocation of this permit.

General Conditions Related to Minimizing Environmental Impacts:

18. **Avoidance and minimization.** Discharges of dredged or fill material into waters of the United States shall be avoided and impacts minimized to the maximum extent practicable.
19. **Mitigation standards.**
 - *Wetland mitigation* will generally be required for all impacts over 1/10 acre on residential, commercial, and institutional development projects and for all impacts on linear transportation projects. Generally, the minimum required wetland mitigation ratios will be as follows: 2:1 for forested wetlands, 1.5:1 for scrub-shrub wetlands, 1:1 for herbaceous emergent wetlands, and 1:1 for conversion of forested wetlands to herbaceous emergent wetlands. Wetland mitigation can include wetland preservation, creation, restoration or enhancement (including restoration or enhancement of upland

forested buffers), purchase of commercial wetland mitigation bank credits, and/or contributions to the Virginia Aquatic Resources Trust Fund.

- *Stream mitigation* will generally be required for any project that involves more than 300 linear feet of stream impact. Minimum stream mitigation requirements will be determined using the current Corps and DEQ endorsed assessment methodology. Stream mitigation can include preservation of existing stream channels and riparian (wetland or upland) buffers, enhancement or restoration of existing stream channels, purchase of commercial stream mitigation bank credits, and/or contributions to the Virginia Aquatic Resources Trust Fund.
 - The need to require mitigation for impacts to open waters will be determined on a case-by-case basis.
 - Where local zoning ordinances provide for riparian and floodplain protection pursuant to the Chesapeake Bay Preservation Act (Virginia Code 10.1-2100 *et seq.*) and the Chesapeake Bay Preservation Area Designation and Management Regulations (9 VAC 1-20 *et seq.*), the use of buffers as a form of compensatory mitigation shall be allowed only (a) where the extent of the buffer exceeds the lateral extent already required by local ordinances pursuant to the Act and the regulations or (b) where the quality of the existing protected buffer area is enhanced to provide greater water quality protection benefits.
20. **Heavy equipment in wetlands.** Heavy equipment working in wetlands must be placed on mats or other measures must be taken to minimize soil disturbance.
21. **Temporary fills.** All temporarily disturbed waters and wetlands must be restored to their pre-construction contours as soon as they are no longer needed. Once restored to their natural contours, their soil must be mechanically loosened to a depth of 12 inches and wetland areas must be seeded or sprigged with appropriate native vegetation.
22. **Sedimentation and erosion control.** Appropriate erosion and sediment controls must be employed and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark, must be permanently stabilized at the earliest practicable date.
23. **Aquatic life movements.** No authorized activities may substantially disrupt the movement of aquatic life indigenous to the waterbody, including those species which normally migrate through the area, unless the activity's primary purpose is to impound water. The Corps has determined that fish and wildlife are most often present in any stream being crossed, in the absence of evidence to the contrary.

All pipes and culverts placed in streams must be countersunk at both the inlet and outlet ends, unless indicated otherwise by the DEQ 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. 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, at least one pipe or culvert shall be countersunk at both the inlet and outlet to convey low flows.

- Exemptions: Countersinking requirements do not apply to:
 - Extensions of existing pipes or culverts that are not countersunk
 - Maintenance to pipes/culverts that does not involve replacing the pipe/culvert

- Pipes that are placed above ordinary high water, such as those placed to allow for floodplain flows
- Bottomless culverts or pipe arches
- Hydraulic capacity: Pipes should be adequately sized to allow for the passage of ordinary high water with the countersinking and invert restrictions taken into account.
- Pipes on bedrock:
 - 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.
 - Pipes in new locations: If the prospective permittee determines that bedrock prevents countersinking, they should evaluate the use of a bottomless pipe/culvert, bottomless utility vault, span (bridge), or other bottomless structure to cross the waterway, and also evaluate alternative locations for the new pipe/culvert that will allow for countersinking. If the permittee determines that countersinking is not practicable, they must include the documentation required below along with their application package.
 - Problems encountered during construction: When a pipe/culvert is being replaced and, during construction, it is found that the streambed/banks are on bedrock, then the permittee must stop work and contact the DEQ. The permittee must provide specific information concerning site conditions and limitations on countersinking. The permittee should recognize that the DEQ could determine that the work will not qualify for 07-SPGP-01.
- Emergency situations: A permittee is encouraged to countersink emergency pipe replacements at the time of the replacement, in accordance with the conditions above. However, if conditions or timeframes do not allow for countersinking, then the pipe can be replaced as it was before the washout, but the permittee will have to come back and replace the pipe/culvert and countersink it in accordance with the conditions above. 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 permittee must notify the DEQ of all pipes/culverts that are replaced without countersinking at the time that the work occurs, even if the work constitutes an otherwise non-reporting activity, and must provide the planned schedule for installing a countersunk replacement (it is acceptable to submit such notification by e-mail).
- Submittal requirements: If a prospective permittee determines that countersinking is not practicable, then they must submit a narrative, along with their application, documenting 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 use of a bottomless pipe, 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 narrative must also include photographs documenting site conditions. The prospective permittee may find it helpful to contact their regional fishery

biologist for the Virginia Department of Game and Inland Fisheries (DGIF) for recommendations about the measures to be taken to allow for fish movement.

24. **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.
25. **Obstruction of high flows.** Discharges of dredged or fill material must not permanently restrict or impede the passage of normal or expected high flows.
26. **Waterbird breeding areas.** Discharges of dredged or fill material into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.
27. **Native trout and anadromous fishes.** Authorizations for discharges of dredged or fill material into native trout waters or anadromous fish spawning areas are conditioned to limit in-stream work within the timeframes recommended by the DGIF.
28. **Water supply intakes.** No discharge of dredged or fill material may occur in proximity of a public water supply intake.

General Procedural Conditions:

29. **Inspections.** The permittee shall allow the Corps and/or the DEQ 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 Corps reserves the right to require post-construction engineering drawings and/or surveys of any work authorized under 07-SPGP-01, as deemed necessary on a case-by-case basis.
30. **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.
31. **Property rights.** 07-SPGP-01 does not convey any property rights, either in real estate or material, or convey any exclusive privileges, nor does it authorize any injury to property or invasion of rights or any infringement of Federal, state, or local laws or regulations.
32. **Modification, suspension, and revocation.** 07-SPGP-01 and individual verifications under 07-SPGP-01 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.
33. **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.
34. **Special conditions.** The Corps may impose other special conditions on a project authorized pursuant to 07-SPGP-01 that are determined necessary to minimize adverse navigational and/or environmental effects or based on any other factor of the public

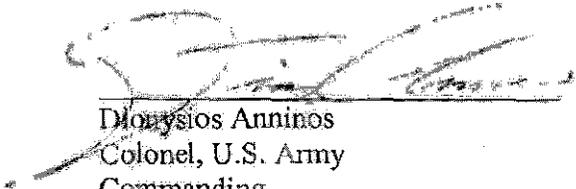
interest. Failure to comply with all conditions of the authorization, including special conditions, constitutes a permit violation and may subject the permittee, or his/her contractor, to criminal, civil, or administrative penalties and/or restoration.

35. **False or incomplete information.** In granting authorization pursuant to this permit, the Corps has relied upon information and data provided by the permittee. If, subsequent to notification by the Corps or DEQ 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.
36. **Abandonment.** If the permittee decides to abandon the activity authorized under 07-SPGP-01, 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 Corps.
37. **Transfer of authorization.** In order to transfer authorization under 07-SPGP-01, the transferee and permittee must supply the DEQ with a written request to undertake a transfer. Such transfer is effective upon written approval by DEQ.
38. **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:

39. **Duration of authorization.** Activities authorized under 07-SPGP-01 must be completed by June 1, 2012.
40. **Time extensions.** If a permittee is unable to complete the work authorized under 07-SPGP-01 in the time limit provided in the initial authorization, he/she must submit a request for a time extension to the Corps and DEQ for consideration at least one month prior to the expiration of the permit authorization.
41. **Expiration of 07-SPGP-01.** Unless further modified, suspended, or revoked, 07-SPGP-01 will be in effect until June 1, 2012. Upon expiration, it may be considered for revalidation.

6/1/07
date


Dionysios Anninos
Colonel, U.S. Army
Commanding

PART I – SPECIAL CONDITIONS

A. Authorized Activities

1. This permit authorizes permanent or temporary impacts of up to two acres of nontidal wetlands or open water and up to 1,500 linear feet of nontidal stream bed according to the information provided in the approved and complete application.
2. Any changes to the authorized permanent impacts to surface waters associated with this project shall require either a notice of planned change in accordance with 9 VAC 25-690-80, or another VWP permit application.
3. Any changes to the authorized temporary impacts to surface waters associated with this project shall require written notification to DEQ and restoration to preexisting conditions in accordance with the conditions of this permit authorization.
4. Modification to compensation requirements may be approved at the request of the permittee when a decrease in the amount of authorized surface waters impacts occurs, provided that the adjusted compensation meets the initial authorization compensation goals.
5. The activities authorized for coverage under this VWP general permit must commence and be completed within seven years of the date of this authorization.

B. Continuation of Coverage

Reapplication for continuation of coverage under this VWP general permit or a new VWP permit may be necessary if any portion of the authorized activities or any VWP general permit requirement (including compensation) has not been completed within seven years of the date of authorization. Notwithstanding any other provision, a request for continuation of coverage under a VWP general permit in order to complete monitoring requirements shall not be considered a new application, and no application fee will be charged. The request for continuation of coverage must be made no less than 60 days prior to the expiration date of this VWP general permit authorization, at which time the board will determine if continuation of the VWP general permit authorization is necessary.

C. Overall Project Conditions

1. The activities authorized by this VWP general permit shall be executed in a manner so as to minimize adverse impacts on instream beneficial uses as defined in § 62.1-10 (b) of the Code of Virginia.
2. No activity may substantially disrupt the movement of aquatic life indigenous to the water body, including those species which normally migrate through the area, unless the primary purpose of the activity is to impound water. Culverts placed in streams must be installed to maintain low flow conditions. The requirement to countersink does not apply to extensions or maintenance of existing culverts that are not countersunk, floodplain culverts being placed above ordinary high water, culverts being placed on bedrock, or culverts required to be placed on slopes 5.0% or greater. No activity may cause more than minimal adverse effect on navigation. Furthermore the activity must

not impede the passage of normal or expected high flows and the structure or discharge must withstand expected high flows.

3. Wet or uncured concrete shall be prohibited from entry into flowing surface waters. Excess or waste concrete shall not be disposed of in flowing surface waters or washed into flowing surface waters.
4. All fill material shall be clean and free of contaminants in toxic concentrations or amounts in accordance with all applicable laws and regulations.
5. Erosion and sedimentation controls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992, or for mining activities covered by this general permit, the standards issued by the Virginia Department of Mines, Minerals and Energy that are effective as those in the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992. These controls shall be placed prior to clearing and grading and maintained in good working order to minimize impacts to state waters. These controls shall remain in place until the area is stabilized and shall then be removed.
6. Exposed slopes and streambanks shall be stabilized immediately upon completion of work in each permitted impact area. All denuded areas shall be properly stabilized in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.
7. All construction, construction access (e.g., cofferdams, sheetpiling, and causeways) and demolition activities associated with this project shall be accomplished in a manner that minimizes construction or waste materials from entering surface waters to the maximum extent practicable, unless authorized by this VWP general permit.
8. No machinery may enter flowing waters, unless authorized by this VWP general permit.
9. Heavy equipment in temporarily-impacted wetland areas shall be placed on mats, geotextile fabric, or other suitable material to minimize soil disturbance to the maximum extent practicable. Equipment and materials shall be removed immediately upon completion of work.
10. All nonimpacted surface waters and compensatory mitigation areas within 50 feet of permitted activities and within the project or right-of-way limits shall be clearly flagged or marked for the life of the construction activity at that location to preclude unauthorized disturbances to these surface waters and compensatory mitigation areas during construction. The permittee shall notify contractors that no activities are to occur in these marked surface waters.
11. Temporary disturbances to surface waters during construction shall be avoided and minimized to the maximum extent practicable. All temporarily disturbed wetland areas shall be restored to preexisting conditions within 30 days of completing work at each respective temporary impact area, which shall include reestablishing preconstruction contours, and planting or seeding with appropriate wetland vegetation according to cover type (emergent, scrub/shrub, or forested). The permittee shall take all appropriate measures to promote and maintain revegetation of temporarily disturbed wetland areas with wetland vegetation through the second year post-disturbance. All temporarily impacted streams and streambanks shall be restored to their original contours within

- 30 days following the construction at that stream segment, and the banks seeded or planted with the same vegetation cover type originally present along the streambanks, including supplemental erosion control grasses if necessary, except for invasive species identified on DCR's Invasive Alien Plant Species of Virginia list.
12. Materials (including fill, construction debris, and excavated and woody materials) temporarily stockpiled in wetlands shall be placed on mats or geotextile fabric, immediately stabilized to prevent entry into state waters, managed such that leachate does not enter state waters, and completely removed within 30 days following completion of that construction activity. Disturbed areas shall be returned to original contours, restored within 30 days following removal of the stockpile, and restored with the same vegetation cover type originally present, including supplemental erosion control grasses if necessary, except for invasive species identified on DCR's Invasive Alien Plant Species of Virginia list.
 13. Continuous flow of perennial springs shall be maintained by the installation of spring boxes, french drains, or other similar structures.
 14. The permittee shall employ measures to prevent spills of fuels or lubricants into state waters.
 15. The permittee shall conduct activities in accordance with the time-of-year restrictions recommended by the Virginia Department of Game and Inland Fisheries, the Virginia Marine Resources Commission, or other interested and affected agencies and shall ensure that all contractors are aware of the time-of-year restrictions imposed.
 16. Water quality standards shall not be violated as a result of the construction activities, unless allowed by this permit authorization.
 17. ~~If stream channelization~~ or relocation is required, all work in surface waters shall be done in the dry, unless authorized by this VWP general permit, and all flows shall be diverted around the ~~channelization or relocation~~ area until the new channel is stabilized. This work shall be accomplished by leaving a plug at the inlet and outlet ends of the new channel during excavation. Once the new channel has been stabilized, flow shall be routed into the new channel by first removing the downstream plug and then the upstream plug. The rerouted stream flow must be fully established before construction activities in the old stream channel can begin.

D. Road Crossings

1. Access roads and associated bridges or culverts shall be constructed to minimize the adverse effects on surface waters to the maximum extent practicable. Access roads constructed above preconstruction contours and elevations in surface waters must be bridged or culverted to maintain surface flows.
2. Installation of road crossings shall occur in the dry via the implementation of cofferdams, sheetpiling, stream diversions, or similar structures.

E. Utility Lines

1. All utility line work in surface waters shall be performed in a manner that minimizes disturbance, and the area must be returned to its original contours and restored within 30 days of completing work in the area, unless otherwise authorized by this VWP general permit. Restoration shall be the seeding or planting of the same vegetation cover type originally present, including supplemental erosion control grasses if necessary, except for invasive species identified on DCR's Invasive Alien Plant Species of Virginia list.
2. Material resulting from trench excavation may be temporarily sidecast into wetlands not to exceed a total of 90 days, provided the material is not placed in a manner such that it is dispersed by currents or other forces.
3. The trench for a utility line cannot be constructed in a manner that drains wetlands (e.g., backfilling with extensive gravel layers creating a french drain effect.). For example, utility lines may be backfilled with clay blocks to ensure that the trench does not drain surface waters through which the utility line is installed.

F. Stream Modification and Stream Bank Protection

1. Riprap bank stabilization shall be of an appropriate size and design in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.
2. Riprap apron for all outfalls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.
3. For stream bank protection activities, the structure and backfill shall be placed as close to the stream bank as practicable. No material shall be placed in excess of the minimum necessary for erosion protection.
4. All stream bank protection structures shall be located to eliminate or minimize impacts to vegetated wetlands to the maximum extent practicable.
5. Asphalt and materials containing asphalt or other toxic substances shall not be used in the construction of submerged sills or breakwaters.
6. Redistribution of existing stream substrate for the purpose of erosion control is prohibited.
7. No material removed from the stream bottom shall be disposed of in surface waters, unless authorized by this permit.

G. Dredging

1. Dredging depths shall be determined and authorized according to the proposed use and controlling depths outside the area to be dredged.

2. Dredging shall be accomplished in a manner that minimizes disturbance of the bottom and minimizes turbidity levels in the water column.
3. If evidence of impaired water quality, such as a fish kill, is observed during the dredging, dredging operations shall cease and the DEQ shall be notified immediately.
4. Barges used for the transportation of dredge material shall be filled in such a manner to prevent the overflow of dredged materials.
5. Double handling of dredged material in state waters shall not be permitted.
6. For navigation channels the following shall apply:
 - a. A buffer of four times the depth of the dredge cut shall be maintained between the bottom edge of the design channel and the channelward limit of wetlands, or a buffer of 15 feet shall be maintained from the dredged cut and the channelward edge of wetlands, whichever is greater. This landward limit of buffer shall be flagged and inspected prior to construction.
 - b. Side slope cuts of the dredging area shall not exceed a two-horizontal-to-one-vertical slope to prevent slumping of material into the dredged area.
7. A dredged material management plan for the designated upland disposal site shall be submitted and approved 30 days prior to initial dredging activity.
8. Pipeline outfalls and spillways shall be located at opposite ends of the dewatering area to allow for maximum retention and settling time. Filter fabric shall be used to line the dewatering area and to cover the outfall pipe to further reduce sedimentation to state waters.
9. The dredge material dewatering area shall be of adequate size to contain the dredge material and to allow for adequate dewatering and settling out of sediment prior to discharge back into state waters.
10. The dredge material dewatering area shall utilize an earthen berm or straw bales covered with filter fabric along the edge of the area to contain the dredged material, and shall be properly stabilized prior to placing the dredged material within the containment area.
11. Overtopping of the dredge material containment berms with dredge materials shall be strictly prohibited.

H. Stormwater Management Facilities

1. Stormwater management facilities shall be installed in accordance with best management practices and watershed protection techniques (e.g., vegetated buffers, siting considerations to minimize adverse effects to aquatic resources, bioengineering methods incorporated into the facility design to benefit water quality and minimize adverse effects to aquatic resources) that provide for long-term aquatic resources protection and enhancement, to the maximum extent practicable.

2. Compensation for unavoidable impacts shall not be allowed within maintenance areas of stormwater management facilities.
3. Maintenance activities within stormwater management facilities shall not require additional permit authorization or compensation, provided that the maintenance activities do not exceed the original contours of the facility, as approved and constructed, and is accomplished in designated maintenance areas as indicated in the facility maintenance or design plan.

PART II – CONSTRUCTION AND COMPENSATION REQUIREMENTS, MONITORING, AND REPORTING

A. Minimum Compensation Requirements

1. The permittee shall provide appropriate and practicable compensation for all impacts meeting the conditions outlined in this VWP general permit.
2. Compensation options that may be considered under this VWP general permit shall meet the criteria in 9 VAC 25-690-70.
3. The site or sites depicted in the conceptual compensation plan submitted with the application shall constitute the compensation site for the approved project. A site change will require a modification to the authorization.
4. For compensation involving the purchase or use of mitigation bank credits or a contribution to an in-lieu fee fund, the permittee shall not initiate work in permitted impact areas until documentation of the mitigation bank credit purchase or usage or of the fund contribution has been submitted to and received by DEQ.
5. All aspects of the compensation plan shall be finalized, submitted, and approved by the board prior to a construction activity in permitted impact areas. The board shall review and provide written comments on the plan within 30 days of receipt or it shall be deemed approved. The final compensation plan as approved by the board shall be an enforceable requirement of this VWP general permit authorization. Deviations from the approved plan must be submitted and approved in advance by the board.
6. The final wetlands compensation plan shall include:
 - a. The goals and objectives of the plan in terms of replacement of wetland acreage and functions, by wetland type;
 - b. Location map, including latitude and longitude (to the nearest second) at the center of the site;
 - c. Summary of the type and acreage of existing wetland impacts anticipated during the construction of the compensation site and proposed compensation for these impacts;
 - d. Grading plan with existing and proposed elevations at one-foot or less contours;
 - e. Schedule for compensation site construction, including sequence of events with estimated dates;
 - f. Hydrologic analysis, including a water budget based on expected monthly inputs and outputs that will project water level elevations for a typical year, a wet year, and a dry year;

- g. Groundwater elevation data for the site, or the location of groundwater monitoring wells to collect these data, and groundwater data for reference wetlands, if applicable;
 - h. Design of water control structures;
 - i. Planting scheme and schedule, indicating plant species, zonation, and acreage of each vegetation type proposed;
 - j. An abatement and control plan covering all undesirable plant species, as listed on DCR's Invasive Alien Plant Species of Virginia list, that includes the proposed procedures for notifying DEQ of their presence, methods of removal, and the control of such species;
 - k. Erosion and sedimentation control plan;
 - l. A soil preparation and amendments plan addressing both topsoil and subsoil conditions;
 - m. A discussion of structures and features considered necessary for the success of the site;
 - n. A monitoring plan, including success criteria, monitoring goals and methodologies, monitoring and reporting schedule, and the locations of photographic stations and monitoring wells, sampling points, and, if applicable, reference wetlands;
 - o. Site access plan;
 - p. The location and composition of any buffers; and
 - q. The mechanism for protection of the compensation area(s).
7. The final stream compensation plan shall include:
- a. The goals and objectives of the compensation plan in terms of replacement of stream functions and water quality benefits;
 - b. A location map, including latitude and longitude (to the nearest second) at the center of the site;
 - c. An evaluation, discussion, and plan sketches of existing conditions on the proposed compensation stream, including the identification of functional and physical deficiencies for which the measures are proposed, and summary of geomorphologic measurements (e.g., stream width, entrenchment ratio, width-depth ratio, sinuosity, slope, substrate, etc.);
 - d. The identification of existing geomorphological stream type being impacted and proposed geomorphological stream type for compensation purposes;
 - e. Detailed design information for the proposed restorative measures, including geomorphological measurements and reference reach information as appropriate;

- f. Riparian buffer plantings, including planting scheme, species, buffer width;
 - g. Livestock access limiting measures, to the greatest extent possible;
 - h. A site access plan;
 - i. An erosion and sedimentation control plan, if appropriate;
 - j. An abatement and control plan covering all undesirable plant species, listed on DCR's Invasive Alien Plant Species of Virginia list, that includes the proposed procedures for notifying DEQ of their presence, methods for removal, and the control of such species;
 - k. A schedule for compensation site construction including projected start date, sequence of events with projected dates, and projected completion date;
 - l. A monitoring plan, including a monitoring and reporting schedule; monitoring design and methodologies to evaluate the success of the proposed compensation measures, allowing comparison from year to year; proposed success criteria for appropriate compensation measures; location of all monitoring stations including photo stations, vegetation sampling points, survey points, bank pins, scour chains, and reference streams;
 - m. The mechanism for protection of the compensation area; and
 - n. Plan view sketch depicting the pattern and all compensation measures being employed, a profile sketch, and cross-section sketches of the proposed compensation stream.
8. For final wetland or stream compensation plans, the vegetation used shall be native species common to the area, shall be suitable for growth in local wetland or riparian conditions, and shall be from areas within the same or adjacent USDA Plant Hardiness Zone or NRCS Land Resource Region as that of the project site.
 9. The final wetland or stream compensation plan(s) shall include a mechanism for protection in perpetuity of the compensation sites(s) to include all state waters within the compensation site boundary or boundaries. Such protections shall be in place within 120 days of final compensation plan approval. The restrictions, protections, or preservations, or similar instrument, shall state that no activity will be performed on the property in any area designated as a compensation area with the exception of maintenance or corrective action measures authorized by the board. Unless specifically authorized by the board through the issuance of a VWP individual or general permit, or waiver thereof, this restriction applies to ditching, land clearing or the discharge of dredge or fill material. Such instrument shall contain the specific phrase "ditching, land clearing or discharge of dredge or fill material" in the limitations placed on the use of these areas. The protective instrument shall be recorded in the chain of title to the property, or an equivalent instrument for government-owned lands. Proof of recordation shall be submitted within 120 days of final compensation plan approval.
 10. All work in impact areas shall cease if compensation site construction has not commenced within 180 days of commencement of project construction, unless otherwise authorized by the board.

11. DEQ shall be notified in writing at least 10 days prior to the initiation of construction activities at the compensation site(s).
12. Planting of woody plants shall occur when vegetation is normally dormant unless otherwise approved in the final wetlands or stream compensation plan(s).
13. Point sources of stormwater runoff shall be prohibited from entering a wetland compensation site prior to treatment by appropriate best management practices. Appropriate best management practices may include sediment traps, grassed waterways, vegetated filter strips, debris screens, oil and grease separators, or forebays.
14. The success of the compensation shall be based on meeting the success criteria established in the approved final compensation plan.
15. Wetland hydrology shall be considered established if depths to the seasonal high water table are equal to or less than 12 inches below ground surface for at least 12.5% of the region's killing frost-free growing season, as defined in the soil survey for the locality of the compensation site or the NRCS WETS table, measured in consecutive days under typical precipitation conditions, and as defined in the water budget of the final compensation plan. For the purpose of this regulation, the growing season is defined as the period in which temperatures are expected to be above 28 degrees Fahrenheit in five out of 10 years, or the period during which the soil temperature in a wetland compensation site is greater than biological zero (five degrees Celsius) at a depth of 50 centimeters (19.6 inches), if such data is available.
16. The wetland plant community shall be considered established according to the performance criteria specified in the final compensation plan and approved by the board. The proposed vegetation success criteria in the final compensation plan shall include the following:
 - a. Species composition shall reflect the desired plant community types stated in the final wetland compensation plan by the end of the first growing season and shall be maintained through the last monitoring year.
 - b. Species composition shall consist of greater than 50% facultative (FAC) or wetter (FACW or OBL) vegetation, as expressed by plant stem density or areal cover, by the end of the first growing season and shall be maintained through the last monitoring year.
17. Undesirable plant species shall be identified and controlled as described in the undesirable plant species control plan, such that they are not dominant species or do not change the desired community structure. The control plan shall include procedures to notify DEQ when undesirable plant species comprise greater than 5.0% of the vegetation by areal coverage on wetland or stream compensation sites. The notification shall include the methods of removal and control, and whether the methods are successful.
18. If the wetland or stream compensation area fails to meet the specified success criteria in a particular monitoring year, other than the final monitoring year, the reasons for this failure shall be determined, and a corrective action plan shall be submitted to DEQ for approval with or before that year's monitoring report. The corrective action plan shall contain at minimum the proposed

actions, a schedule for those actions, and a monitoring plan, and shall be implemented by the permittee in accordance with the approved schedule. Should significant changes be necessary to ensure success, the required monitoring cycle shall begin again, with monitoring year one being the year that the changes are complete, as confirmed by DEQ. If the wetland or stream compensation area fails to meet the specified success criteria by the final monitoring year, or if the wetland or stream compensation area has not met the stated restoration goals, reasons for this failure shall be determined and a corrective action plan, including proposed actions, a schedule, and a monitoring plan, shall be submitted with the final year monitoring report for DEQ approval. Corrective action shall be implemented by the permittee in accordance with the approved schedule. Annual monitoring shall be required to continue until two sequential, annual reports indicate that all criteria have been successfully satisfied and the site has met the overall restoration goals (e.g., that corrective actions were successful).

19. The surveyed wetland boundary for the wetlands compensation site shall be based on the results of the hydrology, soils, and vegetation monitoring data and shall be shown on the site plan. Calculation of total wetland acreage shall be based on that boundary at the end of the monitoring cycle. Data shall be submitted by December 31 of the final monitoring year.
20. Herbicides or algicides shall not be used in or immediately adjacent to the wetlands or stream compensation site or sites without prior authorization by the board. All vegetation removal shall be done by manual means, unless authorized by DEQ in advance.

B. Impact Site Construction Monitoring

1. Construction activities authorized by this permit that are within impact areas shall be monitored and documented. The monitoring shall document the preexisting conditions, activities during construction, and post-construction conditions. Monitoring shall consist of one of the following options:
 - a. Photographs shall be taken during construction at the end of the first, second, and third months after commencing construction, and then every six months thereafter for the remainder of the construction project. Photos are not required during periods of no activity within impact areas.
 - b. An ortho-rectified photograph shall be taken by a firm specializing in ortho-rectified photography prior to construction, and then annually thereafter, until all impacts are taken. Photos shall clearly show the delineated surface waters and authorized impact areas.
 - c. In lieu of photographs, and with prior approval from DEQ, the permittee may submit a written narrative that summarizes site construction activities in impact areas. The narrative shall be submitted at the end of the first, second, and third months after commencing construction, and then every six months thereafter, for the remainder of the construction activities. Narratives are not required during periods of no activity within the impact areas.
2. As part of construction monitoring, photographs taken at the photo stations or the narrative shall document site activities and conditions, which may include installation and maintenance of erosion and sediment controls; surface water discharges from the site; condition of adjacent nonimpact surface waters; flagged nonimpact surface waters; construction access and staging

areas; filling, excavation, and dredging activities; culvert installation; dredge disposal; and site stabilization, grading, and associated restoration activities. With the exception of the preconstruction photographs, photographs at an individual impact site shall not be required until construction activities are initiated at that site. With the exception of the post-construction photographs, photographs at an individual impact site shall not be required once the site is stabilized following completion of construction at that site.

3. Each photograph shall be labeled to include the following information: permit number, impact area and photo station number, date and time of the photograph, name of the person taking the photograph, photograph orientation, and photograph subject description.
4. Monitoring of water quality parameters shall be conducted during permanent relocation of perennial streams through new channels in the manner noted below. The permittee shall report violations of water quality standards to DEQ in accordance with the procedures in Part II E. Corrective measures and additional monitoring may be required if water quality standards are not met. Reporting shall not be required if water quality standards are not violated.
 - a. A sampling station shall be located upstream and immediately downstream of the relocated channel.
 - b. Temperature, pH and dissolved oxygen (D.O.) measurements shall be taken every 30 minutes for at least two hours at each station prior to opening the new channels and immediately before opening new channels.
 - c. Temperature, pH and D.O. readings shall be taken after opening the channels and every 30 minutes for at least three hours at each station.

C. Wetland Compensation Site Monitoring

1. An as-built ground survey, or an aerial survey provided by a firm specializing in aerial surveys, shall be conducted for the entire compensation site or sites including invert elevations for all water elevation control structures and spot elevations throughout the site or sites. Aerial surveys shall include the variation from actual ground conditions, such as +/- 0.2 feet. Either type of survey shall be certified by a licensed surveyor or by a registered professional engineer to conform to the design plans. The survey shall be submitted within 60 days of completing compensation site construction. Changes or deviations in the as-built survey or aerial survey shall be shown on the survey and explained in writing.
2. Photographs shall be taken at the compensation site or sites from the permanent markers identified in the final compensation plan, and established to ensure that the same locations and view directions at the site or sites are monitored in each monitoring period. These photographs shall be taken after the initial planting and at a time specified in the final compensation plan during every monitoring year.
3. Compensation site monitoring shall begin on day one of the first complete growing season (monitoring year 1) after wetland compensation site construction activities, including planting, have been completed. Monitoring shall be required for monitoring years 1, 2, 3, and 5, unless

otherwise approved by DEQ. In all cases if all success criteria have not been met in the final monitoring year, then monitoring shall be required for each consecutive year until two annual sequential reports indicate that all criteria have been successfully satisfied.

4. The establishment of wetland hydrology shall be measured during the growing season, with the location and number of monitoring wells, and frequency of monitoring for each site, set forth in the final monitoring plan. Hydrology monitoring well data shall be accompanied by precipitation data, including rainfall amounts either from on site or from the closest weather station. Once the wetland hydrology success criteria have been satisfied for a particular monitoring year, monitoring may be discontinued for the remainder of that monitoring year following DEQ approval. After a period of three monitoring years, the permittee may request that hydrology monitoring be discontinued, providing that adequate hydrology has been established and maintained. Hydrology monitoring shall not be discontinued without written approval from DEQ.
5. The presence of hydric soils or soils under hydric conditions shall be evaluated in accordance with the final compensation plan.
6. The establishment of wetland vegetation shall be in accordance with the final compensation plan. Monitoring shall take place in August, September, or October during the growing season of each monitoring year, unless otherwise authorized in the monitoring plan.
7. The presence of undesirable plant species shall be documented.
8. All wetland compensation monitoring reports shall be submitted in accordance with 9 VAC 25-690-100 Part II E 6.

D. Stream Compensation, Restoration, and Monitoring

1. Riparian buffer restoration activities shall be detailed in the final compensation plan and shall include, as appropriate, the planting of a variety of native species currently growing in the site area, including appropriate seed mixtures and woody species that are bare root, balled, or burlapped. A minimum buffer width of 50 feet, measured from the top of the stream bank at bankfull elevation landward on both sides of the stream, shall be required where practical.
2. The installation of root wads, vanes, and other instream structures, shaping of the stream banks, and channel relocation shall be completed in the dry whenever practicable.
3. Livestock access to the stream and designated riparian buffer shall be limited to the greatest extent practicable.
4. Stream channel restoration activities shall be conducted in the dry or during low flow conditions. When site conditions prohibit access from the streambank, heavy equipment shall be authorized for use within the stream channel.
5. Photographs shall be taken at the compensation site from the vicinity of the permanent photo stations identified in the final compensation plan. The photograph orientation shall remain constant during all monitoring events. At a minimum, photographs shall be taken from the center

of the stream, facing downstream, with a sufficient number of photographs to view the entire length of the restoration site. Photographs shall document the completed restoration conditions. Photographs shall be taken prior to site activities, during instream and riparian compensation construction activities, within one week of completion of activities, and during at least one day of each monitoring year to depict restored conditions.

6. An as-built ground survey, or an aerial survey provided by a firm specializing in aerial surveys, shall be conducted for the entire compensation site or sites. Aerial surveys shall include the variation from actual ground conditions, such as +/- 0.2 feet. The survey shall be certified by the licensed surveyor or by a registered, professional engineer to conform to the design plans. The survey shall be submitted within 60 days of completing compensation site construction. Changes or deviations from the final compensation plans in the as-built survey or aerial survey shall be shown on the survey and explained in writing.
7. Compensation site monitoring shall begin on day one of the first complete growing season (monitoring year 1) after stream compensation site construction activities, including planting, have been completed. Monitoring shall be required for monitoring years 1 and 2, unless otherwise determined by DEQ. In all cases, if all success criteria have not been met in the final monitoring year, then monitoring shall be required for each consecutive year until two annual sequential reports indicate that all criteria have been successfully satisfied.
8. All stream compensation monitoring reports shall be submitted in accordance with 9 VAC 25-690-100 Part II E 6.

E. Reporting

1. Written communications required by this VWP general permit shall be submitted to the appropriate DEQ office. The VWP general permit authorization number shall be included on all correspondence.
2. DEQ shall be notified in writing at least 10 days prior to the start of construction activities at the first permitted site authorized by this VWP general permit authorization so that inspections of the project can be planned, if deemed necessary by DEQ. The notification shall include a projected schedule for initiation and completion of work at each permitted impact area.
3. Construction monitoring reports shall be submitted to DEQ no later than the 10th day of the month following the month in which the monitoring event specified in Part II B takes place, unless otherwise specified below. The reports shall include the following, as appropriate:
 - a. For each permitted impact area, a written narrative stating whether work was performed during the monitoring period, and if work was performed, a description of the work performed, when the work was initiated, and the expected date of completion.
 - b. Photographs labeled with the permit number, the photo station number, the photo orientation, the date and time of the photo, the name of the person taking the photograph, and a brief description of the construction activities. The first construction monitoring report shall include the photographs taken at each impact site prior to initiation of construction in a permitted

impact area. Written notification and photographs demonstrating that all temporarily disturbed wetland and stream areas have been restored in compliance with the permit conditions shall be submitted within 30 days of restoration. The post-construction photographs shall be submitted within 30 days of documenting post-construction conditions.

- c. Summary of activities conducted to comply with the permit conditions.
 - d. Summary of permit noncompliance events or problems encountered, subsequent notifications, and corrective actions.
 - e. Summary of anticipated work to be completed during the next monitoring period, and an estimated date of construction completion at all impact areas.
 - f. Labeled site map depicting all impact areas and photo stations.
4. DEQ shall be notified in writing within 30 days following the completion of all activities in all permitted impact areas authorized under this permit.
 5. DEQ shall be notified in writing at least 10 days prior to the initiation of activities at the compensation site. The notification shall include a projected schedule of activities and construction completion.
 6. All compensation monitoring reports shall be submitted annually by December 31, with the exception of the last year of authorization, in which case the report shall be submitted at least 60 days prior to expiration of authorization under the general permit.
 - a. All wetland compensation monitoring reports shall include, as applicable, the following:
 - (1) General description of the site including a site location map identifying photo stations, vegetative and soil monitoring stations, monitoring wells, and wetland zones.
 - (2) Summary of activities completed during the monitoring year, including alterations or maintenance conducted at the site.
 - (3) Description of monitoring methods.
 - (4) Analysis of all hydrology information, including monitoring well data, precipitation data, and gauging data from streams or other open water areas, as set forth in the final compensation plan.
 - (5) Evaluation of hydric soils or soils under hydric conditions, as appropriate.
 - (6) Analysis of all vegetative community information, including woody and herbaceous species, both planted and volunteers, as set forth in the final compensation plan.

- (7) Photographs labeled with the permit number, the name of the compensation site, the photo station number, the photograph orientation, the date and time of the photograph, the name of the person taking the photograph, and a brief description of the photograph subject. This information shall be provided as a separate attachment to each photograph, if necessary. Photographs taken after the initial planting shall be included in the first monitoring report after planting is complete.
 - (8) Discussion of wildlife or signs of wildlife observed at the compensation site.
 - (9) Comparison of site conditions from the previous monitoring year and reference site.
 - (10) Discussion of corrective measures or maintenance activities to control undesirable species, to repair damaged water control devices, or to replace damaged planted vegetation.
 - (11) Corrective action plan, which includes proposed actions, a schedule, and monitoring plan.
- b. All stream compensation monitoring reports shall include, as applicable, the following:
- (1) General description of the site including a site location map identifying photo stations and monitoring stations.
 - (2) Summary of activities completed during the monitoring year, including alterations or maintenance conducted at the site.
 - (3) Description of monitoring methods.
 - (4) An evaluation and discussion of the monitoring results in relation to the success criteria and overall goals of compensation.
 - (5) Photographs shall be labeled with the permit number, the name of the compensation site, the photo station number, the photograph orientation, the date and time of the photograph, the name of the person taking the photograph, and a brief description of the photograph subject. Photographs taken prior to compensation site construction activities, during instream and riparian restoration activities, and within one week of completion of activities shall be included in the first monitoring report.
 - (6) A discussion of alterations, maintenance, or major storm events resulting in significant change in stream profile or cross section, and corrective actions conducted at the stream compensation site.
 - (7) Documentation of undesirable plant species and summary of abatement and control measures.
 - (8) A summary of wildlife or signs of wildlife observed at the compensation site.

- (9) Comparison of site conditions from the previous monitoring year and reference site, and as-built survey, if applicable.
 - (10) A corrective action plan, which includes proposed actions, a schedule and monitoring plan.
 - (11) Additional submittals that were approved by DEQ in the final compensation plan.
7. The permittee shall notify DEQ in writing when unusual or potentially complex conditions are encountered which require debris removal or involve potentially toxic substance. Measures to remove the obstruction, material, or toxic substance or to change the location of a structure are prohibited until approved by DEQ.
 8. The permittee shall report fish kills or spills of oil or fuel immediately upon discovery. If spills or fish kills occur between the hours of 8:15 a.m. to 5 p.m., Monday through Friday, the appropriate DEQ regional office shall be notified; otherwise, the Department of Emergency Management shall be notified at 1-800-468-8892.
 9. Violations of state water quality standards shall be reported within 24 hours to the appropriate DEQ office.
 10. Submittals required by this VWP general permit shall contain the following signed certification statement:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violation."

PART III – CONDITIONS APPLICABLE TO ALL VWP GENERAL PERMITS

A. Duty to Comply

The permittee shall comply with all conditions of the VWP general permit. Nothing in this VWP general permit shall be construed to relieve the permittee of the duty to comply with all applicable federal and state statutes, regulations, and toxic standards and prohibitions. VWP general permit noncompliance is a violation of the Clean Water Act and State Water Control Law, and is grounds for enforcement action, VWP general permit authorization termination for cause, VWP general permit authorization revocation, or denial of a continuation of coverage request.

B. Duty to Mitigate

The permittee shall take all reasonable steps to minimize or prevent impacts in violation of the VWP general permit which may have a reasonable likelihood of adversely affecting human health or the environment.

C. Reopener

This VWP general permit authorization may be reopened to modify its conditions when the circumstances on which the previous VWP general permit authorization was based have materially and substantially changed, or special studies conducted by the board or the permittee show material and substantial change since the time the VWP general permit authorization was issued and thereby constitute cause for VWP general permit authorization revocation and reissuance.

D. Compliance with State and Federal Law

Compliance with this VWP general permit constitutes compliance with the VWP permit requirements of the State Water Control Law. Nothing in this VWP general permit shall be construed to preclude the institution of any legal action under or relieve the permittee from any responsibilities, liabilities, or other penalties established pursuant to any other state law or regulation or under the authority preserved by § 510 of the Clean Water Act.

E. Property Rights

The issuance of this VWP general permit does not convey property rights in either real or personal property, or exclusive privileges, nor does it authorize injury to private property or invasion of personal property rights, nor infringement of federal, state or local laws or regulations.

F. Severability

The provisions of this VWP general permit authorization are severable.

G. Right of Entry

The permittee shall allow the board or its agents, upon the presentation of credentials, at reasonable times and under reasonable circumstances to enter the permittee's property, public or private, and have access to, inspect and copy records that must be kept as part of the VWP general permit conditions; to inspect facilities, operations or practices (including monitoring and control equipment) regulated or required under the VWP general permit; and to sample or monitor any substance, parameter or activity for the purpose of assuring compliance with the conditions of the VWP general permit or as otherwise authorized by law. For the purpose of this section, the time for inspection shall be deemed reasonable during regular business hours. Nothing contained herein shall make an inspection time unreasonable during an emergency.

H. Transferability of VWP General Permit Authorization

This VWP general permit authorization may be transferred to another person by a permittee when all of the criteria listed below are met. On the date of the VWP general permit authorization transfer, the transferred VWP general permit authorization shall be as fully effective as if it had been issued directly to the new permittee.

1. The current permittee notifies the board of the transfer of the title to the facility or property.
2. The notice to the board includes a written agreement between the current and new permittees containing a specific date of transfer of VWP general permit authorization responsibility, coverage and liability to the new permittee, or that the current permittee will retain such responsibility, coverage or liability, including liability for compliance with the requirements of enforcement activities related to the permitted activity.
3. The board does not notify the current and new permittees of its intent to modify or revoke and reissue the VWP general permit authorization within 15 days.

I. Notice of Planned Change

Authorization under the VWP general permit may be modified subsequent to issuance in one or more of the cases listed below. A notice of planned change is not required if the project results in additional temporary impacts to surface waters, provided that DEQ is notified in writing, the additional temporary impacts are restored to preexisting conditions in accordance with Part I C 11 of this general permit, and the additional temporary impacts do not exceed the general permit threshold for use. The permittee shall notify the board in advance of the planned change, and the planned change request will be reviewed according to all provisions of this regulation.

1. The permittee determines that additional permanent wetland, open water, or stream impacts are necessary, provided that the additional impacts are associated with the previously authorized activities in authorized locations within the same phase of development, the cumulative increase in acreage of wetland or open water impacts is not greater than 1/4 acre, the cumulative increase in stream bed impacts is not greater than 100 linear feet, and the additional impacts are fully compensated.

2. The project results in less wetland or stream impacts, in which case, compensation requirements may be modified in relation to the adjusted impacts at the request of the permittee, provided that the adjusted compensation meets the initial authorization compensation goals.
3. There is a change in the project plans that does not result in a change in project impacts.
4. There is a change in the mitigation bank at which credits are purchased or used, provided that the same amount of credits are purchased or used and all criteria for use are met, as detailed in 9 VAC 25-210-116 E.
5. Typographical errors need to be corrected.

J. VWP General Permit Authorization Termination for Cause

This VWP general permit authorization is subject to termination for cause by the board after public notice and opportunity for a hearing. Reasons for termination for cause are as follows:

1. Noncompliance by the permittee with any condition of the VWP general permit authorization;
2. The permittee's failure in the application or during the VWP general permit authorization issuance process to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at any time;
3. The permittee's violation of a special or judicial order; and
4. A determination that the permitted activity endangers human health or the environment and can be regulated to acceptable levels by a VWP general permit authorization planned change or termination for cause.

K. VWP General Permit Authorization Termination by Consent

This VWP general permit authorization may be terminated by consent when all permitted activities requiring notification under 9 VAC 25-690-50 A and all compensatory mitigation have been completed or when the authorized impacts will not occur. The permittee shall submit a request for termination by consent within 30 days of project completion or project cancellation. When submitted for project completion, the termination by consent shall constitute a notice of completion in accordance with 9 VAC 25-210-130. The director may accept this termination of authorization on behalf of the board. The request for termination by consent shall contain the following information:

1. Name, mailing address and telephone number of the permittee;
2. Name and location of the activity;
3. The VWP permit authorization number; and
4. One of the following certifications:

a. For project completion:

"I certify under penalty of law that all activities and any required compensatory mitigation authorized by a VWP general permit have been completed. I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit, and that performing activities in surface waters is unlawful where the activity is not authorized by a VWP permit. I also understand that the submittal of this notice does not release me from liability for any violations of this VWP general permit authorization."

b. For project cancellation:

"I certify under penalty of law that the activities and any required compensatory mitigation authorized by this VWP general permit will not occur. I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit, and that performing activities in surface waters is unlawful where the activity is not authorized by a VWP permit. I also understand that the submittal of this notice does not release me from liability for any violations of this VWP general permit authorization, nor does it allow me to resume the permitted activities without reapplication and reauthorization."

c. For events beyond permittee control, the permittee shall provide a detailed explanation of the events, to be approved by DEQ, and the following certification statement:

"I certify under penalty of law that the activities or the required compensatory mitigation authorized by a VWP general permit have changed as the result of events beyond my control (see attached). I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit, and that performing activities in surface waters is unlawful where the activity is not authorized by a VWP permit. I also understand that the submittal of this notice does not release me from liability for any violations of this VWP general permit authorization, nor does it allow me to resume the permitted activities without reapplication and reauthorization."

L. Civil and Criminal Liability

Nothing in this VWP general permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

M. Oil and Hazardous Substance Liability

Nothing in this VWP general permit shall be construed to preclude the institution of legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under § 311 of the Clean Water Act or §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

N. Duty to Cease or Confine Activity

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the activity for which a VWP permit has been granted in order to maintain compliance with the conditions of the VWP permit.

O. Duty to Provide Information

1. The permittee shall furnish to the board any information which the board may request to determine whether cause exists for modifying, revoking and reissuing and terminating the VWP permit authorization, or to determine compliance with the VWP permit authorization. The permittee shall also furnish to the board, upon request, copies of records required to be kept by the permittee.
2. Plans, maps, conceptual reports and other relevant information shall be submitted as required by the board prior to commencing construction.

P. Monitoring and Records Requirements

1. Monitoring of parameters, other than pollutants, shall be conducted according to approved analytical methods as specified in the VWP permit. Analysis of pollutants will be conducted according to 40 CFR Part 136 (2000), Guidelines Establishing Test Procedures for the Analysis of Pollutants.
2. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
3. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart or electronic recordings for continuous monitoring instrumentation, copies of all reports required by the VWP permit, and records of all data used to complete the application for the VWP permit, for a period of at least three years from the date of the expiration of a granted VWP permit. This period may be extended by request of the board at any time.
4. Records of monitoring information shall include, as appropriate:
 - a. The date, exact place and time of sampling or measurements;
 - b. The name of the individuals who performed the sampling or measurements;
 - c. The date and time the analyses were performed;
 - d. The name of the individuals who performed the analyses;
 - e. The analytical techniques or methods supporting the information such as observations, readings, calculations and bench data used;

- f. The results of such analyses; and
- g. Chain of custody documentation.

Q. Unauthorized Discharge of Pollutants

Except in compliance with this VWP general permit, it shall be unlawful for the permittee to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances;
2. Excavate in a wetland;
3. Otherwise alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, to animal or aquatic life, to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses; or
4. On and after October 1, 2001, conduct the following activities in a wetland:
 - a. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions;
 - b. Filling or dumping;
 - c. Permanent flooding or impounding; or
 - d. New activities that cause significant alteration or degradation of existing wetland acreage or functions.

EXHIBIT L

Form of Transfer of Ownership of Wetlands Permit

[SEE ATTACHED]

2025 RELEASE UNDER E.O. 14176

Change in Ownership Agreement Form

RE: Change of Ownership : DEQ VWP General Permit No. WP4-08-0334
COE State Program General Permit No. 12-SPGP-01

Name of Permitted Facility: Nugget Joint Venture
Fairfax County, Virginia

TO: Commonwealth of Virginia
Department of Environmental Quality
13901 Crown Court
Woodbridge, Virginia 22193
Attn: Trisha Beasley

We, the undersigned, hereby request a transfer of ownership for the referenced permits.

Anticipated Date Of Transfer: _____

CURRENT APPLICANT: I (we) hereby agree to the transfer of ownership modification to the referenced U.S. Army Corps of Engineers (COE) Permit and Virginia Department of Environmental Quality (DEQ) Permit.

Current Applicant name as listed on the referenced COE and DEQ Permits:
Rocks Engineering Company

Signed: _____

Date: _____

Printed Name: Mr. Samuel A. Rocks

Title: _____

Address: 1960 Gallows Road, Suite 300

Vienna, Virginia 22182

NEW APPLICANT: I (we) hereby agree to the change of ownership modification to the referenced COE and DEQ Permits, and agree to accept all conditions and responsibilities of the permits.

Transferred Permits To Be Issued To:
Fairfax County Board of Supervisors

Signed: _____

Date: _____

Printed Name: Ms. Heather Diez

Title: Project Coordinator

Address: 12000 Government Center Parkway, Suite 444 Telephone: 703-324-5695

Fairfax, Virginia 22035