



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

CENAO-WRR STATE PROGRAMMATIC GENERAL PERMIT (SPGP)  
Piers, Aquaculture, Shoreline, Dredging, Other (PASDO)  
22-SPGP-PASDO

Effective Date: TBD

Expiration Date: TBD

I. **AUTHORITIES:**

- A. 22-SPGP-PASDO authorizes, by the Secretary of the Army and the Chief of Engineers, under Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 403) and under Section 404 of the Clean Water Act (CWA) (33 U.S.C. § 1344), certain pier, aquaculture, shoreline, dredging, and other (PASDO) activities in tidal or non-tidal waters of the United States (WOTUS), including wetlands, within the geographical limits of the Commonwealth of Virginia and under the regulatory jurisdiction of the U.S. Army Corps of Engineers, Norfolk District (Corps or Norfolk District). The Corps' authority and guidance to develop general permits is contained in 33 U.S.C. § 1344(e), 33 C.F.R. § 325.2(e)(2), 33 C.F.R. § 325.3(b), and Corps Regulatory Guidance Letter (RGL) 83-7.
- B. 22-SPGP-PASDO projects must have no more than minimal individual and cumulative impacts and must meet all the terms and conditions outlined herein.
- C. The use of 22-SPGP-PASDO is restricted to those projects that have avoided and minimized impacts to WOTUS, including wetlands, to the maximum extent practicable.

II. **PROCEDURES:**

- A. **APPLICATION:** The following information must be submitted as part of the 22-SPGP-PASDO permit application:
  - 1. A completed and signed Joint Permit Application (JPA). The applicant must utilize the most recent version, which is located on the Norfolk District Regulatory website.
  - 2. A JPA that is clearly marked 22-SPGP-PASDO.
  - 3. Non-commercial shellfish aquaculture projects that are eligible for authorization under the Virginia Marine Resources Commission (VMRC) General Permit #3 may use the abbreviated JPA, which can be accessed on the VMRC website.
  - 4. A compensatory mitigation plan for all projects where the permanent loss exceeds 0.1 acre of wetlands, and/or 0.03 acre of stream bed, or 300 linear feet of stream bed. *Stream channel loss must be reported in acres and linear feet.*

**B. PROCESSING:**

1. The VMRC will send the application link to the Corps for federal review and processing.
2. The Corps, VMRC, and Local Wetland Board (LWB) will review the application concurrently.
3. The VMRC and/or LWB are the agencies responsible for ensuring that the permit application is in compliance with Virginia code and regulations.
4. The Corps is the agency responsible for the federal review, and for ensuring that the permit application is complete and meets the informational and technical requirements for a 22-SPGP-PASDO verification.

**C. STATE APPROVALS:**

1. Prior to commencing work in WOTUS, and to meet the criteria of a 22-SPGP-PASDO verification, permittees must obtain authorization from the VMRC and/or a LWB by permit, rule, or regulation.
2. When required, permittees must also obtain a Department of Environmental Quality (DEQ) permit prior to commencing work in WOTUS.

**D. 22-SPGP-PASDO VERIFICATIONS:**

1. The Corps will issue all 22-SPGP-PASDO verifications with special conditions (if applicable).
2. The permittee is required to submit a new 22-SPGP-PASDO permit application when a permit verification has been issued AND changes have been made to the project, including but not limited to: changes to the purpose, impact totals, impact type, jurisdiction, proposed compensation, etc.

**E. EXCLUDED ACTIVITIES:**

1. A pier project verified under the 22-SPGP-PASDO does not imply that future dredging proposals will be approved by the Corps.

**III. DEFINITIONS:**

- A. Loss: WOTUS that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. The loss of stream bed includes the acres of stream bed that are permanently adversely affected by filling or excavation because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of WOTUS is a threshold measurement of the impact to jurisdictional waters, including wetlands, for determining whether a project may qualify for a 22-SPGP-PASDO; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset

losses of aquatic functions and services. WOTUS temporarily filled, flooded, excavated, or drained, but restored to pre-construction contours and elevations after construction, are not included in the measurement of loss of WOTUS. Impacts resulting from activities that do not require Corps authorization, such as activities eligible for exemptions under section 404(f) of the Clean Water Act, are not considered when calculating the loss of WOTUS.

- B. Permittee: The responsible party in receipt of the 22-SPGP-PASDO verification. The permittee will be the responsible party for complying with all 22-SPGP-PASDO general conditions and any additional special conditions required for each single and complete project.

#### **IV. AUTHORIZED ACTIVITIES:**

22-SPGP-PASDO Eligibility Criteria:

1. **The discharge must not cause the loss of greater than 1/2 acre of WOTUS (e.g., wetlands, open water, and stream channel). Stream channel loss must be reported in acres and linear feet.**
2. Activities are subject to Corps regulations.
3. Activities meet the general and special conditions of 22-SPGP-PASDO listed in this document and any special conditions required of each project-specific verification.
4. All required compensatory mitigation follows the Mitigation Rule [Corps-EPA Compensatory Mitigation for Losses of Aquatic Resources, dated April 10, 2008, 33 CFR 325 and 332/40 CFR 230].
5. All applicable federal reviews, listed in the general conditions of this document, have been completed.
6. All required state approvals have been received.

**22-SPGP-PASDO authorizes the following activities:**

##### **A. Piers:**

1. Private piers and mooring structures
2. Public and commercial piers and mooring structures

##### **B. Aquaculture Activities:**

1. Non-commercial oyster floats and bags authorized by VMRC GP#3 (non-reporting activity)
2. Aquaculture and mariculture authorized by VMRC rule
3. Other aquaculture and mariculture

##### **C. Shoreline Stabilization Activities:**

1. Living Shoreline Group 1: Non-structural activities that provide substrate necessary to support wetland vegetation and/or beach nourishment

2. Living Shoreline Group 2: Sill structures with tidal marsh and/or associated sandy fill material
3. Low breakwaters and associated sandy fill material
4. Bulkheads, revetments, and associated backfill and/or excavation
5. Groins, jetties, spurs and/or baffles, and associated sandy fill material

**D. Dredging Activities:**

1. Maintenance Dredging for Previously Authorized Projects
2. New Dredging

**E. Other Activities:**

1. Boat ramps and accessory structures
2. Mooring Buoys
3. Aids to Navigation
4. Osprey poles
5. Removal of abandoned vessels

**V. GENERAL CONDITIONS:**

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

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

people, goods, or services from a point of origin to a terminal point, which often involves multiple crossings of one or more waterbodies at separate and distant locations. The term “single and complete project” is defined as that portion of the total linear project proposed or accomplished by one owner/developer or partnership or other association of owners/developers that includes all crossings of a single water of the United States (i.e., a single waterbody) at a specific location. For linear projects crossing a single or multiple waterbodies several times at separate and distant locations, each crossing is considered a single and complete project for purposes of 22-SPGP-PASDO authorization. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately.

6. Independent utility: A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.
7. Multiple general permit authorizations: The 22-SPGP-PASDO may be combined with other Corps general permits (including Nationwide, Regional, or other programmatic general permits) if the impacts are considered cumulatively and do not exceed the acreage limit or linear footage limits of the 22-SPGP-PASDO.
8. Permit on-site: The permittee shall ensure that a copy of 22-SPGP-PASDO and the accompanying authorization letter are always at the work site. These copies must be made available to any regulatory representative upon request. Although the permittee may assign various aspects of the work to different contractors or sub-contractors, all contractors and sub-contractors shall be expected to comply with all conditions of any 22-SPGP-PASDO verification.
9. Historic properties:
  - a. No activity is authorized under the 22-SPGP-PASDO which may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.
  - b. Federal permittees: should follow their own procedures for complying with the requirements of section 106 of the NHPA (see 33 CFR 330.4(g)(1)). The federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation is not submitted, then additional consultation under section 106 may be necessary. The respective federal agency is responsible for fulfilling its obligation to comply with section 106.

- c. Non-federal permittees: must state which historic properties might have the potential to be affected by the proposed 22-SPGP-PASDO activity, or include a vicinity map indicating the location of the historic properties, or the potential for the presence of historic properties. Assistance regarding information on the location of, or potential for, the presence of historic properties can be sought from the State Historic Preservation Officer (SHPO), Tribal Historic Preservation Officer (THPO), or designated tribal representative, as appropriate, and the NHPA (see 33 CFR 330.4(g)). When reviewing permit applications, district engineers will comply with the current procedures for addressing the requirements of section 106 of the NHPA. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts commensurate with potential impacts, which may include background research, consultation, oral history interviews, sample field investigation, and/or field survey. Based on the information submitted in the permit application and these identification efforts, the district engineer shall determine whether the proposed SPGP-PASDO activity has the potential to cause effects on the historic properties. Section 106 consultation is not required when the district engineer determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). Section 106 consultation is required when the district engineer determines that the activity has the potential to cause effects on historic properties. The district engineer will conduct consultation with consulting parties identified under 36 CFR 800.2(c) when he or she makes any of the following effect determinations for the purposes of section 106 of the NHPA: no historic properties affected, no adverse effect, or adverse effect.
- d. Where the non-federal applicant has identified historic properties on which the proposed 22-SPGP-PASDO activity might have the potential to cause effects and has so notified the Corps, the non-federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects to historic properties or that NHPA section 106 consultation has been completed. If NHPA section 106 consultation is required, the district engineer will notify the non-federal applicant that he or she cannot begin the activity until section 106 consultation is completed.
- e. Prospective permittees should be aware that section 110k of the NHPA (54 U.S.C. 306113) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the

circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

- f. Discovery of previously unknown remains and artifacts. Permittees who discover any previously unknown historic, cultural, or archeological remains and artifacts while accomplishing the activity authorized by 22-SPGP-PASDO, must immediately notify the district engineer of what they have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal, and state coordination required to determine if the items or remains warrant a recovery.

**Non-federal permittees shall not begin work on the activity until Section 106 review and/or consultation has been completed AND they have received their 22-SPGP-PASDO verification.**

10. Tribal rights: No activity or its operation may impair reserved Tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.
11. Federal lands: Authorized activities shall not impinge upon the value of any National Wildlife Refuge, National Forest, National Park, or any other area administered by the United States Fish and Wildlife Service (USFWS), U.S. Forest Service, or National Park Service unless approval from the applicable land management agency is provided with the permit application.
12. Endangered species: No activity is authorized under any 22-SPGP-PASDO which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under any 22-SPGP-PASDO which “may affect” a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.

Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will review the documentation and determine whether it is sufficient to address ESA compliance for the 22-SPGP-PASDO activity, or whether additional ESA consultation is necessary.

**Non-federal permittees shall not begin work on the activity until Section 7 review and/or consultation has been completed AND they have received their 22-SPGP-PASDO verification.**

Authorization of an activity by a 22-SPGP-PASDO does not authorize the “take” of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit or a Biological Opinion with “incidental take” provisions) from the USFWS or the National Marine Fisheries Service (NMFS). The ESA prohibits any person subject to the jurisdiction of the United States to take a listed species, where “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word “harm” in the definition of “take” means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the USFWS and NMFS or their World Wide Web pages at <http://www.fws.gov/> or <http://www.fws.gov/ipac> and <http://www.noaa.gov/fisheries.html> respectively.

13. Migratory birds and bald and golden eagles: 22-SPGP-PASDO complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting the appropriate local office of the USFWS to determine what measures, if any, are necessary or appropriate to reduce adverse effects to migratory birds or eagles, including whether “incidental take” permits are necessary and available under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for a particular activity.
14. Wild and scenic rivers: Currently, there are no designated Wild and Scenic Rivers in Virginia. No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system, while the river is in an official study status, unless the appropriate federal agency with direct management responsibility for such river has determined, in writing, that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate federal land management agency in the area (e.g., National Park Service (NPS), U.S. Forest Service (USFS), Bureau of Land Management (BLM), and USFWS). Impacts that occur in these resource areas will require coordination with the appropriate Federal agency.
15. Navigation:
  - a. No activity may cause more than a minimal adverse effect on navigation.



- b. Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable WOTUS.
  - c. The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.
16. Floodplains: The activity must comply with applicable Federal Emergency Management Agency (FEMA) -approved state or local floodplain management requirements.
17. 408 certification: Under 33 USC 408, no activity may temporarily or permanently alter or make use of a U.S. Army Corps of Engineers civil works project unless reviewed and permitted by the Secretary of the Army. The Corps may grant this permission if the work does not impair the usefulness of the project and is not injurious to the public interest.
18. Environmental justice: Activities authorized under 22-SPGP-PASDO must comply with Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.
19. Federal liability: In issuing 22-SPGP-PASDO, the Federal government does not assume any liability for the following:
- a. damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
  - b. damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
  - c. damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by 22-SPGP-PASDO.
  - d. design or construction deficiencies associated with the permitted work.
  - e. damage claims associated with any future modification, suspension, or revocation of this permit.
20. Avoidance and minimization: Except as provided under section 404(b)(2), no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant

adverse environmental consequences. (40 CFR 230.10(a)-(d) Section 404 (b)(1) Guidelines).

21. Compensatory mitigation: Mitigation will generally be required for all projects where permanent loss exceeds 0.10 acre of wetlands, and/or 0.03 acre of stream bed, or 300 linear feet of stream bed. Stream channel loss must be reported in acres and linear feet.

a. WETLANDS and OPEN WATERS:

- i. All wetland mitigation will comply with the Mitigation Rule [Corps-EPA Compensatory Mitigation for Losses of Aquatic Resources, dated April 10, 2008, 33 CFR 325 and 332/40 CFR 230].
- ii. Wetland mitigation: will generally be required for all projects where the total permanent impacts exceed 1/10 acre.
- iii. Generally, the minimum required wetland mitigation ratios will be as follows:
  - 2.1 for forested wetlands
  - 1.5:1 for scrub/shrub wetlands
  - 1:1 for emergent wetlands
  - 0.5:1 for permanent loss of palustrine open waters
  - 1:1 for emergent wetlands
  - 1:1 for conversion of forested wetlands to emergent wetlands
- iv. On a case-by-case basis, additional compensatory mitigation may be required to ensure impacts are minimal
  - For permanent or temporary conversion of one wetland type to another
  - For wetland impacts totaling less than 1/10 acre
  - At mitigation ratios beyond the generally recommended ratios

b. STREAMS: mitigation will generally be required for all projects where the permanent loss exceeds 0.03 acre or 300 linear feet of stream bed. Stream channel loss must be reported in acres and linear feet.

- i. All stream mitigation will comply with the Mitigation Rule [Corps-EPA Compensatory Mitigation for Losses of Aquatic Resources, dated April 10, 2008, 33 CFR 325 and 332/40 CFR 230].
- ii. Minimum stream mitigation requirements will be determined using the current Corps and DEQ endorsed assessment methodology.
- iii. On a case-by-case basis, additional compensatory mitigation may be required to ensure impacts are minimal:
  - For stream mitigation requirements that exceed the assessment methodology recommendation.
  - For mitigation for impacts totaling less than 0.03 acre or 300 linear feet of stream bed may be required on a case-by-case basis to ensure impacts are minimal.

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

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

24. Sedimentation and erosion control: Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, and any work below the ordinary high-water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within WOTUS during periods of low-flow or no-flow.
25. Countersinking of pipes and culverts: Based on consultation with Virginia Department of Wildlife Resources (VDWR), the Corps has determined that fish and other aquatic organisms are most likely present in any nontidal stream being crossed, in the absence of site-specific evidence to the contrary. The following conditions will apply in nontidal waters:
- a. All pipes and culverts placed in streams will be countersunk at both the inlet and outlet ends, unless indicated otherwise by the Corps on a case-by-case basis (see below). Pipes that are 24" or less in diameter shall be countersunk 3" below the natural stream bottom. Pipes that are greater than 24" in diameter shall be countersunk 6" below the natural stream bottom. The countersinking requirement does not apply to bottomless pipes/culverts or pipe arches. All single pipes or culverts (with bottoms) shall be depressed (countersunk) below the natural streambed at both the inlet and outlet of the structure. In sets of multiple pipes or culverts (with bottoms) at least one pipe or culvert shall be depressed (countersunk) at both the inlet and outlet to convey low flows.
  - b. When countersinking culverts, permittees must ensure reestablishment of a surface water channel (within 15 days post construction) that allows for the movement of aquatic organisms and maintains the same hydrologic regime that

was present preconstruction (i.e., the depth of surface water through the permit area should match the upstream and downstream depths). This may require the addition of finer materials to choke the larger stone and/or placement of riprap to allow for a low flow channel.

c. The requirement to countersink does not apply to extensions of existing pipes or culverts that are not countersunk, or to maintenance of pipes/culverts that do not involve replacing the pipe/culvert (e.g., repairing cracks or adding material to prevent/correct scour).

d. Floodplain pipes: The requirement to countersink does not apply to pipes or culverts that are being placed above ordinary high water, such as those placed to allow for floodplain flows. The placement of pipes above ordinary high water is not jurisdictional (provided no fill is discharged into wetlands).

e. Hydraulic opening: Pipes should be adequately sized to allow for the passage of ordinary high water with the countersinking and invert restrictions taken into account.

f. Pipes on bedrock or above existing utility lines: Different procedures will be followed for pipes or culverts to be placed on bedrock or above existing buried utility lines where it is not practicable to relocate the lines, depending on whether the work is for replacement of an existing pipe/culvert or a new pipe/culvert:

i. Replacement of an existing pipe/culvert: Countersinking is not required provided the elevations of the inlet and outlet ends of the replacement pipe/culvert are no higher above the stream bottom than those of the existing pipe/culvert. Documentation (photographic or other evidence) must be maintained in the permittee's records showing the bedrock condition and the existing inlet and outlet elevations.

ii. A pipe/culvert is being placed in a new location: If the permittee determines that bedrock or an existing buried utility line that is not practicable to relocate prevents countersinking, he/she should evaluate the use of a bottomless pipe/culvert, bottomless utility vault, span (bridge), or other bottomless structure to cross the waterway, and also evaluate alternative locations for the new pipe/culvert that will allow for countersinking. If the permittee determines that neither a bottomless structure nor an alternative location is practicable, justification must be provided in the 22-SPGP-PASDO application. The permittee must provide documentation of measures evaluated to minimize disruption of the movement of aquatic life as well as documentation of the cost, engineering factors, and site conditions that prohibit countersinking the pipe/culvert. Options that must be considered include partial countersinking (such as less than 3" of countersinking, or countersinking of one end of the pipe), and constructing stone step pools, low rock weirs

downstream, or other measures to provide for the movement of aquatic organisms. The permit application must also include photographs documenting site conditions. NOTE: Blasting of stream bottoms through the use of explosives is not acceptable as a means of providing for countersinking of pipes on bedrock.

g. Pipes on steep terrain: Pipes being placed on steep terrain (slope of 5% or greater) must be countersunk in accordance with the conditions above and will in most cases be non-reporting. It is recommended that on slopes greater than 5%, a larger pipe than required be installed to allow for the passage of ordinary high water in order to increase the likelihood that natural velocities can be maintained. There may be situations where countersinking both the inlet and outlet may result in a slope in the pipe that results in flow velocities that cause excessive scour at the outlet and/or prohibit some fish movement. This type of situation could occur on the side of a mountain where falls and drop pools occur along a stream. Should this be the case, or should the permittee not want to countersink the pipe/culvert for other reasons, justification must be provided in the 22-SPGP-PASDO application. The permittee must provide documentation of measures evaluated to minimize disruption of the movement of aquatic life and documentation of the cost, engineering factors, and site conditions that prohibit countersinking the pipe/culvert. The permittee should design the pipe to be placed at a slope as steep as stream characteristics allow, countersink the inlet 3-6", and implement measures to minimize any disruption of fish movement. These measures can include constructing a stone step/pool structure, preferably using river rock/native stone rather than riprap, constructing low rock weirs to create a pool or pools, or other structures to allow for fish movements in both directions. Stone structures should be designed with sufficient-sized stone to prevent erosion or washout and should include keying-in as appropriate. These structures should be designed both to allow for fish passage and to minimize scour at the outlet. The quantities of fill discharged below ordinary high water necessary to comply with these requirements (i.e., the cubic yards of stone, riprap or other fill placed below the plane of ordinary high water) must be included in project totals.

h. Problems encountered during construction: When a pipe/culvert is being replaced, and the design calls for countersinking at both ends of the pipe/culvert, and during construction it is found that the streambed/banks are on bedrock, a utility line, or other documentable obstacle, then the permittee must stop work and contact the Corps (contact by telephone and/or email is acceptable). The permittee must provide the Corps with specific information concerning site conditions and limitations. The Corps will work with the permittee to determine an acceptable plan, taking into consideration the information provided by the permittee, but the permittee should recognize that the Corps could determine that the work will not qualify for a 22-SPGP-PASDO permit.

i. Emergency pipe replacements: In the case of an emergency situation, such as when a pipe/culvert washes out during a flood, a permittee is encouraged to countersink the replacement pipe at the time of replacement, in accordance with the conditions above. However, if conditions or timeframes do not allow for countersinking, then the pipe can be replaced as it was before the washout, but the permittee will have to replace and countersink the pipe/culvert and at a later time in accordance with the guidance above. In other words, the replacement of the washed-out pipe is viewed as a temporary repair, and a countersunk replacement should be made at the earliest possible date. The Corps must be notified of all pipes/culverts that are replaced without countersinking at the time that it occurs, even if it is an otherwise non-reporting activity, and must provide the permittee's planned schedule for installing a countersunk replacement (it is acceptable to submit such notification by email). The permittee should anticipate whether bedrock or steep terrain will limit countersinking, and if so, should follow the procedures outlined in (f) and/or (g) above.

26. Discharge of pollutants: All authorized activities involving any discharge of pollutants into WOTUS shall be consistent with applicable water quality standards, effluent limitations, standards of performance, prohibitions, and pretreatment standards and management practices established pursuant to the CWA (33 U.S.C. § 1251 et seq.) and applicable state and local laws.
27. Suitable material: No activity may use unsuitable material (e.g., trash, debris, car bodies, or asphalt). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).
28. Obstruction of high flows: Discharges of dredged or fill material must not permanently restrict or impede the passage of normal or expected high flows.
29. Aquatic life movements: No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species. If a bottomless culvert cannot be used, then the crossing should be designed and constructed to minimize adverse effects to aquatic life movements.
30. Spawning areas: Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.
31. Migratory bird breeding areas: Activities in WOTUS that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

32. Native trout: Designated Trout Waters, are defined by the Virginia State Water Control Board and the VDWR. The waters, occurring specifically within the mountains of Virginia, are within the following river basins:

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

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

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

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

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

33. Anadromous fish use areas: Authorizations associated with the 22-SPGP-PASDO shall not adversely affect spawning habitat or a migratory pathway for anadromous fish. Areas of anadromous fish use are indicated on the VDWR information system at: <https://services.dwr.virginia.gov/fwis/index.asp>.

If a project is located within an area documented as an anadromous fish use area (confirmed or potential), all in-stream work is prohibited from occurring between February 15 through June 30 of any given year or other time of year restriction (TOYR) specified by the VDWR and/or VMRC.

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

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



41. Special conditions: The Corps may impose other special conditions on a project verified pursuant to 22-SPGP-PASDO that are determined necessary to minimize adverse navigational and/or environmental effects or based on any other factor of the public interest. Failure to comply with all conditions of the authorization/verification, including special conditions, constitutes a permit violation and may subject the permittee, or his/her contractor, to criminal, civil, or administrative penalties and/or restoration.
42. False or incomplete information: In granting authorization pursuant to this permit, the Corps has relied upon information and data provided by the permittee. If, subsequent to notification by the Corps that a project qualifies for this permit, such information and data prove to be false or incomplete, the Corps may suspend or revoke authorization, in whole or in part, and/or the United States or Corps may institute appropriate legal proceedings.
43. Abandonment: If the permittee decides to abandon the activity authorized under 22-SPGP-PASDO, unless such abandonment is merely the transfer of property to a third party, they may be required to restore the area to the satisfaction of the Corps.
44. Transfer of verification: To transfer verification under 22-SPGP-PASDO, the transferee and permittee must supply the Corps with a written and signed, by all appropriate parties, request to make such a transfer. Such transfer is not effective until written approval has been granted by the Corps.
45. Binding effect. The provisions of the permit authorization shall be binding on any assignee or successor in interest of the original permittee.
46. Expiration of 22-SPGP-PASDO: Unless further suspended or revoked, the 22-SPGP-PASDO will be in effect until TBD.
  - a. Activities which have commenced (i.e., are under construction) or are under contract to commence construction in reliance upon 22-SPGP-PASDO will remain authorized provided the activity is completed within 12 months of the date of this 22-SPGP-PASDO's expiration of TBD, unless discretionary authority has been exercised on a case-by-case basis to modify, suspend, or revoke the authorization in accordance with 33 CFR 325.7(a-e). Activities qualifying for this extension that are not complete by TBD must apply for new general and/or individual Corps permit authorization.
  - b. Activities which have NOT commenced and are NOT under contract to commence construction by the TBD, expiration must apply for a new general and/or individual Corps permit authorization.

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