

Part I – Special Conditions

Authorized Activities and Permit Term

1. Authorized Activities

This permit authorizes the following impacts as indicated in the application dated December 27, 2006 and supplemental materials, revisions, and clarifications received through May 1, 2008, including the project drawings Sheets 1 to 15 entitled “Indigo Dunes Residential Community”, prepared by Kimley-Horn and Associates, Inc, dated November 7, 2006 and last revised on April 28, 2008, and Sheets 16 to 30 entitled “Indigo Dunes Waterfront Community”, prepared by Kimley-Horn and Associates, Inc., with an engineer’s date stamp of October 31, 2007.

1. The permanent impact of 0.46 acres of tidal emergent wetlands.
2. The permanent impact of 0.68 acres of tidal non-vegetated wetlands.
3. The permanent impact of 1.21 acres of nontidal emergent wetlands.
4. The permanent impact of 2.26 acres of open water (1.32 acres is nontidal and 0.94 acres is tidal).
5. The impact to 0.13 acres of Phragmites-dominated non-tidal wetlands to allow its enhancement to a salt marsh cordgrass tidal marsh.
6. The permanent impact to surface waters for the installation of the open-pile canoe/kayak pier and the two osprey nesting platforms.

In accepting this permit, the permittee expressly agrees that, should subsequent local government actions require reduced densities in this development, a revised development plan shall be submitted to DEQ for review and approval prior to finalizing the final plans for construction referenced in Part I.G.2 and initiating any of the above referenced impacts. Should DEQ determine that additional avoidance and minimization of surface water impacts are warranted, a modification of this permit may be required.

2. *Permit Term*

This permit is valid for **15 years** from the date of issuance. A new permit may be necessary for the continuance of the authorized activities or any permit requirement that has not been completed, including compensation provisions. The permit term, including any granted extensions, shall not exceed 15 years. The permittee shall notify DEQ in writing at least **120 calendar days** prior to the expiration of this permit if permit re-issuance is required.

Project Construction at Impact Site

3. *Standard Project Conditions*

1. The activities authorized by this permit shall be executed in such a manner that any impacts to stream beneficial uses are minimized. As defined in § 62.1-10(b) of the Code, "beneficial use" means both instream and offstream uses. Instream beneficial uses include, but are not limited to, the protection of fish and wildlife habitat, maintenance of waste assimilation, recreation, navigation, and cultural and aesthetic values. Offstream beneficial uses include, but are not limited to, domestic (including public water supply), agricultural, electric power generation, commercial, and industrial uses. Public water supply uses for human consumption shall be considered the highest priority.
2. No activity shall substantially disrupt the movement of aquatic life indigenous to the water body, including those species that normally migrate through the area, unless the primary purpose of the activity is to impound water.
3. At crossings of streams, pipes and culverts less or equal to 24 inches in diameter shall be countersunk a minimum of three inches, and pipes and culverts greater than 24 inches in diameter shall be countersunk a minimum of six inches to provide for the re-establishment of a natural stream bottom and to maintain a low flow channel. For multiple-celled culverts, only the bottoms of those cells situated below the limits of ordinary high water shall be countersunk. To the greatest extent practicable, other cells, pipes, or culverts shall be elevated to provide a natural distribution of flood flows. The requirement to countersink shall not apply to extensions or maintenance of existing culverts that are not countersunk, to floodplain culverts being placed above ordinary high water, to culverts being placed on bedrock, or to culverts required to be placed on slopes 5% or greater.
4. Flows downstream of the project area shall be maintained to protect all uses.
5. No activity shall cause more than minimal adverse effect on navigation, and no activity shall block more than half of the width of the stream at any given time.

6. The activity shall not impede the passage of normal or expected high flows, and any associated structure shall withstand expected high flows.
7. Continuous flow of perennial springs shall be maintained by the installation of spring boxes, French drains, or other similar structures.
8. Activities shall be conducted in accordance with any Time-of-Year restriction(s) as recommended by the Department of Game and Inland Fisheries or the Virginia Marine Resources Commission. The permittee shall retain a copy of the agency correspondence concerning the Time-of-Year restriction(s), or the lack thereof, for the duration of the construction phase of the project.
9. All excavation, dredging, or filling in surface waters shall be accomplished in a manner that minimizes bottom disturbance and turbidity. Turbidity levels downstream of the construction site shall not exceed turbidity levels upstream of the construction site at any time.
10. All in-stream activities shall be conducted during low-flow conditions whenever practicable.
11. All construction, construction access, and demolition activities associated with this project shall be accomplished in a manner that minimizes construction materials or waste materials from entering surface waters, unless authorized by this permit. Wet, excess, or waste concrete shall be prohibited from entering surface waters.
12. All fill material placed in surface waters shall be clean and free of contaminants in toxic concentrations or amounts in accordance with all applicable laws and regulations.
13. Stormwater runoff shall be prohibited from directly discharging into any surface waters. Best management practices (BMP) designed, installed, and maintained, as described in the Virginia Erosion and Sediment Control Handbook (Third Edition, 1992, or the most recent version in effect at the time of construction) and the Virginia Stormwater Management Handbook (First Edition, 1999, or the most recent version in effect at the time of construction), shall be deemed suitable treatment prior to discharge into surface waters. Installation of alternative practices not described in these references shall be submitted to DEQ for approval prior to beginning construction.
14. Measures shall be employed at all times to prevent and contain spills of fuels, lubricants, or other pollutants into surface waters.
15. Machinery or heavy equipment is authorized in temporarily impacted streams provided that it is placed on mats or geotextile fabric, or other suitable means are implemented to minimize soil disturbance to the maximum extent practical. Mats, fabrics, or other measures shall be removed as soon as the work is complete in the temporarily impacted

stream. Work shall be conducted in the dry or during low flow conditions, whenever possible.

16. Temporary disturbances to wetlands, stream channels, and/or stream banks during project construction activities shall be avoided and minimized to the maximum extent practicable. Any temporary impacts, not authorized in Part I.A, shall be reported to DEQ immediately.
17. All temporarily disturbed wetland areas shall be restored to preconstruction conditions within **30 calendar days** of completing work in each respective area, which shall include re-establishing pre-construction contours, and planting or seeding with appropriate wetland vegetation according to cover type (emergent, scrub/shrub, or forested), except for invasive species identified on DCR's Invasive Alien Plant Species of Virginia list. The permittee shall take all appropriate measures to promote and maintain the revegetation of temporarily disturbed surface waters through the **second year post-disturbance**.
18. All materials (including fill, construction debris, excavated materials, and woody materials, that are temporarily placed in wetlands, in stream channels, or on stream banks) shall be placed on mats or geotextile fabric, shall be immediately stabilized to prevent the material or leachate from entering surface waters, and shall be entirely removed within **30 calendar days** following completion of that construction activity. After removal, disturbed areas shall be returned to original contours, shall be stabilized, and shall be restored to the original vegetated state within **30 calendar days**. The permittee shall take all appropriate measures to promote and maintain the revegetation of temporarily disturbed surface waters through the **second year post-disturbance**.
19. Temporary in-stream construction features such as cofferdams shall be made of non-erodible materials.
20. Virginia Water Quality Standards shall not be violated in any surface waters as a result of the project activities.
21. Seeds used for all project and compensation activities shall conform to the Virginia Seed Law (Sections 3.1-262 Code of Virginia) and Virginia Seed Regulations (2 VAC 5-290-10 et. seq).
22. Erosion and sedimentation controls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992, or the most recent version in effect at the time of construction. These controls shall be placed prior to clearing and grading activities and shall be maintained in good working order, to minimize impacts to surface waters. These controls shall remain in place only until clearing and grading activities cease and these areas have been stabilized. DEQ may require additional controls if deemed necessary to prevent impacts to surface water resources.

23. All *non-impacted* wetlands within the project or right-of-way limits, and that are within fifty feet of any project activities, shall be clearly flagged, or demarcated with orange construction fencing, for the life of the construction activity within that area. Open water areas should be demarcated as practicable. The permittee shall notify all contractors and subcontractors that *no activities are to occur in these marked areas*.
24. All required notifications and submittals shall be submitted to the DEQ office stated below, to the attention of the VWP permit manager, unless directed in writing by DEQ subsequent to the issuance of this permit:

DEQ Tidewater Regional Office
Virginia Water Protection Program
5636 Southern Boulevard
Virginia Beach, Virginia 23462

25. All reports required by this permit and other information requested by DEQ shall be signed by the permittee or a person acting in the permittee's behalf, with the authority to bind the permittee. A person is a duly authorized representative only if *both* criteria below are met. If a representative authorization is no longer valid because of a change in responsibility for the overall operation of the facility, a new authorization shall be immediately submitted to DEQ.
 1. The authorization is made in writing by the permittee.
 2. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, superintendent, or position of equivalent responsibility. A duly authorized representative may thus be either a named individual or any individual occupying a named position.
26. All submittals 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 violations."
27. Any fish kills or spills of fuels or oils shall be reported to DEQ immediately upon discovery at 757-518-2177. If DEQ cannot be reached, the spill shall be reported to the

Virginia Department of Emergency Management (DEM) at 1-800-468-8892 or the National Response Center (NRC) at 1-800-424-8802.

28. DEQ shall be notified in writing within **24 hours or as soon as possible on the next business day** when potential environmentally threatening conditions are encountered which require debris removal or involve potentially toxic substances. Measures to remove the obstruction, material, or toxic substance or to change the location of any structure are prohibited until approved by DEQ.
29. The permittee shall notify the DEQ of any additional impacts (including any temporary impacts) to surface waters, including wetlands; and of any change to the type of surface water impacts associated with this project. Any additional impacts, modifications, or changes shall be subject to individual permit review and/or modification of this permit. Compensation may be required.

4. *Projects Involving Utilities*

1. All utility line work in surface waters shall be performed in a manner that minimizes disturbance in each area. Temporarily disturbed surface waters shall be restored in accordance with Part I.C.17 and C.18, unless otherwise authorized by this permit.
2. Material resulting from trench excavation may be temporarily sidecast into authorized wetland impact areas not to exceed a total of 90 calendar 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).

5. *Projects Involving Road Crossings*

1. Access roads authorized by this permit shall be constructed to minimize the adverse effects on surface waters to the maximum extent practicable and to follow as near as possible pre-construction contours and elevations.
2. Installation of pipes and road crossings shall occur in the dry via the implementation of cofferdams, sheetpiling, stream diversions or other similar structures.
3. Surface water bottom elevations at road crossings shall be measured at the inlet and outlet of the proposed structure and recorded prior to construction and within one week after the completion of construction to ensure that the design elevations were met. This information shall be submitted to DEQ with the construction monitoring report due after elevations are measured.

6. *Projects Involving Stormwater Management Structures*

1. Stormwater management facilities shall be installed in accordance with best management practices and watershed protection techniques (as per the Dept. of Conservation and Recreation's Stormwater Management Handbook, First Edition, 1999, or the most recent version in effect at the time of construction), such as vegetated buffers, siting considerations to minimize adverse effects to aquatic resources, and 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. The outfall and overflow structure shall be constructed and maintained to prevent downstream sediment deposition, erosion, or scour that may be associated with normal flow and any expected storm flows. Construction shall include the use of an appropriately sized riprap outlet protection apron at the outfall site.
3. Final design plans for the proposed wet stormwater pond shall be submitted to the DEQ prior to commencement of the associated wetland impacts. Maintenance excavation shall follow the approved maintenance plan, and shall not exceed the original contours of the facility as constructed.
4. Final design plans for any stormwater outfalls shall be provided to DEQ prior to commencement of the associated surface water impacts. Riprap aprons for all outfalls shall be designed in accordance with Virginia Erosion and Sediment Control Handbook, Third Edition, 1992, or the most recent version in effect at the time of construction.
5. Maintenance within stormwater management facilities will not require compensation provided that the maintenance is accomplished in designated maintenance areas as indicated in the stormwater management maintenance plan.
6. Draining of a stormwater management facility or other surface water shall be performed by a method that prevents downstream sediment deposition, erosion, or scour.
7. *Project Construction Monitoring and Submittals (Impact Site)*

Pre-Construction Monitoring

1. The permittee shall conduct photographic monitoring of pre-construction conditions in permitted permanent impact areas covered by this permit. Photographic monitoring shall be conducted by the following method:

Enumerated photo stations shall be established at each permitted impact area that shall be used for the duration of construction activities. The directional orientation of each photo station shall remain constant during all monitoring events. Photo stations

shall be sufficient to distinguish the boundaries between permitted impact areas and non-impact areas and any site stormwater discharges entering surface waters. Photo stations may be established via water craft or temporary floating structures. Each photograph taken shall be labeled with the permit number, the permitted impact area, 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.

Pre-Construction Submittals

2. Final plans for project construction activities associated with development authorized by this permit shall be submitted **30 calendar days** prior to initiating any land disturbance or construction in permitted impact areas in each identified development phase. These plans shall clearly depict all proposed surface water impacts, including temporary impacts. For any proposed temporary impacts to surface waters, a justification and description of the proposed impacts shall also be provided. Construction activities shall not be initiated until DEQ has both reviewed and commented on the plans, or until **30 calendar days** have passed, during which time no DEQ comments were received regarding the plan. In the event DEQ submits comments on the final plans, construction shall not proceed until comments are resolved to DEQ's satisfaction.
3. Construction shall be performed in accordance with the final construction plans submitted to DEQ, which shall be in compliance with the permit. Final construction plans shall include the location and orientation of all photo monitoring stations. Any changes to the final plans for permitted areas shall be submitted to DEQ immediately upon determination that changes are necessary. DEQ approval shall be required prior to implementing the changes.
4. The permittee shall submit written notification at least **ten calendar days** prior to the initiation of land disturbance or construction activities in permitted areas. The notification shall include a projected schedule for initiating and completing work at each permitted impact area.

Monitoring During Construction

5. The permittee shall conduct photographic monitoring of construction activities to document that the permitted activities are in compliance with permit conditions, and to document any events that are not in compliance with the construction-related permit conditions. Monitoring shall document all site stormwater discharges into surface waters and adjacent non-impacted surface waters. The permittee shall use the same photo method and location that was used for pre-construction monitoring.

5. Photographic monitoring during activities in each permitted impact area shall be required during **each semi-annual period**.
5. Construction photographic data shall be submitted with construction monitoring reports as detailed in special condition G.8.

Construction Monitoring Reports

8. Construction Monitoring Reports shall be submitted to DEQ **twice a year**. These reports shall be submitted by the **10th calendar day** of the month following each six-month period (i.e. July 10th and January 10th). The reports shall include the following, as appropriate:
 1. A written narrative stating whether or not work was performed during the monitoring period in each permitted impact area. If work was performed, the narrative shall include a description of the work performed, when the work was initiated, and the expected date of completion.
 2. A summary of activities conducted to comply with the permit conditions, including items associated with meeting specific permit conditions and a description of erosion and sediment controls used to protect water quality and any maintenance performed on the controls.
 3. A written summary, including photographs, of non-compliance events or problems encountered, any corrective actions taken, and any subsequent notifications to DEQ.
 4. A summary of anticipated work to be completed during the next reporting period, and an estimated date of construction completion at all permitted impact areas.
 5. A labeled site map depicting all permitted impact areas and photo stations.
 6. Properly labeled photographs, including those documenting the completed restoration of temporarily disturbed surface waters. The first construction monitoring report shall also include the photographs taken at each permitted impact area prior to initiation of land disturbance or construction activities in that area.

Post-Construction Monitoring

9. The permittee shall conduct photographic monitoring of all permitted impact areas upon completion of construction and stabilization of the area. The permittee shall use the same photo method and location that was used for pre-construction monitoring.

Post-Construction Submittals

10. Post-construction photographs of permitted impact areas shall be submitted within **30 calendar days** of completing **work in each permitted area**.
11. The permittee shall submit an annual photograph, through the **second year** post-disturbance, documenting the conditions at each temporarily disturbed surface water area.
11. The permittee shall submit written notification within **30 calendar days** after the completion of all activities in all permitted impact areas authorized under this permit.

Compensation for Surface Water Impacts

8. *On/Off Site Creation, Restoration, and/or Preservation Compensatory Mitigation*
 1. To provide compensation for 2.35 acres of authorized tidal and nontidal wetland impacts and 0.75 acres of tidal open water impacts, the permittee shall create 6.18 acres of vegetated tidal wetlands from on-site upland areas. A conceptual design for this creation has been provided in the application; however, a final compensation plan must be approved by DEQ. The compensation site shall be preserved in perpetuity as described in final compensation plan and special condition J.4.1 of this permit.
9. *On/Off Site Creation, Restoration, and/or Preservation Standard Conditions*
 1. The permittee is responsible for meeting all of the components of the compensatory mitigation requirements associated with this permit. This responsibility can only be transferred if and when the permit is transferred to another party and then only to the new permit recipient.
 2. The final wetland/open water compensation plan (final compensation plan), as prepared in accordance with special condition J.4 of this permit, shall be approved by DEQ prior to any construction activity in permitted impact areas. DEQ shall have **60 calendar days** to review and either provide written comments to the permittee or approve the final compensation plan. The final compensation plan as approved by DEQ shall be an enforceable requirement of this permit. Any change to the approved final compensation plan must be submitted to DEQ for approval prior to implementing the change.
 3. Compensation site construction shall occur prior to or concurrently with authorized project impacts and as specified in the DEQ-approved final compensation plan.
 4. Planting of woody plants shall occur when vegetation is normally dormant unless otherwise approved in the final compensation plan.

5. Vegetation shall be native species common to the area and shall be suitable for growth in local wetland and/or riparian conditions.
 6. All vegetation removal for control purposes shall be done by manual means, unless authorized by DEQ in advance. Herbicides or algicides shall not be used in or immediately adjacent to compensation areas except as authorized by DEQ.
 7. Point sources of stormwater runoff shall be prohibited from entering any compensation site prior to treatment by appropriate best management practices (BMPs) that are designed, installed, and maintained as described in the Virginia Erosion and Sediment Control Handbook (Third Edition, 1992, or the most recent version in effect at the time of construction) and the Virginia Stormwater Management Handbook (First Edition, 1999, or the most recent version in effect at the time of construction). Appropriate best management practices may include sediment traps, grassed waterways, vegetated filter strips, debris screens, oil and grease separators, and forebays. Installation of alternative practices not described in these references shall be submitted to DEQ for approval prior to beginning construction.
 8. All *non-impacted surface waters* and designated upland buffers that are within the compensation site limits, and that are within fifty feet of any compensation site activities, shall be clearly flagged or demarcated for the life of the activity within that area. Open water areas should be demarcated as practicable. The permittee shall notify all contractors and subcontractors that *no activities are to occur within these marked areas*.
10. *Wetland Compensation Site Construction Tasks, Monitoring, and Submittals*

Pre-Construction Tasks

1. The permittee shall conduct photographic documentation of pre-construction conditions at the wetland/open water compensation site (compensation site). Photographic documentation shall be conducted by the following method:
 - Photographs shall be taken at a height of approximately five to six feet and from fixed-point stations. Photographs shall be taken in each of the four cardinal directions (north, east, south, and west). Permanent markers shall be established to ensure that the same locations on the site are used for future monitoring events. Each photograph taken 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. This information shall be provided as a separate attachment to each photograph, if necessary.
2. Photographs of existing conditions shall be taken prior to the commencing activities at the compensation site. Photographs at the compensation site shall not be required until land disturbance or construction activities are initiated on the compensation site.

Pre-Construction Submittals

3. DEQ shall be notified in writing at least **ten calendar days** prior to the initiation of activities at the compensation site. The notification shall include a projected schedule of activities and construction completion.
3. The permittee shall submit a final compensation plan, which shall include, at a minimum, the following information:
 1. The goals and objectives of the plan, including but not limited to classification of the existing wetlands being impacted, how the compensation is replacing/enhancing/preserving wetland functions and values, the components of the compensation expressed in acres, the proposed vegetation types, and the wetland classification;
 2. The schedule for compensation site construction, including projected start date, sequence of events with projected dates, and projected completion date;
 3. A location map, including the compensation site boundaries, the latitude and longitude (to the nearest second) at the center of the compensation site, and the watershed name and the 8-digit Hydrologic Unit Code in which the compensation site is located;
 4. Design of water control structures;
 5. Any collectible information on reference wetlands adjacent to or near the compensation site;
 6. Grading and erosion and sediment control plans;
 7. A planting scheme and schedule, including but not limited to, suggested plant species, zonation, and acreage of each vegetation type proposed;
 8. A soil preparation and amendment plan addressing both topsoil and subsoil conditions;
 9. A surrounding land use and access plan for the compensation site;
10. A success criteria monitoring plan including:
 1. the monitoring design and methodologies being used to evaluate the success of the proposed compensation site;
 2. the monitoring and reporting schedule;
 3. the proposed success criteria for the compensation measures, including discussion of structures and features necessary for the success of the compensation site;

4. sketch(es) depicting the location of photo stations, vegetation sampling points, and reference wetlands (if available);
 5. corrective action and/or contingency plan to address compensation site problems, deficiencies, or unexpected events;
11. A monitoring and control plan for undesirable plant species: the plan shall apply, at a minimum, to the species listed on DCR's Invasive Alien Plant Species of Virginia list; shall include the procedures to notify DEQ of any undesirable plant species occurrences, the methods to be used for removal and control, and the method of reporting the control results to DEQ; and shall be implemented whenever an invasive species, either individually or cumulatively, becomes a dominant species in any wetland compensation site;
12. Proposed deed restriction language for protecting the compensation site, including all surface waters and upland areas that are to be preserved in perpetuity within the compensation site boundary. Protection of the compensation site shall be documented as follows:
- (1) The protected areas shall be surveyed or platted within **120 calendar days** of final compensation plan approval by DEQ. The final survey or plat shall be certified by a professional engineer or licensed land surveyor and shall be submitted to DEQ for review. DEQ shall have **15 calendar days** to review the survey or plat to verify that the protected areas are the same as those presented in the final compensation plan.
 - (2) The protective instrument shall be written so that no activity will be performed on the property in any area designated as a compensation site or non-impacted surface water, with the exception of maintenance or corrective action measures authorized by DEQ. Unless otherwise authorized by DEQ, the restrictions apply to ditching, land clearing, or the discharge of dredge or fill material. The protective instrument restrictions shall contain the phrase "ditching, land clearing, or discharge of dredge or fill material" in the limitations placed on the use of these areas. The instrument shall also include specialized language contained in the U.S. Army Corps of Engineers permit related to possible future piers across the compensation area. The protective instrument shall be submitted to DEQ for review and approval prior to recordation.
 3. The protective instrument shall be recorded in the chain-of-title to the property on which the compensation site exists. Proof of recordation shall be submitted to DEQ within **60 calendar days**, following DEQ's review and confirmation of the surveyed or platted compensation site.

Monitoring During Construction

5. Photographic monitoring of compensation site construction shall be required at the end of each month and at the end of compensation site construction.
5. Photographic monitoring shall be conducted by the same method outlined in Part.I.J.1.

Submittals for Construction Monitoring

5. Compensation site construction monitoring reports shall be submitted within **30 calendar days** of each monitoring event. The reports shall include the following, as appropriate:
 1. A summary of construction progress, including any problems encountered and the proposed corrective actions or the DEQ-approved corrective actions taken.
 2. Properly labeled photographs as detailed in Part I.J.1. The first construction monitoring report shall include the photographs taken at the compensation site prior to initiation of land disturbance or construction activities at the compensation site.
 8. After the compensation site reaches final grades, but prior to planting, the permittee shall submit a post-grading survey to DEQ. The survey shall be conducted by a licensed land surveyor and certified by a licensed surveyor, licensed professional engineer, or licensed landscape architect. The survey shall document spot elevations within the compensation areas and adjacent reference wetland areas that are within +/- 0.2 feet of the elevations indicated in the site construction grading plan. Post-grading elevations for the compensation site shall be sufficient to ensure that wetland hydrology will be achieved on the site to support the goals and objectives of the approved final compensation plan. DEQ shall have **30 calendar days** to review the survey and provide comments to the permittee.

Monitoring for Success Criteria After Construction

9. Success monitoring of the on-site compensation areas shall begin at the first complete growing season (monitoring year one) following compensation site construction; shall be conducted annually as stipulated in the approved final compensation plan; and shall continue for no less than four additional years (through monitoring year five) as specified in the approved final compensation plan.
10. If all success criteria have not been met by **November 30th** of the last monitoring year specified in the approved final compensation plan, or if visual observations conclude that the site has not met the overall restoration goals, corrective actions shall be implemented in accordance with the DEQ-approved corrective action plan. Annual monitoring shall continue until two sequential, annual reports indicate that all criteria have been successfully satisfied (e.g., that corrective actions were successful) and the compensation site has met the overall restoration goals. The permittee shall be solely

responsible for ensuring that all necessary corrective actions are implemented so that the compensation site meets the success criteria, as detailed in the final compensation plan. Should any significant changes to the compensation site be necessary, the first full growing season after the changes are complete shall become the new monitoring year one. Monitoring shall continue in accordance with the DEQ-approved corrective action plan.

11. Photographic documentation during success monitoring shall be conducted in accordance with the final compensation plan approved by DEQ.
12. Wetland vegetation monitoring shall be conducted in accordance with the final compensation plan approved by DEQ. Undesirable plant species shall be identified and controlled as described in the monitoring and control plan for undesirable plant species, such that they are not dominant species or do not change the desired community structure.
13. Wildlife data collection shall be conducted in accordance with the final compensation plan approved by DEQ.
14. At the completion of each monitoring year, a calculation of the acreage of each wetland type shall be made and shall be based upon that monitoring year's vegetation data. The acreage calculation shall be shown on the most recent version of the compensation site design plan sheet(s) and shall be submitted with that year's monitoring report.
15. Within **60 calendar days** of the completion of the entire monitoring cycle, including any time extensions for corrective action, a wetland boundary survey shall be conducted by a licensed land surveyor or a licensed professional engineer, and shall be based upon the results of monitoring data for vegetation. A calculation shall be made of the total acreage of each wetland type. The boundary and acreage per wetland type shall be shown on the most recent version of the compensation site design plan sheet(s).

Submittals for Success Criteria Monitoring

16. Wetland compensation site monitoring reports shall be submitted by **December 31st** of the years in which a monitoring report is required, including the final monitoring year, as identified in the approved final compensation plan. The reports shall include the following, at a minimum:
 1. A general description of the compensation site including a site location map identifying photo stations, vegetative and soil monitoring stations, monitoring wells (if applicable), and wetland zones;
 2. Summary of activities completed during the monitoring year;

3. Description of monitoring methods;
4. An analysis of all vegetative community information, including woody and herbaceous species, both planted and volunteers, set forth in the final compensation plan;
5. Discussion of wildlife or signs of wildlife observed at the compensation site;
6. Properly labeled photographs;
7. Comparison of site conditions from the previous monitoring year and/or reference site;
8. The acreage calculation, shown on the most recent version of the compensation site design plan sheet(s);
9. A corrective action plan, if necessary, which shall include any proposed actions or maintenance activities, a schedule, and a monitoring plan (e.g., the control of undesirable species, the repair of a damaged water control device, the replacement of damaged, planted vegetation, etc.);

17. *For final monitoring year only*, the report shall include all items in Part I.J.16 and the most recent version of the compensation site design plan sheet(s) depicting the final wetland boundary and area calculations, as detailed in Part I.J.15.

On-Site Resource Protections

L. On-Site Preservation and Other Protections

1. The permittee shall preserve in perpetuity, via deed restriction or conservation easement, all non-impacted surface waters on site as depicted on the project drawings referenced in Part I.A of this permit.
2. All preservation areas shall be surveyed or platted and the final survey or plat shall be certified by a professional engineer or licensed land surveyor and shall be submitted to DEQ for review. DEQ shall have **15 calendar days** to review the surveys or plats to verify that the protected areas are the same as those presented in application.
3. The final instruments for preservation of all non-impacted surface waters shall be submitted to the DEQ for review and approval. This submittal, and subsequent proof of recordation of these approved final instruments, shall be submitted to DEQ prior to commencement of any project construction activities. The restrictive language shall allow for activities in these surface waters that are authorized by this permit.

4. The permittee shall consult with and abide by recommendations from the Virginia Institute of Marine Science and the Virginia Marine Resources Commission related to the design and construction of the proposed oyster bars.