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## Detroit District

### Reissuance of Nationwide Permits and Final Regional Conditions in Michigan

On January 8, 2026, the U.S. Army Corps of Engineers (Corps) published a final action in the *Federal Register* (91 FR 768) announcing the reissuance of 56 existing nationwide permits (NWP) and one new NWP, as well as the reissuance of NWP general conditions and definitions with some modifications. The following 57 NWP will go into effect on March 15, 2026, and will expire on March 15, 2031:

1. Aids to Navigation
2. Structures in Artificial Canals
3. Maintenance
4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
5. Scientific Measurement Devices
6. Survey Activities
7. Outfall Structures and Associated Intake Structures
8. Oil and Gas Structures on the Outer Continental Shelf
9. Structures in Fleeting and Anchorage Areas
10. Mooring Buoys
11. Temporary Recreational Structures
12. Oil or Natural Gas Pipeline Activities
13. Bank Stabilization
14. Linear Transportation Projects
15. U.S. Coast Guard Approved Bridges
16. Return Water From Upland Contained Disposal Areas
17. Hydropower Projects
18. Minor Discharges
19. Minor Dredging
20. Response Operations for Oil or Hazardous Substances
21. Surface Coal Mining Activities
22. Removal of Vessels
23. Approved Categorical Exclusions
24. Indian Tribe or State Administered Section 404 Programs
25. Structural Discharges
26. [Reserved]
27. Aquatic Ecosystem Restoration, Enhancement and Establishment Activities
28. Modifications of Existing Marinas

29. Residential Developments
30. Moist Soil Management for Wildlife
31. Maintenance of Existing Flood Control Facilities
32. Completed Enforcement Actions
33. Temporary Construction, Access, and Dewatering
34. Cranberry Production Activities
35. Maintenance Dredging of Existing Basins
36. Boat Ramps
37. Emergency Watershed Protection and Rehabilitation
38. Cleanup of Hazardous and Toxic Waste
39. Commercial and Institutional Developments
40. Agricultural Activities
41. Reshaping Existing Drainage Ditches
42. Recreational Facilities
43. Stormwater Management Facilities
44. Mining Activities
45. Repair of Uplands Damaged by Discrete Events
46. Discharges in Ditches
47. [Reserved]
48. Commercial Shellfish Mariculture Activities
49. Coal Remining Activities
50. Underground Coal Mining Activities
51. Land-Based Renewable Energy Generation Facilities
52. Water-Based Renewable Energy Generation Pilot Projects
53. Removal of Low-Head Dams
54. Living Shorelines
55. Seaweed Mariculture Activities
56. [Reserved]
57. Electric Utility Line and Telecommunications Activities
58. Utility Line Activities for Water and Other Substances
59. Water Reclamation and Reuse Facilities
60. Activities to Improve Passage of Fish and Other Aquatic Organisms

The 2021/22 versions of the NWP listed above expire on March 14, 2026. The NWP general conditions and definitions that were issued in the final action published in the January 8, 2026 issue of the *Federal Register* (91 FR 768) apply to these 56 reissued NWPs and to the new NWP 60. The general conditions are included in this public notice for your convenience. The January 8, 2026, *Federal Register* notice is available for viewing at: <https://www.federalregister.gov/documents/2026/01/08/2026-00121/reissuance-and-modification-of-nationwide-permits>

As an alternative, interested parties can access the January 8, 2026, final action and related documents at: <https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Nationwide-Permits/>

In addition, regional conditions for the State of Michigan were developed which will provide additional protection for the aquatic environment by ensuring that the NWP's authorize only those activities with minimal adverse effects on the aquatic environment. Regional conditions will help ensure protection of high value waters within Michigan. NWP's 8, 48, and 55 are not applicable in Michigan as they only authorize work located in marine waters. NWP's 2, 21, 44, 49, 50, and 52 were revoked in Michigan because the district was unable to determine if the work allowed under these permits would result in no more than minimal individual and cumulative adverse impacts to the aquatic environment. NWP's 1, 3, 4, 6, 9, 11, 13, 15, 16, 17, 19, 20, 22, 23, 24, 25, 27, 28, 30, 31, 32, 33, 34, 35, 36, 37, 38, 40, 45, 46, 51, 54, 59, and 60 were issued without additional regional conditions. NWP's 5, 7, 10, 12, 14, 18, 29, 39, 41, 42, 43, 53, 57, and 58 were issued with additional District regional conditions.

Three different agencies are responsible for Clean Water Act Section 401 Water Quality Certification (WQC) in their respective parts of Michigan. The State of Michigan's Department of Environment, Great Lakes and Energy (EGLE) administers WQC on non-tribal lands in Michigan. EGLE is also responsible for administering the State of Michigan's Coastal Zone Management Act (CZMA). EGLE developed WQC and CZMA General Conditions (see Section C) that apply to all of the NWP's. In addition, EGLE applied specific conditions to some of the individual NWP's (see Section A).

The U.S. Environmental Protection Agency (EPA) administers WQC for lands within Isle Royale National Park and on all Federally recognized tribal lands except for the Keweenaw Bay Indian Community (KBIC) tribal lands. The KBIC administers WQC on their tribal lands. In response to the June 18, 2025 Federal Register Notice and the Detroit District's June 18, 2025 Public Notice, the three agencies made determinations regarding WQC and CZMA consistency as shown in Section A.

Attached is the text of the NWP's and regional conditions applicable to specific NWP's in Michigan (Section A), the Detroit District regional conditions applicable to all NWP's in Michigan (Section B), the EGLE regional conditions applicable to all NWP's for WQC /CZMA consistency (Section C), the EPA conditions for WQC on all tribal lands except for KBIC land (Section D), the General Conditions (Section E), and Further Information (Section F).

If you have questions concerning regional conditions or NWP's, please contact Lucas Shea at [lucas.p.shea@usace.army.mil](mailto:lucas.p.shea@usace.army.mil). If additional information is needed about permit requirements, please contact the Regulatory Branch of the Detroit District, as provided at the following link: <https://www.lrd.usace.army.mil/detroit/>.

Shane M. McCoy  
Chief, Regulatory Branch  
Operations Division

**A. Nationwide Permits and regional conditions applicable to specific NWP:**

**1. Aids to Navigation.** The placement of aids to navigation and regulatory markers that are approved by and installed in accordance with the requirements of the U.S. Coast Guard (see 33 CFR, chapter I, subchapter C, part 66). (Authority: Section 10 of the Rivers and Harbors Act of 1899 (Section 10))

*Detroit District NWP 1 Regional Conditions: The Detroit District has not added any regional conditions specific to NWP 1.*

*EGLE Water Quality Certification/CZMA consistency for NWP 1: EGLE granted certification/consistency subject to General Conditions.*

*EPA Water Quality Certification for Isle Royal National Park and all tribal lands except for KBIC tribal lands for NWP 1: Applicant must contact EPA to determine whether the proposed work may result in a discharge and seek CWA Section 401 WQC from EPA prior to commencing the activity, if needed.*

*Water Quality Certification on KBIC tribal lands for NWP 1: KBIC denied certification.*

**2. Structures in Artificial Canals.** Structures constructed in artificial canals within principally residential developments where the connection of the canal to a navigable water of the United States has been previously authorized (see 33 CFR 322.5(g)). (Authority: Section 10)

*The Detroit District has revoked NWP 2.*

**3. Maintenance.** (a) The repair, rehabilitation, or replacement of any previously authorized, currently serviceable structure or fill, or of any currently serviceable structure or fill authorized by 33 CFR 330.3, provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit or the most recently authorized modification. Minor deviations in the structure's configuration or filled area, including those due to changes in materials, construction techniques, requirements of other regulatory agencies, or current construction codes or safety standards that are necessary to make the repair, rehabilitation, or replacement are authorized. This NWP also authorizes the removal of previously authorized structures or fills. Any stream channel modification is limited to the minimum necessary for the repair, rehabilitation, or replacement of the structure or fill; such modifications, including the removal of material from the stream channel, must be immediately adjacent to the project. This NWP also authorizes the removal of accumulated sediment and debris within, and in the immediate vicinity of, the structure or fill. This NWP also authorizes the repair, rehabilitation, or replacement of those structures or fills destroyed or damaged by storms, floods, fire or other discrete events, provided the repair, rehabilitation, or replacement is commenced, or is under contract to commence, within two years of the date of their destruction or damage. In cases of catastrophic events, such as hurricanes or tornadoes, this two-year limit may be waived by the district engineer, provided the permittee can demonstrate funding, contract, or other similar delays.

(b) This NWP also authorizes the removal of accumulated sediments and debris outside the immediate vicinity of existing structures (e.g., bridges, culverted road crossings, water intake structures, etc.). The removal of sediment is limited to the minimum necessary to restore the waterway in the vicinity of the structure to the approximate dimensions that existed when the structure was built, but cannot extend farther than 200 feet in any direction from the structure. This 200 foot limit does not apply to maintenance dredging to remove accumulated sediments blocking or restricting outfall and intake structures or to maintenance dredging to remove accumulated sediments from canals associated with outfall and intake structures. All dredged or excavated materials must be

deposited and retained in an area that has no waters of the United States unless otherwise specifically approved by the district engineer under separate authorization.

(c) This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to conduct the maintenance activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges of dredged or fill material, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. After conducting the maintenance activity, temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

(d) This NWP does not authorize maintenance dredging for the primary purpose of navigation. This NWP does not authorize beach restoration. This NWP does not authorize new stream channelization or stream relocation projects.

**Notification:** For activities authorized by paragraph (b) of this NWP, the permittee must submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 32). The pre-construction notification must include information regarding the original design capacities and configurations of the outfalls, intakes, small impoundments, and canals. (Authorities: Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act (Sections 10 and 404))

**Note:** This NWP authorizes the repair, rehabilitation, or replacement of any previously authorized structure or fill that does not qualify for the Clean Water Act Section 404(f) exemption for maintenance.

*Detroit District NWP 3 Regional Conditions: The Detroit District has not added any regional conditions specific to NWP 3.*

*EGLE Water Quality Certification/CZMA consistency for NWP 3:*

*1. An individual 401 Certification and Consistency Determination concurrence are required for the following activities, unless waived by EGLE:*

- a. Projects in waters regulated under Part 305, Natural Rivers, of the NREPA.*
- b. Projects in waters regulated under Part 325, Great Lakes Submerged Lands, of the NREPA except for the maintenance and repair of serviceable structures with no increase in the footprint of the structure.*

*2. All stream crossings shall span the bankfull width and, where the structure has a bottom, the structure bottom must match the slope of the streambed.*

*3. The request for repair, rehabilitation, or replacement of structures destroyed by discrete events must be submitted to the USACE within 12 months of the date of damage.*

*EPA Water Quality Certification on All Tribal Lands Except for KBIC tribal lands for NWP 3: EPA granted certification subject to category-specific conditions listed in Section D.*

*Water Quality Certification on KBIC tribal lands for NWP 3: KBIC denied certification.*

**4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities.** Fish and wildlife harvesting devices and activities such as pound nets, crab traps, crab dredging, eel pots, lobster traps, duck blinds, and clam and oyster digging, fish aggregating devices, and small fish attraction devices such as open water fish concentrators (sea kites, etc.). This NWP does not authorize artificial reefs or impoundments and semi-impoundments of waters of the United States for the culture or holding of motile species such as lobster, or the use of covered oyster trays or clam

racks. (Authorities: Sections 10 and 404)

*Detroit District NWP 4 Regional Conditions: The Detroit District has not added any regional conditions specific to NWP 4.*

*EGLE Water Quality Certification/CZMA consistency for NWP 4: EGLE granted certification/consistency subject to General Conditions.*

*EPA Water Quality Certification on All Tribal Lands Except for KBIC tribal lands for NWP 4: EPA granted certification subject to category-specific conditions listed in Section D.*

*Water Quality Certification on KBIC tribal lands for NWP 4: KBIC denied certification.*

**5. Scientific Measurement Devices.** Devices, whose purpose is to measure and record scientific data, such as staff gauges, tide and current gauges, meteorological stations, water recording and biological observation devices, water quality testing and improvement devices, and similar structures. Small weirs and flumes constructed primarily to record water quantity and velocity are also authorized provided the discharge of dredged or fill material is limited to 25 cubic yards. Upon completion of the use of the device to measure and record scientific data, the measuring device and any other structures or fills associated with that device (e.g., foundations, anchors, buoys, lines, etc.) must be removed to the maximum extent practicable and the site restored to pre-construction elevations. (Authorities: Sections 10 and 404)

*Detroit District NWP 5 Regional Conditions:*

- a. *The application must provide the latitude and longitude (or UTM coordinates) of each device.*
- b. *Each device must be marked in accordance with all relevant U.S. Coast Guard requirements.*

*EGLE Water Quality Certification/CZMA consistency for NWP 5: EGLE granted certification/consistency subject to General Conditions.*

*EPA Water Quality Certification on All Tribal Lands Except for KBIC tribal lands for NWP 5: EPA granted certification without conditions.*

*Water Quality Certification on KBIC tribal lands for NWP 5: KBIC denied certification.*

**6. Survey Activities.** Survey activities, such as core sampling, seismic exploratory operations, plugging of seismic shot holes and other exploratory-type bore holes, exploratory trenching, soil surveys, sampling, sample plots or transects for wetland delineations, and historic resources surveys. For the purposes of this NWP, the term “exploratory trenching” means mechanical land clearing of the upper soil profile to expose bedrock or substrate, for the purpose of mapping or sampling the exposed material. The area in which the exploratory trench is dug must be restored to its pre-construction elevation upon completion of the work and must not drain a water of the United States. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench. This NWP authorizes the construction of temporary pads, provided the discharge of dredged or fill material does not exceed 1/10-acre in waters of the U.S. Discharges of dredged or fill material and structures associated with the recovery of historic resources are not authorized by this NWP. Drilling and the discharge of excavated material from test wells for oil and gas exploration are not authorized by this NWP; the plugging of such wells is authorized. Fill placed for roads and other similar activities is not authorized by this NWP. The NWP does not authorize any permanent structures. The discharge of drilling mud and cuttings may require a permit under Section 402 of the Clean Water Act. (Authorities: Sections 10 and 404)

*Detroit District NWP 6 Regional Conditions: The Detroit District has not added any regional conditions specific to NWP 6.*

*EGLE Water Quality Certification/CZMA consistency for NWP 6:*

*1. An individual 401 Certification and Consistency Determination concurrence are required for the following activities, unless waived by EGLE:*

- a. Placement of temporary fill pads that exceed 1,000 square feet in wetlands, lakes, or streams.*
- b. Exploratory trenching in waters regulated under Part 325, Great Lakes Submerged Lands, of the NREPA.*

*EPA Water Quality Certification on All Tribal Lands Except for KBIC tribal lands for NWP 6: EPA granted certification without conditions.*

*Water Quality Certification on KBIC tribal lands for NWP 6: KBIC denied certification.*

**7. Outfall Structures and Associated Intake Structures.** Activities related to the construction or modification of outfall structures and associated intake structures, where the effluent from the outfall is authorized, conditionally authorized, or specifically exempted by, or otherwise in compliance with regulations issued under the National Pollutant Discharge Elimination System Program (Section 402 of the Clean Water Act). The construction of intake structures is not authorized by this NWP unless they are directly associated with an authorized outfall structure.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) (Authorities: Sections 10 and 404)

*Detroit District NWP 7 Regional Conditions:*

- a. On boatable waters, the face of the outfall must not extend into the receiving water to impair navigation.*
- b. The face of the outfall structure must not create shoreline pockets capable of trapping debris.*

*EGLE Water Quality Certification/CZMA consistency for NWP 7:*

*1. An individual 401 Certification and Consistency Determination concurrence are required for the following activities, unless waived by EGLE:*

- a. Loss of any acreage of wetland habitat.*
- b. Placement of an intake structure in wetland.*

*2. The face of the outfall structure shall not extend into the receiving water in a way that impairs navigation or creates shoreline pockets capable of trapping debris.*

*3. The outfall must be stabilized to prevent soil erosion. Excavation and riprap placement is limited to the minimum necessary to ensure stabilization.*

*EPA Water Quality Certification on All Tribal Lands Except for KBIC tribal lands for NWP 7: EPA granted certification subject to category-specific conditions listed in Section D.*

*Water Quality Certification on KBIC tribal lands for NWP 7: KBIC denied certification.*

**8. Oil and Gas Structures on the Outer Continental Shelf.** Structures for the exploration, production, and transportation of oil, gas, and minerals on the outer continental shelf within areas leased for such purposes by the Department of the Interior, Bureau of Ocean Energy Management. Such structures shall not be placed within the limits of any designated shipping safety fairway or traffic separation scheme, except temporary anchors that comply with the fairway regulations in 33 CFR 322.5(l). The district engineer will review such proposals to ensure compliance with the provisions of the fairway regulations in 33 CFR 322.5(l). Any Corps review under this NWP will be limited to the effects on navigation and national security in accordance with 33 CFR 322.5(f), as well as 33 CFR 322.5(l) and 33 CFR part 334. Such structures will not be placed in established danger zones or restricted areas as designated in 33 CFR part 334, nor will such structures be permitted in

EPA or Corps-designated dredged material disposal areas.

**Notification:** The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) (Authority: Section 10)

*NWP 8 does not apply in Michigan.*

**9. Structures in Fleeting and Anchorage Areas.** Structures, buoys, floats, and other devices placed within anchorage or fleeting areas to facilitate moorage of vessels where such areas have been established for that purpose. (Authority: Section 10)

*Detroit District NWP 9 Regional Conditions: The Detroit District has not added any regional conditions specific to NWP 9.*

*EGLE Water Quality Certification/CZMA consistency for NWP 9: EGLE granted certification/consistency subject to General Conditions.*

*EPA Water Quality Certification on All Tribal Lands Except for KBIC tribal lands for NWP 9: Applicant must contact EPA to determine whether the proposed work may result in a discharge and seek CWA Section 401 WQC from EPA prior to commencing the activity, if needed.*

*Water Quality Certification on KBIC tribal lands for NWP 9: KBIC denied certification.*

**10. Mooring Buoys.** Non-commercial, single-boat, mooring buoys. (Authority: Section 10)

*Detroit District NWP 10 Regional Conditions:*

- a. The application must provide the latitude and longitude (or UTM coordinates) of the buoy and the distance of the buoy offshore.*
- b. The buoy must be clearly marked with the Corps of Engineers File Numbers in letters and numbers at least 3 inches high and of contrasting color to the background color of the buoy.*
- c. The mooring buoy must be marked in accordance with all relevant U.S. Coast Guard requirements.*

*EGLE Water Quality Certification/CZMA consistency for NWP 10:*

- 1. An individual 401 Certification and Consistency Determination concurrence are required for projects in waters regulated under Part 325, Great Lakes Submerged Lands, of the NREPA, unless waived by EGLE.*

*EPA Water Quality Certification on All Tribal Lands Except for KBIC tribal lands for NWP 10: Applicant must contact EPA to determine whether the proposed work may result in a discharge and seek CWA Section 401 WQC from EPA prior to commencing the activity, if needed.*

*Water Quality Certification on KBIC tribal lands for NWP 10: KBIC denied certification.*

**11. Temporary Recreational Structures.** Temporary buoys, markers, small floating docks, and similar structures placed for recreational use during specific events such as water skiing competitions and boat races or seasonal use, provided that such structures are removed within 30 days after use has been discontinued. At Corps of Engineers reservoirs, the reservoir managers must approve each buoy or marker individually. (Authority: Section 10)

*Detroit District NWP 11 Regional Conditions: The Detroit District has not added any regional conditions specific to NWP 11.*

*EGLE Water Quality Certification/CZMA consistency for NWP 11:*

- 1. An individual 401 Certification and Consistency Determination concurrence are required for structures located at a public road end on an inland lake, river, or stream, unless waived by EGLE.*
- 2. The structure must be removed immediately after the use has been discontinued and no later than 30 days after placement.*
- 3. The purpose of the structure must support uses that are dependent upon being located on or in a lake, river, stream, or wetland.*

*EPA Water Quality Certification on All Tribal Lands Except for KBIC tribal lands for NWP 11: Applicant must contact EPA to determine whether the proposed work may result in a discharge and seek CWA Section 401 WQC from EPA prior to commencing the activity, if needed.*

*Water Quality Certification on KBIC tribal lands for NWP 11: KBIC denied certification.*

**12. Oil or Natural Gas Pipeline Activities.** Activities required for the construction, maintenance, repair, and removal of oil and natural gas pipelines and associated facilities in waters of the United States, provided the activity does not result in the loss of greater than 1/2-acre of waters of the United States for each single and complete project.

*Oil or natural gas pipelines:* This NWP authorizes discharges of dredged or fill material into waters of the United States and structures or work in navigable waters for crossings of those waters associated with the construction, maintenance, or repair of oil and natural gas pipelines. There must be no change in pre-construction contours of waters of the United States. An "oil or natural gas pipeline" is defined as any pipe or pipeline for the transportation of any form of oil or natural gas, including products derived from oil or natural gas, such as gasoline, jet fuel, diesel fuel, heating oil, petrochemical feedstocks, waxes, lubricating oils, and asphalt.

Material resulting from trench excavation may be temporarily sidecast into waters of the United States for no more than three months, provided the material is not placed in such a manner that it is dispersed by currents or other forces. The district engineer may extend the period of temporary side casting for no more than a total of 180 days, where appropriate. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench. The trench cannot be constructed or backfilled in such a manner as to drain waters of the United States (e.g., backfilling with extensive gravel layers, creating a French drain effect). Any exposed slopes and stream banks must be stabilized immediately upon completion of the utility line crossing of each waterbody.

*Oil or natural gas pipeline substations:* This NWP authorizes the construction, maintenance, or expansion of substation facilities (e.g., oil or natural gas or gaseous fuel custody transfer stations, boosting stations, compression stations, metering stations, pressure regulating stations) associated with an oil or natural gas pipeline in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not result in the loss of greater than 1/2-acre of waters of the United States. This NWP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters of the United States to construct, maintain, or expand substation facilities.

*Foundations for above-ground oil or natural gas pipelines:* This NWP authorizes the construction or maintenance of foundations for above-ground oil or natural gas pipelines in all waters of the United States, provided the foundations are the minimum size necessary.

*Access roads:* This NWP authorizes the construction of access roads for the construction and maintenance of oil or natural gas pipelines, in non-tidal waters of the United States, provided the

activity, in combination with all other activities included in one single and complete project, does not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. This NWP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters for access roads. Access roads must be the minimum width necessary (see Note 2, below). Access roads must be constructed so that the length of the road minimizes any adverse effects on waters of the United States and must be as near as possible to pre-construction contours and elevations (e.g., at grade corduroy roads or geotextile/gravel roads). Access roads constructed above pre-construction contours and elevations in waters of the United States must be properly bridged or culverted to maintain surface flows.

This NWP may authorize oil or natural gas pipelines in or affecting navigable waters of the United States even if there is no associated discharge of dredged or fill material (see 33 CFR part 322). Oil or natural gas pipelines routed in, over, or under section 10 waters without a discharge of dredged or fill material may require a section 10 permit.

This NWP authorizes, to the extent that Department of the Army authorization is required, temporary structures, fills, and work necessary for the remediation of inadvertent returns of drilling fluids to waters of the United States through sub-soil fissures or fractures that might occur during horizontal directional drilling activities conducted for the purpose of installing or replacing oil or natural gas pipelines. These remediation activities must be done as soon as practicable, to restore the affected waterbody. District engineers may add special conditions to this NWP to require a remediation plan for addressing inadvertent returns of drilling fluids to waters of the United States during horizontal directional drilling activities conducted for the purpose of installing or replacing oil or natural gas pipelines.

This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to conduct the oil or natural gas pipeline activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges of dredged or fill material, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. After construction, temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) a section 10 permit is required; (2) the discharge will result in the loss of greater than 1/10-acre of waters of the United States; or (3) the proposed oil or natural gas pipeline activity is associated with an overall project that is greater than 250 miles in length and the project purpose is to install new pipeline (vs. conduct repair or maintenance activities) along the majority of the distance of the overall project length. If the proposed oil or gas pipeline is greater than 250 miles in length, the pre-construction notification must include the locations and proposed impacts (in acres or other appropriate unit of measure) for all crossings of waters of the United States that require DA authorization, including those crossings authorized by an NWP would not otherwise require pre-construction notification. (See general condition 32.) (Authorities: Sections 10 and 404)

Note 1: Where structures or work are authorized in navigable waters of the United States (i.e., section 10 waters) within the coastal United States, the Great Lakes, and United States territories, the permittee should provide a copy of the 'as-built drawings' and the geographic coordinate system used in the 'as-built drawings' to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), to inform updates to nautical charts and Coast Pilot corrections. The information should be transmitted via email to [ocs.ndb@noaa.gov](mailto:ocs.ndb@noaa.gov).

Note 2: For oil or natural gas pipeline activities crossing a single waterbody more than one

time at separate and distant locations, or multiple waterbodies at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. Oil or natural gas pipeline activities must comply with 33 CFR 330.6(d).

Note 3: Access roads used for both construction and maintenance may be authorized, provided they meet the terms and conditions of this NWP. Access roads used solely for construction of the oil or natural gas pipeline must be removed upon completion of the work, in accordance with the requirements for temporary fills.

Note 4: Pipes or pipelines used to transport gaseous, liquid, liquescent, or slurry substances over navigable waters of the United States are considered to be bridges, and may require a permit from the U.S. Coast Guard pursuant to the General Bridge Act of 1946. However, any discharges of dredged or fill material into waters of the United States associated with such oil or natural gas pipelines will require a section 404 permit (see NWP 15).

Note 5: This NWP authorizes oil or natural gas pipeline maintenance and repair activities that do not qualify for the Clean Water Act section 404(f) exemption for maintenance of currently serviceable fills or fill structures.

Note 6: For NWP 12 activities that require pre-construction notification, the PCN must include any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings that require Department of the Army authorization but do not require pre-construction notification (see paragraph (b)(4) of general condition 32). The district engineer will evaluate the PCN in accordance with Section D, "District Engineer's Decision." The district engineer may require mitigation to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see general condition 23).

Note 7: Where structures or work are proposed in navigable waters of the United States, project proponents should ensure they provide the location and dimensions of the proposed structures to the U.S. Coast Guard (USCG) prior to submittal of a Pre-Construction Notification, or prior to beginning construction. The USCG may assess potential navigation-related concerns associated with the location of proposed structures or work and may inform project proponents of marking and lighting requirements necessary to comply with General Condition 1 (Navigation). For assistance identifying the appropriate USCG District or Sector Waterways Management Staff responsible for the area of the proposed work, contact USCG at [CGWWM@uscg.mil](mailto:CGWWM@uscg.mil).

*Detroit District NWP 12 Regional Conditions:*

*a. For substations and permanent access roads, no discharge is authorized in areas below the OHWM, areas subject to inundation by the adjacent water body, or areas which otherwise provide fish habitat functions.*

*b. Impacts for substations and permanent access roads are limited to 1/4 acre in wetlands adjacent to navigable waters of the U.S.*

*c. Impacted wetlands outside of permanently maintained rights of way must be restored to the same or more valuable wetland type (e.g., forested wetlands must be restored to forested wetlands). Within permanently maintained rights of way, impacted wetlands must be restored, unless otherwise authorized by the Corps.*

*d. For utility lines placed across the channel of an authorized Federal navigation project, the following conditions apply:*

- 1. the line must be embedded at least 6 feet below the authorized Federal channel depth;*
- 2. existing and proposed elevation information on precise plan and section scale drawings are required;*
- 3. within 60 days after construction, an as-built survey must be provided indicating the points of entry and exit of the installation.*

- e. The application must provide the latitude and longitude (or UTM coordinates) of each end of the utility line at the limits of Corps jurisdiction (OHWM or upland limit of wetlands), and for each point between where the utility changes direction.*
- f. All excavated and dredged material, other than that used to backfill the trench as authorized pursuant to NWP 12, must be disposed of on uplands.*

*EGLE Water Quality Certification/CZMA consistency for NWP 12:*

- 1. An individual 401 Certification and Consistency Determination concurrence are required for the following activities, unless waived by EGLE:*
  - a. Projects in waters regulated under Part 325, Great Lakes Submerged Lands, of the NREPA.*
  - b. Substation or temporary access road projects that result in discharge of fill below the ordinary high water mark (OHWM), or into floodplain or wetland areas subject to inundation by the adjacent water body or which otherwise provide fish habitat functions.*
  - c. Substation or temporary access road projects that impact more than 0.1 acre in wetlands, lakes, or streams.*
  - d. Construction of permanent access roads.*
- 2. Applicants must demonstrate that upland alternatives are not practicable.*
- 3. Impacted wetlands outside of permanently maintained rights-of-way shall be restored to the same or more valuable wetland type (e.g., forested wetlands shall be restored to forested wetlands). Within permanently maintained rights of way, impacted wetlands shall be restored, unless otherwise authorized by EGLE and the USACE.*
- 4. All excavated and dredged material, other than that used to backfill the trench as authorized pursuant to NWP 12, shall be properly disposed of in uplands (i.e., outside of wetlands, floodplains, or inland lakes and streams).*
- 5. All revegetation of wetland sites must be with plant species that are native to Michigan according to the Floristic Quality Assessment for the State of Michigan.*

*EPA Water Quality Certification on All Tribal Lands Except for KBIC tribal lands for NWP 12: EPA granted certification subject to category-specific conditions listed in Section D.*

*Water Quality Certification on KBIC tribal lands for NWP 12: KBIC denied certification.*

**13. Bank Stabilization.** Bank stabilization activities necessary for erosion control or prevention, such as vegetative stabilization, bioengineering, sills, rip rap, revetment, gabion baskets, stream barbs, and bulkheads, or combinations of bank stabilization techniques, provided the activity meets all of the following criteria:

- (a) No material is placed in excess of the minimum needed for erosion protection;
- (b) The activity is no more than 500 feet in length along the bank, unless the district engineer waives this criterion by making a written determination concluding that the discharge of dredged or fill material will result in no more than minimal adverse environmental effects (an exception is for bulkheads – the district engineer cannot issue a waiver for a bulkhead that is greater than 1,000 feet in length along the bank);
- (c) The activity will not exceed an average of one cubic yard per running foot, as measured along the length of the treated bank, below the plane of the ordinary high water mark or the high tide line, unless the district engineer waives this criterion by making a written determination concluding that the discharge of dredged or fill material will result in no more than minimal adverse environmental effects; The activity does not involve discharges of dredged or fill material into special aquatic sites, unless the district engineer waives this criterion by making a written determination concluding that the discharge of dredged or fill material will result in no more than minimal adverse environmental effects;

(d) No material is of a type, or is placed in any location, or in any manner, that will impair surface water flow into or out of any waters of the United States;

(e) No material is placed in a manner that will be eroded by normal or expected high flows (properly anchored native trees and treetops may be used in low energy areas);

(f) Native plants appropriate for current site conditions, including salinity, must be used for bioengineering or vegetative bank stabilization;

(g) The activity is not a stream channelization activity; and

(h) The activity must be properly maintained, which may require repairing it after severe storms or erosion events. This NWP authorizes those maintenance and repair activities if they require authorization.

In addition, this NWP authorizes discharges of dredged or fill material into waters of the United States and structures and work in navigable waters of the United States to incorporate nature-based solutions into new and existing bank stabilization activities to provide habitat and other ecosystem functions and services and to reduce adverse effects of bank stabilization activities on the aquatic environment. Examples of nature-based solutions for bank stabilization activities include the use of construction materials for seawalls and bulkheads that have textured surfaces, crevices, shelves, benches, and pits that support attachment and growth of benthic organisms; vegetative stabilization; bioengineering; the construction of rock pools next to the bank stabilization activity; the construction of small pocket beaches next to the bank stabilization activity; the use of various sizes of rock for revetments to provide different sizes of spaces between rocks for habitat for various species of organisms; the placement of rock clusters next to a seawall or bulkhead; the placement of large wood next to seawalls, bulkheads, and revetments; and the placement of bags of molluscs or the placement of small reef structures to provide habitat for molluscs and other sessile aquatic organisms next to a seawall, bulkhead, or revetment. Nature-based solutions should be appropriate for the physical and biological characteristics of the site.

This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to construct the bank stabilization activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges of dredged or fill material, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. After construction, temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

**Notification:** The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if the bank stabilization activity: (1) involves discharges of dredged or fill material into special aquatic sites; or (2) is in excess of 500 feet in length; or (3) will involve the discharge of dredged or fill material of greater than an average of one cubic yard per running foot as measured along the length of the treated bank, below the plane of the ordinary high water mark or the high tide line. (See general condition 32.) (Authorities: Sections 10 and 404)

**Note 1:** In coastal waters and the Great Lakes, living shorelines may be an appropriate option for bank stabilization, and may be authorized by NWP 54.

**Note 2:** Under 33 CFR 320.4(g)(2), a landowner has the general right to protect his or her property from erosion, and the district engineer can provide general guidance to the landowner

regarding possible alternative methods of protecting his or her property. Permittees are encouraged to use soft bank stabilization approaches (e.g., bioengineering, vegetative stabilization) at sites where those methods are likely to be effective in managing erosion, such as sites where shorelines and banks are subject to moderate to low erosive forces. However, hard bank stabilization activities (e.g., seawalls, bulkheads, revetments, riprap) may be necessary at sites where shorelines and banks are subject to strong erosive forces. An appropriate and effective approach to managing shoreline or bank erosion at a specific site requires consideration of a variety of factors, including but not limited to: bank height; bank condition; the energy of tides, waves, currents, or other water flows that the bank is exposed to; fetch; nearshore water depths; the potential for storm surges; sediment or substrate type; tidal range in waters subject to the ebb and flow of tides; shoreline configuration and orientation; the width of the waterway; and whether there is infrastructure in the vicinity of the proposed bank stabilization activity that needs to be protected and the degree of protection needed.

*Detroit District NWP 13 Regional Conditions: The Detroit District has not added any regional conditions specific to NWP 13.*

*EGLE Water Quality Certification/CZMA consistency for NWP 13:*

1. *An individual 401 Certification and Consistency Determination concurrence are required for the following activities, unless waived by EGLE:*
  - a. *Discharge of fill in a wetland.*
  - b. *Loss of any acreage of wetland habitat.*
  - c. *Installation of a new vertical bulkhead or seawall where one does not currently exist.*
  - d. *Replacement of more than 200 linear feet of existing vertical bulkhead or seawall.*
  - e. *Placement of more than 300 linear feet of rip rap.*
  - f. *Projects on vacant lots or parcels without any existing structures or infrastructure such as houses, roads, or utilities.*
  - g. *Projects in areas designated under Part 305, Natural Rivers, of the NREPA.*
  - h. *Projects in areas designated under Part 323, Shorelands Protection and Management, of the NREPA.*
  - i. *Projects in areas designated under Part 353, Sand Dunes Protection and Management, of the NREPA.*
2. *The seawall to be replaced must meet at least one of the following:*
  - a. *The seawall is currently capable of breaking the force of waves and retaining soil across a minimum of 50 percent of its length and there is evidence of a previous seawall along the other 50 percent of its length, or*
  - b. *The seawall was breaking the force of waves and retaining soil but was damaged by a single catastrophic event which occurred within the 2 years prior to permit application submittal for the replacement of the seawall.*
3. *Replacement seawalls shall be installed no more than 1 foot waterward of the existing seawall, or in-place or further inland of the existing seawall.*
4. *The replacement seawall shall have toe stone (i.e., rip rap) placed waterward along 100 percent of the length to prevent undercutting by wave action, to mitigate for the loss of habitat, and to provide a use for fish and other aquatic life. The toe stone shall be placed at a 1-on-3 slope (e.g., 1-foot vertical to 3 feet horizontal) or gentler. The toe stone shall extend from the lake or stream bottom to the top of the wall but cannot extend more than 6 feet lakeward of the ordinary high water mark for inland lakes and cannot extend more than 15 feet lakeward of the ordinary high water mark for the Great Lakes. This toe stone shall be placed unless it is determined by EGLE that less toe stone is required based on site conditions, navigation, or mooring.*
5. *Rip rap shall be placed at a 1-on-3 slope (e.g., 1-foot vertical to 3 feet horizontal) or gentler. Rip rap shall be appropriately sized based on the expected wave energy for the site. For inland lakes, the rip rap shall be a maximum of 18-inch diameter rock and must not extend more than 6 feet waterward of the OHWM. For the Great Lakes, the rip rap shall be a maximum of 48-inch diameter rock and must not extend more than 15 feet lakeward of the OHWM. For streams, rip*

*rap shall be properly sized based on velocity and must not extend waterward of the existing banks upstream or downstream.*

*6. All rip rap discharged in the project shall consist only of clean natural field stone, rock, or gravel, free of fines and other materials, and shall be placed or contained in such a manner as not to erode into any waters. Woven wire gabion baskets, broken concrete, and grouted or manufactured interlocking materials are prohibited.*

*7. The amount of backfill shall be limited to the minimum volumes necessary for bank stabilization.*

*EPA Water Quality Certification on All Tribal Lands Except for KBIC tribal lands for NWP 13: EPA granted certification subject to category-specific conditions listed in Section D.*

*Water Quality Certification on KBIC tribal lands for NWP 13: KBIC denied certification.*

**14. Linear Transportation Projects.** Activities required for crossings of waters of the United States associated with the construction, expansion, modification, or improvement of linear transportation projects (e.g., roads, highways, railways, trails, driveways, airport runways, and taxiways) in waters of the United States. For linear transportation projects in non-tidal waters, the discharge of dredged or fill material cannot cause the loss of greater than 1/2-acre of waters of the United States. For linear transportation projects in tidal waters, the discharge of dredged or fill material cannot cause the loss of greater than 1/3-acre of waters of the United States. Any stream channel modification, including bank stabilization, is limited to the minimum necessary to construct or protect the linear transportation project; such modifications must be in the immediate vicinity of the project.

This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to construct the linear transportation project. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges of dredged or fill material, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

This NWP cannot be used to authorize non-linear features commonly associated with transportation projects, such as vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangars.

**Notification:** The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) the loss of waters of the United States exceeds 1/10-acre; or (2) there is a discharge of dredged or fill material in a special aquatic site, including wetlands. (See general condition 32.) (Authorities: Sections 10 and 404)

**Note 1:** For linear transportation projects crossing a single waterbody more than one time at separate and distant locations, or multiple waterbodies at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. Linear transportation projects must comply with 33 CFR 330.6(d).

**Note 2:** Some discharges of dredged or fill material for the construction of farm roads or forest roads, or temporary roads for moving mining equipment, may qualify for an exemption under Section 404(f) of the Clean Water Act (see 33 CFR 323.4).

**Note 3:** For NWP 14 activities that require pre-construction notification, the PCN must include any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to

authorize any part of the proposed project or any related activity, including other separate and distant crossings that require Department of the Army authorization but do not require pre-construction notification (see paragraph (b)(4) of general condition 32). The district engineer will evaluate the PCN in accordance with Section D, "District Engineer's Decision." The district engineer may require mitigation to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see general condition 23).

*Detroit District NWP 14 Regional Conditions:*

- a. For private road projects, the base width of the fill is limited to 16 feet and impacts are limited to 1/10 acre.*
- b. For private paths, the base width of the fill is limited to 6 feet.*
- c. The limits for private roads and paths apply unless the applicant provides a written statement supporting a variation, and the Corps accepts the justification.*
- d. Culverts or other appropriate measures are required to maintain existing drainage patterns.*
- e. The selected route must be the least damaging practicable alternative.*
- f. For public projects, the total impacts are limited to 3 acres for all crossings associated with the same project.*

*EGLE Water Quality Certification/CZMA consistency for NWP 14:*

- 1. An individual 401 Certification and Consistency Determination concurrence are required for the following activities, unless waived by EGLE:*
  - a. Wetland crossings of more than 200 feet for a private road project.*
  - b. Cumulative wetland impacts in excess of 2 acres for a public transportation project.*
- 2. All stream crossings shall span the bankfull width and where the structure has a bottom, the structure bottom must match the slope of the streambed.*

*EPA Water Quality Certification on All Tribal Lands Except for KBIC tribal lands for NWP 14: EPA granted certification subject to category-specific conditions listed in Section D.*

*Water Quality Certification on KBIC tribal lands for NWP 14: KBIC denied certification.*

**15. U.S. Coast Guard Approved Bridges.** Discharges of dredged or fill material incidental to the construction of a bridge across navigable waters of the United States, including cofferdams, abutments, foundation seals, piers, and temporary construction and access fills, provided the construction of the bridge structure has been authorized by the U.S. Coast Guard under the General Bridge Act of 1946, Section 9 of the Rivers and Harbors Act of 1899, or other applicable laws. Causeways and approach fills are not included in this NWP and will require a separate Clean Water Act Section 404 permit. (Authority: Section 404 of the Clean Water Act (Section 404))

*Detroit District NWP 15 Regional Conditions: The Detroit District has not added any regional conditions specific to NWP 15.*

*EGLE Water Quality Certification/CZMA consistency for NWP 15: An individual 401 Certification and Consistency Determination concurrence are required for all projects, unless waived by EGLE.*

*EPA Water Quality Certification on All Tribal Lands Except for KBIC tribal lands for NWP 15: EPA granted certification subject to category-specific conditions listed in Section D.*

*Water Quality Certification on KBIC tribal lands for NWP 15: KBIC denied certification.*

**16. Return Water From Upland Contained Disposal Areas.** Return water from an upland contained dredged material disposal area. The return water from a contained disposal area is

administratively defined as a discharge of dredged material by 33 CFR 323.2(d), even though the disposal itself occurs in an area that has no waters of the United States and does not require a section 404 permit. This NWP satisfies the technical requirement for a section 404 permit for the return water where the quality of the return water is controlled by the state through the Clean Water Act Section 401 certification procedures. The dredging activity may require a section 404 permit (33 CFR 323.2(d)), and will require a section 10 permit if located in navigable waters of the United States. (Authority: Section 404)

*Detroit District NWP 16 Regional Conditions: The Detroit District has not added any regional conditions specific to NWP 16.*

*EGLE Water Quality Certification/CZMA consistency for NWP 16: EGLE granted certification/consistency subject to General Conditions.*

*EPA Water Quality Certification on All Tribal Lands Except for KBIC tribal lands for NWP 16: EPA granted certification subject to category-specific conditions listed in Section D.*

*Water Quality Certification on KBIC tribal lands for NWP 16: KBIC denied certification.*

**17. Hydropower Projects.** Discharges of dredged or fill material associated with hydropower projects having: (a) Less than 10,000 kW of total generating capacity at existing reservoirs, where the project, including the fill, is licensed by the Federal Energy Regulatory Commission (FERC) under the Federal Power Act of 1920, as amended; or (b) a licensing exemption granted by the FERC pursuant to Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708) and Section 30 of the Federal Power Act, as amended.

**Notification:** The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) (Authority: Section 404)

*Detroit District NWP 17 Regional Conditions: The Detroit District has not added any regional conditions specific to NWP 17.*

*EGLE Water Quality Certification/CZMA consistency for NWP 17: An individual 401 Certification and Consistency Determination concurrence are required for all projects, unless waived by EGLE.*

*EPA Water Quality Certification on All Tribal Lands Except for KBIC tribal lands for NWP 17: EPA granted certification subject to category-specific conditions listed in Section D.*

*Water Quality Certification on KBIC tribal lands for NWP 17: KBIC denied certification.*

**18. Minor Discharges.** Minor discharges of dredged or fill material into all waters of the United States, provided the activity meets all of the following criteria:

- (a) The quantity of discharged dredged or fill material and the volume of area excavated do not exceed 25 cubic yards below the plane of the ordinary high water mark or the high tide line;
- (b) The discharge of dredged or fill material will not cause the loss of more than 1/10-acre of waters of the United States; and
- (c) The discharge of dredged or fill material is not placed for the purpose of a stream diversion.

**Notification:** The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) the discharge of dredged or fill material or the volume of area excavated exceeds 10 cubic yards below the plane of the ordinary high water mark or the high tide line, or (2) the discharge of dredged or fill material is in a special aquatic site, including wetlands. (See general condition 32.) (Authorities: Sections 10 and 404)

*Detroit District NWP 18 Regional Conditions:*

- a. *Discharges of sand and/or pea gravel for creation or maintenance of shoreline recreation areas, swim areas, and the like, the location and waterward extent of the discharge is the least environmentally damaging practicable alternative.*
- b. *The discharge material consists of clean, uncontaminated sand or crushed rock or stone.*

*EGLE Water Quality Certification/CZMA consistency for NWP 18:*

1. *An individual 401 Certification and Consistency Determination concurrence are required for the following activities, unless waived by EGLE:*
  - a. *Discharges resulting in the loss of more than 1,000 square feet in lakes or streams.*
  - b. *Discharges resulting in the loss of any acreage of wetlands.*
  - c. *Discharges of fill in a floodway.*
2. *For discharges of sand and/or pea gravel for creation or maintenance of shoreline recreation areas, swim areas, and the like, the location and waterward extent of the discharge must be the least environmentally damaging practicable alternative.*

*EPA Water Quality Certification on All Tribal Lands Except for KBIC tribal lands for NWP 18: EPA granted certification subject to category-specific conditions listed in Section D.*

*Water Quality Certification on KBIC tribal lands for NWP 18: KBIC denied certification.*

**19. Minor Dredging.** Dredging of no more than 25 cubic yards below the plane of the ordinary high water mark or the mean high water mark from navigable waters of the United States (i.e., section 10 waters). This NWP does not authorize the dredging or degradation through siltation of coral reefs, sites that support submerged aquatic vegetation (including sites where submerged aquatic vegetation is documented to exist but may not be present in a given year), anadromous fish spawning areas, or wetlands, or the connection of canals or other artificial waterways to navigable waters of the United States (see 33 CFR 322.5(g)). All dredged material must be deposited and retained in an area that has no waters of the United States unless otherwise specifically approved by the district engineer under separate authorization. (Authorities: Sections 10 and 404)

*Detroit District NWP 19 Regional Conditions: The Detroit District has not added any regional conditions specific to NWP 19.*

*EGLE Water Quality Certification/CZMA consistency for NWP 19:*

1. *An individual 401 Certification and Consistency Determination concurrence are required for the following activities, unless waived by EGLE:*
  - a. *Dredging in wetlands.*
  - b. *Dredging in waters of the state in excess of 25 cubic yards.*
  - c. *Dredging in waters of the state in excess of 1,000 square feet.*
  - d. *Projects for which EGLE has notified the applicant that sediment testing is required, unless the applicant provides sediment test results in accordance with EGLE procedures that show the material does not contain contamination.*
2. *All dredged or excavated materials shall be properly disposed of in upland (i.e., outside of wetlands, floodplains, inland lakes and streams, or the Great Lakes).*

*EPA Water Quality Certification on All Tribal Lands Except for KBIC tribal lands for NWP 19: EPA granted certification without conditions.*

*Water Quality Certification on KBIC tribal lands for NWP 19: KBIC denied certification.*

**20. Response Operations for Oil or Hazardous Substances.** Activities conducted in response to a discharge or release of oil or hazardous substances that are subject to the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR part 300) including containment, cleanup, and mitigation efforts, provided that the activities are done under either: (1) the Spill Control and Countermeasure Plan required by 40 CFR 112.3; (2) the direction or oversight of the federal on-scene coordinator designated by 40 CFR part 300; or (3) any approved existing state, regional or local contingency plan provided that the Regional Response Team (if one exists in the area) concurs with the proposed response efforts. This NWP also authorizes activities required for the cleanup of oil releases in waters of the United States from electrical equipment that are governed by EPA's polychlorinated biphenyl spill response regulations at 40 CFR part 761. This NWP also authorizes the use of temporary structures and fills in waters of the U.S. for spill response training exercises. (Authorities: Sections 10 and 404)

*Detroit District NWP 20 Regional Conditions: The Detroit District has not added any regional conditions specific to NWP 20.*

*EGLE Water Quality Certification/CZMA consistency for NWP 20:*

1. *An individual 401 Certification and Consistency Determination concurrence are required for waste disposal and site restoration activities, unless waived by EGLE.*
2. *NWP 20 shall be limited to substance containment, stabilization, and removal activities.*
3. *All wetlands, lakes, and streams must be restored to the most practicable extent possible.*

*EPA Water Quality Certification on All Tribal Lands Except for KBIC tribal lands for NWP 20: EPA granted certification without conditions.*

*Water Quality Certification on KBIC tribal lands for NWP 20: KBIC denied certification.*

**21. Surface Coal Mining Activities.** Discharges of dredged or fill material into waters of the United States associated with surface coal mining and reclamation operations, provided the following criteria are met:

(a) The activities are already authorized, or are currently being processed by states with approved programs under Title V of the Surface Mining Control and Reclamation Act of 1977 or by the Department of the Interior, Office of Surface Mining Reclamation and Enforcement;

(b) The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. This NWP does not authorize discharges of dredged or fill material into tidal waters or non-tidal wetlands adjacent to tidal waters; and

(c) The discharge is not associated with the construction of valley fills. A "valley fill" is a fill structure that is typically constructed within valleys associated with steep, mountainous terrain, associated with surface coal mining activities.

Notification: The permittee must submit a pre-construction notification to the district engineer. (See general condition 32.) (Authorities: Sections 10 and 404)

*The Detroit District has revoked NWP 21 in Michigan.*

**22. Removal of Vessels.** Temporary structures or minor discharges of dredged or fill material required for the removal of wrecked, abandoned, or disabled vessels, or the removal of man-made obstructions to navigation. This NWP does not authorize maintenance dredging, shoal removal, or riverbank snagging.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) the vessel is listed or eligible for listing in the National Register of Historic Places; or (2) the activity is conducted in a special aquatic site, including coral reefs and wetlands. (See general condition 32.) If the vessel is listed or eligible for listing in the National Register of Historic Places, the permittee cannot commence the activity until informed by the district engineer that compliance with the “Historic Properties” general condition is completed. (Authorities: Sections 10 and 404)

Note 1: Intentional ocean disposal of vessels at sea requires a permit from the U.S. EPA under the Marine Protection, Research and Sanctuaries Act, which specifies that ocean disposal should only be pursued when land-based alternatives are not available. If a Department of the Army permit is required for vessel disposal in waters of the United States, separate authorization will be required.

Note 2: Compliance with general condition 18, Endangered Species, and general condition 20, Historic Properties, is required for all NWPs. The concern with historic properties is emphasized in the notification requirements for this NWP because of the possibility that shipwrecks may be historic properties.

*Detroit District NWP 22 Regional Conditions: The Detroit District has not added any regional conditions specific to NWP 22.*

*EGLE Water Quality Certification/CZMA consistency for NWP 22: EGLE granted certification/consistency subject to General Conditions.*

*EPA Water Quality Certification on All Tribal Lands Except for KBIC tribal lands for NWP 22: EPA granted certification without conditions.*

*Water Quality Certification on KBIC tribal lands for NWP 22: KBIC denied certification.*

**23. Approved Categorical Exclusions.** Activities undertaken, assisted, authorized, regulated, funded, or financed, in whole or in part, by another Federal agency or department where:

(a) That agency or department has determined, pursuant to Section 106, 109, and 111(1) of the National Environmental Policy Act, that the activity is categorically excluded from the requirement to prepare an environmental impact statement or environmental assessment analysis, because it is included within a category of actions which neither individually nor cumulatively have a significant effect on the human environment; and

(b) The Office of the Chief of Engineers (Attn: CECW-CO) has concurred with that agency’s or department’s determination that the activity is categorically excluded and approved the activity for authorization under NWP 23.

The Office of the Chief of Engineers may require additional conditions, including pre-construction notification, for authorization of an agency’s categorical exclusions under this NWP.

Notification: Certain categorical exclusions approved for authorization under this NWP require the permittee to submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 32). The activities that require pre-construction notification are listed in

the appropriate Regulatory Guidance Letter(s) (Authorities: Sections 10 and 404)

**Note:** The agency or department may submit an application for an activity believed to be categorically excluded to the Office of the Chief of Engineers (Attn: CECW-CO). Prior to approval for authorization under this NWP of any agency's activity, the Office of the Chief of Engineers will solicit public comment. As of the date of issuance of this NWP, agencies with approved categorical exclusions are: the Bureau of Reclamation, Federal Highway Administration, and U.S. Coast Guard. Activities approved for authorization under this NWP as of the date of this notice are found in Corps Regulatory Guidance Letter 05-07. Any changes to approved categorical exclusions applicable to this NWP will be announced in the Federal Register and posted on this same web site.

*Detroit District NWP 23 Regional Conditions: The Detroit District has not added any regional conditions specific to NWP 23.*

*EGLE Water Quality Certification/CZMA consistency for NWP 23: An individual 401 Certification and Consistency Determination concurrence are required for all projects, unless waived by EGLE.*

*EPA Water Quality Certification on All Tribal Lands Except for KBIC tribal lands for NWP 23: EPA granted certification subject to category-specific conditions listed in Section D.*

*Water Quality Certification on KBIC tribal lands for NWP 23: KBIC denied certification.*

**24. Indian Tribe or State Administered Section 404 Programs.** Any activity permitted by a state or Indian Tribe administering its own section 404 permit program pursuant to 33 U.S.C. 1344(g)-(l) is permitted pursuant to Section 10 of the Rivers and Harbors Act of 1899. (Authority: Section 10)

**Note 1:** As of the date of the promulgation of this NWP, only New Jersey and Michigan administer their own Clean Water Act Section 404 permit programs.

**Note 2:** Those activities that do not involve an Indian Tribe or State Clean Water Act Section 404 permit are not included in this NWP, but certain structures will be exempted by Section 154 of Pub. L. 94-587, 90 Stat. 2917 (33 U.S.C. 591) (see 33 CFR 322.4(b)).

*Detroit District NWP 24 Regional Conditions: The Detroit District has not added any regional conditions specific to NWP 24.*

*EGLE Water Quality Certification/CZMA consistency for NWP 24: EGLE granted certification/consistency subject to General Conditions.*

*EPA Water Quality Certification on All Tribal Lands Except for KBIC tribal lands for NWP 24: Applicant must contact EPA to determine whether the proposed work may result in a discharge and seek CWA Section 401 WQC from EPA prior to commencing the activity, if needed.*

*Water Quality Certification on KBIC tribal lands for NWP 24: KBIC denied certification.*

**25. Structural Discharges.** Discharges of dredged or fill material such as concrete, sand, rock, etc., into tightly sealed forms or cells where the material will be used as a structural member for standard pile supported structures, such as bridges, transmission line footings, and walkways, or for general navigation, such as mooring cells, including the excavation of bottom material from within the form prior to the discharge of concrete, sand, rock, etc. This NWP does not authorize filled structural

members that would support buildings, building pads, homes, house pads, parking areas, storage areas and other such structures. The structure itself may require a separate section 10 permit if located in navigable waters of the United States. (Authority: Section 404)

*Detroit District NWP 25 Regional Conditions: The Detroit District has not added any regional conditions specific to NWP 25.*

*EGLE Water Quality Certification/CZMA consistency for NWP 25: An individual 401 Certification and Consistency Determination concurrence are required for all projects, unless waived by EGLE.*

*EPA Water Quality Certification on All Tribal Lands Except for KBIC tribal lands for NWP 25: EPA granted certification subject to category-specific conditions listed in Section D.*

*Water Quality Certification on KBIC tribal lands for NWP 25: KBIC denied certification.*

## **26. [Reserved]**

**27. Aquatic Ecosystem Restoration, Enhancement, and Establishment Activities.** Activities in waters of the United States associated with the restoration, enhancement, and establishment of tidal and non-tidal wetlands and riparian areas, the restoration and enhancement of non-tidal rivers and streams and their riparian areas, the restoration and enhancement of other non-tidal open waters, and the restoration and enhancement of tidal streams, tidal wetlands, and tidal open waters, provided those activities result in net increases in aquatic ecosystem functions and services.

To be authorized by this NWP, the aquatic ecosystem restoration, enhancement, or establishment activity must be planned, designed, and implemented so that it results in an aquatic ecosystem that resembles an ecological reference (i.e., a natural ecosystem). An ecological reference may be based on the characteristics of aquatic ecosystems or riparian areas that currently exist in the region, or the characteristics of aquatic ecosystems or riparian area that existed in the region in the past. Ecological references include cultural ecosystems, which are ecosystems that have developed under the joint influence of natural processes and human management activities (e.g., fire stewardship for vegetation management). An ecological reference may also be based on regional ecological knowledge, including indigenous and local ecological knowledge, of the target aquatic ecosystem type or riparian area.

This NWP authorizes the relocation of non-tidal waters, including non-tidal wetlands and streams, on the project site provided there are net increases in aquatic ecosystem functions and services.

This NWP does not authorize: (1) dam removal activities; (2) stream channelization activities; and (3) the conversion of tidal wetlands to open water impoundments and other aquatic uses unless the conversion is solely for the purpose of enhancing the functions of tidal wetlands.

Only native plant species should be planted at the site. Compensatory mitigation is not required for activities authorized by this NWP because these activities must result in net increases in aquatic ecosystem functions and services.

*Reversion.* For aquatic ecosystem restoration, enhancement, and establishment activities conducted: (1) In accordance with the terms and conditions of a binding stream or wetland enhancement or restoration agreement, or a wetland establishment agreement, between the landowner and the U.S. Fish and Wildlife Service (FWS), the Natural Resources Conservation Service (NRCS), the Farm Service Agency (FSA), the National Marine Fisheries Service (NMFS), the National Ocean Service (NOS), U.S. Forest Service (USFS), Bureau of Land Management (BLM), or

their designated state cooperating agencies; (2) as voluntary wetland restoration, enhancement, and establishment actions documented by the NRCS or USDA Technical Service Provider pursuant to NRCS Field Office Technical Guide standards; or (3) on reclaimed surface coal mine lands, in accordance with a Surface Mining Control and Reclamation Act permit issued by the Office of Surface Mining Reclamation and Enforcement (OSMRE) or the applicable state agency, this NWP also authorizes any future discharge of dredged or fill material associated with the reversion of the area to its documented prior condition and use (i.e., prior to the restoration, enhancement, or establishment activities). The reversion must occur within five years after expiration of a limited term wetland restoration or establishment agreement or permit, and is authorized in these circumstances even if the discharge of dredged or fill material occurs after this NWP expires. The five-year reversion limit does not apply to agreements without time limits reached between the landowner and the FWS, NRCS, FSA, NMFS, NOS, USFS, BLM, or an appropriate state cooperating agency. This NWP also authorizes discharges of dredged or fill material in waters of the United States for the reversion of wetlands that were restored, enhanced, or established on prior-converted cropland or on uplands, in accordance with a binding agreement between the landowner and NRCS, FSA, FWS, or their designated state cooperating agencies (even though the restoration, enhancement, or establishment activity did not require a section 404 permit). The prior condition will be documented in the original agreement or permit, and the determination of return to prior conditions will be made by the federal agency or appropriate state agency executing the agreement or permit. Before conducting any reversion activity, the permittee or the appropriate federal or state agency must notify the district engineer and include the documentation of the prior condition. Once an area has reverted to its prior physical condition, it will be subject to whatever the Corps Regulatory Program requirements are applicable to that type of land at the time. The requirement that the activity results in a net increase in aquatic ecosystem functions and services does not apply to reversion activities meeting the above conditions. Except for the activities described above, this NWP does not authorize any future discharge of dredged or fill material associated with the reversion of the area to its prior condition. In such cases a separate permit would be required for any reversion.

Reporting. The permittee must submit a report containing information on the proposed aquatic ecosystem restoration, enhancement, and establishment activity to the district engineer at least 30 days prior to commencing activities in waters of the United States authorized by this NWP. The report must include the following information:

- (1) Name, address, and telephone numbers of the prospective permittee;
- (2) Location of the proposed activity;
- (3) Information on baseline ecological conditions at the project site, including a general description and map of aquatic and terrestrial habitat types on that site. The map of existing aquatic and terrestrial habitat types and their approximate boundaries on the project site should be based on recent aerial imagery or similar information, and verified with photo points or other field-based data points for each mapped habitat type;
- (4) A sketch of the proposed project elements of the NWP 27 activity drawn over a copy of the map of existing aquatic and terrestrial habitat types on the project site;
- (5) The objectives of the proposed aquatic ecosystem restoration, enhancement, or establishment activity and a description of the techniques or mechanisms that are proposed to be used to increase aquatic ecosystem functions and services on the project site to meet the objectives;
- (6) And if applicable, a copy of: (a) the binding stream enhancement or restoration agreement or wetland enhancement, restoration, or establishment agreement with the FWS, NRCS, FSA, NMFS, NOS, USFS, BLM, or their designated state cooperating agencies; (b) the NRCS or USDA Technical Service Provider documentation for the voluntary stream enhancement or

restoration action or wetland restoration, enhancement, or establishment action; or (c) the SMCRA permit issued by OSMRE or the applicable state agency.

(Authorities: Sections 10 and 404)

Note 1: This NWP can be used to authorize compensatory mitigation projects, including mitigation banks and in-lieu fee projects. However, this NWP does not authorize the reversion of an area used for a compensatory mitigation project to its prior condition, since compensatory mitigation is generally intended to be permanent.

Note 2: If an activity authorized by this NWP requires a PCN because of an NWP general condition (e.g., NWP general condition 18, endangered species) or a regional condition imposed by a division engineer, the information required by paragraph (3) of the Reporting requirement substitutes for the delineation of waters, wetlands, and other special aquatic sites required by paragraph (b)(5) of general condition 32.

*Detroit District NWP 27 Regional Conditions: The Detroit District has not added any regional conditions specific to NWP 27.*

*EGLE Water Quality Certification/CZMA consistency for NWP 27:*

1. *An individual 401 Certification and Consistency Determination concurrence are required for the following activities, unless waived by EGLE:*
  - a. *Alteration of wetlands that are of ecological types considered rare or imperiled (S1, S2, or S3 ranked) as defined by the Michigan Natural Features Inventory.*
  - b. *Construction of nesting islands.*
  - c. *Stream restoration projects involving a pre-restoration stream length of more than 500 linear feet.*
  - d. *Placement of fill for construction of dikes, berms, or water control structures in excess of 2 acres.*
  - e. *Construction of a dike or berm of a height of 6 feet or more and that impounds an area of 5 acres or more during a design flood.*
  - f. *Enhancement of hydrology to increase water levels above original or natural levels, unless EGLE concurs that the wetland ecosystem has been farmed within the last 5 years or is dominated by invasive species.*
  - g. *Reversion activities.*
2. *Placement of discarded Christmas trees is prohibited.*
3. *Excavation of wetlands to provide shallow water habitat for wildlife (i.e. "pushouts") is limited to either:*
  - a. *In altered wetlands, 0.5 acres maximum; or*
  - b. *In wetlands that have been regularly farmed within the past 5 years or in wetlands documented to be dominated by invasive species (e.g., reed canary grass or Phragmites), each individual excavated area shall not exceed 1.5 acres and the cumulative impact of excavation associated with a project shall not exceed 3 acres.*
4. *Agency coordination between the USACE and EGLE is required for all activities under NWP 27.*

*EPA Water Quality Certification on All Tribal Lands Except for KBIC tribal lands for NWP 27: EPA granted certification subject to category-specific conditions listed in Section D.*

*Water Quality Certification on KBIC tribal lands for NWP 27: KBIC denied certification.*

**28. Modifications of Existing Marinas.** Reconfiguration of existing docking facilities within an authorized marina area. No dredging, additional slips, dock spaces, or expansion of any kind within waters of the United States is authorized by this NWP. (Authority: Section 10)

*Detroit District NWP 28 Regional Conditions: The Detroit District has not added any regional conditions specific to NWP 28.*

*EGLE Water Quality Certification/CZMA consistency for NWP 28:*

- 1. The reconfigured docking facilities must not constitute a safety or navigation hazard.*
- 2. The marina shall be configured so that all boat mooring under any wind condition will occur solely within the marina's riparian interest area.*
- 3. Boat mooring and ingress and egress for an outside slip shall require a minimum maneuvering distance of 1.5 times the length of the slip. This minimum distance shall be measured from the end of the slip or, for broadside moorage, the outside beam of a watercraft moored at the slip, to the boundary of the marina's riparian interest area.*

*EPA Water Quality Certification on All Tribal Lands Except for KBIC tribal lands for NWP 28: Applicant must contact EPA to determine whether the proposed work may result in a discharge and seek CWA Section 401 WQC from EPA prior to commencing the activity, if needed.*

*Water Quality Certification on KBIC tribal lands for NWP 28: KBIC denied certification.*

**29. Residential Developments.** Discharges of dredged or fill material into non-tidal waters of the United States for the construction or expansion of a single residence, a multiple unit residential development, or a residential subdivision. This NWP authorizes the construction of building foundations and building pads and attendant features that are necessary for the use of the residence or residential development. Attendant features may include but are not limited to roads, parking lots, garages, yards, utility lines, storm water management facilities, septic fields, and recreation facilities such as playgrounds, playing fields, and golf courses (provided the golf course is an integral part of the residential development).

The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. This NWP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters.

*Subdivisions:* For residential subdivisions, the aggregate total loss of waters of United States authorized by this NWP cannot exceed 1/2-acre. This includes any loss of waters of the United States associated with development of individual subdivision lots.

*Notification:* The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) (Authorities: Sections 10 and 404)

*Detroit District NWP 29 Regional Conditions:*

- a. The discharge must not cause the loss of greater than 1/4 acre of wetlands adjacent to navigable waters of the U.S.*
- b. No discharge is authorized in areas waterward of the OHWM, areas subject to inundation by the adjacent waterbody, or areas which provide fish habitat functions.*
- c. The following attendant features are authorized under this NWP: garage, driveway, parking/turn areas, lawn up to 15 feet surrounding the buildings, storage shed, septic field, utilities, deck foundations, and access paths.*
- d. Culverts and other measures to maintain pre-existing drainage patterns across the site are required and are proposed.*
- e. Where the option is available, on-site sewage treatment systems must utilize pump-back systems to upland.*

*EGLE Water Quality Certification/CZMA consistency for NWP 29:*

1. An individual 401 Certification and Consistency Determination concurrence are required for the following activities, unless waived by EGLE:

- a. Projects in waters regulated under Part 301, Inland Lakes and Streams, of the NREPA.
- b. Projects in waters regulated under Part 325, Great Lakes Submerged Lands, of the NREPA.
- c. Projects that impact rare or imperiled habitat types (S1, S2, or S3 ranked) as defined by the Michigan Natural Features Inventory.

2. NWP 29 is limited to the construction or expansion of a single-family residence with less than 0.1 acre of wetland impact on properties that have been owned within an immediate family since 1980.

*EPA Water Quality Certification on All Tribal Lands Except for KBIC tribal lands for NWP 29: EPA granted certification subject to category-specific conditions listed in Section D.*

*Water Quality Certification on KBIC tribal lands for NWP 29: KBIC denied certification.*

**30. Moist Soil Management for Wildlife.** Discharges of dredged or fill material into non-tidal waters of the United States and maintenance activities that are associated with moist soil management for wildlife for the purpose of continuing ongoing, site-specific, wildlife management activities where soil manipulation is used to manage habitat and feeding areas for wildlife. Such activities include, but are not limited to, plowing or discing to impede succession, preparing seed beds, or establishing fire breaks. Sufficient riparian areas must be maintained adjacent to all open water bodies, including streams, to preclude water quality degradation due to erosion and sedimentation. This NWP does not authorize the construction of new dikes, roads, water control structures, or similar features associated with the management areas. The activity must not result in a net loss of aquatic resource functions and services. This NWP does not authorize the conversion of wetlands to uplands, impoundments, or other open water bodies. (Authority: Section 404)

Note: The repair, maintenance, or replacement of existing water control structures or the repair or maintenance of dikes may be authorized by NWP 3. Some such activities may qualify for an exemption under Section 404(f) of the Clean Water Act (see 33 CFR 323.4).

*Detroit District NWP 30 Regional Conditions: The Detroit District has not added any regional conditions specific to NWP 30.*

*EGLE Water Quality Certification/CZMA consistency for NWP 30: EGLE granted certification/consistency subject to General Conditions.*

*EPA Water Quality Certification on All Tribal Lands Except for KBIC tribal lands for NWP 30: EPA granted certification without conditions.*

*Water Quality Certification on KBIC tribal lands for NWP 30: KBIC denied certification.*

**31. Maintenance of Existing Flood Control Facilities.** Discharges of dredged or fill material resulting from activities associated with the maintenance of existing flood control facilities, including debris basins, retention/detention basins, levees, and channels that: (i) were previously authorized by the Corps by individual permit, general permit, or 33 CFR 330.3, or did not require a permit at the time they were constructed, or (ii) were constructed by the Corps and transferred to a non-Federal sponsor for operation and maintenance. Activities authorized by this NWP are limited to those resulting from maintenance activities that are conducted within the “maintenance baseline,” as described in the definition below. Discharges of dredged or fill materials associated with maintenance activities in flood control facilities in any watercourse that have previously been determined to be within the

maintenance baseline are authorized under this NWP. To the extent that a Corps permit is required, this NWP authorizes the removal of vegetation from levees associated with the flood control project. This NWP does not authorize the removal of sediment and associated vegetation from natural water courses except when these activities have been included in the maintenance baseline. All dredged and excavated material must be deposited and retained in an area that has no waters of the United States unless otherwise specifically approved by the district engineer under separate authorization. Proper sediment controls must be used.

*Maintenance Baseline:* The maintenance baseline is a description of the physical characteristics (e.g., depth, width, length, location, configuration, or design flood capacity, etc.) of a flood control project within which maintenance activities are normally authorized by NWP 31, subject to any case-specific conditions required by the district engineer. The district engineer will approve the maintenance baseline based on the approved or constructed capacity of the flood control facility, whichever is smaller, including any areas where there are no constructed channels but which are part of the facility. The prospective permittee will provide documentation of the physical characteristics of the flood control facility (which will normally consist of as-built or approved drawings) and documentation of the approved and constructed design capacities of the flood control facility. If no evidence of the constructed capacity exists, the approved capacity will be used. The documentation will also include best management practices to ensure that the adverse environmental impacts caused by the maintenance activities are no more than minimal, especially in maintenance areas where there are no constructed channels. (The Corps may request maintenance records in areas where there has not been recent maintenance.) Revocation or modification of the final determination of the maintenance baseline can only be done in accordance with 33 CFR 330.5. Except in emergencies as described below, this NWP cannot be used until the district engineer approves the maintenance baseline and determines the need for mitigation and any regional or activity-specific conditions. Once determined, the maintenance baseline will remain valid for any subsequent reissuance of this NWP. This NWP does not authorize maintenance of a flood control facility that has been abandoned. A flood control facility will be considered abandoned if it has operated at a significantly reduced capacity without needed maintenance being accomplished in a timely manner. A flood control facility will not be considered abandoned if the prospective permittee is in the process of obtaining other authorizations or approvals required for maintenance activities and is experiencing delays in obtaining those authorizations or approvals.

*Mitigation:* The district engineer will determine any required mitigation one-time only for impacts associated with maintenance work at the same time that the maintenance baseline is approved. Such one-time mitigation will be required when necessary to ensure that adverse environmental effects are no more than minimal, both individually and cumulatively. Such mitigation will only be required once for any specific reach of a flood control project. However, if one-time mitigation is required for impacts associated with maintenance activities, the district engineer will not delay needed maintenance, provided the district engineer and the permittee establish a schedule for identification, approval, development, construction and completion of any such required mitigation. Once the one-time mitigation described above has been completed, or a determination made that mitigation is not required, no further mitigation will be required for maintenance activities within the maintenance baseline (see Note, below). In determining appropriate mitigation, the district engineer will give special consideration to natural water courses that have been included in the maintenance baseline and require mitigation and/or best management practices as appropriate.

*Emergency Situations:* In emergency situations, this NWP may be used to authorize maintenance activities in flood control facilities for which no maintenance baseline has been approved. Emergency situations are those which would result in an unacceptable hazard to life, a significant loss of property, or an immediate, unforeseen, and significant economic hardship if action is not taken before a maintenance baseline can be approved. In such situations, the determination of mitigation requirements, if any, may be deferred until the emergency has been resolved. Once the emergency has ended, a maintenance baseline must be established expeditiously, and mitigation,

including mitigation for maintenance conducted during the emergency, must be required as appropriate.

**Notification:** The permittee must submit a pre-construction notification to the district engineer before any maintenance work is conducted (see general condition 32). The pre-construction notification may be for activity-specific maintenance or for maintenance of the entire flood control facility by submitting a five-year (or less) maintenance plan. The pre-construction notification must include a description of the maintenance baseline and the disposal site for dredged or excavated material. (Authorities: Sections 10 and 404)

**Note:** If the maintenance baseline was approved by the district engineer under a prior version of NWP 31, and the district engineer imposed the one-time compensatory mitigation requirement on maintenance for a specific reach of a flood control project authorized by that prior version of NWP 31, during the period this version of NWP 31 is in effect, the district engineer will not require additional compensatory mitigation for maintenance activities authorized by this NWP in that specific reach of the flood control project.

*Detroit District NWP 31 Regional Conditions: The Detroit District has not added any regional conditions specific to NWP 31.*

*EGLE Water Quality Certification/CZMA consistency for NWP 31: EGLE granted certification/consistency subject to General Conditions.*

*EPA Water Quality Certification on All Tribal Lands Except for KBIC tribal lands for NWP 31: EPA granted certification subject to category-specific conditions listed in Section D.*

*Water Quality Certification on KBIC tribal lands for NWP 31: KBIC denied certification.*

**32. Completed Enforcement Actions.** Any structure, work, or discharge of dredged or fill material remaining in place or undertaken for mitigation, restoration, or environmental benefit in compliance with either:

(i) The terms of a final written Corps non-judicial settlement agreement resolving a violation of Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899; or the terms of an EPA 309(a) order on consent resolving a violation of Section 404 of the Clean Water Act, provided that:

(a) The activities authorized by this NWP cannot adversely affect more than 5 acres of non-tidal waters or 1 acre of tidal waters;

(b) The settlement agreement provides for environmental benefits, to an equal or greater degree, than the environmental detriments caused by the unauthorized activity that is authorized by this NWP; and

(c) The district engineer issues a verification letter authorizing the activity subject to the terms and conditions of this NWP and the settlement agreement, including a specified completion date; or

(ii) The terms of a final Federal court decision, consent decree, or settlement agreement resulting from an enforcement action brought by the United States under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899; or

(iii) The terms of a final court decision, consent decree, settlement agreement, or non-judicial settlement agreement resulting from a natural resource damage claim brought by a trustee or

trustees for natural resources (as defined by the National Contingency Plan at 40 CFR subpart G) under Section 311 of the Clean Water Act, Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, Section 312 of the National Marine Sanctuaries Act, Section 1002 of the Oil Pollution Act of 1990, or the Park System Resource Protection Act at 16 U.S.C. 19jj, to the extent that a Corps permit is required.

Compliance is a condition of the NWP itself; non-compliance of the terms and conditions of an NWP 32 authorization may result in an additional enforcement action (e.g., a Class I civil administrative penalty). Any authorization under this NWP is automatically revoked if the permittee does not comply with the terms of this NWP or the terms of the court decision, consent decree, or judicial/non-judicial settlement agreement. This NWP does not apply to any activities occurring after the date of the decision, decree, or agreement that are not for the purpose of mitigation, restoration, or environmental benefit. Before reaching any settlement agreement, the Corps will ensure compliance with the provisions of 33 CFR part 326 and 33 CFR 330.6(d)(2) and (e). (Authorities: Sections 10 and 404)

*Detroit District NWP 32 Regional Conditions: The Detroit District has not added any regional conditions specific to NWP 32.*

*EGLE Water Quality Certification/CZMA consistency for NWP 32: An individual 401 Certification and Consistency Determination concurrence are required for all projects, unless waived by EGLE.*

*EPA Water Quality Certification on All Tribal Lands Except for KBIC tribal lands for NWP 32: EPA granted certification subject to category-specific conditions listed in Section D.*

*Water Quality Certification on KBIC tribal lands for NWP 32: KBIC denied certification.*

**33. Temporary Construction, Access, and Dewatering.** Temporary structures, work, and discharges of dredged or fill material, including cofferdams, necessary for construction activities or access fills or dewatering of construction sites, provided that the associated primary activity is authorized by the Corps of Engineers or the U.S. Coast Guard. This NWP also authorizes temporary structures, work, and discharges of dredged or fill material, including cofferdams, necessary for construction activities not otherwise subject to the Corps or U.S. Coast Guard permit requirements. Appropriate measures must be taken to maintain near normal downstream flows and to minimize flooding. Fill must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. The use of dredged material may be allowed if the district engineer determines that it will not cause more than minimal adverse environmental effects. Following completion of construction, temporary fill must be entirely removed to an area that has no waters of the United States, dredged material must be returned to its original location, and the affected areas must be restored to pre-construction elevations. The affected areas must also be revegetated, as appropriate. This permit does not authorize the use of cofferdams to dewater wetlands or other aquatic areas to change their use. Structures left in place after construction is completed require a separate section 10 permit if located in navigable waters of the United States. (See 33 CFR part 322.)

**Notification:** The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if the activity is conducted in navigable waters of the United States (i.e., section 10 waters) (see general condition 32). The pre-construction notification must include a restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-project conditions. (Authorities: Sections 10 and 404)

*Detroit District NWP 33 Regional Conditions: The Detroit District has not added any regional conditions specific to NWP 33.*

*EGLE Water Quality Certification/CZMA consistency for NWP 33:*

1. *An individual 401 Certification and Consistency Determination concurrence are required for the following activities, unless waived by EGLE:*
  - a. *Temporary fill impacts that exceed 1,000 square feet in wetlands, lakes, or streams.*
  - b. *Temporary fill impacts that exceed 25 cubic yards of fill material in wetlands, lakes, or streams.*
  - c. *Placement of temporary structures or construction mats that exceed 0.1 acre in wetlands, lakes, or streams.*
  - d. *Projects in waters regulated under Part 325, Great Lakes Submerged Lands, of the NREPA.*
2. *Temporary structures, construction mats, and fill must be removed immediately after use has been discontinued and no later than 90 days after initiation of the authorized activity.*
3. *Geotextile shall be placed prior to temporary fill. Following completion of construction, temporary fill must be entirely removed to upland areas and the affected areas must be restored to pre-construction grade and wetland type. A restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-construction grade and wetland type shall be provided by the applicant. Any re-vegetation shall use seeds and plants native to Michigan according to the Floristic Quality Assessment for the State of Michigan.*
4. *Cofferdams shall be maintained in good working order throughout the duration of the project. Upon project completion the accumulated materials shall be properly disposed of in an identified upland site excluding Great Lakes, inland lakes, streams, floodplains, or wetlands.*
5. *All slurry resulting from any dewatering operation shall be discharged through a filter bag or pumped to a sump located away from wetlands and surface waters and allowed to filter through natural upland vegetation, gravel filters, or other engineered devices for a sufficient distance and/or period of time necessary to remove sediment or suspended particles.*
6. *A construction sequence with dates when the structures will be installed and removed must be provided by the applicant. Structures left in place after construction are prohibited.*
7. *All stream crossings shall span the bankfull width and, where the structure has a bottom, the structure bottom must match the slope of the streambed.*

*EPA Water Quality Certification on All Tribal Lands Except for KBIC tribal lands for NWP 33: EPA granted certification subject to category-specific conditions listed in Section D.*

*Water Quality Certification on KBIC tribal lands for NWP 33: KBIC denied certification.*

**34. Cranberry Production Activities.** Discharges of dredged or fill material for dikes, berms, pumps, water control structures or leveling of cranberry beds associated with expansion, enhancement, or modification activities at existing cranberry production operations. The cumulative total acreage of disturbance per cranberry production operation, including but not limited to, filling, flooding, ditching, or clearing, must not exceed 10 acres of waters of the United States, including wetlands. The activity must not result in a net loss of wetland acreage. This NWP does not authorize any discharge of dredged or fill material related to other cranberry production activities such as warehouses, processing facilities, or parking areas. For the purposes of this NWP, the cumulative total of 10 acres will be measured over the period that this NWP is valid.

**Notification:** The permittee must submit a pre-construction notification to the district engineer once during the period that this NWP is valid, and the NWP will then authorize discharges of dredge or fill material at an existing operation for the permit term, provided the 10-acre limit is not exceeded.

(See general condition 32.) (Authority: Section 404)

*Detroit District NWP 34 Regional Conditions: The Detroit District has not added any regional conditions specific to NWP 34.*

*EGLE Water Quality Certification/CZMA consistency for NWP 34:*

1. *An individual 401 Certification and Consistency Determination concurrence are required for the following activities, unless waived by EGLE:*
  - a. *Discharge of fill below the OHWM.*
  - b. *Connection of an inlet or outlet to any lake, river, stream, or Great Lakes waters.*
2. *Only 1 permit under this and future NWP categories may be granted per cranberry production operation. For the purposes of NWP 34, a cranberry production operation is defined as a group of (usually) contiguous beds and the water storage and handling system that serves them, all of which are managed as a unit.*

*EPA Water Quality Certification on All Tribal Lands Except for KBIC tribal lands for NWP 34: EPA granted certification subject to category-specific conditions listed in Section D.*

*Water Quality Certification on KBIC tribal lands for NWP 34: KBIC denied certification.*

**35. Maintenance Dredging of Existing Basins.** The removal of accumulated sediment for maintenance of existing marina basins, access channels to marinas or boat slips, and boat slips to previously authorized depths or controlling depths for ingress/egress, whichever is less. All dredged material must be deposited and retained in an area that has no waters of the United States unless otherwise specifically approved by the district engineer under separate authorization. Proper sediment controls must be used for the disposal site. (Authority: Section 10)

*Detroit District NWP 35 Regional Conditions: The Detroit District has not added any regional conditions specific to NWP 35.*

*EGLE Water Quality Certification/CZMA consistency for NWP 35:*

1. *An individual 401 Certification and Consistency Determination concurrence are required for the following activities, unless waived by EGLE:*
  - a. *Dredging of a previously authorized dredge area that exceeds a total of 5,000 cubic yards during a 5-year period.*
  - b. *Projects for which EGLE has notified the applicant that sediment testing is required, unless the applicant provides sediment test results in accordance with EGLE procedures that show the material does not contain contamination.*
2. *All dredged or excavated materials shall be properly disposed in uplands (i.e., outside of wetlands, floodplains, inland lakes, or streams).*

*EPA Water Quality Certification on All Tribal Lands Except for KBIC tribal lands for NWP 35: Applicant must contact EPA to determine whether the proposed work may result in a discharge and seek CWA Section 401 WQC from EPA prior to commencing the activity, if needed.*

*Water Quality Certification on KBIC tribal lands for NWP 35: KBIC denied certification.*

**36. Boat Ramps.** Activities required for the construction, repair, or replacement of boat ramps, provided the activity meets all of the following criteria:

- (a) The discharge of dredged or fill material into waters of the United States does not exceed 50 cubic yards of concrete, rock, crushed stone or gravel into forms, or in the form of pre-cast concrete planks or slabs, unless the district engineer waives the 50 cubic yard limit by making a written determination concluding that the discharge of dredged or fill material will result in no more

than minimal adverse environmental effects;

(b) The boat ramp does not exceed 20 feet in width, unless the district engineer waives this criterion by making a written determination concluding that the discharge of dredged or fill material will result in no more than minimal adverse environmental effects;

(c) The base material is crushed stone, gravel or other suitable material;

(d) The excavation is limited to the area necessary for site preparation and all excavated material is removed to an area that has no waters of the United States; and,

(e) No material is placed in special aquatic sites, including wetlands.

The use of unsuitable material that is structurally unstable is not authorized. If dredging in navigable waters of the United States is necessary to provide access to the boat ramp, the dredging must be authorized by another NWP, a regional general permit, or an individual permit.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) The discharge of dredged or fill material into waters of the United States exceeds 50 cubic yards, or (2) the boat ramp exceeds 20 feet in width. (See general condition 32.) (Authorities: Sections 10 and 404)

*Detroit District NWP 36 Regional Conditions: The Detroit District has not added any regional conditions specific to NWP 36.*

*EGLE Water Quality Certification/CZMA consistency for NWP 36:*

*1. An individual 401 Certification and Consistency Determination concurrence are required for the following activities, unless waived by EGLE:*

- a. Projects that are not limited to serving 1 single-family residential lot.*
- b. Fill volumes that exceed 25 cubic yards.*
- c. Dredge volumes that exceed 25 cubic yards.*
- d. Ramp widths that exceed 12 feet.*

*EPA Water Quality Certification on All Tribal Lands Except for KBIC tribal lands for NWP 36: EPA granted certification subject to category-specific conditions listed in Section D.*

*Water Quality Certification on KBIC tribal lands for NWP 36: KBIC denied certification.*

**37. Emergency Watershed Protection and Rehabilitation.** Work done by or funded by:

(a) The Natural Resources Conservation Service for a situation requiring immediate action under its emergency Watershed Protection Program (7 CFR part 624);

(b) The U.S. Forest Service under its Burned-Area Emergency Rehabilitation Handbook (FSH 2509.13);

(c) The Department of the Interior for wildland fire management burned area emergency stabilization and rehabilitation (DOI Manual part 620, Ch. 3);

(d) The Office of Surface Mining, or states with approved programs, for abandoned mine land reclamation activities under Title IV of the Surface Mining Control and Reclamation Act (30 CFR subchapter R), where the activity does not involve coal extraction; or

(e) The Farm Service Agency under its Emergency Conservation Program (7 CFR part 701).

In general, the permittee should wait until the district engineer issues an NWP verification or 45 calendar days have passed before proceeding with the watershed protection and rehabilitation activity. However, in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur, the emergency watershed protection and rehabilitation activity may proceed immediately and the district engineer will consider the information in the pre-construction notification and any comments received as a result of agency coordination to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

Notification: Except in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur, the permittee must submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 32). (Authorities: Sections 10 and 404)

*Detroit District NWP 37 Regional Conditions: The Detroit District has not added any regional conditions specific to NWP 37.*

*EGLE Water Quality Certification/CZMA consistency for NWP 37: An individual 401 Certification and Consistency Determination concurrence are required for all projects, unless waived by EGLE.*

*EPA Water Quality Certification on All Tribal Lands Except for KBIC tribal lands for NWP 37: EPA granted certification subject to category-specific conditions listed in Section D.*

*Water Quality Certification on KBIC tribal lands for NWP 37: KBIC denied certification.*

**38. Cleanup of Hazardous and Toxic Waste.** Specific activities required to affect the containment, stabilization, or removal of hazardous or toxic waste materials that are performed, ordered, or sponsored by a government agency with established legal or regulatory authority. Court ordered remedial action plans or related settlements are also authorized by this NWP. This NWP does not authorize the establishment of new disposal sites or the expansion of existing sites used for the disposal of hazardous or toxic waste.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) (Authorities: Sections 10 and 404)

Note: Activities undertaken entirely on a Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) site by authority of CERCLA as approved or required by EPA, are not required to obtain permits under Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act.

*Detroit District NWP 38 Regional Conditions: The Detroit District has not added any regional conditions specific to NWP 38.*

*EGLE Water Quality Certification/CZMA consistency for NWP 38:*

- 1. The cleanup shall minimize, to the most practicable extent, impacts to the public trust, riparian rights, and waters or wetlands.*
- 2. Wetlands, lakes, and streams lost or damaged by activities authorized under NWP 38, shall be restored to the most practicable extent.*

*EPA Water Quality Certification on All Tribal Lands Except for KBIC tribal lands for NWP 38: EPA granted certification subject to category-specific conditions listed in Section D.*

*Water Quality Certification on KBIC tribal lands for NWP 38: KBIC denied certification.*

**39. Commercial and Institutional Developments.** Discharges of dredged or fill material into non-tidal waters of the United States for the construction or expansion of commercial and institutional building foundations and 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, storm water management facilities, wastewater treatment facilities, and recreation facilities such as playgrounds and playing fields. Examples of commercial developments include retail stores, industrial facilities, storage facilities, restaurants, business parks, data centers (to include for example, artificial intelligence and machine learning facilities), pharmaceutical manufacturing facilities, 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. The construction of new golf courses and new ski areas is not authorized by this NWP.

The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. This NWP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters.

**Notification:** The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) (Authorities: Sections 10 and 404)

**Note:** For any activity that involves the construction of a wind energy generating structure, solar tower, or overhead transmission line, a copy of the PCN and NWP verification will be provided by the Corps to the Department of Defense Siting Clearinghouse, which will evaluate potential effects on military activities.

*Detroit District NWP 39 Regional Conditions:*

- a. No discharge is authorized in areas below the OHWM, areas subject to inundation by the adjacent water body, or areas which otherwise provide fish habitat functions of any kind.*
- b. The discharge must not cause the loss of greater than 1/4 acre of wetlands adjacent to navigable waters of the U.S.*

*EGLE Water Quality Certification/CZMA consistency for NWP 39: An individual 401 Certification and Consistency Determination concurrence are required for all projects, unless waived by EGLE.*

*EPA Water Quality Certification on All Tribal Lands Except for KBIC tribal lands for NWP 39: EPA granted certification subject to category-specific conditions listed in Section D.*

*Water Quality Certification on KBIC tribal lands for NWP 39: KBIC denied certification.*

**40. Agricultural Activities.** Discharges of dredged or fill material into non-tidal waters of the United States for agricultural activities, including the construction of building pads for farm buildings. Authorized activities include the installation, placement, or construction of drainage tiles, ditches, or levees; mechanized land clearing; land leveling; the relocation of existing serviceable drainage ditches constructed in waters of the United States; and similar activities.

This NWP also authorizes the construction of farm ponds in non-tidal waters of the United States, excluding perennial streams, provided the farm pond is used solely for agricultural purposes. This NWP does not authorize the construction of aquaculture ponds.

This NWP also authorizes discharges of dredged or fill material into non-tidal jurisdictional

waters of the United States to relocate existing serviceable drainage ditches constructed in non-tidal streams.

The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. This NWP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) (Authority: Section 404)

Note: Some discharges of dredged or fill material into waters of the United States for agricultural activities may qualify for an exemption under Section 404(f) of the Clean Water Act (see 33 CFR 323.4). This NWP authorizes the construction of farm ponds that do not qualify for the Clean Water Act section 404(f)(1)(C) exemption because of the recapture provision at section 404(f)(2).

*Detroit District NWP 40 Regional Conditions: The Detroit District has not added any regional conditions specific to NWP 40.*

*EGLE Water Quality Certification/CZMA consistency for NWP 40:*

*1. NWP 40 is limited to building pads for farm buildings impacting a maximum of 0.50 acre of wetland within areas that have been in existing, on-going agricultural production since at least 1980.*

*EPA Water Quality Certification on All Tribal Lands Except for KBIC tribal lands for NWP 40: EPA granted certification subject to category-specific conditions listed in Section D.*

*Water Quality Certification on KBIC tribal lands for NWP 40: KBIC denied certification.*

**41. Reshaping Existing Drainage and Irrigation Ditches.** Discharges of dredged or fill material into non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters, to modify the cross-sectional configuration of currently serviceable drainage and irrigation ditches constructed in waters of the United States, for the purpose of improving water quality by regrading the drainage or irrigation ditch with gentler slopes, which can reduce erosion, increase growth of vegetation, and increase uptake of nutrients and other substances by vegetation. The reshaping of the drainage ditch cannot increase drainage capacity beyond the original as-built capacity nor can it expand the area drained by the drainage ditch as originally constructed (i.e., the capacity of the drainage ditch must be the same as originally constructed and it cannot drain additional wetlands or other waters of the United States). Compensatory mitigation is not required because the work is designed to improve water quality.

This NWP does not authorize the relocation of drainage or irrigation ditches constructed in waters of the United States; the location of the centerline of the reshaped drainage or irrigation ditch must be approximately the same as the location of the centerline of the original drainage or irrigation ditch. This NWP does not authorize stream channelization or stream relocation projects. (Authority: Section 404)

*Detroit District NWP 41 Regional Conditions:*

*a. All excavated materials must be placed on uplands unless specifically authorized.*

*EGLE Water Quality Certification/CZMA consistency for NWP 41:*

*1. An individual 401 Certification and Consistency Determination concurrence are required for the following activities, unless waived by EGLE:*

- a. Deepening of drainage ditches beyond the original constructed depth.*
- b. Relocation of drainage ditches.*

- c. *Projects that cumulatively impact more than 1 mile of drainage ditch.*
- d. *Projects that directly impact more than one-third of an acre of wetland outside the existing channel.*
- e. *Reshaping ditches that are not established pursuant to Michigan's Drain Code of 1956.*
2. *Spoil material shall not be sidecast or deposited in a floodway.*
3. *NWP 41 is limited to activities carried out by the county drain commissioner or their agents in conjunction with routine management of county and inter-county drains established pursuant to Michigan's Drain Code of 1956. The permit applicant must provide evidence, such as construction drawings, of the original design capacity of the ditch.*
4. *Agency coordination between the USACE and EGLE is required for all activities under NWP 41.*

*EPA Water Quality Certification on All Tribal Lands Except for KBIC tribal lands for NWP 41: EPA granted certification subject to category-specific conditions listed in Section D.*

*Water Quality Certification on KBIC tribal lands for NWP 41: KBIC denied certification.*

**42. Recreational Facilities.** Discharges of dredged or fill material into non-tidal waters of the United States for the construction or expansion of recreational facilities. Examples of recreational facilities that may be authorized by this NWP include playing fields (e.g., football fields, baseball fields), basketball courts, tennis courts, hiking trails, bike paths, golf courses, ski areas, horse paths, nature centers, and campgrounds (excluding recreational vehicle parks). This NWP also authorizes the construction or expansion of small support facilities, such as maintenance and storage buildings and stables that are directly related to the recreational activity, but it does not authorize the construction of hotels, restaurants, racetracks, stadiums, arenas, or similar facilities.

The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. This NWP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters.

**Notification:** The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) (Authority: Section 404)

*Detroit District NWP 42 Regional Conditions:*

- a. *No discharge is authorized in areas below the OHWM, areas subject to inundation by the adjacent water body, or areas which otherwise provide fish habitat functions of any kind.*
- b. *The discharge must not cause the loss of greater than 1/4 acre of wetlands adjacent to navigable waters of the U.S.*
- c. *Golf courses and/or ski areas are not authorized.*

*EGLE Water Quality Certification/CZMA consistency for NWP 42:*

1. *An individual 401 Certification and Consistency Determination concurrence are required for the following activities, unless waived by EGLE:*
  - a. *Projects that are not fill pathways on public lands or open pile or floating boardwalks or docks.*
  - b. *Construction of fill pathways that exceed 6 feet in width.*
  - c. *Construction of fill pathways that exceed 200 feet in length.*

*EPA Water Quality Certification on All Tribal Lands Except for KBIC tribal lands for NWP 42: EPA granted certification subject to category-specific conditions listed in Section D.*

*Water Quality Certification on KBIC tribal lands for NWP 42: KBIC denied certification.*

**43. Stormwater Management Facilities.** Discharges of dredged or fill material into non-tidal waters of the United States for the construction of stormwater management facilities, including stormwater detention basins and retention basins and other stormwater management facilities; the construction of water control structures, outfall structures and emergency spillways; the construction of nature-based solutions for managing stormwater and reducing inputs of sediments, nutrients, and other pollutants into waters. Examples of such nature-based solutions include, but are not limited to, stream biofilters, bioretention ponds or swales, rain gardens, vegetated filter strips, vegetated swales (bioswales), constructed wetlands, infiltration trenches, and regenerative stormwater conveyances, as well as other nature-based solutions and other features that are conducted to meet reduction targets established under Total Maximum Daily Loads set under the Clean Water Act.

This NWP authorizes, to the extent that a section 404 permit is required, discharges of dredged or fill material into non-tidal waters of the United States for the maintenance of stormwater management facilities, and nature-based solutions for managing stormwater and reducing inputs of sediments, nutrients, and other pollutants into waters. The maintenance of stormwater management facilities and nature-based solutions that do not contain waters of the United States does not require a section 404 permit.

The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. This NWP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters. This NWP does not authorize discharges of dredged or fill material for the construction of new stormwater management facilities in perennial streams.

**Notification:** For discharges of dredged or fill material into non-tidal waters of the United States for the construction of new stormwater management facilities or nature-based solutions, or the expansion of existing stormwater management facilities or nature-based solutions, the permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) Maintenance activities do not require pre-construction notification if they are limited to restoring the original design capacities of the stormwater management facility or nature-based solution. (Authority: Section 404)

*Detroit District NWP 43 Regional Conditions:*

*a. Construction of new facilities are not authorized.*

*EGLE Water Quality Certification/CZMA consistency for NWP 43:*

*1. An individual 401 Certification and Consistency Determination concurrence are required for the following activities, unless waived by EGLE:*

*a. Construction of new stormwater management facilities*

*b. Stormwater management facility maintenance activities that exceed 0.5 acre.*

*2. NWP 43 may be used only to authorize maintenance activities in facilities constructed and used for the primary purpose of providing stormwater detention, retention, and treatment.*

*3. All dredged or excavated materials shall be disposed of in upland (i.e., outside of wetlands, floodplains, or inland lakes and streams).*

*EPA Water Quality Certification on All Tribal Lands Except for KBIC tribal lands for NWP 43: EPA granted certification subject to category-specific conditions listed in Section D.*

*Water Quality Certification on KBIC tribal lands for NWP 43: KBIC denied certification.*

**44. Mining Activities.** Discharges of dredged or fill material into non-tidal waters of the United States for mining activities, except for coal mining activities, provided the activity meets all of the following criteria:

(a) For mining activities involving discharges of dredged or fill material into non-tidal jurisdictional wetlands, the discharge must not cause the loss of greater than 1/2-acre of non-tidal

jurisdictional wetlands;

(b) For mining activities involving discharges of dredged or fill material in non-tidal jurisdictional open waters (e.g., rivers, streams, lakes, and ponds) or work in non-tidal navigable waters of the United States (i.e., section 10 waters), the mined area, including permanent and temporary impacts due to discharges of dredged or fill material into jurisdictional waters, must not exceed 1/2-acre; and

(c) The acreage loss under paragraph (a) plus the acreage impact under paragraph (b) does not exceed 1/2-acre.

This NWP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters.

**Notification:** The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) If reclamation is required by other statutes, then a copy of the final reclamation plan must be submitted with the pre-construction notification. (Authorities: Sections 10 and 404)

*The Detroit District has revoked NWP 44.*

**45. Repair of Uplands Damaged by Discrete Events.** This NWP authorizes discharges of dredged or fill material, including dredging or excavation, into all waters of the United States for activities associated with the restoration of upland areas damaged by storms, floods, or other discrete events. This NWP authorizes bank stabilization to protect the restored uplands. The restoration of the damaged areas, including any bank stabilization, must not exceed the contours, or ordinary high water mark, that existed before the damage occurred. The district engineer retains the right to determine the extent of the pre-existing conditions and the extent of any restoration work authorized by this NWP. The work must commence, or be under contract to commence, within two years of the date of damage, unless this condition is waived in writing by the district engineer. This NWP cannot be used to reclaim lands lost to normal erosion processes over an extended period. This NWP does not authorize beach restoration or nourishment.

Minor dredging is limited to the amount necessary to restore the damaged upland area and should not significantly alter the pre-existing bottom contours of the waterbody.

**Notification:** The permittee must submit a pre-construction notification to the district engineer (see general condition 32) within 18-months of the date of the damage; for major storms, floods, or other discrete events, the district engineer may waive the 18-month limit for submitting a pre-construction notification if the permittee can demonstrate funding, contract, or other similar delays. The pre-construction notification must include documentation, such as a recent topographic survey or photographs, to justify the extent of the proposed restoration. (Authorities: Sections 10 and 404)

**Note:** The uplands themselves that are lost as a result of a storm, flood, or other discrete event can be replaced without a Clean Water Act Section 404 permit, if the uplands are restored to the ordinary high water mark (in non-tidal waters) or high tide line (in tidal waters). (See also 33 CFR 328.5.) This NWP authorizes discharges of dredged or fill material into waters of the United States associated with the restoration of uplands.

*Detroit District NWP 45 Regional Conditions: The Detroit District has not added any regional conditions specific to NWP 45.*

*EGLE Water Quality Certification/CZMA consistency for NWP 45:*

*1. An individual 401 Certification and Consistency Determination concurrence are required for the following activities, unless waived by EGLE:*

- a. *Projects in areas regulated under Part 323, Shorelands Protection and Management, of the NREPA.*
  - b. *Projects in waters regulated under Part 325, Great Lakes Submerged Lands, of the NREPA.*
  - c. *Projects in areas designated under Part 353, Sand Dunes Protection and Management, of the NREPA.*
2. *The repair shall minimize, to the most practicable extent, impacts to the public trust, riparian rights, and waters or wetlands.*
  3. *Bank stabilization must meet NWP 13 as conditioned by EGLE.*

*EPA Water Quality Certification on All Tribal Lands Except for KBIC tribal lands for NWP 45: EPA granted certification subject to category-specific conditions listed in Section D.*

*Water Quality Certification on KBIC tribal lands for NWP 45: KBIC denied certification.*

**46. Discharges in Ditches.** Discharges of dredged or fill material into non-tidal ditches that are (1) constructed in uplands, (2) receive water from an area determined to be a water of the United States prior to the construction of the ditch, (3) divert water to an area determined to be a water of the United States prior to the construction of the ditch, and (4) determined to be waters of the United States. The discharge of dredged or fill material must not cause the loss of greater than one acre of waters of the United States.

This NWP does not authorize discharges of dredged or fill material into ditches constructed in streams or other waters of the United States, or in streams that have been relocated in uplands. This NWP does not authorize discharges of dredged or fill material that increase the capacity of the ditch and drain those areas determined to be waters of the United States prior to construction of the ditch.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) (Authority: Section 404)

*Detroit District NWP 46 Regional Conditions: The Detroit District has not added any regional conditions specific to NWP 46.*

*EGLE Water Quality Certification/CZMA consistency for NWP 46: An individual 401 Certification and Consistency Determination concurrence are required for all projects, unless waived by EGLE.*

*EPA Water Quality Certification on All Tribal Lands Except for KBIC tribal lands for NWP 46: EPA granted certification subject to category-specific conditions listed in Section D.*

*Water Quality Certification on KBIC tribal lands for NWP 46: KBIC denied certification.*

**47. [Reserved]**

**48. Commercial Shellfish Mariculture Activities.** Structures or work in navigable waters of the United States and discharges of dredged or fill material into waters of the United States necessary for new and continuing commercial shellfish mariculture operations (i.e., the cultivation of bivalve molluscs such as oysters, mussels, clams, and scallops) in authorized project areas. For the purposes of this NWP, the project area is the area in which the operator is authorized to conduct commercial shellfish mariculture activities, as identified through a lease or permit issued by an appropriate state or local government agency, a treaty, or any easement, lease, deed, contract, or other legally binding agreement that establishes an enforceable property interest for the operator. This NWP does not authorize structures or work in navigable waters of the United States or discharges of dredged or fill material into waters of the United States within Washington State.

This NWP authorizes the installation of buoys, floats, racks, trays, nets, lines, tubes, containers, and other structures into navigable waters of the United States. This NWP also authorizes discharges of dredged or fill material into waters of the United States necessary for shellfish seeding, rearing, cultivating, transplanting, and harvesting activities. Rafts and other floating structures must be securely anchored and clearly marked.

This NWP does not authorize:

- (a) The cultivation of a nonindigenous species unless that species has been previously cultivated in the waterbody;
- (b) The cultivation of an aquatic nuisance species as defined in the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990; or
- (c) Attendant features such as docks, piers, boat ramps, stockpiles, or staging areas, or the deposition of shell material back into waters of the United States as waste.

**Notification:** The permittee must submit a pre-construction notification to the district engineer if the activity directly affects more than 1/2-acre of submerged aquatic vegetation. If the operator will be conducting commercial shellfish mariculture activities in multiple contiguous project areas, he or she can either submit one PCN for those contiguous project areas or submit a separate PCN for each project area. (See general condition 32.) (Authorities: Sections 10 and 404)

**Note 1:** Where structures or work are proposed in navigable waters of the United States, project proponents should ensure they provide the location and dimensions of the proposed structures to the U.S. Coast Guard (USCG) prior to submittal of a Pre-Construction Notification, or prior to beginning construction. The USCG may assess potential navigation-related concerns associated with the location of proposed structures or work, and may inform project proponents of marking and lighting requirements necessary to comply with General Condition 1 (Navigation). For assistance identifying the appropriate USCG District or Sector Waterways Management Staff responsible for the area of the proposed work, contact USCG at CGWWM@uscg.mil.

**Note 2:** To prevent introduction of aquatic nuisance species, no material that has been taken from a different waterbody may be reused in the current project area, unless it has been treated in accordance with the applicable regional aquatic nuisance species management plan.

**Note 3:** The Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 defines "aquatic nuisance species" as "a nonindigenous species that threatens the diversity or abundance of native species or the ecological stability of infested waters, or commercial, agricultural, aquacultural, or recreational activities dependent on such waters."

**Note 4:** Where structures or work are authorized in navigable waters of the United States (i.e., section 10 waters) within the coastal United States, the Great Lakes, and United States territories, the permittee should provide a copy of the 'as-built drawings' and the geographic coordinate system used in the 'as-built drawings' to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), to inform updates to nautical charts and Coast Pilot corrections. The information should be transmitted via email to ocs.ndb@noaa.gov.

*NWP 48 does not apply in Michigan.*

**49. Coal Remining Activities.** Discharges of dredged or fill material into non-tidal waters of the United States associated with the remining and reclamation of lands that were previously mined for coal. The activities must already be authorized, or they must currently be in process by the Department of the Interior Office of Surface Mining Reclamation and Enforcement, or by states with

approved programs under Title IV or Title V of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Areas previously mined include reclaimed mine sites, abandoned mine land areas, or lands under bond forfeiture contracts.

As part of the project, the permittee may conduct new coal mining activities in conjunction with the remining activities when he or she clearly demonstrates to the district engineer that the overall mining plan will result in a net increase in aquatic resource functions. The Corps will consider the SMCRA agency's decision regarding the amount of currently undisturbed adjacent lands needed to facilitate the remining and reclamation of the previously mined area. The total area disturbed by new mining must not exceed 40 percent of the total acreage covered by both the remined area and the additional area necessary to carry out the reclamation of the previously mined area.

**Notification:** The permittee must submit a pre-construction notification and a document describing how the overall mining plan will result in a net increase in aquatic resource functions to the district engineer and receive written authorization prior to commencing the activity. (See general condition 32.) (Authorities: Sections 10 and 404)

*The Detroit District has revoked NWP 49.*

**50. Underground Coal Mining Activities.** Discharges of dredged or fill material into non-tidal waters of the United States associated with underground coal mining and reclamation operations provided the activities are authorized, or are currently being processed by the Department of the Interior, Office of Surface Mining Reclamation and Enforcement, or by states with approved programs under Title V of the Surface Mining Control and Reclamation Act of 1977.

The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. This NWP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters. This NWP does not authorize coal preparation and processing activities outside of the mine site.

**Notification:** The permittee must submit a pre-construction notification to the district engineer. (See general condition 32.) If reclamation is required by other statutes, then a copy of the reclamation plan must be submitted with the pre-construction notification. (Authorities: Sections 10 and 404)

*The Detroit District has revoked NWP 50.*

**51. Land-Based Renewable Energy Generation Facilities.** Discharges of dredged or fill material into non-tidal waters of the United States for the construction, expansion, or modification of land-based renewable energy production facilities, including attendant features. Such facilities include infrastructure to collect solar (concentrating solar power and photovoltaic), wind, biomass, or geothermal energy. Attendant features may include, but are not limited to roads, parking lots, and stormwater management facilities within the land-based renewable energy generation facility.

The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. This NWP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters.

**Notification:** The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if the discharge results in the loss of greater than 1/10-acre of waters of the United States. (See general condition 32.) (Authorities: Sections 10 and 404)

**Note 1:** Electric utility lines constructed to transfer the energy from the land-based renewable energy generation facility to a distribution system, regional grid, or other facility are generally considered to be linear projects and each separate and distant crossing of a waterbody is eligible for

treatment as a separate single and complete linear project. Those electric utility lines may be authorized by NWP 57 or another Department of the Army authorization.

Note 2: If the only activities associated with the construction, expansion, or modification of a land-based renewable energy generation facility that require Department of the Army authorization are discharges of dredged or fill material into waters of the United States to construct, maintain, repair, and/or remove electric utility lines and/or road crossings, then NWP 57 and/or NWP 14 shall be used if those activities meet the terms and conditions of NWPs 57 and 14, including any applicable regional conditions and any case-specific conditions imposed by the district engineer.

Note 3: For any activity that involves the construction of a wind energy generating structure, solar tower, or overhead transmission line, a copy of the PCN and NWP verification will be provided by the Corps to the Department of Defense Siting Clearinghouse, which will evaluate potential effects on military activities.

*Detroit District NWP 51 Regional Conditions: The Detroit District does not propose any regional conditions.*

*EGLE Water Quality Certification/CZMA consistency for NWP 51: An individual 401 Certification and Consistency Determination concurrence are required for all projects, unless waived by EGLE.*

*EPA Water Quality Certification on All Tribal Lands Except for KBIC tribal lands for NWP 51: EPA granted certification subject to category-specific conditions listed in Section D.*

*Water Quality Certification on KBIC tribal lands for NWP 51: KBIC denied certification.*

**52. Water-Based Renewable Energy Generation Pilot Projects.** Structures and work in navigable waters of the United States and discharges of dredged or fill material into waters of the United States for the construction, expansion, modification, or removal of water-based wind, water-based solar, wave energy, or hydrokinetic renewable energy generation pilot projects and their attendant features. Attendant features may include, but are not limited to, land-based collection and distribution facilities, control facilities, roads, parking lots, and stormwater management facilities.

For the purposes of this NWP, the term “pilot project” means an experimental project where the water-based renewable energy generation units will be monitored to collect information on their performance and environmental effects at the project site.

The discharge must not cause the loss of greater than 1/2-acre of waters of the United States. The placement of a transmission line on the bed of a navigable water of the United States from the renewable energy generation unit(s) to a land-based collection and distribution facility is considered a structure under Section 10 of the Rivers and Harbors Act of 1899 (see 33 CFR 322.2(b)), and the placement of the transmission line on the bed of a navigable water of the United States is not a loss of waters of the United States for the purposes of applying the 1/2-acre limit.

For each single and complete project, no more than 10 generation units (e.g., wind turbines, wave energy devices, or hydrokinetic devices) are authorized. For floating solar panels in navigable waters of the United States, each single and complete project cannot exceed 1/2-acre in water surface area covered by the floating solar panels.

This NWP does not authorize activities in coral reefs. Structures in an anchorage area established by the U.S. Coast Guard must comply with the requirements in 33 CFR 322.5(l)(2). Structures may not be placed in established danger zones or restricted areas designated in 33 CFR part 334, Federal navigation channels, shipping safety fairways or traffic separation schemes

established by the U.S. Coast Guard (see 33 CFR 322.5(l)(1)), or EPA or Corps designated open water dredged material disposal areas.

Upon completion of the pilot project, the generation units, transmission lines, and other structures or fills associated with the pilot project must be removed to the maximum extent practicable unless they are authorized by a separate Department of the Army authorization, such as another NWP, an individual permit, or a regional general permit. Completion of the pilot project will be identified as the date of expiration of the Federal Energy Regulatory Commission (FERC) license, or the expiration date of the NWP authorization if no FERC license is required.

**Notification:** The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) (Authorities: Sections 10 and 404)

**Note 1:** Electric utility lines constructed to transfer the energy from the land-based collection facility to a distribution system, regional grid, or other facility are generally considered to be linear projects and each separate and distant crossing of a waterbody is eligible for treatment as a separate single and complete linear project. Those electric utility lines may be authorized by NWP 57 or another Department of the Army authorization.

**Note 2:** An activity that is located on an existing locally or federally maintained U.S. Army Corps of Engineers project requires separate review and/or approval from the Corps under 33 U.S.C. 408.

**Note 3:** Where structures or work are authorized in navigable waters of the United States (i.e., section 10 waters) within the coastal United States, the Great Lakes, and United States territories, the permittee should provide a copy of the 'as-built drawings' and the geographic coordinate system used in the 'as-built drawings' to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), to inform updates to nautical charts and Coast Pilot corrections. The information should be transmitted via email to ocs.ndb@noaa.gov.

**Note 4:** Hydrokinetic renewable energy generation projects that require authorization by the Federal Energy Regulatory Commission under the Federal Power Act of 1920 do not require separate authorization from the Corps under section 10 of the Rivers and Harbors Act of 1899.

**Note 5:** For any activity that involves the construction of a wind energy generating structure, solar tower, or overhead transmission line, a copy of the PCN and NWP verification will be provided by the Corps to the Department of Defense Siting Clearinghouse, which will evaluate potential effects on military activities.

**Note 6:** Where structures or work are proposed in navigable waters of the United States, project proponents should ensure they provide the location and dimensions of the proposed structures to the U.S. Coast Guard (USCG) prior to submittal of a Pre-Construction Notification, or prior to beginning construction. The USCG may assess potential navigation-related concerns associated with the location of proposed structures or work, and may inform project proponents of marking and lighting requirements necessary to comply with General Condition 1 (Navigation). For assistance identifying the appropriate USCG District or Sector Waterways Management Staff responsible for the area of the proposed work, contact USCG at CGWWM@uscg.mil.

*The Detroit District has revoked NWP 52.*

**53. Removal of Low-Head Dams.** Structures and work in navigable waters of the United States and discharges of dredged or fill material into waters of the United States associated with the removal of low-head dams.

For the purposes of this NWP, the term “low-head dam” is generally defined as a dam or weir built across a stream to pass flows from upstream over all, or nearly all, of the width of the dam crest and does not have a separate spillway or spillway gates, but it may have an uncontrolled spillway. The dam crest is the top of the dam from left abutment to right abutment. A low-head dam may have been built for a range of purposes (e.g., check dam, mill dam, irrigation, water supply, recreation, hydroelectric, or cooling pond), but in all cases, it provides little or no storage function.

The removed low-head dam structure must be deposited and retained in an area that has no waters of the United States unless otherwise specifically approved by the district engineer under separate authorization.

Because the removal of the low-head dam will result in a net increase in ecological functions and services provided by the stream, as a general rule compensatory mitigation is not required for activities authorized by this NWP. However, the district engineer may determine for a particular low-head dam removal activity that compensatory mitigation is necessary to ensure that the authorized activity results in no more than minimal adverse environmental effects.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) (Authorities: Sections 10 and 404)

Note: This NWP does not authorize discharges of dredged or fill material into waters of the United States or structures or work in navigable waters to restore the stream in the vicinity of the low-head dam, including the former impoundment area. Nationwide permit 27 or other Department of the Army permits may authorize such activities. This NWP does not authorize discharges of dredged or fill material into waters of the United States or structures or work in navigable waters to stabilize stream banks. Bank stabilization activities may be authorized by NWP 13 or other Department of the Army permits.

*Detroit District NWP 53 Regional Conditions:*

*a. Work is not authorized on dams serving as sea lamprey barriers.*

*EGLE Water Quality Certification/CZMA consistency for NWP 53:*

*1. An individual 401 Certification and Consistency Determination concurrence are required for the following activities, unless waived by EGLE:*

- a. Projects in waters regulated under Part 325, Great Lakes Submerged Lands, of the NREPA.*
- b. Removal of dams with a height of 2 feet or more.*
- c. Removal of dams that impound an area of 2 acres or more.*
- d. Removal of dams that serve as a barrier to upstream movement of sea lamprey.*
- e. Removal of dams that impound sediments for which EGLE has notified the applicant that sediment testing is required, unless the applicant provides sediment test results in accordance with EGLE procedures that show the material does not contain contamination.*
- f. Excavation and fill activities that impact one-third of an acre or more of wetlands.*

*2. Excavation and fill activities in wetlands are allowed only for the purposes of dam removal, stream channel establishment at the existing dam control structure, and bank stabilization.*

*EPA Water Quality Certification on All Tribal Lands Except for KBIC tribal lands for NWP 53: EPA granted certification subject to category-specific conditions listed in Section D.*

*Water Quality Certification on KBIC tribal lands for NWP 53: KBIC denied certification.*

**54. Living Shorelines.** Structures and work in navigable waters of the United States and discharges of dredged or fill material into waters of the United States for the construction and maintenance of living shorelines to stabilize banks and shores in coastal waters, which includes the Great Lakes, along shores with small fetch and gentle slopes that are subject to low- to mid-energy waves. A living shoreline has a footprint that is made up mostly of native material. It incorporates vegetation or other living, natural “soft” elements alone or in combination with some type of harder shoreline structure (e.g., oyster or mussel reefs or rock sills) for added protection and stability. Living shorelines should maintain the natural continuity of the land-water interface, and retain or enhance shoreline ecological processes. Living shorelines must have a substantial biological component, either tidal or lacustrine fringe wetlands or oyster or mussel reef structures, but a portion of a living shoreline may consist of an unvegetated cobble, gravel, and/or sand beach, (i.e., a pocket beach). The following conditions must be met:

(a) The structures and fill area, including cobble, gravel, and/or sand fills, sills, breakwaters, or reefs, cannot extend into the waterbody more than 30 feet from the mean low water line in tidal waters or the ordinary high water mark in the Great Lakes, unless the district engineer waives this criterion by making a written determination concluding that the activity will result in no more than minimal adverse environmental effects;

(b) The activity is no more than 500 feet in length along the bank, unless the district engineer waives this criterion by making a written determination concluding that the activity will result in no more than minimal adverse environmental effects;

(c) Coir logs, coir mats, stone, native oyster shell, native wood debris, and other structural materials must be adequately anchored, of sufficient weight, or installed in a manner that prevents relocation in most wave action or water flow conditions, except for extremely severe storms;

(d) For living shorelines consisting of tidal or lacustrine fringe wetlands, native plants appropriate for current site conditions, including salinity and elevation, must be used if the site is planted by the permittee;

(e) Discharges of dredged or fill material into waters of the United States, and oyster or mussel reef structures in navigable waters, must be the minimum necessary for the establishment and maintenance of the living shoreline;

(f) If sills, breakwaters, or other structures must be constructed to protect fringe wetlands for the living shoreline, those structures must be the minimum size necessary to protect those fringe wetlands;

(g) The activity must be designed, constructed, and maintained so that it has no more than minimal adverse effects on water movement between the waterbody and the shore and the movement of aquatic organisms between the waterbody and the shore; and

(h) The living shoreline must be properly maintained, which may require periodic repair of sills, breakwaters, or reefs, or replacing cobble, gravel, and/or sand fills after severe storms or erosion events. Vegetation may be replanted to maintain the living shoreline. This NWP authorizes those maintenance and repair activities, including any minor deviations necessary to address changing environmental conditions.

This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to construct the living shoreline activity. Appropriate measures must be taken to maintain high flows, tidal flows or seiches, when temporary structures, work, and discharges of dredged or fill material, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows, tidal flows or seiches. After construction, temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

This NWP does not authorize beach nourishment or land reclamation activities.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the construction of the living shoreline. (See general condition 32.) The pre-construction notification must include a delineation of special aquatic sites (see paragraph (b)(4) of general condition 32). Pre-construction notification is not required for maintenance and repair activities for living shorelines unless required by applicable NWP general conditions or regional conditions. (Authorities: Sections 10 and 404)

Note: In waters outside of coastal waters, nature-based bank stabilization techniques, such as bioengineering and vegetative stabilization, may be authorized by NWP 13.

*Detroit District NWP 54 Regional Conditions: The Detroit District has not added any regional conditions specific to NWP 54.*

*EGLE Water Quality Certification/CZMA consistency for NWP 54:*

- 1. An individual 401 Certification and Consistency Determination concurrence are required for the following activities, unless waived by EGLE:*
  - a. Projects in areas regulated under Part 323, Shorelands Protection and Management, of the NREPA.*
  - b. Projects in waters regulated under Part 325, Great Lakes Submerged Lands, of the NREPA.*
  - c. Projects in areas regulated under Part 353, Sand Dunes Protection and Management, of the NREPA.*
- 2. Fill waterward of the existing shoreline is limited to temporary wave breaks or barriers made entirely of biodegradable materials and placed and anchored near the existing shoreline to facilitate vegetative establishment.*
- 3. Rock and hard armoring shall be placed at or landward of the existing shoreline and are limited to 300 feet of shoreline. Placement of the rock and hard armoring must allow for the natural growth and spread of riparian vegetation. Vertical structures and structures perpendicular to the shoreline are not authorized.*
- 4. Vegetation, including plantings and other potentially viable material, such as live stakes, brush bundles, or other gathered woody material, shall be comprised only of plant species that are considered native to Michigan according to the Floristic Quality Assessment for the State of Michigan. Engineered plant material, such as jute and coconut fabric, shall be comprised of inert plant fiber that may be nonnative.*
- 5. The destruction or alteration of areas of existing native wetland or aquatic vegetation, or the expansion of beach areas shall not be authorized.*

*EPA Water Quality Certification on All Tribal Lands Except for KBIC tribal lands for NWP 54: EPA granted certification subject to category-specific conditions listed in Section D.*

*Water Quality Certification on KBIC tribal lands for NWP 54: KBIC denied certification.*

**55. Seaweed Mariculture Activities.** Structures in marine and estuarine waters, including structures anchored to the seabed in waters overlying the outer continental shelf, for seaweed mariculture activities. This NWP also authorizes structures for bivalve shellfish mariculture if shellfish production is a component of an integrated multi-trophic mariculture system (e.g., the production of seaweed and bivalve shellfish on the same structure or a nearby mariculture structure that is part of the single and complete project).

This NWP authorizes the installation of buoys, long-lines, floats, anchors, rafts, racks, and other similar structures into navigable waters of the United States. Rafts, racks and other floating structures must be securely anchored and clearly marked. To the maximum extent practicable, the permittee must remove these structures from navigable waters of the United States if they will no longer be used for seaweed mariculture activities or multi-trophic mariculture activities.

Structures in an anchorage area established by the U.S. Coast Guard must comply with the requirements in 33 CFR 322.5(l)(2). Structures may not be placed in established danger zones or restricted areas designated in 33 CFR part 334, Federal navigation channels, shipping safety fairways or traffic separation schemes established by the U.S. Coast Guard (see 33 CFR 322.5(l)(1)), or EPA or Corps designated open water dredged material disposal areas.

This NWP does not authorize:

(a) The cultivation of an aquatic nuisance species as defined in the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 or the cultivation of a nonindigenous species unless that species has been previously cultivated in the waterbody; or

(b) Attendant features such as docks, piers, boat ramps, stockpiles, or staging areas.

Notification: The permittee must submit a pre-construction notification to the district engineer. (See general condition 32.)

In addition to the information required by paragraph (b) of general condition 32, the preconstruction notification must also include the following information: (1) a map showing the locations and dimensions of the structure(s); (2) the name(s) of the species that will be cultivated during the period this NWP is in effect; and (3) general water depths in the project area(s) (a detailed survey is not required). No more than one pre-construction notification per structure or group of structures should be submitted for the seaweed mariculture operation during the effective period of this NWP. The pre-construction notification should describe all species and culture activities the operator expects to undertake during the effective period of this NWP. (Authority: Section 10)

Note 1: Where structures or work are proposed in navigable waters of the United States, project proponents should ensure they provide the location and dimensions of the proposed structures to the U.S. Coast Guard (USCG) prior to submittal of a Pre-Construction Notification, or prior to beginning construction. The USCG may assess potential navigation-related concerns associated with the location of proposed structures or work, and may inform project proponents of marking and lighting requirements necessary to comply with General Condition 1 (Navigation). For assistance identifying the appropriate USCG District or Sector Waterways Management Staff responsible for the area of the proposed work, contact USCG at [CGWWM@uscg.mil](mailto:CGWWM@uscg.mil).

Note 2: To prevent introduction of aquatic nuisance species, no material that has been taken from a different waterbody may be reused in the current project area, unless it has been treated in accordance with the applicable regional aquatic nuisance species management plan.

**Note 3:** The Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 defines “aquatic nuisance species” as “a nonindigenous species that threatens the diversity or abundance of native species or the ecological stability of infested waters, or commercial, agricultural, aquacultural, or recreational activities dependent on such waters.”

**Note 4:** Where structures or work are authorized in navigable waters of the United States (i.e., section 10 waters) within the coastal United States, the Great Lakes, and United States territories, the permittee should provide a copy of the ‘as-built drawings’ and the geographic coordinate system used in the ‘as-built drawings’ to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), to inform updates to nautical charts and Coast Pilot corrections. The information should be transmitted via email to ocs.ndb@noaa.gov.

*NWP 55 does not apply in Michigan.*

## **56. [Reserved]**

**57. Electric Utility Line and Telecommunications Activities.** Activities required for the construction, maintenance, repair, and removal of electric utility lines, telecommunication lines, and associated facilities in waters of the United States, provided the activity does not result in the loss of greater than 1/2-acre of waters of the United States for each single and complete project.

*Electric utility lines and telecommunication lines:* This NWP authorizes discharges of dredged or fill material into waters of the United States and structures or work in navigable waters for crossings of those waters associated with the construction, maintenance, or repair of electric utility lines and telecommunication lines. There must be no change in pre-construction contours of waters of the United States. An “electric utility line and telecommunication line” is defined as any cable, line, fiber optic line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, and internet, radio, and television communication.

Material resulting from trench excavation may be temporarily sidecast into waters of the United States for no more than three months, provided the material is not placed in such a manner that it is dispersed by currents or other forces. The district engineer may extend the period of temporary side casting for no more than a total of 180 days, where appropriate. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench. The trench cannot be constructed or backfilled in such a manner as to drain waters of the United States (e.g., backfilling with extensive gravel layers, creating a French drain effect). Any exposed slopes and stream banks must be stabilized immediately upon completion of the electric utility line or telecommunication line crossing of each waterbody.

*Electric utility line and telecommunications substations:* This NWP authorizes the construction, maintenance, or expansion of substation facilities associated with an electric utility line or telecommunication line in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not result in the loss of greater than 1/2-acre of waters of the United States. This NWP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters of the United States to construct, maintain, or expand substation facilities.

*Foundations for overhead electric utility line or telecommunication line towers, poles, and anchors:* This NWP authorizes the construction or maintenance of foundations for overhead electric utility line or telecommunication line towers, poles, and anchors in all waters of the United States, provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a larger single pad) are used where feasible.

**Access roads:** This NWP authorizes the construction of access roads for the construction and maintenance of electric utility lines or telecommunication lines, including overhead lines and substations, in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. This NWP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters for access roads. Access roads must be the minimum width necessary (see Note 2, below). Access roads must be constructed so that the length of the road minimizes any adverse effects on waters of the United States and must be as near as possible to pre-construction contours and elevations (e.g., at grade corduroy roads or geotextile/gravel roads). Access roads constructed above pre-construction contours and elevations in waters of the United States must be properly bridged or culverted to maintain surface flows.

This NWP may authorize electric utility lines or telecommunication lines in or affecting navigable waters of the United States even if there is no associated discharge of dredged or fill material (see 33 CFR part 322). Electric utility lines or telecommunication lines constructed over section 10 waters and electric utility lines or telecommunication lines that are routed in or under section 10 waters without a discharge of dredged or fill material require a section 10 permit.

This NWP authorizes, to the extent that Department of the Army authorization is required, temporary structures, fills, and work necessary for the remediation of inadvertent returns of drilling fluids to waters of the United States through sub-soil fissures or fractures that might occur during horizontal directional drilling activities conducted for the purpose of installing or replacing electric utility lines or telecommunication lines. These remediation activities must be done as soon as practicable, to restore the affected waterbody. District engineers may add special conditions to this NWP to require a remediation plan for addressing inadvertent returns of drilling fluids to waters of the United States during horizontal directional drilling activities conducted for the purpose of installing or replacing electric utility lines or telecommunication lines.

This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to conduct the electric utility line activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges of dredged or fill material, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. After construction, temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

**Notification:** The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) a section 10 permit is required; or (2) the discharge will result in the loss of greater than 1/10-acre of waters of the United States. (See general condition 32.) (Authorities: Sections 10 and 404)

**Note 1:** Where structures or work are authorized in navigable waters of the United States (i.e., section 10 waters) within the coastal United States, the Great Lakes, and United States territories, the permittee should provide a copy of the 'as-built drawings' and the geographic coordinate system used in the 'as-built drawings' to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), to inform updates to nautical charts and Coast Pilot corrections. The information should be transmitted via email to [ocs.ndb@noaa.gov](mailto:ocs.ndb@noaa.gov).

**Note 2:** For electric utility line or telecommunications activities crossing a single waterbody more than one time at separate and distant locations, or multiple waterbodies at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP

authorization. Electric utility line and telecommunications activities must comply with 33 CFR 330.6(d).

Note 3: Electric utility lines or telecommunication lines consisting of aerial electric power transmission lines crossing navigable waters of the United States (which are defined at 33 CFR part 329) must comply with the applicable minimum clearances specified in 33 CFR 322.5(i).

Note 4: Access roads used for both construction and maintenance may be authorized, provided they meet the terms and conditions of this NWP. Access roads used solely for construction of the electric utility line or telecommunication line must be removed upon completion of the work, in accordance with the requirements for temporary fills.

Note 5: This NWP authorizes electric utility line and telecommunication line maintenance and repair activities that do not qualify for the Clean Water Act section 404(f) exemption for maintenance of currently serviceable fills or fill structures.

Note 6: For overhead electric utility lines and telecommunication lines authorized by this NWP, a copy of the PCN and NWP verification will be provided by the Corps to the Department of Defense Siting Clearinghouse, which will evaluate potential effects on military activities.

Note 7: For activities that require pre-construction notification, the PCN must include any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings that require Department of the Army authorization but do not require pre-construction notification (see paragraph (b)(4) of general condition 32). The district engineer will evaluate the PCN in accordance with Section D, "District Engineer's Decision." The district engineer may require mitigation to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see general condition 23).

Note 8: Where structures or work are proposed in navigable waters of the United States, project proponents should ensure they provide the location and dimensions of the proposed structures to the U.S. Coast Guard (USCG) prior to submittal of a Pre-Construction Notification, or prior to beginning construction. The USCG may assess potential navigation-related concerns associated with the location of proposed structures or work, and may inform project proponents of marking and lighting requirements necessary to comply with General Condition 1 (Navigation). For assistance identifying the appropriate USCG District or Sector Waterways Management Staff responsible for the area of the proposed work, contact USCG at [CGWWM@uscg.mil](mailto:CGWWM@uscg.mil).

*Detroit District NWP 57 Regional Conditions:*

*a. For substations and permanent access roads, no discharge is authorized in areas below the OHWM, areas subject to inundation by the adjacent water body, or areas which otherwise provide fish habitat functions.*

*b. Impacts for substations and permanent access roads are limited to 1/4 acre in wetlands adjacent to navigable waters of the U.S.*

*c. Impacted wetlands outside of permanently maintained rights of way shall be restored to the same or more valuable wetland type (e.g., forested wetlands shall be restored to forested wetlands). Within permanently maintained rights of way, impacted wetlands shall be restored, unless otherwise authorized by the Corps.*

*d. For underground utility lines placed across the channel of an authorized Federal navigation project, the following conditions apply:*

- 1. the line must be embedded at least 6 feet below the authorized Federal channel depth;*

2. *existing and proposed elevation information on precise plan and section scale drawings are required;*
  3. *within 60 days after construction, an as-built survey must be provided indicating the points of entry and exit of the installation.*
- e. The application must provide the latitude and longitude (or UTM coordinates) of each end of the utility line at the limits of Corps jurisdiction (OHWM or upland limit of wetlands), and for each point between where the utility changes direction.*
- f. All excavated and dredged material, other than that used to backfill the trench as authorized pursuant to NWP 57, shall be disposed of on uplands.*

*EGLE Water Quality Certification/CZMA consistency for NWP 57:*

1. *An individual 401 Certification and Consistency Determination concurrence are required for the following activities, unless waived by EGLE:*
  - a. *Projects in waters regulated under Part 325, Great Lakes Submerged Lands, of the NREPA.*
  - b. *Substation or temporary access road projects that result in discharge of fill below the OHWM, or into floodplain or wetland areas subject to inundation by the adjacent water body or which otherwise provide fish habitat functions.*
  - c. *Substation or temporary access road projects that impact more than 0.1 acre of wetlands, lakes, or streams.*
  - d. *Construction of permanent access roads.*
2. *Applicants must demonstrate that upland alternatives are not practicable.*
3. *Impacted wetlands outside of permanently maintained rights-of-way shall be restored to the same or more valuable wetland type (e.g., forested wetlands shall be restored to forested wetlands). Within permanently maintained rights of way, impacted wetlands shall be restored, unless otherwise authorized by the EGLE and the USACE.*
4. *All excavated and dredged material, other than that used to backfill the trench as authorized pursuant to NWP 57, shall be properly disposed of in uplands (i.e., outside of wetlands, floodplains, or inland lakes and streams).*
5. *All revegetation of wetland sites must be with plant species that are native to Michigan according to the Floristic Quality Assessment for the State of Michigan.*

*EPA Water Quality Certification on All Tribal Lands Except for KBIC tribal lands for NWP 57: EPA granted certification subject to category-specific conditions listed in Section D.*

*Water Quality Certification on KBIC tribal lands for NWP 57: KBIC denied certification.*

**58. Utility Line Activities for Water and Other Substances.** Activities required for the construction, maintenance, repair, and removal of utility lines for water and other substances, excluding oil, natural gas, products derived from oil or natural gas, and electricity. Oil or natural gas pipeline activities or electric utility line and telecommunications activities may be authorized by NWPs 12 or 57, respectively. This NWP also authorizes associated utility line facilities in waters of the United States, provided the activity does not result in the loss of greater than 1/2-acre of waters of the United States for each single and complete project.

*Utility lines:* This NWP authorizes discharges of dredged or fill material into waters of the United States and structures or work in navigable waters for crossings of those waters associated with the construction, maintenance, or repair of utility lines for water and other substances, including

outfall and intake structures. There must be no change in pre-construction contours of waters of the United States. A “utility line” is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquescent, or slurry substance, for any purpose that is not oil, natural gas, or petrochemicals. Examples of activities authorized by this NWP include utility lines that convey water, sewage, stormwater, wastewater, brine, irrigation water, and industrial products that are not petrochemicals. The term “utility line” does not include activities that drain a water of the United States, such as drainage tile or French drains, but it does apply to pipes conveying drainage from another area.

Material resulting from trench excavation may be temporarily sidecast into waters of the United States for no more than three months, provided the material is not placed in such a manner that it is dispersed by currents or other forces. The district engineer may extend the period of temporary side casting for no more than a total of 180 days, where appropriate. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench. The trench cannot be constructed or backfilled in such a manner as to drain waters of the United States (e.g., backfilling with extensive gravel layers, creating a French drain effect). Any exposed slopes and stream banks must be stabilized immediately upon completion of the utility line crossing of each waterbody.

*Utility line substations:* This NWP authorizes the construction, maintenance, or expansion of substation facilities associated with a utility line in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not result in the loss of greater than 1/2-acre of waters of the United States. This NWP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters of the United States to construct, maintain, or expand substation facilities.

*Foundations for above-ground utility lines:* This NWP authorizes the construction or maintenance of foundations for above-ground utility lines in all waters of the United States, provided the foundations are the minimum size necessary.

*Access roads:* This NWP authorizes the construction of access roads for the construction and maintenance of utility lines, including utility line substations, in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. This NWP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters for access roads. Access roads must be the minimum width necessary (see Note 2, below). Access roads must be constructed so that the length of the road minimizes any adverse effects on waters of the United States and must be as near as possible to pre-construction contours and elevations (e.g., at grade corduroy roads or geotextile/gravel roads). Access roads constructed above pre-construction contours and elevations in waters of the United States must be properly bridged or culverted to maintain surface flows.

This NWP may authorize utility lines in or affecting navigable waters of the United States even if there is no associated discharge of dredged or fill material (see 33 CFR part 322). Overhead utility lines constructed over section 10 waters and utility lines that are routed in or under section 10 waters without a discharge of dredged or fill material may require a section 10 permit.

This NWP authorizes, to the extent that Department of the Army authorization is required, temporary structures, fills, and work necessary for the remediation of inadvertent returns of drilling fluids to waters of the United States through sub-soil fissures or fractures that might occur during horizontal directional drilling activities conducted for the purpose of installing or replacing utility lines. These remediation activities must be done as soon as practicable, to restore the affected waterbody. District engineers may add special conditions to this NWP to require a remediation plan for addressing inadvertent returns of drilling fluids to waters of the United States during horizontal directional drilling activities conducted for the purpose of installing or replacing utility lines.

This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to conduct the utility line activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges of dredged or fill material, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. After construction, temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) a section 10 permit is required; or (2) the discharge will result in the loss of greater than 1/10-acre of waters of the United States. (See general condition 32.) (Authorities: Sections 10 and 404)

Note 1: Where structures or work are authorized in navigable waters of the United States (i.e., section 10 waters) within the coastal United States, the Great Lakes, and United States territories, the permittee should provide a copy of the 'as-built drawings' and the geographic coordinate system used in the 'as-built drawings' to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), to inform updates to nautical charts and Coast Pilot corrections. The information should be transmitted via email to [ocs.ndb@noaa.gov](mailto:ocs.ndb@noaa.gov).

Note 2: For utility line activities crossing a single waterbody more than one time at separate and distant locations, or multiple waterbodies at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. Utility line activities must comply with 33 CFR 330.6(d).

Note 3: Access roads used for both construction and maintenance may be authorized, provided they meet the terms and conditions of this NWP. Access roads used solely for construction of the utility line must be removed upon completion of the work, in accordance with the requirements for temporary fills.

Note 4: Pipes or pipelines used to transport gaseous, liquid, liquescent, or slurry substances over navigable waters of the United States are considered to be bridges, not utility lines, and may require a permit from the U.S. Coast Guard pursuant to the General Bridge Act of 1946. However, any discharges of dredged or fill material into waters of the United States associated with such pipelines will require a section 404 permit (see NWP 15).

Note 5: This NWP authorizes utility line maintenance and repair activities that do not qualify for the Clean Water Act section 404(f) exemption for maintenance of currently serviceable fills or fill structures.

Note 6: For activities that require pre-construction notification, the PCN must include any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings that require Department of the Army authorization but do not require pre-construction notification (see paragraph (b)(4) of general condition 32). The district engineer will evaluate the PCN in accordance with Section D, "District Engineer's Decision." The district engineer may require mitigation to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see general condition 23).

Note 7: Where structures or work are proposed in navigable waters of the United States, project proponents should ensure they provide the location and dimensions of the proposed

structures to the U.S. Coast Guard (USCG) prior to submittal of a Pre-Construction Notification, or prior to beginning construction. The USCG may assess potential navigation-related concerns associated with the location of proposed structures or work, and may inform project proponents of marking and lighting requirements necessary to comply with General Condition 1 (Navigation). For assistance identifying the appropriate USCG District or Sector Waterways Management Staff responsible for the area of the proposed work, contact USCG at CGWWM@uscg.mil.

*Detroit District NWP 58 Regional Conditions:*

- a. *For substations and permanent access roads, no discharge is authorized in areas below the OHWM, areas subject to inundation by the adjacent water body, or areas which otherwise provide fish habitat functions.*
- b. *Impacts for substations and permanent access roads are limited to 1/4 acre in wetlands adjacent to navigable waters of the U.S.*
- c. *Impacted wetlands outside of permanently maintained rights of way must be restored to the same or more valuable wetland type (e.g., forested wetlands must be restored to forested wetlands). Within permanently maintained rights of way, impacted wetlands must be restored, unless otherwise authorized by the Corps.*
- d. *For utility lines placed across the channel of an authorized Federal navigation project, the following conditions apply:*
  1. *the line must be embedded at least 6 feet below the authorized Federal channel depth;*
  2. *existing and proposed elevation information on precise plan and section scale drawings are required;*
  3. *within 60 days after construction, an as-built survey must be provided indicating the points of entry and exit of the installation.*
- e. *The application must provide the latitude and longitude (or UTM coordinates) of each end of the utility line at the limits of Corps jurisdiction (OHWM or upland limit of wetlands), and for each point between where the utility changes direction.*
- f. *All excavated and dredged material, other than that used to backfill the trench as authorized pursuant to NWP 58, shall be disposed on uplands.*

*EGLE Water Quality Certification/CZMA consistency for NWP 58:*

1. *An individual 401 Certification and Consistency Determination concurrence are required for the following activities, unless waived by EGLE:*
  - a. *Projects in waters regulated under Part 325, Great Lakes Submerged Lands, of the NREPA.*
  - b. *Substation or temporary access road projects that result in discharge of fill below the OHWM, or into floodplain or wetland areas subject to inundation by the adjacent water body or which otherwise provide fish habitat functions.*
  - c. *Substation or temporary access road projects that impact more than 0.1 acre of wetlands, lakes, or streams.*
  - d. *Construction of permanent access roads.*
2. *Applicants must demonstrate that upland alternatives are not practicable.*
3. *Impacted wetlands outside of permanently maintained rights-of-way shall be restored to the same or more valuable wetland type (e.g., forested wetlands shall be restored to forested wetlands). Within permanently maintained rights of way, impacted wetlands shall be restored, unless otherwise authorized by the EGLE and the USACE.*
4. *All excavated and dredged material, other than that used to backfill the trench as authorized pursuant to NWP 58, shall be properly disposed of in uplands (i.e., outside of wetlands, floodplains, or inland lakes and streams).*
5. *All revegetation of wetland sites must be with plant species that are native to Michigan according to the Floristic Quality Assessment for the State of Michigan.*

*EPA Water Quality Certification on All Tribal Lands Except for KBIC tribal lands for NWP 58: EPA granted certification subject to category-specific conditions listed in Section D.*

*Water Quality Certification on KBIC tribal lands for NWP 58: KBIC denied certification.*

**59. Water Reclamation and Reuse Facilities.** Discharges of dredged or fill material into non-tidal waters of the United States for the construction, expansion, and maintenance of water reclamation and reuse facilities, including vegetated areas enhanced to improve water infiltration and constructed wetlands to improve water quality.

The discharge of dredged or fill material must not cause the loss of greater than 1/2-acre of waters of the United States. This NWP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters.

This NWP also authorizes temporary fills, including the use of temporary mats, necessary to construct the water reuse project and attendant features. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges of dredged or fill material, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. After construction, temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) (Authorities: Sections 10 and 404)

*Detroit District NWP 59 Regional Conditions: The Detroit District has not added any regional conditions specific to NWP 59.*

*EGLE Water Quality Certification/CZMA consistency for NWP 59: An individual 401 Certification and Consistency Determination concurrence are required for all projects, unless waived by EGLE.*

*EPA Water Quality Certification on All Tribal Lands Except for KBIC tribal lands for NWP 59: EPA granted certification subject to category-specific conditions listed in Section D.*

*Water Quality Certification on KBIC tribal lands for NWP 59: KBIC denied certification.*

**60. Activities to Improve Passage of Fish and Other Aquatic Organisms.** Discharges of dredged or fill material into waters of the United States and structures and work in navigable waters of the United States for activities that restore or enhance the ability of fish and other aquatic organisms to move through aquatic ecosystems. Examples of activities that may be authorized by this NWP include, but are not limited to: the construction, maintenance, modification, or expansion of conventional/technical and nature-like fishways; the construction, maintenance, modification, or expansion of fish bypass channels around existing in-stream structures; the replacement of existing structures (e.g. culverts, low-water crossings) with structures planned, designed, and constructed to restore or enhance passage of fish and other aquatic organisms; the installation of fish screens and other devices to minimize entrainment and entrapment of fish and other aquatic organisms in irrigation ditches and other features; devices to guide fish and other aquatic organisms through passage features; fish lifts and fish by-pass pipes; the modification of existing in-stream structures, such as dams or weirs, to improve the ability of fish and other aquatic organisms to move past those structures.

The activity must not cause the loss of greater than one acre of waters of the United States.

This NWP does not authorize dam removal activities. This NWP also does not authorize the construction or installation of new culverts at crossings of waterbodies where there are not existing culverts.

Notification: For activities resulting in the loss of greater than 1/10-acre of waters of the United States, the permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) (Authorities: Sections 10 and 404)

*Detroit District NWP 60 Regional Conditions: The Detroit District has not added any regional conditions specific to NWP 60.*

*EGL E Water Quality Certification/CZMA consistency for NWP 60:*

*1. Unless waived by EGL E, an individual 401 Certification and Consistency Determination concurrence are required except for culvert replacement projects that meet all of the following conditions:*

- a. Replacement structures must be less than 100 feet in length.*
- b. Replacement structures must either be bottomless (i.e., 3-sided or clear span bridge), or the invert elevation of the structure bottom must be buried below the stream bottom 1/6 of the bankfull width up to a maximum buried depth of 2 feet.*
- c. The structure must span a minimum of the bankfull width of the stream.*
- d. Only a single structure at each stream crossing is allowed (i.e., multiple culverts at a crossing are not allowed).*

*EPA Water Quality Certification on All Tribal Lands Except for KBIC tribal lands for NWP 60: EPA granted certification subject to category-specific conditions listed in Section D.*

*Water Quality Certification on KBIC tribal lands for NWP 60: KBIC denied certification.*

**B. Detroit Regional Conditions applicable to all NWP in Michigan**

(1) Based on a joint processing agreement between the Corps of Engineers (Corps) and the Michigan Department of Environmental, Great Lakes, and Energy (EGLE) submittal of a joint Corps/EGLE permit application is required for activities in Michigan. The submittal of an application is not an authorization to perform the work. The application encompasses the same information as a pre-construction notification (PCN), thereby creating the circumstance that any proposed work in Michigan requires a PCN, irrespective of the National level requirements.

(2) If EGLE has issued its authorization, we shall presume that Coastal Zone Management certification has been satisfied.

(3) Dredging will be performed during MDNR preferred dredge periods except when the Corps has specifically determined that the limits are unwarranted (for example, EGLE has issued a permit and has not restricted the dredging activities to these periods).

(4) Critical Resource Waters: NWP General Condition 22 (GC 22) designates Critical Resource Waters and allows for Regional additions to the list. The following Critical Resource Waters are located in the Detroit District and subject to the restrictions and limitations identified in NWP GC 22:

- a. NOAA-Designated Marine Sanctuaries: The Thunder Bay National Marine Sanctuary and Underwater Preserve is located in Lake Huron off Alpena, Michigan.
- b. National Estuarine Research Reserves (NERR): There are no NERRs within the Detroit District.
- c. State Natural Heritage Sites: There are no areas designated as state natural heritage sites through a state legislative or regulatory process.
- d. Outstanding National Resource Waters or Other Waters Officially Designated: The list of Critical Resource Waters (General Condition 22) in Michigan is amended to include the following:

All areas designated under Part 351, Wilderness and Natural Areas, of the Natural Resources and Environmental Protection Act, Public Act 451, 1994.

All rivers designated under Part 305, Natural Rivers, of the Natural Resources and Environmental Protection Act.

All Environmental Areas designated under Part 323, Shorelands Protection and Management, of the Natural Resources and Environmental Protection Act.

(5) National Wild and Scenic Rivers (NWSR): NWP General Condition 16 (GC 16) designates Wild and Scenic Rivers, and the restrictions applicable to them. The following are Wild and Scenic Rivers located within the Detroit District and subject to the restrictions and limitations identified in NWP GC 16:

- Au Sable River – main stem from the Mio Pond project boundary downstream to the Alcona Pond project boundary.
- Bear Creek (Manistee County) – Coates Highway to the confluence with the Manistee River.
- Black River (Gogebic County) - from the Ottawa National Forest boundary to Lake Superior.
- Carp River – from the west section line of section 30, T43N, R5W to Lake Huron.
- Indian River – from Hovey Lake to Indian Lake.
- Manistee River – from the MDNR boat ramp below Tippy Dam to the Michigan State Highway 55 bridge.
- Ontonagon River – East Branch from its origin to the Ottawa NF boundary; the Middle Branch from its origin to the northern boundary of the Ottawa NF, the Cisco Branch from its origin at Cisco Lake Dam to its confluence with Ten-Mile Creek south of Ewen, the West Branch from its confluence with Cascade Falls to Victoria Reservoir.

- Paint River – main stem from the confluence of the North and South Branches to the Ottawa NF boundary, the North Branch from its origin to its confluence with the South Branch, the South Branch from its origin to its confluence with the North Branch.
- Pere Marquette River – the segment downstream from the junction of the Middle and Little south Branches to its junction with Pere Marquette Highway (old US Highway 31).
- Pine River – the segment from Lincoln Bridge to the east 1/16<sup>th</sup> line of Section 16, T21N, R13W.
- Presque Isle River – the main stem from the confluence of the East and West Branches to the Minnewawa Falls, the East Branch within the Ottawa NF, the South Branch within the Ottawa NF, the West Branch within the Ottawa NF.
- Sturgeon River (Baraga and Houghton Counties) – from its entry into the Ottawa NF to the northern boundary of the Ottawa NF.
- Sturgeon River (Alger and Delta Counties) – from the north line of Section 26, T43N, R19W to Lake Michigan.
- Tahquamenon River East Branch – from its origin to the Hiawatha National Forest boundary.
- Whitefish River – The main stem from its confluence with the East and West Branches to Lake Michigan. The East Branch from the crossing of County Road 003 to its confluence with the West Branch. The West Branch from County Road 444 to its confluence with the East Branch.
- Yellow Dog River – From its origin at the outlet of Bulldog Lake Dam to the boundary of the Ottawa NF.

Portions of the following have also been designated as a “study river” for possible inclusion in the system: Brule River, Carp River, Little Manistee River, Paint River, Presque Isle River, Ontonagon River, Sturgeon River (Baraga and Houghton Counties), Sturgeon River (Alger and Delta Counties), Tahquamenon River, White River, Whitefish River.

(6) NWP General Condition 18 (GC 18) addresses Critical Habitats for Endangered Species. The following Critical Habitats located within the Detroit District are subject to the restrictions applicable to Critical Habitat for Federally Listed Threatened and Endangered Species identified in NWP GC 18:

- a. Critical habitat for the piping plover (*Charadrius melodus*) in Michigan was designated in the May 7, 2001 Federal Register (Vol. 66, No. 88, pages 22938-22969).
- b. Revised Critical habitat for the Hine’s Emerald Dragonfly (*Somatochlora hineana*) in Michigan was finalized April 23, 2010 Federal Register (Vol. 75, No. 78, pages 21394-21453).
- c. Critical habitat for the gray wolf (*Canis lupus*) in Michigan was reinstated in the November 3, 2023 Federal Register (Vol. 88, No. 212, pages 75506-75512).
- d. Critical habitat for the Poweshiek skipperling (*Oarisma poweshiek*) was designated in the October 1, 2015 Federal Register (Vol. 80, No. 190, pages 59248-59384).

**C. EGLE Conditions applicable to all NWP's in Michigan for Water Quality Certification (excluding tribal lands) and Coastal Zone Management consistency determinations**

The following EGLE conditions apply to all proposed NWP's. Applicable enforceable policies and/or water quality requirements are noted:

1. An individual 401 Certification and Consistency Determination concurrence or waiver are required for projects for which EGLE has notified the applicant that sediment testing is required, unless the applicant provides sediment test results in accordance with EGLE procedures that show the material does not contain contamination. (MCL 324.3109(1), 324.3109c, 324.30102, 324.30106, 324.30304, 324.32512, 324.32515a(c); administrative rules R 323.1057)
2. All riprap discharged in the project shall consist only of clean natural field stone, rock, or gravel, free of fines and other materials, and shall be placed or contained in such a manner as not to erode into any Michigan waters. Woven wire gabion baskets are prohibited. Broken concrete and grouted or manufactured interlocking materials are not allowed. (MCL 324.3109(1)); administrative rules R 281.837(5), R 323.1050, R 323.1051, R 323.1057, R 323.1064, and R 323.1100)
3. The discharge of garbage, litter, sewage, oil, or other liquid or solid pollutants into Michigan waters is prohibited by a person or from any vessel or floating craft in the vicinity of the project that is owned, controlled, or operated by the permittee or a contractor of the permittee. (MCL 324.9502)
4. The discharge shall not impair navigation. (Administrative rule R 323.1100(1)(b))
5. Activities that result in a discharge to surface waters must comply with Michigan's water quality standards comprising administrative rules R 323.1041 to R 323.1117 of the Michigan Administrative Code.
6. Authority granted by this permit does not waive requirements under the authority of Part 55, Air Pollution Control, of the NREPA. Submission of a "Notification of Intent to Renovate/Demolish" to EGLE may be required for demolition of structures including residential and commercial buildings, boathouses, garages, and other buildings per 40 CFR 61.145.
7. Authority granted by this permit does not waive permit requirements under Part 91, Soil Erosion and Sedimentation Control, of the NREPA, or the need to acquire applicable permits from the County Enforcing Agency. (MCL 324.9112(1))
8. Authority granted by this permit does not waive permit requirements under Part 305, Natural Rivers, of the NREPA, or the need to acquire applicable permits from the Michigan Department of Natural Resources or local government. (Administrative rules R 281.56(1), R 281.302)
9. Activities regulated under the following statutes require authorization under permits from EGLE, as applicable:
  - a. Part 31, Water Resources Protection, of the NREPA. (MCL 324.3104(4))
  - b. Part 301, Inland Lakes and Streams, of the NREPA. (MCL 324.30102)
  - c. Part 303, Wetlands Protection, of the NREPA. (MCL 324.30304)
  - d. Part 315, Dam Safety, of the NREPA. (MCL 324.31509(1))
  - e. Part 323, Shorelands Protection and Management, of the NREPA. (Administrative rules R 281.22(7), R 281.23(6))
  - f. Part 325, Great Lakes Submerged Lands, of the NREPA. (MCL 324.32512)
  - g. Part 353, Sand Dunes Protection and Management, of the NREPA. (MCL 324.35304)
10. The following activities are prohibited under Part 761, Aboriginal Records and Antiquities, of the NREPA unless authorized under MCL 324.76105, 324.76107, 324.76108, and 324.76109: The recovery, alteration, or destruction of an abandoned vessel or other abandoned property, as defined in MCL 324.76101(a), which is in, on, under, or over the bottomlands of the Great Lakes, including those within a Great Lakes Bottomlands Preserve.
11. The open water disposal of dredged materials that are contaminated with toxic substances as defined in administrative rule R 323.1205 is prohibited pursuant to MCL 324.3109c.

12. Pursuant to MCL 324.32515a(c), the discharge of dredged materials for disposal is prohibited within the following areas:
  - a. A Great Lakes Bottomland Preserve established under Part 761, Aboriginal Records and Antiquities, of the NREPA. Great Lakes Bottomland Preserves are established in administrative rules R 299.6001, R 299.6002, R 299.6003, R 299.6004, R 299.6005, R 299.6006, R 299.6007, R 299.6008, R 299.6009, R 299.6010, R 299.6011, R 299.6012, and R 299.6013.
  - b. A permitted submerged log removal area under Part 326, Great Lakes Submerged Logs Recovery, of the NREPA.
  - c. A lake trout refuge as established by Michigan Department of Natural Resources Fisheries Order. Fisheries Order FO-253.24, titled "Great Lakes and Great Lakes Connecting Waters – Trout and Salmon Regulations," establishes Lake Trout Refuges in Lake Michigan and Lake Huron effective April 1, 2024.
  - d. A *Diporeia* refuge.
13. The following activities are prohibited pursuant to MCL 324.36505:
  - a. Harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting of an animal subject to regulation under Part 365, Endangered Species Protection, of the NREPA, or the attempt to engage in such activity. Lists of animal species subject to regulation are contained in administrative rules R 299.1021, R 299.1022, R 299.1023, R 299.1024, R 299.1025, R 299.1026, and R 299.1027.
  - b. The collecting, picking, cutting, digging up, or destroying in any manner of a plant subject to regulation under Part 365, Endangered Species Protection, of the NREPA. A list of plant species subject to regulation is contained in administrative rule R 299.1028.

**D. U.S. EPA Water Quality Certification Conditions for all Tribal Lands (except KBIC) and Isle Royale National Park**

**Condition 1: Special Aquatic Resources Condition for NWPs 3, 4, 7, 12, 13, 14, 15, 16, 17, 18, 23, 25, 27, 29, 31, 32, 33, 34, 36, 37, 38, 39, 40, 41, 42, 43, 45, 46, 51, 53, 54, 57, 58, 59, and 60.**

Projects or activities expected to have potential discharges into the below special aquatic resources areas on Tribal lands in Michigan or on Isle Royale are not covered by this certification and applicants must request a project-specific CWA Section 401 certification from EPA Region 5 consistent with 40 C.F.R. 121.5.

- **Wetlands classified as peatlands:** For the purposes of this condition, peatlands are permanently or seasonally waterlogged areas containing organic soils classified as a Histosol with a specific thickness of an accumulation of peat (i.e., organic matter) and include fens, bogs and muskegs.<sup>3</sup>
- **Natural Springs:** Within 100 feet of the water source in natural spring areas. For the purposes of this condition, a spring water source is defined as any location where there is flow emanating from a distinct point at any time during the growing season. Some examples of spring-fed wetlands are hanging gardens. Some examples of spring-fed headwater slopes are peat-accumulating wet meadows and fens (see above). These resources may be identified using U.S. Fish and Wildlife Service's online digital National Wetland Inventory maps, or other aquatic resource mapping tools.
- **Riffle and Pool Complexes:** For the purposes of this condition, riffle and pool complexes are steep gradient sections of streams recognizable by their hydraulic characteristics. The rapid movement of water over a coarse substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas associated with riffles. Pools are characterized by a slower stream velocity, a steaming flow, a smooth surface, and a finer substrate.
- **Wild rice (*Manoomin*) waters.** Wild rice is especially sensitive to changes in water quality.<sup>4</sup> "The species benefits from habitat protection and the maintenance of wetland hydrology, including the natural cycle of water fluctuations."<sup>5</sup>
- **State-listed Special Aquatic Resources:** For the purposes of this condition, State-listed Special Aquatic Resources are those aquatic habitats that are identified as Critically Impaired (S1) or Imperiled (S2) according to the Michigan Natural Features Inventory.

**Condition 2: Plan Development and Implementation for Projects that require Pre-Construction Notification (PCN) - NWPs 7, 12, 13, 14, 17, 23, 27, 29, 31, 33, 34, 36, 37, 38, 39, 40, 42, 43, 45, 46, 51, 53, 54, 57, 58, 59, and 60.**

Prior to construction for projects that require a PCN, the project proponent shall develop a plan that includes a copy of the PCN and the following information (if not already included in the PCN):

- Time stamped photo-documentation of the baseline conditions (i.e., 50 feet upstream of the project area, within the project area, and 100 feet downstream of the project area).
- Identifies on a site map, as applicable:
  - Project site with all waters of the U.S. demarcated. Identify all locations where the project will cross jurisdictional waterbodies and identify the ordinary high-water mark and/or wetland boundaries; the planned work area where wetlands/aquatic resources will be removed, disturbed, and/or protected; buffer zones; and areas to be restored/reclaimed, as well as site access points and other approved work areas.
  - Staging areas and stockpiling of materials and equipment, including locations for containment booms and/or absorbent materials, and/or hazardous materials. Stockpiles (e.g., sediment, soil, or other construction materials) shall be stored at least 50 feet from where it may enter waters of the U.S.
  - Construction access points.
  - Disturbance limits.
  - Locations where site dredging and placement of dredged material activities will occur.
  - Locations where dewatering activities will occur including as applicable locations of

- cofferdams, temporary berms, piling, and/or dikes.
- Locations of undergrounding or directional drilling (including bore pits).
- Locations where hazardous materials are stored. Identify where containment booms and/or absorbent materials are located for corrective action if needed. Hazardous materials shall be stored in leak-proof containers with appropriate secondary containment measures (e.g., spill berms, dikes, spill containment pallets, absorbent materials).
- Locations of any silt/sediment fencing.
- Photo-reference sites. The project proponent shall indicate the directional view and location where photos were taken on the site map.
- A description of how the site will be restored to pre-construction conditions, as applicable, including measures that will be used to promote and maintain:
  - stream hydrology and stability.
  - aquatic resource composition.
  - diversity of native species existing on site and as introduced via restoration activities.
  - stability of soils.
  - establishment of vegetation at the same percent cover as pre-construction activities.
- The timeframe/schedule for revegetation following completion of construction. Revegetation should occur at the earliest practicable date following completion of construction. Drill seeding is the preferred method, where applicable.
- Non-native and invasive species shall not be used for restoration activities.
- Includes the following, as applicable:
  - Cofferdams, temporary berms, pilings, and/or dikes: Describe installation and maintenance practices for any cofferdams, temporary berms, pilings, and/or dikes.
  - Dredging: Describe how contaminated materials will be managed (e.g., sediment testing data and information to identify whether sediments are clean or contaminated), if included in the project dredged area. Describe methods for minimizing dredging impacts (i.e., sedimentation resuspension) in the water column.
  - Erosion and sediment control: Identify the types and locations of sediment and erosion control features that shall be used onsite, including sediment control fences, haybales, heavy mud mats, and/or other structures. Biodegradable blankets and/or loose-weave mesh shall be used for erosion control matting. If using velocity dissipation structures (e.g., riprap aprons, check dams etc.), structures shall be constructed to include both peak flow rates and total stormwater volume, and provide protection from the erosive potential of high-velocity flows to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points. The project proponent shall ensure all erosion and sediment control measures are in place prior to the onset of construction.
  - Bank stabilization and channel modification. If the project requires bank stabilization or stream channel modification, include pre-construction cross sections. If the project includes steep bank slopes of 3:1 or greater, include revetment cross sections. Bioengineering techniques suitable for steep slope disturbances are preferred (e.g., vegetated toe, bioengineered boulder toe, etc.) Slopes of disturbed banks shall be designed and installed to not reduce the bottom width of the stream.
  - Dewatering: Work shall be completed in the dry unless coordinated with EPA Region 5. Describe methods for dewatering, including the equipment that would be used to conduct the dewatering activities. Identify the locations and timing, including length of time the area is to be dewatered. Explain removal method of the temporary structures and/or fill and what measures will be taken to minimize downstream turbidity and adaptive management measures that will be taken and employed to prevent the draining of waters of U.S., including wetlands.
  - Ditching and trenching: Explain ditching/trenching and material placement techniques and stabilization methods to be employed, as well as timing. In wetlands, the top 6 to 12 inches of the ditch/trench shall be backfilled with topsoil from the trench, unless other techniques are

- approved. Include activity timing needs for ditching and stabilization.
- Undergrounding or directional drilling: Describe measures taken to prevent, contain and cleanup any inadvertent return of drilling fluid to the surface (i.e., “frac-outs”).
- Submit the plan to EPA Region 5 at [R5wetlands@epa.gov](mailto:R5wetlands@epa.gov) at least 30 days prior to commencing construction activities.

During construction for projects that require a PCN, the project proponent shall:

- Visually inspect construction activities daily.
  - Prevent sediment, debris, silt, sand, cement, concrete, oil or petroleum, organic materials, or other construction debris or wastes from entering waters of the U.S. The discharge of unset cement, concrete, grout, or water that has contacted uncured concrete or cement, or related washout to waters of the U.S. is prohibited.
  - Maintain documentation onsite that all equipment was cleaned of dirt, mud, and other materials prior to arriving on the project site.
  - Inspect all equipment daily and prior to entering any waters of the U.S. for oil, gas, diesel, anti-freeze, hydraulic fluid, and other petroleum leaks. If the project proponent detects a leak from any equipment, they shall immediately remove the equipment from waters of the U.S.; and within 24 hours of detection of a leak, repair the equipment in a staging area or move it offsite.
  - Limit vegetation clearing and disturbance to waters. Limit the clearing and grubbing of vegetation and disturbance to areas demarcated on the site map submitted as part of the vegetation restoration and monitoring plan. The boundaries of vegetation to protect shall be flagged in the field prior to beginning construction activities.
  - Limit restoration of the channel bed to pre-existing contours and conditions. Any proposed deviations must be specified in advance. For example, if any improvements will be made using natural channel design.
  - Photo-document any failures or increased turbidity due to construction activities.
    - Within 24 hours of observing a failure or marked increase in turbidity associated with construction, the project proponent shall remedy and implement any additional adaptive management measures to stabilize the activity and prevent further unauthorized discharges into waters of the U.S. The project proponent shall photo-document the failure (i.e., 50 feet upstream of failure, at the incident site, and at least 100 feet downstream of the failure) and the adaptive management measures taken immediately following implementation. The project proponent shall take remediation condition photos at the same location(s) and direction(s) as in the failure condition photos.
    - Within 48 hours of observing any failure, the project proponent shall provide EPA Region 5 with the required photo-documentation, and descriptions of all observed failures and implemented remedies.
    - Within three weeks of observing a failure, the project proponent shall provide EPA Region 5 with a description of the impacts and effectiveness of the employed adaptive management measures.
  - Carry out as applicable:
    - Erosion control: Inspect sediment and erosion control measures daily during project implementation and within 12 hours of precipitation events. After construction is complete, remove sediment and erosion control structures once vegetation is established to the same percent cover as pre-construction conditions, unless they are needed for long term stabilization purposes.
    - Dewatering: Assess all dewatering measures within 24 hours after a severe storm event.
- Post construction for projects that require a PCN, the project proponent shall, as applicable:
- Submit a post-construction report, as defined below, within 90 days of completing construction activity to EPA Region 5 at [R5wetlands@epa.gov](mailto:R5wetlands@epa.gov) or, if the Corps requires a post-construction report for the project activity, the applicant may submit that report to EPA to fulfill this post-construction requirement. The project proponent shall include the following items in the post-

construction report:

- Construction dates.
  - As-built drawings.
  - Documentation of site restoration activities using photographs and any field data sheets showing that the site was restored to pre-existing conditions or better. Include photographs of the site restoration areas on a map.
  - Any water quality data gathered before, during, and post-construction and associated maps showing the sample locations.
  - A description of any adaptive management strategies that were employed during construction, with a focus on strategy effectiveness.
  - Details on the removal of any sediment and erosion control structures, unless they are needed for long term stabilization purposes.
  - Effectiveness of the plan developed and implemented as required under this condition, and recommendations to remedy any deficiencies in plan development and implementation where employed measures were ineffective.
- For activities that require dredging, submit a copy of the as-builts and a post dredged and disposal report within 45 days of each dredging or disposal event to EPA Region 5 at [R5wetlands@epa.gov](mailto:R5wetlands@epa.gov). The project proponent shall include the following items in the post-dredged and disposal report:
    - Dredging and disposal dates.
    - Updated site map displaying the disposal location(s).
    - Dredging and disposal volumes.
    - Water quality monitoring data.
    - Post-dredged bathymetry.
    - Updated site maps displaying any new ditches, spoil piles, widths, and depths.

**Condition 3: Specific Condition for Bridges for NWPs 3, 14, 15, 57, 58 and 60**

Project proponents shall use an established bridge analysis and hydraulic design tool when designing and constructing bridges (e.g., HEC-RAS, FHWA, etc.). Bridges shall be constructed in a manner such that stormwater does not drain directly into the waterbody. Bridges shall span greater than or equal to 1.2 times the bankfull width and adjacent wetlands of the affected waterbody, where feasible. Crossings shall be placed perpendicular to the direction of the stream flow where possible and account for potential future lateral migration in the stream, unless the project proponent can document that this would result in increased impacts to aquatic resources or compromise the safety of the structure.

**Condition 4: Specific condition for NWP 7**

Outfall design and placement shall include an appropriate energy dissipation structure (e.g., rip rap aprons) and shall be sized to prevent high pressure discharge. For intake structures, project proponents shall use an intake screen that reduces the size of aquatic organisms that can be entrained (e.g., a Johnson-type screen/intake), where feasible. Intake velocities shall not exceed 0.5 feet per second.<sup>7</sup>

**Condition 5: Specific Condition for NWP 13**

For projects using gabions, the project proponent shall visually inspect and repair any damage to gabions and the gabion installation area after construction is completed at least once a year after spring flows.

**Condition 6: Specific Condition for NWP 16**

The project proponent shall provide EPA Region 5 with a description of the return water from the upland disposal area prior to discharge, including a description of the nature of the dredged material and a description of any contaminants present in the discharge. The project proponent shall also provide an analysis of how the return water may impact the physiochemical conditions of the receiving water prior to discharge, including a description of how the project proponent will ensure controls are

in place to ensure compliance with applicable water quality requirements.

**Condition 7: Specific Condition for NWP 40**

The project proponent shall ensure that any return water flows back into waters of the U.S. does not contain levels of toxic and priority pollutants in excess of effluent limitation guidelines established under Section 307 of the Clean Water Act.

**E. Nationwide Permit General Conditions**

1. Navigation
2. Aquatic Life Movements
3. Spawning Areas
4. Migratory Bird Breeding Areas
5. Shellfish Beds
6. Suitable Material
7. Water Supply Intakes
8. Adverse Effects from Impoundments
9. Management of Water Flows
10. Fills Within 100-Year Floodplains
11. Equipment
12. Soil Erosion and Sediment Controls
13. Removal of Temporary Fills
14. Proper Maintenance
15. Single and Complete Project
16. Wild and Scenic Rivers
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20. Historic Properties
21. Discovery of Previously Unknown Remains and Artifacts
22. Designated Critical Resource Waters
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28. Use of Multiple Nationwide Permits
29. Transfer of Nationwide Permit Verifications
30. Compliance Certification
31. Activities Affecting Structures or Works Built by the United States
32. Pre-Construction Notification

**E. Nationwide Permit General Conditions**

Note: To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as applicable, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer. Prospective permittees should contact the appropriate Corps district office to determine if regional conditions have been imposed on an NWP. Prospective permittees should also contact the appropriate Corps district office to determine the status of Clean Water Act Section 401 water quality certification and/or Coastal Zone Management Act consistency for an NWP. Every person who may wish to obtain permit authorization under one or more NWPs, or who is currently relying on an existing or prior permit authorization under one or more NWPs, has been and is on notice that all of the provisions of 33 CFR 330.1 through 330.6 apply to every NWP authorization. Note especially 33 CFR 330.5 relating to the modification, suspension, or revocation of any NWP authorization.

1. 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 waters of the United States.
  - 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 or 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 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.
2. 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.
3. 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.
4. Migratory Bird Breeding Areas. Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.
5. Shellfish Beds. No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWPs 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.
6. Suitable Material. No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see section 307 of the Clean Water Act).

7. 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.
8. Adverse Effects From Impoundments. If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.
9. Management of Water Flows. To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization, storm water management activities, and temporary and permanent road crossings, except as provided below. The activity must be constructed to withstand expected high flows, including tidal flows. The activity must not restrict or impede the passage of normal or high flows, including tidal flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).
10. Fills Within 100-Year Floodplains. The activity must comply with applicable FEMA-approved state or local floodplain management requirements.
11. Equipment. Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance. If mats are used to minimize soil disturbance, the affected areas must be returned to pre-construction elevations, and revegetated as appropriate. In circumstances where the use of mats has caused significant soil compaction, efforts using techniques (e.g., soil reaeration techniques) to break up the compaction should be employed to return the soil to a pre-construction state prior to returning to pre-construction elevations.
12. Soil Erosion and Sediment Controls. Appropriate soil erosion and sediment controls must be used 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 or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow, or during low tides.
13. Removal of Temporary Structures and Fills. Temporary structures must be removed, to the maximum extent practicable, after their use has been discontinued. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.
14. Proper Maintenance. Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.
15. Single and Complete Project. The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.
16. Wild and Scenic Rivers. (a) No NWP 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.

- b. If a proposed NWP activity will 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, the permittee must submit a pre-construction notification (see general condition 32). The district engineer will coordinate the PCN with the Federal agency with direct management responsibility for that river. Permittees shall not begin the NWP activity until notified by the district engineer that the Federal agency with direct management responsibility for that river has determined in writing that the proposed NWP activity will not adversely affect the Wild and Scenic River designation or study status.
- c. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service). Information on these rivers is also available at: <http://www.rivers.gov/>.
- 17. 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.
- 18. Endangered Species.** (a) No activity is authorized under any NWP 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 designated critical habitat or critical habitat proposed for such designation. No activity is authorized under any NWP which “may affect” a listed species or critical habitat, unless ESA section 7 consultation addressing the consequences of the proposed activity on listed species or critical habitat has been completed. See 50 CFR 402.02 for the definition of “effects of the action” for the purposes of ESA section 7 consultation.
- b. Federal agencies should follow their own procedures for complying with the requirements of the ESA (see 33 CFR 330.4(f)(1)). If pre-construction notification is required for the proposed activity, 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 has not been submitted, additional ESA section 7 consultation may be necessary for the activity and the respective federal agency would be responsible for fulfilling its obligation under section 7 of the ESA.
- c. Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat or critical habitat proposed for such designation, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect federally-listed endangered or threatened species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation), the pre-construction notification must include the name(s) of the endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or that utilize the designated critical habitat (or critical habitat proposed for such designation) that might be affected by the proposed activity. The district engineer will determine whether the proposed activity “may affect” or will have “no effect” to listed species and designated critical habitat and will notify the non-federal applicant of the Corps’ determination within 45 days of receipt of a complete pre-construction notification. For activities where the non-federal applicant has identified listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) that might be affected or is in the vicinity of the activity, and has so notified the Corps, the applicant shall not begin work until the Corps has provided

notification that the proposed activity will have “no effect” on listed species (or species proposed for listing or designated critical habitat (or critical habitat proposed for such designation), or until ESA section 7 consultation or conference has been completed. If the non-federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

d. As a result of formal or informal consultation or conference with the FWS or NMFS the district engineer may add species-specific permit conditions to the NWP.

e. Authorization of an activity by an NWP does not authorize the “take” of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with “incidental take” provisions, etc.) from the FWS or the NMFS, the Endangered Species Act 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.

f. If the non-federal permittee has a valid ESA section 10(a)(1)(B) incidental take permit with an approved Habitat Conservation Plan for a project or a group of projects that includes the proposed NWP activity, the non-federal permittee should provide a copy of that ESA section 10(a)(1)(B) permit with the PCN required by paragraph (c) of this general condition. The district engineer will coordinate with the agency that issued the ESA section 10(a)(1)(B) permit to determine whether the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation conducted for the ESA section 10(a)(1)(B) permit. If that coordination results in concurrence from the agency that the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation for the ESA section 10(a)(1)(B) permit, the district engineer does not need to conduct a separate ESA section 7 consultation for the proposed NWP activity. The district engineer will notify the non-federal applicant within 45 days of receipt of a complete pre-construction notification whether the ESA section 10(a)(1)(B) permit covers the proposed NWP activity or whether additional ESA section 7 consultation is required.

g. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the FWS and NMFS or their web pages at <http://www.fws.gov/> or <http://www.fws.gov/ipac> and <http://www.nmfs.noaa.gov/pr/species/esa/> respectively.

19. Migratory Birds and Bald and Golden Eagles. The permittee is responsible for ensuring that an action authorized by an NWP 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 U.S. Fish and Wildlife Service 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.

20. Historic Properties. (a) No activity is authorized under any NWP which may have the potential to cause effects on 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 National Historic Preservation Act (see 33 CFR 330.4(g)(1)). If pre-construction notification is required for the proposed NWP activity, 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 submit a pre-construction notification to the district engineer if the NWP activity might have the potential to cause effects on any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties might have the potential to be affected by the proposed NWP 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, Tribal Historic Preservation Officer, or designated tribal representative, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of section 106 of the National Historic Preservation Act. 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 PCN and these identification efforts, the district engineer shall determine whether the proposed NWP activity has the potential to cause effects on 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 NWP 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 on historic properties or that NHPA section 106 consultation has been completed. For non-federal permittees, the district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA section 106 consultation is required. 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. If the non-federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

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.

21. Discovery of Previously Unknown Remains and Artifacts. Permittees that discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activities authorized by NWP, 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 effort or if the site is eligible for listing in the National Register of Historic Places.
22. Designated Critical Resource Waters. Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment.
- a. Discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, 52, 57 and 58 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.
- b. For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, 38, and 54, notification is required in accordance with general condition 32, for any activity proposed by permittees in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after she or he determines that the impacts to the critical resource waters will be no more than minimal.
23. Mitigation. The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal:
- a. The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site).
- b. Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal.
- c. Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects.

d. Compensatory mitigation at a minimum one-for-one ratio will be required for all losses of stream bed that exceed 3/100-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. This compensatory mitigation requirement may be satisfied through the restoration or enhancement of riparian areas next to streams in accordance with paragraph (e) of this general condition. For losses of stream bed of 3/100-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects. Compensatory mitigation for losses of streams should be provided, if practicable, through stream rehabilitation, enhancement, or preservation, because streams are difficult-to-replace resources (see 33 CFR 332.3(e)(3)).

e. Compensatory mitigation plans for NWP activities in or near streams or other open waters will normally include a requirement for the restoration or enhancement, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, the restoration or maintenance/protection of riparian areas may be the only compensatory mitigation required. If restoring riparian areas involves planting vegetation, only native species should be planted. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to restore or maintain/protect a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or maintaining/protecting a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of minimization or compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

f. Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.

1. The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in no more than minimal adverse environmental effects. For the NWPs, the preferred mechanism for providing compensatory mitigation is mitigation bank credits or in-lieu fee program credits (see 33 CFR 332.3(b)(2) and (3)). However, if an appropriate number and type of mitigation bank or in-lieu credits are not available at the time the PCN is submitted to the district engineer, the district engineer may approve the use of permittee-responsible mitigation.
2. The amount of compensatory mitigation required by the district engineer must be sufficient to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see 33 CFR 330.1(e)(3)). (See also 33 CFR 332.3(f).)
3. Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, aquatic resource restoration should be the first compensatory mitigation option considered for permittee-responsible mitigation.

4. If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) through (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)). If permittee-responsible mitigation is the proposed option, and the proposed compensatory mitigation site is located on land in which another federal agency holds an easement, the district engineer will coordinate with that federal agency to determine if proposed compensatory mitigation project is compatible with the terms of the easement.
  5. If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan needs to address only the baseline conditions at the impact site and the number of credits to be provided (see 33 CFR 332.4(c)(1)(ii)).
  6. Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan (see 33 CFR 332.4(c)(1)(ii)).
    - g. Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any NWP activity resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that an NWP activity already meeting the established acreage limits also satisfies the no more than minimal impact requirement for the NWPs.
    - h. Permittees may propose the use of mitigation banks, in-lieu fee programs, or permittee-responsible mitigation. When developing a compensatory mitigation proposal, the permittee must consider appropriate and practicable options consistent with the framework at 33 CFR 332.3(b). For activities resulting in the loss of marine or estuarine resources, permittee-responsible mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.
    - i. Where certain functions and services of waters of the United States are permanently adversely affected by a regulated activity, such as discharges of dredged or fill material into waters of the United States that will convert a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse environmental effects of the activity to the no more than minimal level.
- 24. Safety of Impoundment Structures.** To ensure that all impoundment structures are safely designed, the district engineer may require non-federal applicants to demonstrate that the structures comply with established state or federal, dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

25. Water Quality. (a) Where the certifying authority (state, authorized tribe, or EPA, as appropriate) has not previously certified compliance of an NWP with CWA section 401, a CWA section 401 water quality certification for the proposed activity which may result in any discharge from a point source into waters of the United States must be obtained or waived (see 33 CFR 330.4(c)). If the permittee cannot comply with all of the conditions of a water quality certification previously issued by the certifying authority for the issuance of the NWP, then the permittee must obtain a water quality certification or waiver for the proposed activity which may result in any discharge from a point source into waters of the United States in order for the activity to be authorized by an NWP.

b. If the NWP activity requires pre-construction notification and the certifying authority has not previously certified compliance of an NWP with CWA section 401, the proposed activity which may result in any discharge from a point source into waters of the United States is not authorized by an NWP until water quality certification is obtained or waived. If the certifying authority issues a water quality certification for the proposed discharge into waters of the United States, the permittee must submit a copy of the certification to the district engineer. The discharge into waters of the United States is not authorized by an NWP until the district engineer has notified the permittee that the water quality certification requirement has been satisfied (i.e., by the issuance of a water quality certification or a waiver and completion of the Section 401(a)(2) process).

c. The district engineer or certifying authority may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

26. Coastal Zone Management. In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). If the permittee cannot comply with all of the conditions of a coastal zone management consistency concurrence previously issued by the state, then the permittee must obtain an individual coastal zone management consistency concurrence or presumption of concurrence in order for the activity to be authorized by an NWP. The district engineer or a state may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

27. Regional and Case-By-Case Conditions. The activity must comply with any regional conditions that may have been added by the division engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its CWA section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

28. Use of Multiple Nationwide Permits. The use of more than one NWP for a single and complete project is authorized, subject to the following restrictions:

a. The total acreage loss of waters of the United States for a single and complete project cannot exceed the acreage limit of the NWP with the highest specified acreage limit when multiple NWPs are used to authorize an activity.

b. If only one of the NWPs used to authorize the single and complete project has a specified acreage limit, the acreage loss of waters of the United States for that single and complete project cannot exceed that specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14 (which has an acreage limit of 1/3 acre in tidal waters), with associated bank stabilization authorized by NWP 13 (which does not have a specified acreage limit), the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

c. If two or more of the NWP's used to authorize the single and complete project have specified acreage limits, the acreage loss of waters of the United States authorized by each of those NWP's cannot exceed the specified acreage limits of each of those NWP's. For example, if a commercial development is constructed under NWP 39 (which has a 1/2-acre limit), and the single and complete project includes the filling of a ditch authorized by NWP 46 (which has a 1-acre limit), the maximum acreage loss of waters of the United States for the construction of the commercial development under NWP 39 cannot exceed 1/2-acre, and the total acreage loss of waters of United States caused by the combination of the NWP 39 and NWP 46 activities cannot exceed 1 acre.

29. Transfer of Nationwide Permit Verifications. If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature:

"When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below."

(Transferee)

(Date)

30. Compliance Certification. Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and implementation of any required compensatory mitigation. The successful completion of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include:

- a. A statement that the authorized activity was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions;
- b. A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(l)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and
- c. The signature of the permittee certifying the completion of the activity and mitigation. The completed certification document must be submitted to the district engineer within 30 days of completion of the authorized activity or the implementation of any required compensatory mitigation, whichever occurs later.

31. Activities Affecting Structures or Works Built by the United States. If an NWP activity also requires review by, or permission from, the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers (USACE) federally authorized Civil Works project (a "USACE project"), the prospective permittee must submit a pre-construction notification. See paragraph (b)(10) of general condition 32. An activity that requires section 408 permission and/or review is not authorized by an NWP until the appropriate Corps

office issues the section 408 permission or completes its review to alter, occupy, or use the USACE project, and the district engineer issues a written NWP verification.

32. Pre-Construction Notification. (a) *Timing.* Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:

1. He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or
2. 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) might be affected or are in the vicinity of the activity, or to notify the Corps pursuant to general condition 20 that the activity might have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)) has been completed. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

*b. Contents of Pre-Construction Notification:* The PCN must be in writing and include the following information:

1. Name, address and telephone numbers of the prospective permittee;
2. Location of the proposed activity;
3. Identify the specific NWP or NWP(s) the prospective permittee wants to use to authorize the proposed activity;
4. (i) A description of the proposed activity; the activity's purpose; direct and indirect adverse environmental effects the activity would cause, including the anticipated amount of loss of wetlands, other special aquatic sites, and other waters expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; a description of any proposed mitigation measures intended to reduce the adverse environmental

effects caused by the proposed activity; and any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings for linear projects that require Department of the Army authorization but do not require pre-construction notification. The description of the proposed activity and any proposed mitigation measures should be sufficiently detailed to allow the district engineer to determine that the adverse environmental effects of the activity will be no more than minimal and to determine the need for compensatory mitigation or other mitigation measures.

(ii) For linear projects where one or more single and complete crossings require pre-construction notification, the PCN must include the quantity of anticipated losses of wetlands, other special aquatic sites, and other waters for each single and complete crossing of those wetlands, other special aquatic sites, and other waters (including those single and complete crossings authorized by an NWP but do not require PCNs). This information will be used by the district engineer to evaluate the cumulative adverse environmental effects of the proposed linear project, and does not change those non-PCN NWP activities into NWP PCNs.

(iii) Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the activity and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);

5. The PCN must include a delineation of waters, wetlands, and other special aquatic sites on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many wetlands, other special aquatic sites, and other waters. Furthermore, the 45-day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate. For NWP 27 activities that require PCNs because of other general conditions or regional conditions imposed by division engineers, see Note 2 of that NWP;
6. If the proposed activity will result in the loss of greater than 1/10-acre of wetlands or 3/100-acre of stream bed and a PCN is required, the prospective permittee must submit a statement describing how the compensatory mitigation requirement will be satisfied, or explaining why the adverse environmental effects are no more than minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.
7. For non-federal permittees, if any listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat (or critical habitat proposed for such designation), the PCN must include the name(s) of those endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or utilize the designated critical habitat (or critical habitat proposed for such designation) that might be affected by the proposed activity. For NWP activities that require pre-construction notification, federal permittees must provide documentation demonstrating compliance with the Endangered Species Act;

8. For non-federal permittees, if the NWP activity might have the potential to cause effects to a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, the PCN must state which historic property might have the potential to be affected by the proposed activity or include a vicinity map indicating the location of the historic property. For NWP activities that require pre-construction notification, federal permittees must provide documentation demonstrating compliance with section 106 of the National Historic Preservation Act;
  9. For an activity that will 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, the PCN must identify the Wild and Scenic River or the “study river” (see general condition 16); and
  10. For an NWP activity that requires permission from, or review by, the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers federally authorized civil works project, the pre-construction notification must include a statement confirming that the project proponent has submitted a written request for section 408 permission from, or review by, the Corps office having jurisdiction over that USACE project.
- c. Form of Pre-Construction Notification:* The nationwide permit pre-construction notification form (Form ENG 6082) should be used for NWP PCNs. A letter containing the required information may also be used. Applicants may provide electronic files of PCNs and supporting materials if the district engineer has established tools and procedures for electronic submittals.
- d. Agency Coordination:* 1. The district engineer will consider any comments from federal and state agencies concerning the proposed activity’s compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the activity’s adverse environmental effects so that they are no more than minimal.
2. Agency coordination is required for: (i) all NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States; (ii) NWP 13 activities in excess of 500 linear feet, fills greater than one cubic yard per running foot, or involve discharges of dredged or fill material into special aquatic sites; and (iii) NWP 54 activities in excess of 500 linear feet, or that extend into the waterbody more than 30 feet from the mean low water line in tidal waters or the ordinary high water mark in the Great Lakes.
  3. When agency coordination is required, the district engineer will immediately provide (e.g., via e-mail, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate federal or state offices (FWS, state natural resource or water quality agency, EPA, and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to notify the district engineer via telephone, facsimile transmission, or e-mail that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse environmental effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity’s compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure that the net adverse environmental effects of the proposed activity are no more than minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource

agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

4. In cases where the prospective permittee is not a federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.
5. Applicants are encouraged to provide the Corps with either electronic files or multiple copies of pre-construction notifications to expedite agency coordination.

**F. Further Information**

1. District engineers have authority to determine if an activity complies with the terms and conditions of an NWP.
2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.
3. NWPs do not grant any property rights or exclusive privileges.
4. NWPs do not authorize any injury to the property or rights of others.
5. NWPs do not authorize interference with any existing or proposed Federal project (see general condition 31).