

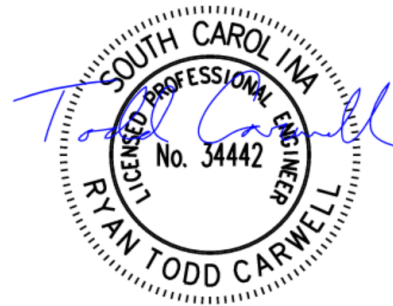
GAFFNEY BOARD OF PUBLIC WORKS

I-85 SEWER EXTENSION  
CONTRACT 1C – COLLECTIONS

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ADDENDUM NO. 5

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12/14/2023

Prepared by

BLACK & VEATCH CORPORATION  
Greenville, South Carolina

B&V Project No. 410381

December 14, 2023

Gaffney Board of Public Works  
I-85 Sewer Extension  
Contract 1C- Collections Bear Den  
SPS to Quarry-1 SPS

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ADDENDUM No. 5

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1. SCOPE. This Addendum No. 5 consists of pages AD5-1 through AD5-4 and the following attachments:

- Revised Specification Section 00400 – Bid Form.
- USACOE Nationwide Permit 58 – SAC 2023-00877.
- SCDHEC Navigable Water Permit – SAC 2023-00877.

This Addendum No. 5 covers the following additions and changes to the Project Manual and Drawings:

2. PROJECT MANUAL.

A. SECTION 00100 – INSTRUCTIONS TO BIDDERS.

- i. Page 9. Article 14 – Basis of Bid, Evaluation of Bids. Delete Article 14.01 in its entirety starting with “14.01. Bids shall be priced on...” and replace with the following:

“Bids shall be priced on a lump sum and unit price basis for the base contract.

Bidder shall complete the schedule of unit prices included in the Bid Form.

The total Bid will be determined as the sum of the products of the estimated quantity for each item and the unit price bid for the item. The final quantities and Contract Price will be determined in accordance with Paragraph 13.03 of the General Conditions.

Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

Discrepancies between words and figures will be resolved in favor of the words”

- B. SECTION 00400 – BID FORM.
  - i. Remove Section 00400 from the Project Manual and replace it with attached revised Section 00400 – Bid Form.
- C. SECTION 00800A – PERMITS.
  - i. Add the attached permits for USACOE Nationwide Permit 58 – SAC 2023-00877 and SCDHEC Navigable Water Permit – SAC 2023-00877 at the end of Section 00800A Permits.
- D. SECTION 01015 – PROJECT REQUIREMENTS.
  - i. Page 10. Paragraph 22. Delete Paragraph 22 Alternatives in its entirety starting with “The Work required under...” and replace with the following:
    - a. “Not Used.”
- E. SECTION 01025 – MEASUREMENT AND PAYMENT.
  - i. Page 14. Paragraph 36. Delete Paragraph 36 Alternatives in its entirety starting with “An Alternate is an item...” including sub paragraphs 36.01 and 36.02 and replace with the following:
    - a. “Not Used.”
- F. SECTION 15108 – AIR VALVES.
  - i. Page 1. Paragraph 2-1 Construction. Delete the first paragraph in its entirety starting with “Combination air valves for wastewater...” and replace with the following:

“Combination air valves for wastewater applications shall be of the integral type with a valve assembly which functions as both an air and vacuum valve and an air release valve. All ARVs shall be equipped with a regulated exhaust slow closing device. The valves shall be Multiplex “Crispin US Series”, ARI “No. D-020”, Val-Matic “SSAV”, or Engineer approved equal.”

3. DRAWINGS

A. Contract 1C – Collections. Sheet C-99-003.

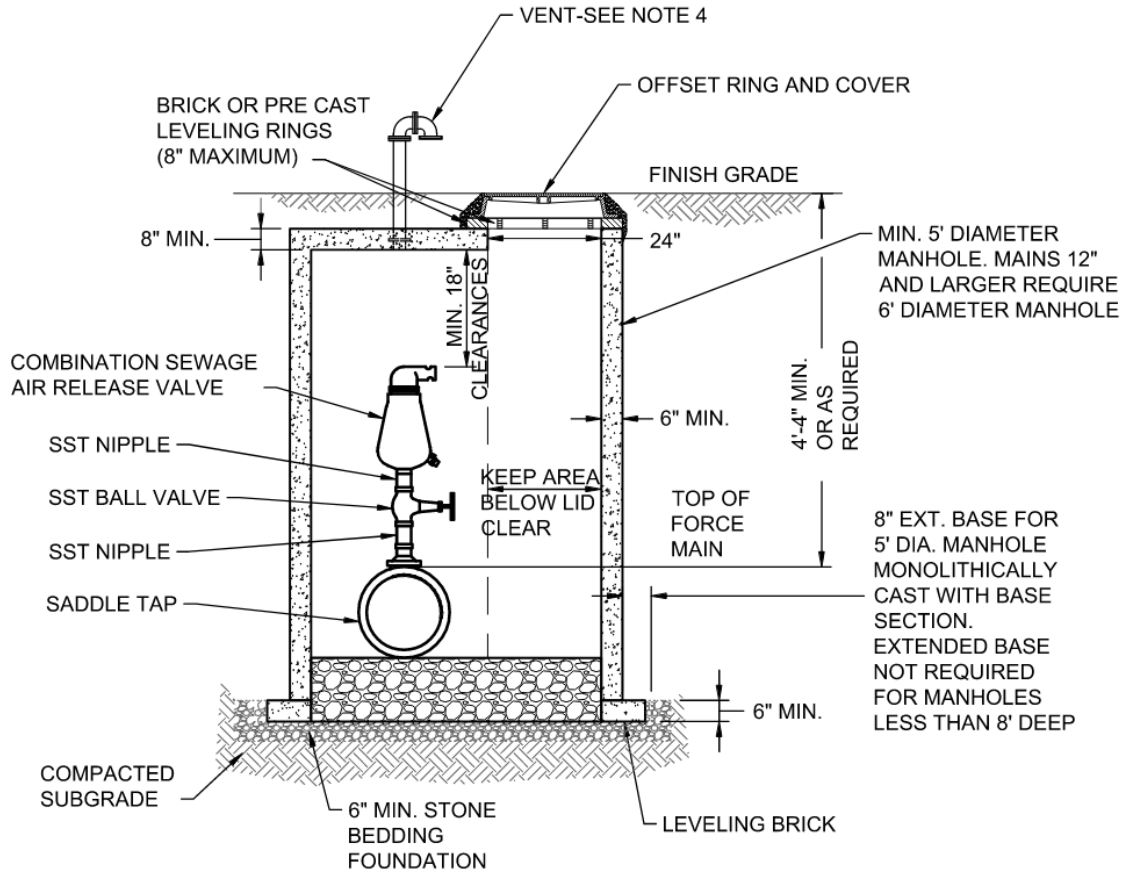
- i. Delete Detail F – “Force Main Pipe Restrained Joint Lengths” entirely and replace with the revised detail below:

FITTING	LENGTH OF RESTRAINED JOINTS	SIDE OF THE FITTING TO BE RESTRAINED
6" - 11.25° BEND	20 FEET	BOTH SIDES OF FITTING
6" - 22.5° BEND	20 FEET	BOTH SIDES OF FITTING
6" - 45° BEND	20 FEET	BOTH SIDES OF FITTING
6" - 90° BEND	40 FEET	BOTH SIDES OF FITTING
6" - VALVE	80-FEET, 40-FEET	UPSTREAM SIDE, DOWNSTREAM SIDE
8" - 11.25° BEND	20 FEET	BOTH SIDES OF FITTING
8" - 22.5° BEND	20 FEET	BOTH SIDES OF FITTING
8" - 45° BEND	20 FEET	BOTH SIDES OF FITTING
8" - 90° BEND	60 FEET	BOTH SIDES OF FITTING
8" - VALVE	100-FEET, 40-FEET	UPSTREAM SIDE, DOWNSTREAM SIDE
10" - 11.25° BEND	20 FEET	BOTH SIDES OF FITTING
10" - 22.5° BEND	20 FEET	BOTH SIDES OF FITTING
10" - 45° BEND	40 FEET	BOTH SIDES OF FITTING
10" - 90° BEND	60 FEET	BOTH SIDES OF FITTING
10" - VALVE	120-FEET, 40-FEET	UPSTREAM SIDE, DOWNSTREAM SIDE
16" - 11.25° BEND	20 FEET	BOTH SIDES OF FITTING
16" - 22.5° BEND	20 FEET	BOTH SIDES OF FITTING
16" - 45° BEND	40 FEET	BOTH SIDES OF FITTING
16" - 90° BEND	80 FEET	BOTH SIDES OF FITTING
16" - VALVE	180 FEET, 40 FEET	UPSTREAM SIDE, DOWNSTREAM SIDE
18" - 11.25° BEND	20-FEET	BOTH SIDES OF FITTING
18" - 22.5° BEND	40-FEET	BOTH SIDES OF FITTING
18" - 45° BEND	60-FEET	BOTH SIDE OF FITTING
18" - 90° BEND	100-FEET	BOTH SIDES OF FITTING
18" - VALVE	200-FEET, 40-FEET	UPSTREAM SIDE, DOWNSTREAM SIDE
20" - 11.25° BEND	20 FEET	BOTH SIDES OF FITTING
20" - 22.5° BEND	20 FEET	BOTH SIDES OF FITTING
20" - 45° BEND	40 FEET	BOTH SIDES OF FITTING
20" - 90° BEND	100 FEET	BOTH SIDES OF FITTING
20" - VALVE	220-FEET, 40-FEET	UPSTREAM SIDE, DOWNSTREAM SIDE

 **FORCE MAIN RESTRAINED JOINT LENGTHS**

B. Contract 1C – Collections. Sheet C-99-004.

- i. Delete Detail C – “Air/Vacuum and Air Release Combination Valve Section” entirely and replace with the revised detail below:



NOTES:

1. CONTRACTOR TO INSTALL VALVE AND MANHOLE AT SUFFICIENT DEPTH TO ALLOW FOR ACCESS.
2. FORCE MAIN TO BE OFFSET IN MANHOLE TO KEEP AREA BELOW LID CLEAR.
3. USE CAST IN RUBBER BOOT WITH SST. CLAMPS FOR ALL MH CONNECTIONS, INCLUDING FORCE MAIN.
4. PROVIDE VENT PIPING WHEN LOCATED WITHIN THE 100 YEAR FLOOD PLAIN. VENT PIPING SHALL BE MADE OF DIP WITH A NON FERROUS INSECT SCREEN AND SHALL BE LOCATED 2-FEET ABOVE THE 100 YEAR FLOOD PLAIN.
5. SEE SCHEDULE D FOR ARV SIZES.

1
C
**AIR/VACUUM AND AIR RELEASE  
COMBINATION VALVE SECTION**  
 NO SCALE

End of Addendum No. 5

Section 00400

BID FORM

PROJECT IDENTIFICATION:

This Bid Form is for bids for the following Gaffney Board of Public Works project:

I-85 Sewer Extension Contract 1C: Collections Bear Den Sewage Pump Station to Quarry-1 Sewage Pump Station

ARTICLE 1 – BID RECIPIENT

1.01. This Bid is submitted to:

Mr. Steve Bratton  
Gaffney Board of Public Works  
210 E. Frederick Street  
Gaffney, South Carolina 29340

1.02. The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an agreement with Owner in the form included in the Bidding Documents to perform all Work as specified or indicated in the Bidding Documents for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

ARTICLE 2 – BIDDER'S ACKNOWLEDGEMENTS

2.01. Bidder accepts all of the terms and conditions of the Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for ninety (90) days after the day of Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Owner. Bidder will sign and submit the Agreement with the bonds and other documents required by the Bidding Documents to Engineer within fifteen (15) days after the date of Owner's Notice of Award.

ARTICLE 3 – BIDDER'S REPRESENTATIONS

3.01. In submitting this Bid, Bidder represents that:

A. Bidder has examined and carefully studied the Bidding Documents, and any data and reference items identified in the Bidding Documents, and hereby acknowledges receipt of the following Addenda:

No. \_\_\_\_\_ Dated \_\_\_\_\_

No. \_\_\_\_\_ Dated \_\_\_\_\_

No. \_\_\_\_\_ Dated \_\_\_\_\_

No. \_\_\_\_\_ Dated \_\_\_\_\_

No. \_\_\_\_\_ Dated \_\_\_\_\_

No. \_\_\_\_\_ Dated \_\_\_\_\_

- B. Bidder has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and satisfied itself as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Bidder is familiar with and satisfied itself as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Bidder has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.
- E. Bidder has considered the information known to Bidder itself; information commonly known to Contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and any Site-related reports and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder; and (3) Bidder's safety precautions and programs.
- F. Bidder agrees, based on the information and observations referred to in the preceding paragraph, that no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid or performance of the Work at the price bid and within the times

required, and in accordance with the other terms and conditions of the Bidding Documents.

- G. Bidder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents.
- H. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents and confirms that the written resolution thereof by Engineer is acceptable to Bidder.
- I. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance and furnishing of the Work.
- J. The submission of this Bid constitutes an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article, and that without exception the Bid and all prices in the Bid are premised upon performing and furnishing the Work required by the Bidding Documents.

#### ARTICLE 4 – BIDDER'S CERTIFICATION

##### 4.01. Bidder certifies that:

- A. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation;
- B. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid;
- C. Bidder has not solicited or induced any individual or entity to refrain from bidding; and
- D. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph 4.01.D:
  - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process;



2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of Owner, (b) to establish bid prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish bid prices at artificial, non-competitive levels; and
4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

**ARTICLE 5 – BASIS OF BID**

5.01. Bidder will complete the Work for the following unit prices, computed in accordance with Paragraph 13.03.C of the General Conditions. Bidder acknowledges that (1) each Bid unit price includes an amount considered by Bidder to be adequate to cover Contractor's overhead and profit for each separately identified item, and (2) estimated quantities are not guaranteed and are solely for the purpose of comparison of Bids, and that final payment for all unit price Bid items will be based on actual quantities provided, determined as provided in the Contract Documents.

**5.01 UNIT PRICE SCHEDULE**

<b>ITEM #</b>	<b>DESCRIPTION</b>	<b>UNIT</b>	<b>QUANTITY</b>	<b>UNIT PRICE</b>	<b>TOTAL COST</b>
<b>1.</b>	<b>GRAVITY PIPE</b>				
1.1	PIPE, 18" DIAMETER GRAVITY, PVC, SDR 35, 0-4' DEEP	LF	306	\$	\$
1.2	PIPE, 18" DIAMETER GRAVITY, PVC, SDR 35, 4-8' DEEP	LF	2,580	\$	\$
1.3	PIPE, 18" DIAMETER GRAVITY, PVC, SDR 35, 8-12' DEEP	LF	2,754	\$	\$
1.4	PIPE, 18" DIAMETER GRAVITY, PVC, SDR 35, 12-16' DEEP	LF	1,786	\$	\$
1.5	PIPE, 18" DIAMETER GRAVITY, PVC, SDR 26, 16-20' DEEP	LF	510	\$	\$
1.6	PIPE, 18" DIAMETER GRAVITY, PVC, SDR 26, >20' DEEP	LF	48	\$	\$
1.7	PIPE, 18" DIAMETER GRAVITY, DIP, CLASS 250, 4-8' DEEP	LF	172	\$	\$
1.8	PIPE, 18" DIAMETER GRAVITY, DIP, CLASS 250, 8-12' DEEP	LF	251	\$	\$

1.9	PIPE, 18" DIAMETER GRAVITY, DIP, CLASS 250, 12-16' DEEP	LF	25	\$	\$
1.10	PIPE, 18" DIAMETER GRAVITY, DIP, CLASS 250, 16-20' DEEP	LF	19	\$	\$
1.11	PIPE, 12" DIAMETER GRAVITY, PVC, SDR 35, 0-4' DEEP	LF	280	\$	\$
1.12	PIPE, 12" DIAMETER GRAVITY, PVC, SDR 35, 4-8' DEEP	LF	1,109	\$	\$
1.13	PIPE, 12" DIAMETER GRAVITY, PVC, SDR 35, 8-12' DEEP	LF	12	\$	\$
1.14	PIPE, 12" DIAMETER GRAVITY, DIP, CLASS 250, 8-12' DEEP	LF	105	\$	\$
1.15	PIPE, 10" DIAMETER GRAVITY, PVC, SDR 35, 4-8' DEEP	LF	1,241	\$	\$
1.16	PIPE, 10" DIAMETER GRAVITY, PVC, SDR 35, 8-12' DEEP	LF	2,013	\$	\$
1.17	PIPE, 10" DIAMETER GRAVITY, PVC, SDR 35, 12-16' DEEP	LF	442	\$	\$
1.18	PIPE, 10" DIAMETER GRAVITY, DIP, CLASS 250, 4-8' DEEP	LF	191	\$	\$
1.19	PIPE, 10" DIAMETER GRAVITY, DIP, CLASS 250, 8-12' DEEP	LF	92	\$	\$
1.20	PIPE, 8" DIAMETER GRAVITY, PVC, SDR 35, 4-8' DEEP	LF	583	\$	\$
1.21	PIPE, 8" DIAMETER GRAVITY, PVC, SDR 35, 8-12' DEEP	LF	520	\$	\$
1.22	PIPE, 8" DIAMETER GRAVITY, PVC, SDR 26, 4-8' DEEP	LF	112	\$	\$
1.23	PIPE, 8" DIAMETER GRAVITY, PVC, SDR 26, 8-12' DEEP	LF	483	\$	\$
1.24	PIPE, 8" DIAMETER GRAVITY, PVC, SDR 26, 12-16' DEEP	LF	71	\$	\$
1.25	PIPE, 8" DIAMETER GRAVITY, PVC, SDR 35, 16-20' DEEP	LF	65	\$	\$
<b>2.</b>	<b>FORCE MAIN PIPE</b>				
2.1	PIPE, 10" DIAMETER FORCE MAIN, PVC, DR 18	LF	17,330	\$	\$
2.2	PIPE, 10" DIAMETER FORCE MAIN, CIP, CLASS 350	LF	866	\$	\$
2.3	PIPE, 8" DIAMETER FORCE MAIN, PVC, DR 25	LF	8,888	\$	\$
2.4	PIPE, 6" DIAMETER FORCE MAIN, PVC, DR 25	LF	5,621	\$	\$
2.5	PIPE, 6" DIAMETER FORCE MAIN, DIP, CLASS 350	LF	162	\$	\$
<b>3.</b>	<b>WATER LINE PIPE</b>				
3.1	PIPE, 2" DIAMETER WATER, HDPE	LF	2,017	\$	\$
<b>4.</b>	<b>STANDARD MANHOLES</b>				

4.1	PRECAST MANHOLE, 48" DIAMETER, 0-8' DEEP	EACH	9	\$	\$
4.2	PRECAST MANHOLE, 48" DIAMETER, 8-12' DEEP	EACH	22	\$	\$
4.3	PRECAST MANHOLE, 48" DIAMETER, 12-16' DEEP	EACH	6	\$	\$
4.4	PRECAST MANHOLE, 48" DIAMETER, >16' DEEP	EACH	3	\$	\$
4.5	PRECAST MANHOLE, 60" DIAMETER, >16' DEEP	EACH	1	\$	\$
4.6	PRECAST MANHOLE, 72" DIAMETER, 8-12' DEEP	EACH	1	\$	\$
4.7	PRECAST MANHOLE, 72" DIAMETER, 12-16' DEEP	EACH	1	\$	\$
4.8	PRECAST MANHOLE, 72" DIAMETER, >16' DEEP	EACH	1	\$	\$
<b>5.</b>	<b>INSIDE DROP MANHOLES</b>				
5.1	PRECAST MANHOLE, 72" DIAMETER, INSIDE DROP, 8-12' DEEP	EACH	2	\$	\$
5.2	PRECAST MANHOLE, 72" DIAMETER, INSIDE DROP, 12-16' DEEP	EACH	4	\$	\$
5.3	PRECAST MANHOLE, 72" DIAMETER, INSIDE DROP, >16' DEEP	EACH	9	\$	\$
<b>6.</b>	<b>SEAL TIGHT MANHOLES</b>				
6.1	PRECAST MANHOLE, 48" DIAMETER, 8-12' DEEP	EACH	1	\$	\$
6.2	PRECAST MANHOLE, 48" DIAMETER, 12-16' DEEP	EACH	1	\$	\$
6.3	PRECAST MANHOLE, 60" DIAMETER, >16' DEEP	EACH	1	\$	\$
<b>7.</b>	<b>FORCE MAIN FITTINGS</b>				
7.1	FITTINGS, 10" 45 DEGREE BEND	EACH	6	\$	\$
7.2	FITTINGS, 10" 11.25 DEGREE BEND	EACH	5	\$	\$
7.3	FITTINGS, 8" 45 DEGREE BEND	EACH	7	\$	\$
7.4	FITTINGS, 8" 22.5 DEGREE BEND	EACH	6	\$	\$
7.5	FITTINGS, 6" 45 DEGREE BEND	EACH	5	\$	\$
7.6	FITTINGS, 6" 11.25 DEGREE BEND	EACH	1	\$	\$
<b>8.</b>	<b>WATER LINE FITTINGS</b>				
8.1	FITTINGS, 2" 90 DEGREE BEND	EACH	1	\$	\$

8.2	FITTINGS, 2" 45 DEGREE BEND	EACH	2	\$	\$
8.3	FITTINGS, 2" 22.5 DEGREE BEND	EACH	1	\$	\$
<b>9.</b>	<b>CONNECTIONS TO EXISTING WATER LINES</b>				
9.1	TAPPING SLEEVE (8X2)	EACH	2	\$	\$
<b>10.</b>	<b>BORE AND JACK</b>				
10.1	30" STEEL CASING, BORE AND JACK, UNDER ROAD	LF	90	\$	\$
10.2	30" STEEL CASING, BORE AND JACK, UNDER RAILROAD	LF	284	\$	\$
10.3	20" STEEL CASING, BORE AND JACK, UNDER ROAD	LF	91	\$	\$
10.4	20" STEEL CASING, BORE AND JACK, UNDER RAILROAD	LF	371	\$	\$
10.5	18" STEEL CASING, BORE AND JACK, UNDER ROAD	LF	477	\$	\$
<b>11.</b>	<b>HORIZONTAL DIRECTIONAL DRILLING (HDD)</b>				
11.1	12" HDPE DR 11, HDD ALONG N MOUNTAIN ST, UNDER RAILROAD, SEGMENT 6	LF	1,354	\$	\$
11.2	12" HDPE DR 11, HDD ALONG YORK RD, UNDER RAILROAD, SEGMENT 8	LF	800	\$	\$
11.3	12" HDPE DR 11 OR 10" fPVC DR 18, HDD ALONG JUMPING BRANCH RD, UNDER JUMPING CREEK, SEGMENT 8	LF	235	\$	\$
<b>12.</b>	<b>AIR RELEASE/VACCUM COMBINATION VALVES</b>				
12.1	2" INFLOW, 2X1/8 OUTFLOW	EACH	29	\$	\$
12.2	1" INFLOW, 2X1/8 OUTFLOW	EACH	4	\$	\$
12.3	3" INFLOW, 2X1/2 OUTFLOW	EACH	1	\$	\$
<b>13.</b>	<b>PLUG VALVES</b>				
13.1	10" PLUG VALVE	EACH	4	\$	\$
<b>14.</b>	<b>ROCK REMOVAL</b>				
		CY	100	\$	\$
<b>15.</b>	<b>REPAVING</b>				
15.1	PAVEMENT REPAIR	SY	796	\$	\$
15.2	DRIVEWAY REPAIR	SY	862	\$	\$
15.3	SIDEWALK REPAIR	SY	512	\$	\$

15.4	CURB AND GUTTER REPAIR	LF	38	\$	\$
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**Base Bid Subtotal** (add Items 1 through 15) \$ \_\_\_\_\_  
**Mobilization** (Not Greater than 3% of Base Bid Subtotal) \$ \_\_\_\_\_  
**Total Base Bid** (add Base Bid Subtotal and Mobilization) \$ \_\_\_\_\_  
(figures)

(words)

**ARTICLE 6 – TIME OF COMPLETION**

6.01. Bidder agrees that the Work covered by the section or sections included in the contract award will be completed within the following numbers of calendar days after the date when Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions. Completion shall mean completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions. The periods listed below shall run concurrently and shall apply regardless of the number of sections awarded to a Bidder.

Substantial Completion: 600 Days      Final Completion: 630 Days

6.02. Bidder accepts the provisions of the agreement as liquidated damages in the event of failure to complete the work within the time specified above.

**ARTICLE 7 – ATTACHMENTS TO THIS BID**

7.01 The following documents are submitted with and made a condition of this Bid:

- A. Required Bid security;
- B. List of Subcontractors and Suppliers;
- C. Non-Collusion Affidavit;
- D. Bidder Qualification Items:
  - 1. A copy of financial statement certified by a Certified Public Accountant;
  - 2. Resume of previous five (5) years (minimum) of experience including project descriptions, owner’s name and contact information, contract value, contract duration and actual duration;
  - 3. Resumes of project manager and project superintendent for the project;

4. A summary of present commitments, durations, and owner's contact information;
5. Experience Modification Rate for each of the three (3) most recent years;
6. A copy of Contractor's license for South Carolina; and
7. A copy of Contractor's active System for Award Management (SAM) registration.
8. Total linear foot of installed pressurized force main and gravity sewer with diameters over the last ten (10) years.

#### ARTICLE 8 – DEFINED TERMS

8.01. The terms used in this Bid have the meanings stated in the Instructions to Bidders, the General Conditions, and the Supplementary Conditions.

ARTICLE 9 – BID SUBMITTAL

BIDDER: \_\_\_\_\_  
*(Correct name of bidding entity)*

By: \_\_\_\_\_  
*(Signature)*  
*(If Bidder is a corporation, a limited liability company, a partnership, or a joint venture, attach evidence of authority to sign.)*

\_\_\_\_\_  
*(Printed name)*

Attest: \_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Printed name)*

\_\_\_\_\_  
*(Title)*

Submittal Date: \_\_\_\_\_

Address for giving notices:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone Number: (\_\_\_\_\_) \_\_\_\_\_

Fax Number: (\_\_\_\_\_) \_\_\_\_\_

Contact Name and e-mail address: \_\_\_\_\_

Contractor's License Number: \_\_\_\_\_

License Expiration Date : \_\_\_\_\_

Contractor's SAM Number: \_\_\_\_\_

End of Section



November 21, 2023

Cory Cox  
210 E Frederick St  
Gaffney, SC 29340

Re: Certification in Accordance with Section 401 of the Clean Water Act, as amended,  
with conditions pursuant to R. 19-450 et. seq., 1976 SC Code of Laws,  
*Permit For Construction in Navigable Waters*

Gaffney Board of Public Works  
c/o Cory Cox  
Gaffney Board of Public Works I-85 Sewer Extension  
Placement of fill material  
Unnamed tributaries and wetlands, Buffalo Creek and the Broad River  
Broad River  
Cherokee County  
P/N: SAC-2023-00877

Dear Sir or Madam:

South Carolina Department of Health and Environmental Control (DHEC) has reviewed plans for this project and determined that there is a reasonable assurance that the proposed project will be conducted in a manner consistent with the Certification requirements of Section 401 of the Federal Clean Water Act, as amended, and the permitting requirements of R. 19-450 et. seq., 1976 SC Code of Laws.

In accordance with the provisions of Section 401, we certify that this project, subject to the included conditions, is consistent with applicable provisions of Section 401 of the Federal Clean Water Act, and S.C. Code Ann. Regs. 61-101.

This certification is subject to the following conditions:

**401 Water Quality Certification conditions:**

1. The applicant must implement best management practices that will minimize erosion and migration of sediments on and off the project site during and after construction. These practices should include the use of appropriate grading and sloping techniques, mulches, hay bales, silt fences, or other devices capable of preventing erosion, migration of sediments, and bank failure. All disturbed land surfaces and sloped areas affected by the project must be stabilized.
2. All necessary measures must be taken to prevent oil, trash, debris and other pollutants from entering the adjacent waters or wetlands.
3. Only clean earthen material, free of all potential sources of pollution, may be used as fill.



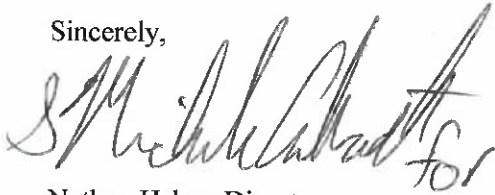
4. Materials used for erosion control (e.g. hay bales or straw mulch) must be certified as weed free from the supplier.
5. Upon completion, all disturbed areas must be permanently stabilized with vegetative cover (preferable), riprap or other erosion control methods as appropriate.
6. The project must comply with any applicable floodplain, stormwater, land disturbance, or riparian buffer ordinances.
7. Pipeline construction must be accomplished in existing disturbance corridors as proposed. Upon completion, preconstruction contours must be restored along pipelines and all disturbed areas must be permanently stabilized with vegetative cover (preferable) and/or riprap, as appropriate. Right-of-ways should be no wider than that necessary for access and maintenance.
8. All excavations should be backfilled with the excavated material after installation of the appropriate structures. Where practicable, sidecast spoil material from trench excavation should be placed on the side of the trench opposite streams and wetlands. Spoil material from trench excavation should be placed on the side of the trench to be reused as back fill with the A-horizon placed back in its original position. Excess spoil material must be removed to an approved upland disposal site.
9. Stream banks at crossings must be restored after construction has been completed. Disturbed stream banks can be restored by planting woody vegetation and by using bioengineering techniques for stream bank stabilization. Plantings should consist of appropriate native species for the ecoregion and should exclude plant species found on the Exotic pest plant council list:  
[https://www.se-eppc.org/southcarolina/SCEPPC\\_LIST2014finalOct.pdf](https://www.se-eppc.org/southcarolina/SCEPPC_LIST2014finalOct.pdf)
10. Right-of-ways through and adjacent to streams should be maintained in low growing, woody vegetation to minimize stream bank erosion and sedimentation. Maintenance of this right-of-way should be conducted with mowing rather than with chemicals to reduce the potential for contamination and negative impacts on aquatic resources. If chemicals are used, a 50-foot buffer on either side of the stream crossing should be established where no herbicide treatments would be allowed. This will serve to retain the riparian vegetation while reducing the amount of chemical runoff into the aquatic environment.
11. Inadvertent releases occasionally occur during HDD, and thus, SCDNR recommends, to protect nearby aquatic resources and water quality, that the preventative measures outlined in a Horizontal Directional Drilling Contingency and Inadvertent Release Plan be implemented. These include:
  - a. Erecting straw bales or sedimentation fences between the drill site and nearby sensitive resources to prevent drilling mud releases from reaching the resource.
  - b. Conducting regular, on-site briefings for personnel to identify and locate sensitive resources at the site.
  - c. Maintaining necessary response equipment either on-site or at a readily accessible

location and in good working order.

- d. In addition, we recommend the HDD Contractor employ a Full Time, Qualified On-Site Mud Engineer to continuously monitor the drilling fluid circulation and returns as a preventative measure.

DHEC reserves the right to impose additional conditions on this Certification to respond to unforeseen, specific problems that may arise and to take any enforcement action necessary to ensure compliance with State water quality standards.

Sincerely,

A handwritten signature in black ink, appearing to read "Nathan Haber" with a stylized flourish at the end.

Nathan Haber, Director  
Division of Water Quality  
Bureau of Water



DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS, CHARLESTON DISTRICT  
750 EXECUTIVE CENTER DRIVE, SUITE 103  
GREENVILLE, SOUTH CAROLINA 29615

NOVEMBER 21, 2023

Regulatory Division

Mr. Cory Cox  
Gaffney Board of Public Works  
210 E Frederick Street  
Gaffney, South Carolina 29340  
ccox@gbpw.com

Dear Mr. Cox:

This is in response to a Pre-Construction Notification (PCN) (SAC-2023-00877) received on JULY 05, 2023, and considered complete on JULY 06, 2023. In submitting the PCN, you requested verification the proposed project is authorized by a Department of the Army (DA) Nationwide Permit (NWP).

The work affecting waters of the United States is part of an overall project known as I-85 Sewer Extension, to place fill material for the installation of gravity sewer lines. The activities in waters of the United States include 6 temporary impacts to wetlands, 1 permanent impact to a wetland, and 10 temporary impacts to tributaries. The project involves temporary impacts to not more than 0.407 acre of waters of the United States and permanent impacts to not more than 0.062 acre of waters of the United States. Specifically, this letter authorizes temporary impacts to 0.397 acre of wetlands, permanent impacts to 0.062 acres of wetlands, and temporary impacts to 37 linear feet and 0.01 acre of tributaries. The project is located on 14 approximate locations south of interstate 85 in Gaffney, Cherokee County, South Carolina as listed below:

1. Wetland C (Latitude: 35.1119°N, Longitude: -81.5830°E)
2. Wetland D (Latitude: 35.1146°N, Longitude: -81.5797°E)
3. Wetland F (Latitude: 35.1199°N, Longitude: -81.5733°E)
4. Wetland N (Latitude: 35.1301°N, Longitude: -81.5442°E)
5. Wetland M (Latitude: 35.1318°N, Longitude: -81.5375°E)
6. Tributary A (Latitude: 35.0872°N, Longitude: -81.6006°E)
7. Tributary B (Latitude: 35.0927°N, Longitude: -81.5991°E)
8. Tributary G (Latitude: 35.1199°N, Longitude: -81.5733°E)
9. Tributary H (Latitude: 35.1243°N, Longitude: -81.5639°E)
10. Tributary I (Latitude: 35.1249°N, Longitude: -81.5616°E)
11. Tributary M (Latitude: 35.1319°N, Longitude: -81.5381°E)
12. Tributary Y (Latitude: 35.1441°N, Longitude: -81.5005°E)
13. Tributary Z (Latitude: 35.1451°N, Longitude: -81.4991°E)
14. Tributary V (Latitude: 35.1562°N, Longitude: -81.4557°E)

The PCN also includes the following supplemental information:

- a. "I-85 Sewer Extension – Aquatic Resources Map" sheet 1 of 1 and dated October 11, 2023.
- b. Drawing sheets 1-140 of 140 titled "I-85 Sewer Extension Volume 2: Collections" and dated JUNE 14, 2023.
- c. A mitigation plan/statement that includes avoidance and minimization measures.
- d. A delineation of wetlands, other special aquatic sites, and other waters.

Based on a review of the PCN, including the supplemental information indicated above, the Corps has determined the proposed activity will result in minimal individual and cumulative adverse environmental effects and is not contrary to the public interest. Furthermore, the activity meets the terms and conditions of NWP 58: Utility Line Activities for Water and Other Substances.

For this authorization to remain valid, the project must comply with the enclosed NWP General Conditions, Charleston District Regional Conditions, and the following special conditions:

- a. That impacts to aquatic areas do not exceed those specified in the above mentioned PCN, including any supplemental information or revised permit drawings that were submitted to the Corps by the permittee.**
- b. That the construction, use, and maintenance of the authorized activity is in accordance with the information given in the PCN, including the supplemental information listed above, and is subject to any conditions or restrictions imposed by this letter.**
- c. That the permittee shall submit the attached signed compliance certification to the Corps within 30 days following completion of the authorized work.**

This verification is valid until March 14, 2026, unless the district engineer modifies, suspends, or revokes the NWP authorization in accordance with 33 CFR 330.5(d). If prior to this date, the NWP authorization is reissued without modification or the activity complies with any subsequent modification of the NWP authorization, the verification continues to remain valid until March 14, 2026. If you commence, or are under contract to commence this activity before the NWP expires, or the NWP is

modified, suspended, or revoked by the Chief of Engineers or division engineer in accordance with 33 CFR 330.5(b) or (c), respectively, in such a way that the activity would no longer comply with the terms and conditions of the NWP, you will have 12 months after the date the NWP expires or is modified, suspended, or revoked, to complete the activity under the present terms and conditions of this NWP.

This NWP is verified based on information you provided. It is your responsibility to read the attached NWP(s) along with the General, Regional, and Special Conditions before you begin work. If you determine your project will not be able to meet the NWP and the conditions, you must contact the Corps before you proceed.

In all future correspondence, please refer to file number SAC-2023-00877. A copy of this letter is forwarded to State and/or Federal agencies for their information. If you have any questions, please contact Travis Scott, Project Manager, at 843-853-1869, or by email at Travis.F.Scott@usace.army.mil.

Sincerely,



Laura Boos  
Team Leader

Attachments

“I-85 Sewer Extension – Aquatic Resources Map”  
Permit Drawings  
NWP 58: Utility Line Activities for Water and Other Substances  
Nationwide Permit General Conditions  
Nationwide Permit Regional Conditions  
401 Water Quality Certification  
Compliance Certification Form

Copies Furnished:

Mr. BRANDON STUTTS  
Stutts Environmental  
213 ROCKY POINT DRIVE  
COLUMBIA, South Carolina 29212  
bgstutts1@gmail.com

SC DHEC - Bureau of Water  
2600 Bull Street  
Columbia, South Carolina 29201  
[WQCWetlands@dhec.sc.gov](mailto:WQCWetlands@dhec.sc.gov)

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 NWP 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 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 the utility line is constructed, installed, or maintained in navigable waters of the United States (i.e., section 10 waters) within the coastal United States, the Great Lakes, and United States territories, a copy of the NWP verification will be sent by the Corps to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), for charting the utility line to protect navigation.

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).

## 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 NWP 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. The activity must not restrict or impede the passage of normal or high 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.

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, as well as 50 CFR 402.17, which provides further explanation under ESA section 7 regarding “activities that are reasonably certain to occur” and “consequences caused by the proposed action.”

(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 applicant 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 world wide 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 to properties listed, or eligible for listing, in the National Register of Historic Places until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of section 106 of the 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 to 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 the historic properties. Section 106 consultation is not required when the district engineer determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). Section 106 consultation is required when the district engineer determines that the activity has the potential to cause effects on historic properties. The district engineer will conduct consultation with consulting parties identified under 36 CFR 800.2(c) when he or she makes any of the following effect determinations for the purposes of section 106 of the NHPA: no historic properties affected, no adverse effect, or adverse effect.

(d) Where the non-Federal applicant has identified historic properties on which the proposed 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 to 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 activity authorized by an NWP, they 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, since 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 NWP, 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 discharge 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 certifying authority for the issuance of the NWP, then the permittee must obtain a water quality certification or waiver for the proposed discharge 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 discharge 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, the permittee must submit a copy of the certification to the district engineer. The discharge is not authorized by an NWP until the district engineer has notified the permittee that the water quality certification requirement has been satisfied by the issuance of a water quality certification or a waiver.

(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) 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 cannot exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank

stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

(b) If one or more of the NWPs used to authorize the single and complete project has specified acreage limits, the acreage loss of waters of the United States authorized by those NWPs cannot exceed their respective specified acreage limits. For example, if a commercial development is constructed under NWP 39, and the single and complete project includes the filling of an upland ditch authorized by NWP 46, the maximum acreage loss of waters of the United States for the commercial development under NWP 39 cannot exceed 1/2-acre, and the total acreage loss of waters of United States due to the NWP 39 and 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.”

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(Transferee)

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(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 success 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 critical habitat 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 wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial and intermittent streams, 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;

(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 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 of 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.

### **District Engineer's Decision**

1. In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If a project proponent requests authorization by a specific NWP, the district engineer should issue the NWP verification for that activity if it meets the terms and conditions of that NWP, unless he or she determines, after considering mitigation, that the proposed activity will result in more than minimal individual and cumulative adverse effects on the aquatic environment and other aspects of the public interest and exercises discretionary authority to require an individual permit for the proposed activity. For a linear project, this determination will include an evaluation of the single and complete crossings of waters of the United States that require PCNs to determine whether they individually satisfy the terms and conditions of the NWP(s), as well as the cumulative effects caused by all of the crossings of waters of the United States authorized by an NWP. If an applicant requests a waiver of an applicable limit, as provided for in NWPs 13, 36, or 54, the district engineer will only grant the waiver upon a written determination that the NWP activity will result in only minimal individual and cumulative adverse environmental effects.

2. When making minimal adverse environmental effects determinations the district engineer will consider the direct and indirect effects caused by the NWP activity. He or she will also consider the cumulative adverse environmental effects caused by activities authorized by an NWP and whether those cumulative adverse environmental effects are no more than minimal. The district engineer will also consider site specific factors, such as the environmental setting in the vicinity of the NWP activity, the type of resource that will be affected by the NWP activity, the functions provided by the aquatic resources that will be affected by the NWP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the NWP activity (e.g., partial or complete loss), the duration of the adverse effects (temporary or permanent), the importance of the aquatic resource

functions to the region (e.g., watershed or ecoregion), and mitigation required by the district engineer. If an appropriate functional or condition assessment method is available and practicable to use, that assessment method may be used by the district engineer to assist in the minimal adverse environmental effects determination. The district engineer may add case-specific special conditions to the NWP authorization to address site-specific environmental concerns.

3. If the proposed activity requires a PCN and will result in a loss of greater than 1/10-acre of wetlands or 3/100-acre of stream bed, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for NWP activities with smaller impacts, or for impacts to other types of waters. The district engineer will consider any proposed compensatory mitigation or other mitigation measures the applicant has included in the proposal in determining whether the net adverse environmental effects of the proposed activity are no more than minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse environmental effects are no more than minimal, after considering mitigation, the district engineer will notify the permittee and include any activity-specific conditions in the NWP verification the district engineer deems necessary. Conditions for compensatory mitigation requirements must comply with the appropriate provisions at 33 CFR 332.3(k). The district engineer must approve the final mitigation plan before the permittee commences 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. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the proposed compensatory mitigation plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure that the NWP activity results in no more than minimal adverse environmental effects. If the net adverse environmental effects of the NWP activity (after consideration of the mitigation proposal) are determined by the district engineer to be no more than minimal, the district engineer will provide a timely written response to the applicant. The response will state that the NWP activity can proceed under the terms and conditions of the NWP, including any activity-specific conditions added to the NWP authorization by the district engineer.

4. If the district engineer determines that the adverse environmental effects of the proposed activity are more than minimal, then the district engineer will notify the applicant either: (a) that the activity does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (b) that the activity is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal; or (c) that the activity is authorized under the NWP with specific modifications or conditions. Where the district engineer determines that mitigation is required to ensure no more than minimal adverse environmental effects, the activity will be authorized within the 45-day PCN period (unless additional time is

required to comply with general conditions 18, 20, and/or 31), with activity-specific conditions that state the mitigation requirements. The authorization will include the necessary conceptual or detailed mitigation plan or a requirement that the applicant submit a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal. When compensatory mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan or has determined that prior approval of a final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation.

### **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).

### **Nationwide Permit Definitions**

Best management practices (BMPs): Policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural.

Compensatory mitigation: The restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

Currently serviceable: Useable as is or with some maintenance, but not so degraded as to essentially require reconstruction.

Direct effects: Effects that are caused by the activity and occur at the same time and place.

Discharge: The term “discharge” means any discharge of dredged or fill material into waters of the United States.

Ecological reference: A model used to plan and design an aquatic habitat and riparian area restoration, enhancement, or establishment activity under NWP 27. An ecological reference may be based on the structure, functions, and dynamics of an aquatic habitat type or a riparian area type that currently exists in the region where the proposed NWP 27 activity is located. Alternatively, an ecological reference may be based on a conceptual model for the aquatic habitat type or riparian area type to be restored, enhanced, or established as a result of the proposed NWP 27 activity. An ecological reference takes into account the range of variation of the aquatic habitat type or riparian area type in the region.

Enhancement: The manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

Establishment (creation): The manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area.

High Tide Line: The line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

Historic Property: Any prehistoric or historic district, site (including archaeological site), building, structure, or other object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria (36 CFR part 60).

Independent utility: A test to determine what constitutes a single and complete non-linear project in the Corps Regulatory Program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.

Indirect effects: Effects that are caused by the activity and are later in time or farther removed in distance, but are still reasonably foreseeable.

Loss of waters of the United States: Waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. The loss of stream bed includes the acres of stream bed that are permanently adversely affected by filling or excavation because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the United States is a threshold measurement of the impact to jurisdictional waters or wetlands for determining whether a project may qualify for an NWP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and services. Waters of the United States temporarily filled, flooded, excavated, or drained, but restored to pre-construction contours and elevations after construction, are not included in the measurement of loss of waters of the United States. Impacts resulting from activities that do not require Department of the Army authorization, such as activities eligible for exemptions under section 404(f) of the Clean Water Act, are not considered when calculating the loss of waters of the United States.

Navigable waters: Waters subject to section 10 of the Rivers and Harbors Act of 1899. These waters are defined at 33 CFR part 329.

Non-tidal wetland: A non-tidal wetland is a wetland that is not subject to the ebb and flow of tidal waters. Non-tidal wetlands contiguous to tidal waters are located landward of the high tide line (i.e., spring high tide line).

Open water: For purposes of the NWPs, an open water is any area that in a year with normal patterns of precipitation has water flowing or standing above ground to the extent that an ordinary high water mark can be determined. Aquatic vegetation within the area of flowing or standing water is either non-emergent, sparse, or absent. Vegetated shallows are considered to be open waters. Examples of “open waters” include rivers, streams, lakes, and ponds.

Ordinary High Water Mark: The term ordinary high water mark means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

Perennial stream: A perennial stream has surface water flowing continuously year-round during a typical year.

Practicable: Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

Pre-construction notification: A request submitted by the project proponent to the Corps for confirmation that a particular activity is authorized by nationwide permit. The request may be a permit application, letter, or similar document that includes information about the proposed work and its anticipated environmental effects. Pre-construction notification may be required by the terms and conditions of a nationwide permit, or by regional conditions. A pre-construction notification may be voluntarily submitted in cases where pre-construction notification is not required and the project proponent wants confirmation that the activity is authorized by nationwide permit.

Preservation: The removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

Re-establishment: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area and functions.

Rehabilitation: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.

Restoration: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: re-establishment and rehabilitation.

Riffle and pool complex: Riffle and pool complexes are special aquatic sites under the 404(b)(1) Guidelines. Riffle and pool complexes sometimes characterize steep gradient sections of streams. Such stream sections are 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. A slower stream velocity, a streaming flow, a smooth surface, and a finer substrate characterize pools.

Riparian areas: Riparian areas are lands next to streams, lakes, and estuarine-marine shorelines. Riparian areas are transitional between terrestrial and aquatic ecosystems, through which surface and subsurface hydrology connects riverine, lacustrine, estuarine, and marine waters with their adjacent wetlands, non-wetland waters, or uplands. Riparian areas provide a variety of ecological functions and services and help improve or maintain local water quality. (See general condition 23.)

Shellfish seeding: The placement of shellfish seed and/or suitable substrate to increase shellfish production. Shellfish seed consists of immature individual shellfish or individual shellfish attached to shells or shell fragments (i.e., spat on shell). Suitable substrate may consist of shellfish shells, shell fragments, or other appropriate materials placed into waters for shellfish habitat.

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

Single and complete non-linear project: For non-linear projects, the term “single and complete project” is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete non-linear project must have independent utility (see definition of “independent utility”). Single and complete non-linear projects may not be “piecemealed” to avoid the limits in an NWP authorization.

Stormwater management: Stormwater management is the mechanism for controlling stormwater runoff for the purposes of reducing downstream erosion, water quality degradation, and flooding and mitigating the adverse effects of changes in land use on the aquatic environment.

Stormwater management facilities: Stormwater management facilities are those facilities, including but not limited to, stormwater retention and detention ponds and best management practices, which retain water for a period of time to control runoff and/or improve the quality (i.e., by reducing the concentration of nutrients, sediments, hazardous substances and other pollutants) of stormwater runoff.

Stream bed: The substrate of the stream channel between the ordinary high water marks. The substrate may be bedrock or inorganic particles that range in size from clay to boulders. Wetlands contiguous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.

Stream channelization: The manipulation of a stream’s course, condition, capacity, or location that causes more than minimal interruption of normal stream processes. A channelized jurisdictional stream remains a water of the United States.



Structure: An object that is arranged in a definite pattern of organization. Examples of structures include, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other manmade obstacle or obstruction.

Tidal wetland: A tidal wetland is a jurisdictional wetland that is inundated by tidal waters. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line.

Tribal lands: Any lands title to which is either: 1) held in trust by the United States for the benefit of any Indian tribe or individual; or 2) held by any Indian tribe or individual subject to restrictions by the United States against alienation.

Tribal rights: Those rights legally accruing to a tribe or tribes by virtue of inherent sovereign authority, unextinguished aboriginal title, treaty, statute, judicial decisions, executive order or agreement, and that give rise to legally enforceable remedies.

Vegetated shallows: Vegetated shallows are special aquatic sites under the 404(b)(1) Guidelines. They are areas that are permanently inundated and under normal circumstances have rooted aquatic vegetation, such as seagrasses in marine and estuarine systems and a variety of vascular rooted plants in freshwater systems.

Waterbody: For purposes of the NWP, a waterbody is a "water of the United States." If a wetland is adjacent to a waterbody determined to be a water of the United States, that waterbody and any adjacent wetlands are considered together as a single aquatic unit (see 33 CFR 328.4(c)(2)).

## 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 NWP 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. The activity must not restrict or impede the passage of normal or high 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.

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, as well as 50 CFR 402.17, which provides further explanation under ESA section 7 regarding “activities that are reasonably certain to occur” and “consequences caused by the proposed action.”

(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 applicant 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 world wide 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 to properties listed, or eligible for listing, in the National Register of Historic Places until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of section 106 of the 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 to 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 the historic properties. Section 106 consultation is not required when the district engineer determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). Section 106 consultation is required when the district engineer determines that the activity has the potential to cause effects on historic properties. The district engineer will conduct consultation with consulting parties identified under 36 CFR 800.2(c) when he or she makes any of the following effect determinations for the purposes of section 106 of the NHPA: no historic properties affected, no adverse effect, or adverse effect.

(d) Where the non-Federal applicant has identified historic properties on which the proposed 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 to 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 activity authorized by an NWP, they 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, since 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 NWP, 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 discharge 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 certifying authority for the issuance of the NWP, then the permittee must obtain a water quality certification or waiver for the proposed discharge 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 discharge 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, the permittee must submit a copy of the certification to the district engineer. The discharge is not authorized by an NWP until the district engineer has notified the permittee that the water quality certification requirement has been satisfied by the issuance of a water quality certification or a waiver.

(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) 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 cannot exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank

stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

(b) If one or more of the NWPs used to authorize the single and complete project has specified acreage limits, the acreage loss of waters of the United States authorized by those NWPs cannot exceed their respective specified acreage limits. For example, if a commercial development is constructed under NWP 39, and the single and complete project includes the filling of an upland ditch authorized by NWP 46, the maximum acreage loss of waters of the United States for the commercial development under NWP 39 cannot exceed 1/2-acre, and the total acreage loss of waters of United States due to the NWP 39 and 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.”

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(Transferee)

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(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 success 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 critical habitat 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 wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial and intermittent streams, 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;

(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 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 of 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.

### **District Engineer's Decision**

1. In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If a project proponent requests authorization by a specific NWP, the district engineer should issue the NWP verification for that activity if it meets the terms and conditions of that NWP, unless he or she determines, after considering mitigation, that the proposed activity will result in more than minimal individual and cumulative adverse effects on the aquatic environment and other aspects of the public interest and exercises discretionary authority to require an individual permit for the proposed activity. For a linear project, this determination will include an evaluation of the single and complete crossings of waters of the United States that require PCNs to determine whether they individually satisfy the terms and conditions of the NWP(s), as well as the cumulative effects caused by all of the crossings of waters of the United States authorized by an NWP. If an applicant requests a waiver of an applicable limit, as provided for in NWPs 13, 36, or 54, the district engineer will only grant the waiver upon a written determination that the NWP activity will result in only minimal individual and cumulative adverse environmental effects.

2. When making minimal adverse environmental effects determinations the district engineer will consider the direct and indirect effects caused by the NWP activity. He or she will also consider the cumulative adverse environmental effects caused by activities authorized by an NWP and whether those cumulative adverse environmental effects are no more than minimal. The district engineer will also consider site specific factors, such as the environmental setting in the vicinity of the NWP activity, the type of resource that will be affected by the NWP activity, the functions provided by the aquatic resources that will be affected by the NWP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the NWP activity (e.g., partial or complete loss), the duration of the adverse effects (temporary or permanent), the importance of the aquatic resource

functions to the region (e.g., watershed or ecoregion), and mitigation required by the district engineer. If an appropriate functional or condition assessment method is available and practicable to use, that assessment method may be used by the district engineer to assist in the minimal adverse environmental effects determination. The district engineer may add case-specific special conditions to the NWP authorization to address site-specific environmental concerns.

3. If the proposed activity requires a PCN and will result in a loss of greater than 1/10-acre of wetlands or 3/100-acre of stream bed, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for NWP activities with smaller impacts, or for impacts to other types of waters. The district engineer will consider any proposed compensatory mitigation or other mitigation measures the applicant has included in the proposal in determining whether the net adverse environmental effects of the proposed activity are no more than minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse environmental effects are no more than minimal, after considering mitigation, the district engineer will notify the permittee and include any activity-specific conditions in the NWP verification the district engineer deems necessary. Conditions for compensatory mitigation requirements must comply with the appropriate provisions at 33 CFR 332.3(k). The district engineer must approve the final mitigation plan before the permittee commences 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. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the proposed compensatory mitigation plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure that the NWP activity results in no more than minimal adverse environmental effects. If the net adverse environmental effects of the NWP activity (after consideration of the mitigation proposal) are determined by the district engineer to be no more than minimal, the district engineer will provide a timely written response to the applicant. The response will state that the NWP activity can proceed under the terms and conditions of the NWP, including any activity-specific conditions added to the NWP authorization by the district engineer.

4. If the district engineer determines that the adverse environmental effects of the proposed activity are more than minimal, then the district engineer will notify the applicant either: (a) that the activity does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (b) that the activity is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal; or (c) that the activity is authorized under the NWP with specific modifications or conditions. Where the district engineer determines that mitigation is required to ensure no more than minimal adverse environmental effects, the activity will be authorized within the 45-day PCN period (unless additional time is

required to comply with general conditions 18, 20, and/or 31), with activity-specific conditions that state the mitigation requirements. The authorization will include the necessary conceptual or detailed mitigation plan or a requirement that the applicant submit a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal. When compensatory mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan or has determined that prior approval of a final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation.

### **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).

### **Nationwide Permit Definitions**

Best management practices (BMPs): Policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural.

Compensatory mitigation: The restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

Currently serviceable: Useable as is or with some maintenance, but not so degraded as to essentially require reconstruction.

Direct effects: Effects that are caused by the activity and occur at the same time and place.

Discharge: The term "discharge" means any discharge of dredged or fill material into waters of the United States.

Ecological reference: A model used to plan and design an aquatic habitat and riparian area restoration, enhancement, or establishment activity under NWP 27. An ecological reference may be based on the structure, functions, and dynamics of an aquatic habitat type or a riparian area type that currently exists in the region where the proposed NWP 27 activity is located. Alternatively, an ecological reference may be based on a conceptual model for the aquatic habitat type or riparian area type to be restored, enhanced, or established as a result of the proposed NWP 27 activity. An ecological reference takes into account the range of variation of the aquatic habitat type or riparian area type in the region.

Enhancement: The manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

Establishment (creation): The manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area.

High Tide Line: The line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

Historic Property: Any prehistoric or historic district, site (including archaeological site), building, structure, or other object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria (36 CFR part 60).

Independent utility: A test to determine what constitutes a single and complete non-linear project in the Corps Regulatory Program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.

Indirect effects: Effects that are caused by the activity and are later in time or farther removed in distance, but are still reasonably foreseeable.

Loss of waters of the United States: Waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. The loss of stream bed includes the acres of stream bed that are permanently adversely affected by filling or excavation because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the United States is a threshold measurement of the impact to jurisdictional waters or wetlands for determining whether a project may qualify for an NWP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and services. Waters of the United States temporarily filled, flooded, excavated, or drained, but restored to pre-construction contours and elevations after construction, are not included in the measurement of loss of waters of the United States. Impacts resulting from activities that do not require Department of the Army authorization, such as activities eligible for exemptions under section 404(f) of the Clean Water Act, are not considered when calculating the loss of waters of the United States.

Navigable waters: Waters subject to section 10 of the Rivers and Harbors Act of 1899. These waters are defined at 33 CFR part 329.

Non-tidal wetland: A non-tidal wetland is a wetland that is not subject to the ebb and flow of tidal waters. Non-tidal wetlands contiguous to tidal waters are located landward of the high tide line (i.e., spring high tide line).

Open water: For purposes of the NWPs, an open water is any area that in a year with normal patterns of precipitation has water flowing or standing above ground to the extent that an ordinary high water mark can be determined. Aquatic vegetation within the area of flowing or standing water is either non-emergent, sparse, or absent. Vegetated shallows are considered to be open waters. Examples of “open waters” include rivers, streams, lakes, and ponds.

Ordinary High Water Mark: The term ordinary high water mark means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

Perennial stream: A perennial stream has surface water flowing continuously year-round during a typical year.

Practicable: Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

Pre-construction notification: A request submitted by the project proponent to the Corps for confirmation that a particular activity is authorized by nationwide permit. The request may be a permit application, letter, or similar document that includes information about the proposed work and its anticipated environmental effects. Pre-construction notification may be required by the terms and conditions of a nationwide permit, or by regional conditions. A pre-construction notification may be voluntarily submitted in cases where pre-construction notification is not required and the project proponent wants confirmation that the activity is authorized by nationwide permit.

Preservation: The removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

Re-establishment: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area and functions.

Rehabilitation: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.

Restoration: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: re-establishment and rehabilitation.

Riffle and pool complex: Riffle and pool complexes are special aquatic sites under the 404(b)(1) Guidelines. Riffle and pool complexes sometimes characterize steep gradient sections of streams. Such stream sections are 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. A slower stream velocity, a streaming flow, a smooth surface, and a finer substrate characterize pools.

Riparian areas: Riparian areas are lands next to streams, lakes, and estuarine-marine shorelines. Riparian areas are transitional between terrestrial and aquatic ecosystems, through which surface and subsurface hydrology connects riverine, lacustrine, estuarine, and marine waters with their adjacent wetlands, non-wetland waters, or uplands. Riparian areas provide a variety of ecological functions and services and help improve or maintain local water quality. (See general condition 23.)

Shellfish seeding: The placement of shellfish seed and/or suitable substrate to increase shellfish production. Shellfish seed consists of immature individual shellfish or individual shellfish attached to shells or shell fragments (i.e., spat on shell). Suitable substrate may consist of shellfish shells, shell fragments, or other appropriate materials placed into waters for shellfish habitat.

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

Single and complete non-linear project: For non-linear projects, the term “single and complete project” is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete non-linear project must have independent utility (see definition of “independent utility”). Single and complete non-linear projects may not be “piecemealed” to avoid the limits in an NWP authorization.

Stormwater management: Stormwater management is the mechanism for controlling stormwater runoff for the purposes of reducing downstream erosion, water quality degradation, and flooding and mitigating the adverse effects of changes in land use on the aquatic environment.

Stormwater management facilities: Stormwater management facilities are those facilities, including but not limited to, stormwater retention and detention ponds and best management practices, which retain water for a period of time to control runoff and/or improve the quality (i.e., by reducing the concentration of nutrients, sediments, hazardous substances and other pollutants) of stormwater runoff.

Stream bed: The substrate of the stream channel between the ordinary high water marks. The substrate may be bedrock or inorganic particles that range in size from clay to boulders. Wetlands contiguous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.

Stream channelization: The manipulation of a stream’s course, condition, capacity, or location that causes more than minimal interruption of normal stream processes. A channelized jurisdictional stream remains a water of the United States.



Structure: An object that is arranged in a definite pattern of organization. Examples of structures include, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other manmade obstacle or obstruction.

Tidal wetland: A tidal wetland is a jurisdictional wetland that is inundated by tidal waters. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line.

Tribal lands: Any lands title to which is either: 1) held in trust by the United States for the benefit of any Indian tribe or individual; or 2) held by any Indian tribe or individual subject to restrictions by the United States against alienation.

Tribal rights: Those rights legally accruing to a tribe or tribes by virtue of inherent sovereign authority, unextinguished aboriginal title, treaty, statute, judicial decisions, executive order or agreement, and that give rise to legally enforceable remedies.

Vegetated shallows: Vegetated shallows are special aquatic sites under the 404(b)(1) Guidelines. They are areas that are permanently inundated and under normal circumstances have rooted aquatic vegetation, such as seagrasses in marine and estuarine systems and a variety of vascular rooted plants in freshwater systems.

Waterbody: For purposes of the NWP, a waterbody is a "water of the United States." If a wetland is adjacent to a waterbody determined to be a water of the United States, that waterbody and any adjacent wetlands are considered together as a single aquatic unit (see 33 CFR 328.4(c)(2)).



DEPARTMENT OF THE ARMY  
CORPS OF ENGINEERS, CHARLESTON DISTRICT  
69A HAGOOD AVENUE  
CHARLESTON, SOUTH CAROLINA 29403-5107

## FINAL REGIONAL CONDITIONS FOR THE 2021 NATIONWIDE PERMITS IN CHARLESTON DISTRICT (SAC)

Effective Date for Modified Regional Conditions for 16 NWP: January 19, 2022  
Effective Date for Regional Conditions for 41 NWP: February 25, 2022  
Expiration Date for Regional Conditions for All NWP: March 14, 2026

**This Regional Condition document supersedes all prior Regional Condition documents for the Charleston District.**

### A. BACKGROUND/APPLICABILITY

1. The following regional conditions have been approved by the Division Engineer for the South Atlantic Division (SAD) for use in the Charleston District (SAC) for the following Nationwide Permits (NWP):
  - a. The NWP published in the January 13, 2021 Federal Register (86 FR 2744) announcing the reissuance of twelve (12) existing NWP (that is, NWP 12, 21, 29, 39, 40, 42, 43, 44, 48, 50, 51, and 52) and issuance of four (4) new NWP (that is, NWP 55, 56, 57, and 58), as well as the reissuance of NWP general conditions and definitions with some modifications. These 16 NWP were effective on March 15, 2021 and will expire on March 14, 2026; and
  - b. The NWP published in the December 27, 2021 Federal Register (86 FR 73522) announcing the reissuance of the remaining unmodified forty (40) existing NWP (that is, NWP 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, 27, 28, 30, 31, 32, 33, 34, 35, 36, 37, 38, 41, 45, 46, 49, 53, and 54) and issuance of one (1) new NWP (that is, NWP 59). At this time, NWP 26 and 47 are reserved. These 41 NWP will be effective as of February 25, 2022 and will expire on March 14, 2026.
2. Status of Activities Under Prior NWP and/or Regional Conditions.
  - i. 16 NWP: The modified regional conditions that were issued on January 19, 2022 and are incorporated in this document **supersede** the previous regional conditions that were approved for the 16 NWP that went into effect on March 15, 2021, **except** for the following scenarios:
    1. NWP verification letters for one or more of the 16 NWP that were issued **prior** to January 19, 2022; or

## 2021-2022 NWP REGIONAL CONDITIONS FOR CHARLESTON DISTRICT (SAC)

2. NWP activities that do not require a pre-construction notification (PCN)<sup>1</sup>, are covered by one or more of the 16 NWPs, and have either commenced, are under contract to commence, or have been completed **prior** to January 19, 2022.
  - ii. 40 NWPs: For information about whether an activity can continue under the 2017 versions of the 40 existing NWPs (for example, the status of prior permit verifications and pre-construction notifications) and, accordingly, the 2017 Regional Conditions, see the discussion in the Reissuance and Modification of Nationwide Permits at 86 FR 73522 in Section I.D. on page 73525 or contact the Charleston District Regulatory Office directly.
3. The following regional conditions will provide additional protection for the aquatic environment that is necessary to ensure that the NWPs authorize only those activities with no more than minimal adverse environmental effects.
4. As specified, under NWP General Condition 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 Section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

### **B. EXCLUDED WATERS AND/OR AREAS**

Not applicable.

### **C. REGIONAL CONDITIONS APPLICABLE TO ALL NWPs**

1. Use of nationwide permits does not preclude requirements to obtain all other applicable Federal, State, county, and local government authorizations.
2. NWP activities are not authorized in areas known or suspected to have sediment contamination, with the exception of the following: (1) activities authorized by NWP 38; (2) activities authorized by NWP 53 when used in combination with NWP 38; (3) sediment sampling for dredging projects authorized by NWP 6; and (4) activities authorized by NWP 20.
3. For all proposed activities, both temporary and permanent, that would be located within a FEMA designated floodway, the prospective permittee must submit a PCN to the District Engineer in accordance with General Condition 32.

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<sup>1</sup> The acronym "PCN" used throughout this document refers to *Pre-Construction Notification*, as defined in NWP General Condition 32.

## 2021-2022 NWP REGIONAL CONDITIONS FOR CHARLESTON DISTRICT (SAC)

4. For all NWPs, the prospective permittee must submit a PCN to the District Engineer in accordance with General Conditions 31 and 32, for any activity that would be located in or adjacent to an authorized USACE Civil Works project, including Federal Navigation projects:
  - a. **USACE Civil Works projects:** Buck Creek in Horry County, Eagle Creek in Dorchester County, Kingstree Branch in Williamsburg County, Sawmill Branch in Berkeley and Dorchester Counties, Scotts Creek in Newberry County, Socastee Creek in Horry County and Turkey Creek in Sumter County, Wilson Branch in Chesterfield County, Edisto River in Orangeburg and Dorchester Counties, North Edisto River in Aitken and Orangeburg Counties, Folly Beach in Charleston County, Hunting Island Beach, waste water treatment plant and water line in Beaufort County, Myrtle Beach in Georgetown and Horry County, Pawleys Island Beach in Georgetown County, Edisto Island Beach in Charleston County, Crab Bank in Charleston County, Morris Island Lighthouse in Charleston County, Miller Corner Disposal area Phragmites Control in Georgetown County, Cape Marsh Management area (Santee Coastal Reserve) in Charleston County, Murphy Island in Charleston County, Pocotaligo River and Swamp in Clarendon and Sumter Counties, Pinopolis Dam in Berkeley County, Battery Pringle in Charleston County, Castle Pinckney in Charleston County, Pompion Hill Chapel along the Cooper River in Berkeley County, Drayton Hall in Charleston County, Indian Bluff in Orangeburg County, Singleton Swash at Shore Drive in Horry County, Turkey Creek Bridge at Pineview Drive in Lancaster, Big Dutchman Creek Bridge at West Oak Drive in Rock Hill, SC, Calabash Branch Bridge at Tom Joye Road in Clover, Blue Branch Bridge at Fortanberry Road in Gaffney, Glenn Creek Bridge at Sulphur Springs Road in Spartanburg County, Cow Castle Creek (Bowman) in Orangeburg County, Cowpen Swamp at Simpson Creek in Horry County, Crabtree Swamp in Horry County, Saluda River (North, South, and Middle Fork) in Greenville County, Shot Pouch Creek in Sumter County, Simpson Creek in Horry County, and Todd Swamp in Horry County.
  - b. **Defined Federal Navigation projects:** Ashley River (0.5 miles east of Hwy 7 bridge downstream to the Atlantic Intracoastal Waterway (AIWW)), Atlantic Intracoastal Waterway ((AIWW) GA/SC line to SC/NC line), Brookgreen Garden Canal, Calabash Creek, Charleston Harbor (including the Cooper River, Town Creek, Shem Creek to Coleman Blvd and Mount Pleasant Channel), Folly River, Georgetown Harbor (Winyah Bay, Sampit River and Bypass Channel), Jeremy Creek, Little River Inlet, Murrells Inlet (Main Creek), Port Royal Harbor, Shipyard River, Savannah River (Below Augusta) and Town Creek McClellanville (i.e., Five Fathoms Creek, AIWW to Bulls Bay).
  - c. **Undefined Federal Navigation projects:** Adams Creek, Archers Creek (From intersection with Beaufort River for 2 miles), Edisto River (River mile 0.00 to 175.0), Great Pee Dee River (Waccamaw River via Bull Creek then to

## 2021-2022 NWP REGIONAL CONDITIONS FOR CHARLESTON DISTRICT (SAC)

Smith Mills, then to Cheraw), Lynches River/Clark Creek (Clark Creek to Lynches River, River Mile 0.0 to 56.0), Mingo Creek (to Hemmingway Bridge), Salkehatchie River (5 miles above Toby's Bluff to Hickory Hill, River mile 20.4 to 62.3), Santee River (Closed to navigation at mile 87 (Santee Dam)), Waccamaw River (river mile 0.0 to 90 (state line)), Wateree River (Mouth to Camden), and Village Creek (Morgan River to Porpoise Fish Co., 2.2 miles).

5. For all proposed activities that would be located in or adjacent to an authorized Federal Navigation project, as referenced in Regional Condition C.4.b, the project drawings must include the following information: (1) State Plane Coordinates (NAD 1983) for a minimum of two corners of each structure or fill where it is closest to the Federal channel; (2) the distance from the watermost edge of the proposed structure or fill to the nearest edge of the Federal channel; and (3) Mean Low Water line and the Mean High Water line.
6. For all NWPs requiring a PCN and when the activity involves the discharge of dredged or fill material into waters of the U.S. associated with mechanized land clearing that results in the permanent conversion of forested or scrub-shrub wetlands to herbaceous wetlands, the PCN should include the following information: (1) a written description and/or drawings of the proposed conversion activity and (2) acreage of the permanent conversion.

### D. REGIONAL CONDITIONS APPLICABLE TO SPECIFIC NWPs

1. For NWP 3, paragraph (a) activities, the prospective permittee must submit a PCN to the District Engineer in accordance with General Condition #32 for the repair, rehabilitation or replacement of existing utility lines, which include electric lines and/or telecommunication lines, constructed over navigable waters of the United States (i.e., Section 10 waters), and existing utility lines, electric lines, telecommunication lines and/or pipelines routed in or under navigable waters of the United States (i.e., Section 10 waters), even if no discharge of dredged or fill material occurs.
2. For NWP 3, the prospective permittee must submit a PCN to the District Engineer in accordance with General Condition 32, for maintenance activities related to stormwater management that would occur in tidal waters, including tidal wetlands.
3. For NWPs 3, 11, 12, 13, 14, 15, 20, 22, 33, 57, 58, and 59, temporary structures, fills, and/or work, including the use of temporary mats, are authorized for the minimum amount of time necessary to accomplish the work, which shall not exceed a period of 180 days without additional Corps approval. **However, temporary sidecast material authorized by NWPs 12, 57, or 58 cannot ever exceed a period of 180 days.** The temporary structures, fills, and/or work, including the use of temporary mats, shall be removed as soon as the work is

## 2021-2022 NWP REGIONAL CONDITIONS FOR CHARLESTON DISTRICT (SAC)

complete and the disturbed areas be restored to pre-construction contours and conditions. The temporary mats include timber mats, metal, synthetic and/or artificial mats, or other materials that may serve the purpose of mats.

4. For NWPs 3, 11, 12, 13, 14, 15, 20, 22, 33, 57, 58 and 59 that require PCNs and when the activity involves temporary structures, fills, and/or work, including the use of temporary mats, the PCN should include the following information: (1) a written description and/or drawings of the proposed temporary activities that will be used during project construction; (2) the timeframe that the proposed temporary activities will be in place; and (3) specifications of how pre-construction contours will be re-established and verified after construction. Temporary mats include timber mats, metal, synthetic and/or artificial mats, or other materials that may serve the purpose of mats.
5. For NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, 52, 57 and 58 in accordance with General Condition 22(a) and for NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, 38 and 54, in accordance with General Condition 22(b), the ACE Basin National Estuarine Research Reserve and the North Inlet Winyah Bay National Estuarine Research Reserve are Designated Critical Resource Waters. Activities described in the NWPs listed herein are subject to the limitations and/or PCN requirements listed in General Condition 22 (a) and (b).
6. For NWPs 7 and 58 activities that involve intake structures, the associated intake structure must be screened to prevent entrainment of juvenile and larval organisms, and the inflow velocity of the associated intake structures cannot exceed 0.5 feet/second.
7. For NWPs 12, 57 and 58 activities that involve horizontal directional drilling beneath navigable waters of the United States (i.e., Section 10 waters), the PCN should include a proposed remediation plan (i.e., frac-out plan).
8. For NWPs 12, 14, 29, 39, 46, 51, 52, 57 and 58 activities that involve crossings, all culverts must be adequately sized to maintain flow. For these activities that require submittal of a PCN, the PCN should include the minimum size of and number of culvert/pipes that are proposed.
9. For NWPs 12, 14, 18, 43, 51, 57 and 58, the prospective permittee must submit a PCN to the District Engineer in accordance with General Condition #32, for activities that involve the loss of greater than 0.005 acre of stream bed.
10. For NWPs 12, 14, 18, 21, 29, 39, 40, 42, 43, 44, 50, 51, 52, 57, 58 and 59, activities that involve the loss of greater than 0.005 acre of stream bed, compensatory mitigation will be required and the PCN should include a compensatory mitigation plan.

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11. For NWPs 12, 14, 18, 21, 27, 29, 39, 40, 42, 43, 44, 50, 51, 52, 57, 58, and 59, the discharge cannot cause the loss of greater than 0.05 acre of stream bed.
12. For NWPs 29 and 39, the discharges of dredged or fill material for the construction of stormwater management facilities in perennial streams are not authorized.
13. For NWP 33, the prospective permittee must submit a PCN to the District Engineer, in accordance with General Condition #32, for temporary construction, access, and dewatering activities that impact greater than 0.1 acre of non-tidal waters of the United States, including wetlands. In addition, the PCN should include a restoration plan.
14. For existing NWP 48 activities that involve changing from bottom culture to floating or suspended culture OR proposed NWP 48 activities that involve floating or suspended culture, the prospective permittee must submit a PCN to the District Engineer in accordance with General Condition #32.
15. For proposed NWP 48 activities involving floating or suspended culture and/or proposed NWPs 55 and 56 activities that will occur adjacent to property that is not owned by the prospective permittee, the PCN should include the following information:
  - a. A map or depiction that shows the adjacent property(ies) and adjacent property owners' contact information. Note: This information may be obtained online from the applicable county's tax information pages.
  - b. A signed letter(s) of "no objection" to the proposed mariculture activity from each of the adjacent property owner(s). Each letter shall include the name, mailing address, property address, property Tax Map Parcel (TMS) number, and signature of the property owner. Or, if the prospective permittee is unable to obtain a letter(s) of "no objection", the Corps will notify the adjacent property owner(s) of the proposed project by letter wherein the adjacent property owner will be given 15 days to provide comments.
16. For NWP 53, the PCN should include a Tier I evaluation, in accordance with the Inland Testing Manual, for the project area immediately upstream of the low-head dam. If the Tier I evaluation indicates contaminated sediments are present, a Tier II evaluation may be required.
17. The prospective permittee is advised of the following for activities under any NWP for which (1) the 401 Water Quality Certifications (WQC) were denied (see F.1.a), and/or (2) activities under the NWP were found to be inconsistent with the S.C. Coastal Zone Management Program and, therefore, concurrence with the Coastal Zone Consistency determination was denied (see F.2.a), and/or (3) the

## 2021-2022 NWP REGIONAL CONDITIONS FOR CHARLESTON DISTRICT (SAC)

proposed activity is located in one of the “Critical Areas” of the Coastal Zone (see F.3):

- a. For NWPs 12, 14, 16, 17, 21, 23, 29, 34, 39, 44, 46, 49, 50, 54, 57, 58 and 59 where WQC was denied, the prospective permittee should provide to the Corps a copy of the Individual WQC or evidence demonstrating a waiver was granted.
- b. For NWPs 12, 14, 16, 17, 21, 23, 24, 29, 34, 35, 39, 42, 44, 46, 49, 50, 51, 55, 56, 57, 58 and 59 where concurrence with the Coastal Zone Consistency was denied, the prospective permittee should provide to the Corps a copy of the Individual CZC Concurrence or presumed concurrence for the proposed activity.
- c. For all NWPs in any of the “Critical Areas” of the Coastal Zone, an Individual Critical Area permit is required (see F.3). Therefore, the prospective permittee should provide a copy of the Individual Critical Area permit to the Corps for the proposed activity.

Note: For WQC conditions on activities under NWPs 43, 51, and 52, see F.1.b. For Coastal Zone Consistency conditions on activities under NWPs 43 and 52, see F.2.b.

18. For NWPs 12, 57 and 58, the prospective permittee must submit a PCN to the District Engineer in accordance with General Condition 32 if the activity involves the discharge of dredged or fill material into waters of the U.S. associated with mechanized land clearing that results in the permanent conversion of forested or scrub-shrub wetlands to herbaceous wetlands for a maintained right-of-way.

### **E. ACTIVITY SPECIFIC REGIONAL CONDITIONS**

Not applicable.

### **F. SECTION 401 WATER QUALITY CERTIFICATION (WQC) AND/OR COASTAL ZONE MANAGEMENT ACT (CZMA) CONSISTENCY DETERMINATION SUMMARY AND APPLICABLE CONDITIONS**

#### **1. Water Quality Certification (WQC)**

##### **a. WQC Denied**

The Water Quality Certifications (WQC) for the following NWPs are denied; therefore, an Individual WQC, or evidence demonstrating a waiver was granted, from the South Carolina Department of Health and Environmental Control (SCDHEC) will be required for authorization under these NWPs:



## 2021-2022 NWP REGIONAL CONDITIONS FOR CHARLESTON DISTRICT (SAC)

NWPs 12, 14, 16, 17, 21, 23, 29, 34, 39, 44, 46, 49, 50, 54, 57, 58 and 59.

### b. **WQC Granted With Conditions**

The following WQC Conditions, as stated in the SCDHEC's Notice of Department Decision dated November 25, 2020, are also considered 2021 NWP Regional Conditions:

- i. For NWP 43, "Activities authorized by this certification are limited to maintenance of existing facilities, such as stormwater ponds, detention and retention basins, water control structures, outfall structures, emergency spillways, and existing ponds, that are proposed for use as water quantity or volume control. This NWP cannot be used for existing ponds that are proposed to be converted into water quality treatment facilities, such as sediment basins, sediment traps, or other similar structures."
- ii. For NWP 51, "This NWP is not certified for activities that cause the loss of more than 300 linear feet of stream bed."
- iii. For NWP 52, "This NWP is not certified for activities that cause the loss of more than 300 linear feet of stream bed."

### c. **WQC Granted Without Conditions**

The WQCs for NWPs 3, 4, 5, 6, 7, 13, 15, 18, 19, 20, 22, 25, 27, 30, 31, 32, 33, 36, 37, 38, 40, 41, 42, 45, 48 and 53 were granted without conditions.

### d. **No WQC Required**

NWPs 1, 2, 8, 9, 10, 11, 24, 28, 35, 55 and 56 do not require WQCs.

## 2. **Coastal Zone Consistency (CZC)**

### a. **CZC Concurrence Denied**

The following NWPs were found to be inconsistent with the S.C. Coastal Zone Management Program; thus, the CZC concurrence is denied and an Individual CZC concurrence, or presumed concurrence for the proposed activity, will be required for these NWPs:

NWPs 12, 14, 16, 17, 21, 23, 24, 29, 34, 35, 39, 42, 44, 46, 49, 50, 51, 54, 55, 56, 57, 58 and 59.

### b. **CZC Concurrence Granted With Conditions**

## 2021-2022 NWP REGIONAL CONDITIONS FOR CHARLESTON DISTRICT (SAC)

The following CZC Conditions, as stated in the SCDHEC's Notice of Department Decision dated November 25, 2020, are also considered 2021 NWP Regional Conditions:

- i. For NWP 43, "Activities authorized by this certification are limited to maintenance of existing facilities, such as stormwater ponds, detention and retention basins, water control structures, outfall structures, emergency spillways, and existing ponds that are proposed for use as water quantity or volume control. This NWP cannot be used for existing ponds that are proposed to be converted into water quality treatment facilities such as sediment basins, sediment traps, or other similar structures."
- ii. For NWP 52, "This NWP is not certified for activities that cause the loss of more than 300 linear feet of stream bed."

### c. **CZC Concurrence Granted Without Conditions**

The CZCs for NWPs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 15, 18, 19, 20, 22, 25, 27, 28, 30, 31, 32, 33, 36, 37, 38, 40, 41, 45, 48 and 53 were granted without conditions.

### d. **No CZC required**

Not applicable.

## 3. **Coastal Zone Consistency (CZC) General Condition**

The following CZC General Condition, as stated in the SCDHEC 401/CZC Letter dated December 14, 2020, is considered a 2021 NWP Regional Condition:

For all NWPs, "Activities in the Critical Areas (as defined in 48-39-10, R 30.1(D) and R 30.10) require a direct permit from SCDHEC OCRM. SCDHEC OCRM's action on direct critical areas permits will serve as the consistency determination for the critical area activity."

## G. **DISTRICT POINT OF CONTACT**

Tracy D. Sanders  
USACE- Charleston District  
69A Hagood Avenue  
Charleston, South Carolina 29403  
843-329-8044  
[Tracy.d.sanders@usace.army.mil](mailto:Tracy.d.sanders@usace.army.mil)  
[SAC.RD.Charleston@usace.army.mil](mailto:SAC.RD.Charleston@usace.army.mil)



Public Notice # SAC-2023-00877

Public Notice Date: October 30, 2023

**NOTICE OF DEPARTMENT DECISION  
WATER QUALITY CERTIFICATION**

DHEC, acting on an application for Water Quality Certification pursuant to Section 401 of the Federal Clean Water Act and conditions pursuant to R. 19-450. et. seq., 1976 SC Code of Laws, Permits for Construction in Navigable Waters.

Gaffney Board of Public Works  
Gaffney Board of Public Works I-85 Sewer Extension  
Placement of fill material  
Unnamed tributaries and wetlands, Buffalo Creek and the Borad River  
Cherokee County  
P/N: SAC-2023-00877

After reviewing the project plans, DHEC Staff determined that there is a reasonable assurance that the project will be conducted in a manner consistent with the certification requirements of Section 401 of the Federal Clean Water Act and the permitting requirements of R. 19-450. et. seq., 1976 SC Code of Laws. Accordingly, DHEC certifies the project with conditions as follows:

**401 Water Quality Certification Conditions:**

1. The applicant must implement best management practices that will minimize erosion and migration of sediments on and off the project site during and after construction. These practices should include the use of appropriate grading and sloping techniques, mulches, hay bales, silt fences, or other devices capable of preventing erosion, migration of sediments, and bank failure. All disturbed land surfaces and sloped areas affected by the project must be stabilized.
2. All necessary measures must be taken to prevent oil, trash, debris and other pollutants from entering the adjacent waters or wetlands.
3. Only clean earthen material, free of all potential sources of pollution, may be used as fill.
4. Materials used for erosion control (e.g. hay bales or straw mulch) must be certified as weed free from the supplier.
5. Upon completion, all disturbed areas must be permanently stabilized with vegetative cover (preferable), riprap or other erosion control methods as appropriate.
6. The project must comply with any applicable floodplain, stormwater, land disturbance, or riparian buffer ordinances.

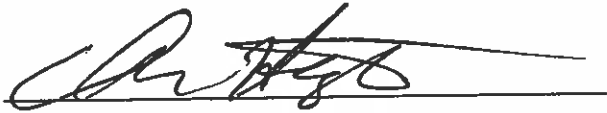
7. Pipeline construction must be accomplished in existing disturbance corridors as proposed. Upon completion, preconstruction contours must be restored along pipelines and all disturbed areas must be permanently stabilized with vegetative cover (preferable) and/or riprap, as appropriate. Right-of-ways should be no wider than that necessary for access and maintenance.
  
8. All excavations should be backfilled with the excavated material after installation of the appropriate structures. Where practicable, sidecast spoil material from trench excavation should be placed on the side of the trench opposite streams and wetlands. Spoil material from trench excavation should be placed on the side of the trench to be reused as back fill with the A-horizon placed back in its original position. Excess spoil material must be removed to an approved upland disposal site.
  
9. Stream banks at crossings must be restored after construction has been completed. Disturbed stream banks can be restored by planting woody vegetation and by using bioengineering techniques for stream bank stabilization. Plantings should consist of appropriate native species for the ecoregion and should exclude plant species found on the exotic pest plant council list: [https://www.se-eppc.org/southcarolina/SCEPPC\\_LIST2014finalOct.pdf](https://www.se-eppc.org/southcarolina/SCEPPC_LIST2014finalOct.pdf)
  
10. Right-of-ways through and adjacent to streams should be maintained in low growing, woody vegetation to minimize stream bank erosion and sedimentation. Maintenance of this right-of-way should be conducted with mowing rather than with chemicals to reduce the potential for contamination and negative impacts on aquatic resources. If chemicals are used, a 50-foot buffer on either side of the stream crossing should be established where no herbicide treatments would be allowed. This will serve to retain the riparian vegetation while reducing the amount of chemical runoff into the aquatic environment.
  
11. Inadvertent releases occasionally occur during HDD, and thus, SCDNR recommends, to protect nearby aquatic resources and water quality, that the preventative measures outlined in a Horizontal Directional Drilling Contingency and Inadvertent Release Plan be implemented. These include:
  - a. Erecting straw bales or sedimentation fences between the drill site and nearby sensitive resources to prevent drilling mud releases from reaching the resource.
  - b. Conducting regular, on-site briefings for personnel to identify and locate sensitive resources at the site.
  - c. Maintaining necessary response equipment either on-site or at a readily accessible location and in good working order.
  - d. In addition, we recommend the HDD Contractor employ a Full Time, Qualified On-Site Mud Engineer to continuously monitor the drilling fluid circulation and returns as a preventative measure.

The SC Department of Health and Environmental Control reserves the right to impose additional conditions on this Certification/Permit to respond to unforeseen, specific problems that might arise and to take any enforcement action necessary to ensure compliance with State standards.

A copy of the staff assessment and related file information are available for review. For a copy of the staff assessment contact Michele Culbreath, the project manager, at (803) 898-4224.

The final Water Quality Certification will be issued unless there is a timely request for review of the Department Decision based on water quality or water use impacts.

The issuance of this Notice of Department Decision represents a final staff decision that may be appealed. Please see the attached appeal procedures for details.

A handwritten signature in black ink, appearing to read 'Chuck Hightower', is written over a solid horizontal line.

Chuck Hightower, Manager  
Water Quality Certification  
and Wetlands Section



STAFF ASSESSMENT

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL (SCDHEC)  
DIVISION OF WATER QUALITY  
WATER QUALITY CERTIFICATION AND WETLANDS SECTION

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I. Background Information

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Applicant: Gaffney Board of Public Works P/N Number: SAC 2023-00877

P/N Date: August 14, 2023 Date Received: July 19, 2023 P/N Close: August 29, 2023

Section of Applicable Federal Law: ( ) Section 10 (x) Section 404 (x) Section 401  
The project is seeking Federal authorization under Nationwide Permit 58 and exceeds the number of crossings allowed in the SCDHEC general certification of the Nationwide Permits and requires individual certification.  
Section of Applicable State Law: ( ) Coastal Zone Consistency ( ) Construction in Navigable Waters Permit

Brief explanation and purpose of activity:

The applicant proposes to place fill material in waters of the U.S. for sewer line installation.

To view a complete copy of the public notice, refer to the Army Corps of Engineers website:  
<https://www.sac.usace.army.mil/Missions/Regulatory/Public-Notices/?Page=9>

Waterbody Name: Unnamed tributaries and wetlands, Buffalo Creek and the Broad River

Water Classification: FW

Waterbody Location: The project is located in Gaffney and Blacksburg within Cherokee County, SC. The project starts at the existing Broad River Wastewater Treatment Plant and runs northwest to the end, located on State Road 1S-1-144.

Waterbody on 2020 303(d) List/ have an approved TMDL?

- ( ) Yes, The waterbody is impaired for turbidity, but the proposed project will not contribute to the impairment  
( ) No

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II. Project Description

A. Description

The project is approximately 88,770 linear feet of sewer line divided into 15 segments. The project includes approximately 2,740 linear feet of 21-inch gravity sewer line; 19,500 linear feet of 18-inch force main sewer line; 8,370 linear feet of 18-inch gravity sewer main; 1,280 linear feet of 12-inch gravity sewer line; 15,900 linear feet of 20-inch force main sewer; 8,240 linear feet of 8-inch force main sewer; 4,520 linear feet of 10-inch gravity sewer line; 1,510 linear feet of 8-inch gravity sewer main; 6,110 linear feet of 6-inch force main sewer; and 20,600 linear feet of 10-inch force main sewer and eight sewer pump stations. Depending on the segment, the sewer lines will be installed within road right-of-way or private easement and will include temporary construction easement. The project area is approximately 81.38 acres and includes 19 tributaries totaling 641 linear feet and 0.63 acre, 5 wetlands totaling 1.71 acre and 1 non-wetland water totaling 0.004 acre. The project proposes 10 temporary impacts associated with backfill and bedding and a rock check dam to 9 tributaries totaling 37 linear feet and 464 square feet or 0.011 acre. Impacts to tributaries are minimized by crossing

perpendicular and returning the disturbed area to original grade and contour after the installation of the sewer line. The project proposes 0.397 acre of temporary impacts to wetlands associated with backfill- bedding and temporary clearing. The project proposes 0.062 acre of permanent impact to one wetland area associated with clearing and conversion of areas will be returned to original grade and contour. Because the permanent impacts associated with conversion from forested to herbaceous wetlands are minor (0.06 ac), mitigation is not proposed.

**B. Fill**

1. Is fill required?  Yes  No If no, proceed to Section II. C.

Amount	cubic yards	acres
Total	0	0.062
Wetlands	0	0.062
Streams	0	0

2. Is the fill temporary?  Yes  No

There will be temporary impacts to 0.397 acres of wetlands and 37 linear feet of streams.

**C. Excavation**

1. Is excavation required?  Yes  No If no, proceed to Section II. D.

Amount	cubic yards	acres
Total	0	0
Wetlands	0	0
Open Waters of U. S.	0	0

2. Is dredge spoil site adequately sized for the amount of material?

- Yes,  
 No

**D. Other Impacts:**  Yes  No

**E. Project Modification**

Was the project modified from the original public notice?

- Yes,  
 No

**F. Compensatory Mitigation**

Is compensation required by SCDHEC?

- Yes  
 No  
 N/A, The impacts are minimal and do not require mitigation.

**G. Remediation**

Is remediation required?  Yes  No  N/A

**H. Nonpoint Source Concerns**

1. Are water quality impacts from nonpoint sources expected?

- Yes  
 Temporary, water quality impacts from non-point sources will be minimized and should not contravene the water quality standards or existing and classified uses of the involved waterbody, if the applicant adheres to the conditions in Section VIII of this staff assessment during and after the project.  
 No



2. Has the applicant addressed nonpoint source concerns? ( ) Yes ( ) No (x) N/A

3. Are any enforceable nonpoint controls required by SCDHEC?

(x) Yes, water quality impacts from nonpoint sources will be minimized and should not contravene the water quality standards or existing and classified uses of the involved waterbody, if the applicant adheres to the conditions in Section VIII of this staff assessment during and after the project.

( ) No

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### III. Environmental Assessment

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A. Is the proposed activity water dependent?

( ) Yes

(x) No

B. Are there feasible alternatives to the proposed activity?

( ) Yes

( ) No, based on the alternatives analysis submitted by the applicant.

( ) Yes, based on the modifications received from the applicant, see Section II. D., Modification.

(x) The proposed activity should not cause adverse impacts to water quality or change classified uses if the applicant adheres to the conditions listed in Section VIII; therefore, no alternatives were investigated.

C. Water Quality Assessment

Water Quality Standards and Designated Uses

The proposed work may cause a temporary increase in turbidity levels, but ambient conditions should resume once the work is completed. Water quality standards will not be contravened and designated uses will not be removed. Potential adverse impacts to water quality can be minimized through the use of best management practices, and the conditions described in Section VIII of this staff assessment.

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### IV. Comments Received and Summary of Comments

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A. S. C. Department of Natural Resources (SCDNR)

Date: August 24, 2023

(x) Does not object to project provided the applicant adheres to the conditions in Section VIII.

SCDNR provided comments and recommendations and offered no objection provided that their recommendations are abided. In a response letter dated October 2, 2023, the applicant stated that they would comply with the recommendations made by SCDNR

( ) Hold in abeyance.

( ) Objects to the proposed project, see discussion in Section VI, Conclusions.

( ) No objection.

( ) Has elected to not conduct an investigation nor provide any comments.

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### V. Consistency with the Coastal Zone Management Program, R. 48-39-10 *et seq.*

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Did the staff of the Office of Ocean and Coastal Resource Management (OCRM) find the project consistent with the S.C. Coastal Zone Management Program? ( ) Yes ( ) No (x) N/A

Date:

- ( ) Per revisions
- ( ) Per conditions included in Section VIII.
- ( ) If no, provide Sections of Coastal Zone Management Program cited.

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## **VI. Conclusion on Water Quality Impacts and Classified Uses**

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When evaluating the proposed work, the SCDHEC followed procedures for implementing State 401 Water Quality Certification regulations pursuant to Section 401 of the Clean Water Act, 33 U.S.C. Section 1341, and the requirements of Regulation 61-101, Water Quality Certification.

The Broad River, Buffalo Creek and unnamed tributaries associated with this project are classified as FW waters (Freshwaters). FW are waters suitable for primary and secondary contact recreation and as a source for drinking water supply after conventional treatment in accordance with the requirements of DHEC. Suitable for fishing and the survival and propagation of a balanced indigenous aquatic community of fauna and flora. Suitable also for industrial and agricultural uses. The Broad River is impaired for turbidity. Provided the applicant adheres to the conditions of the certification, the project should not contribute to the impairments. The proposed project is minor in nature and should not cause significant or cumulative impacts to the unnamed freshwater wetlands associated with the waterbodies in the vicinity of this project.

The water quality impacts of the proposed project will be temporary provided the applicant adheres to the conditions in Section VIII. The Department has reasonable assurance that the water quality standards of Regulation 61-68 will not be contravened as a result of the proposed work. The proposed activity will result in no significant degradation to the aquatic ecosystem or remove existing and classified uses of unnamed tributaries and wetlands, Buffalo Creek and the Broad River and is in compliance with the above regulations provided the applicant adheres to the conditions in Section VIII. The above assessment also ensures that the proper sequencing of avoidance, minimization, and appropriate compensation for unavoidable impacts has been demonstrated. Information about the technical aspects of this application is available from Michele Culbreath, the project manager, by calling 803-898-4224 or by e-mailing [culbresm@dhec.sc.gov](mailto:culbresm@dhec.sc.gov).

The SCDHEC reserves the right to impose additional conditions on this Certification/Permit to respond to unforeseen, specific problems that might arise and to take any enforcement action necessary to ensure compliance with State water quality standards.

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## **VII. Staff Recommendation**

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**Issue 401 Water Quality Certification with conditions.**

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## **VIII. Conditions to be Placed on Water Quality Certification When Issued**

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### **401 Water Quality Certification conditions:**

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3. Only clean earthen material, free of all potential sources of pollution, may be used as fill.
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5. Upon completion, all disturbed areas must be permanently stabilized with vegetative cover (preferable), riprap or other erosion control methods as appropriate.
6. The project must comply with any applicable floodplain, stormwater, land disturbance, or riparian buffer ordinances.
7. Pipeline construction must be accomplished in existing disturbance corridors as proposed. Upon completion, preconstruction contours must be restored along pipelines and all disturbed areas must be permanently stabilized with vegetative cover (preferable) and/or riprap, as appropriate. Right-of-ways should be no wider than that necessary for access and maintenance.
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  - a. Erecting straw bales or sedimentation fences between the drill site and nearby sensitive resources to prevent drilling mud releases from reaching the resource.
  - b. Conducting regular, on-site briefings for personnel to identify and locate sensitive resources at the site.
  - c. Maintaining necessary response equipment either on-site or at a readily accessible location and in good working order.
  - d. In addition, we recommend the HDD Contractor employ a Full Time, Qualified On-Site Mud Engineer to continuously monitor the drilling fluid circulation and returns as a preventative measure.

Prepared by: 

Date: 10-26-2023

Reviewed & Approved by: 

Date: 10/26/23

**South Carolina Board of Health and Environmental Control**

**Guide to Board Review**

**Pursuant to S.C. Code Ann. § 44-1-60**

The decision of the South Carolina Department of Health and Environmental Control (Department) becomes the final agency decision fifteen (15) calendar days after notice of the decision has been mailed to the applicant, permittee, licensee and affected persons who have requested in writing to be notified, unless a written request for final review accompanied by a filing fee in the amount of \$100 is filed with the Department by the applicant, permittee, licensee or affected person.

Applicants, permittees, licensees, and affected parties are encouraged to engage in mediation or settlement discussions during the final review process.

If the Board declines in writing to schedule a final review conference, the Department's decision becomes the final agency decision and an applicant, permittee, licensee, or affected person may request a contested case hearing before the Administrative Law Court within thirty (30) calendar days after notice is mailed that the Board declined to hold a final review conference. In matters pertaining to decisions under the South Carolina Mining Act, appeals should be made to the South Carolina Mining Council.

**I. Filing of Request for Final Review**

1. A written Request for Final Review (RFR) and the required filing fee of one hundred dollars (\$100) must be received by Clerk of the Board within fifteen (15) calendar days after notice of the staff decision has been mailed to the applicant, permittee, licensee, or affected persons. If the 15<sup>th</sup> day occurs on a weekend or State holiday, the RFR must be received by the Clerk on the next working day.
2. RFRs should be filed on-line ([scdhec.gov/FileRFR](http://scdhec.gov/FileRFR)) or in person or by mail at the following address:  
South Carolina Board of Health and Environmental Control  
Attention: Clerk of the Board  
2600 Bull Street  
Columbia, South Carolina 29201  
Alternatively, RFRs may be filed with the Clerk by electronic mail ([boardclerk@dhec.sc.gov](mailto:boardclerk@dhec.sc.gov)).
3. RFRs shall be in writing and should include, at a minimum, the following information:
  - The grounds for amending, modifying, or rescinding the staff decision;
  - a statement of any significant issues or factors the Board should consider in deciding how to handle the matter;
  - the relief requested;
  - a copy of the decision for which review is requested; and
  - the name of the Requestor and the Requestor's mailing address, email address, if applicable, and phone number(s) at which the Requestor can be contacted. If the Requestor consists of a group of individuals, a representative of the group should be identified to receive all notices and communications related to the RFR for the group.

All information submitted is subject to release under the Freedom of Information Act. If the RFR and accompanying documentation contain information the Requestor believes should not be released, such information should be identified.

4. The filing fee may be paid by cash, check or credit card and must be received by the 15<sup>th</sup> day. Credit card payments may be made by phone (803-898-3460, option 2) or on-line at [scdhec.gov/FileRFR](http://scdhec.gov/FileRFR).
5. If there is any perceived discrepancy in compliance with this RFR filing procedure or any other procedural question, the Clerk should consult with the Chairman or, if the Chairman is unavailable, the Vice-Chairman. The Chairman or the Vice-Chairman will determine whether the RFR is timely and properly filed and direct the Clerk to (1) process the RFR for consideration by the Board or (2) return the RFR and filing fee to the requestor with a cover letter explaining why the RFR was not timely or properly filed. Processing an RFR for consideration by the Board shall not be interpreted as a waiver of any claim or defense by the agency in subsequent proceedings concerning the RFR.
6. If the RFR will be processed for Board consideration, the Clerk will send an Acknowledgement of RFR to the Requestor and the applicant, permittee, or licensee, if other than the Requestor.
7. If an RFR pertains to an emergency order, the Clerk will, upon receipt, immediately provide a copy of the RFR to all Board members. The Chairman, or in his or her absence, the Vice-Chairman shall, based on the circumstances, decide whether to refer the RFR to the RFR Committee for expedited review or to decline in writing to schedule a Final Review Conference. If the Chairman or Vice-Chairman determines review by the RFR Committee is appropriate, the Clerk will forward a copy of

the RFR to Department staff and Office of General Counsel. A Department response and RFR Committee review will be provided on an expedited schedule defined by the Chairman or Vice-Chairman.

8. Following any necessary redaction, the Clerk will email the RFR to staff and Office of General Counsel and request a Department Response within ten (10) working days. If the Requestor is not the applicant, permittee, or licensee, the Clerk will email the RFR to the applicant, permittee, or licensee and give them the option of providing a response within ten (10) working days. Upon receipt of the Department Response and, if timely received, the applicant, permittee, or licensee response, the Clerk will forward the RFR and response(s) to all Board members for review, and all Board members will confirm receipt of the RFR package to the Clerk by email. The responses will also be provided by the Clerk to the Requestor and the applicant, permittee, or licensee if not the Requestor, when provided to the Board; however, questions by RFR Committee members notwithstanding, no subsequent submittals by the parties will be provided to the Board until and if a Conference is scheduled. If a Board member does not confirm receipt of the RFR within a twenty-four (24) hour period, the Clerk will attempt to contact the Board member and confirm receipt. If a Board member believes the RFR should be considered by the RFR Committee, he or she will respond to the Clerk's email within seventy-two (72) hours and will request further review. If no Board member requests further review of the RFR within the seventy-two (72) hour period, the Clerk will send a letter by certified mail to the Requestor, with copy by regular mail to the applicant, permittee, or licensee, if not the Requestor, stating the Board will not hold a Final Review Conference. Contested case guidance will be included within the letter.

*NOTE: If the time periods described in this provision end on a weekend or State holiday, the time is automatically extended to the next business day.*

9. If the RFR is to be considered by the RFR Committee, the Clerk will notify the Board that further review is requested. The Board member(s) requesting further review will appear at the RFR Committee meeting to discuss the matter with the RFR Committee unless excused by the presiding member. If time allows, an RFR Committee member may submit questions to the parties via the Clerk to be answered in writing prior to the RFR Committee meeting. RFR Committee meetings are open to the public and will be public noticed at least twenty-four (24) hours in advance.
10. Following RFR Committee or Board consideration of the RFR, if it is determined no Conference will be held, the Clerk will send a letter by certified mail to the Requestor, with copy by regular mail to the applicant, permittee, or licensee, if not the Requestor, stating the Board will not hold a Conference. Contested case guidance will be included within the letter.

## II. Final Review Conference Scheduling

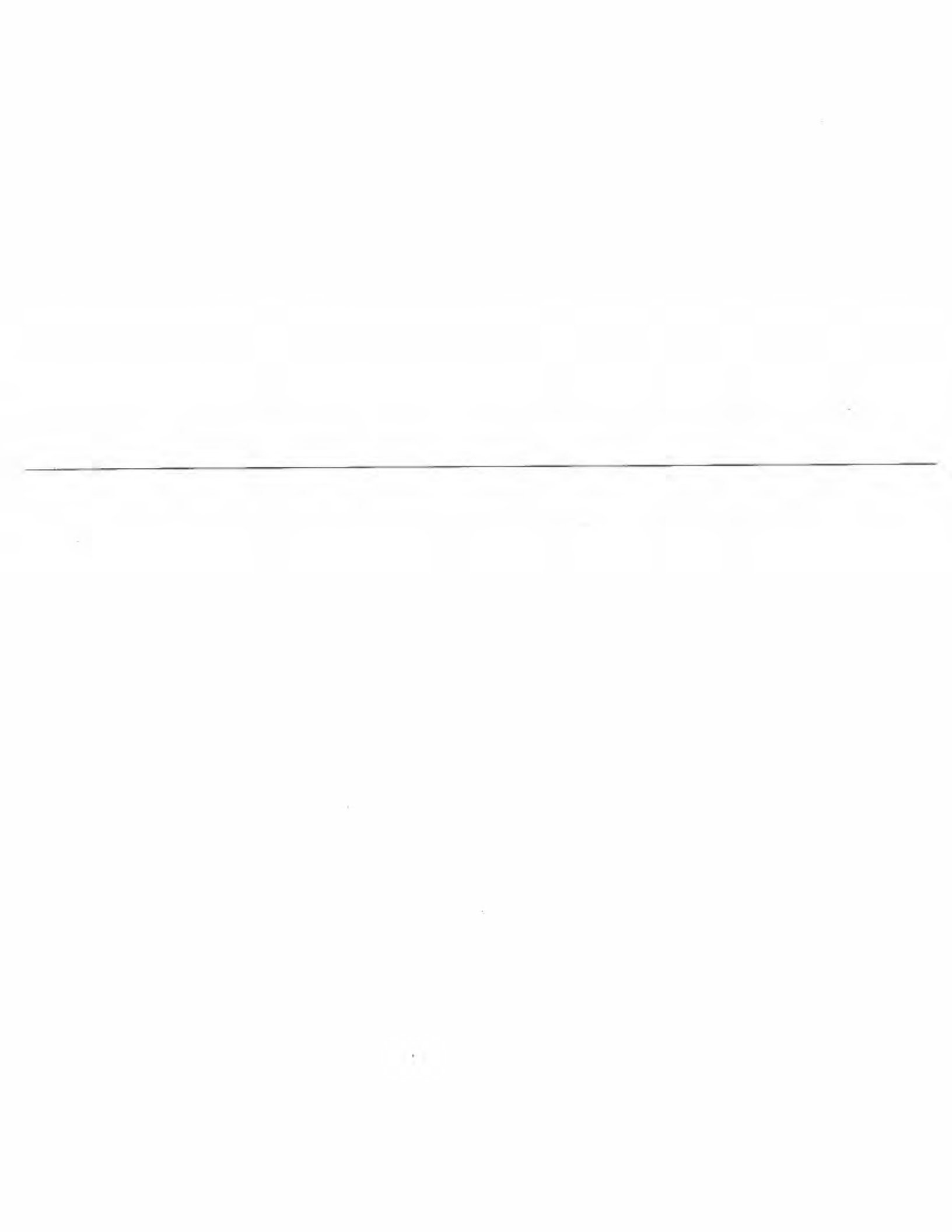
1. If a Conference will be held, the Clerk will send a letter by certified mail to the Requestor, with copy by regular mail to the applicant, permittee, or licensee, if not the Requestor, informing the Requestor of the determination.
2. The Clerk will send Notice of Final Review Conference to the parties at least ten (10) days before the Conference. The Conference will be publicly noticed and the Notice should:
  - include the place, date and time of the Conference;
  - state the presentation times allowed in the Conference;
  - state evidence may be presented at the Conference;
  - if the conference will be held by a committee other than the RFR Committee or a designee, include a copy of the Chairman's order appointing the committee or the designee; and
  - inform the Requestor of his or her right to request a transcript of the proceedings of the Conference prepared at Requestor's expense.
3. Information submitted to the Clerk at least twenty-four (24) hours prior to the Conference will be provided to the Board for consideration prior to the Conference. Such information will also be provided to the parties. While parties may distribute handouts at the Conference, information received by the Clerk after this deadline will not be provided to the Board or the parties.
4. Slide presentations for the Conference must be provided to the Clerk at least twenty-four (24) hours prior to the Conference to allow time for uploading. Slide presentations will be provided to the Board and the parties prior to the Conference.
5. If a party requests a transcript of the proceedings of the Conference and agrees to pay all related costs in writing, including costs for the transcript, the Clerk will schedule a court reporter for the Conference.

## III. Final Review Conference and Decision

1. The order of presentation in the Conference will, subject to the presiding officer's discretion, be as follows:
  - Department staff will provide an overview of the staff decision and the applicable law to include [15 minutes]:
    - Type of decision (permit, enforcement, etc.) and description of the program.
    - Parties
    - Description of facility/site

- Applicable statutes and regulations
  - Decision and materials relied upon in the administrative record to support the staff decision.
  - Requestor(s) will state the reasons for protesting the staff decision and may provide evidence to support amending, modifying, or rescinding the staff decision. [20 minutes] *NOTE: The burden of proof is on the Requestor(s)*
  - Rebuttal by Department staff [20 minutes]
  - Rebuttal by applicant, permittee, or licensee, if not the Requestor [5 minutes]
  - Rebuttal by Requestor(s) [15 minutes]
- Note: Times noted in brackets are for information only and are superseded by times stated in the Notice of Final Review Conference or by the presiding officer.
2. Parties may present evidence during the conference; however, the rules of evidence do not apply.
  3. At any time during the conference, the officers conducting the Conference may request additional information and may question the Requestor, the staff, and anyone else providing information at the Conference.
  4. The presiding officer, in his or her sole discretion, may allow additional time for presentations and may impose time limits on the Conference.
  5. All Conferences are open to the public.
  6. The officers may deliberate in closed session.
  7. The officers may announce the decision at the conclusion of the Conference or it may be reserved for consideration.
  8. The Clerk will mail the written final agency decision (FAD) to parties within thirty (30) days after the Conference. The written decision must explain the basis for the decision and inform the parties of their right to request a contested case hearing before the Administrative Law Court or in matters pertaining to decisions under the South Carolina Mining Act, to request a hearing before the South Carolina Mining Council. The FAD will be sent to the parties by certified mail, return receipt requested.
  9. Communications may also be sent by electronic mail, in addition to the forms stated herein, when electronic mail addresses are provided to the Clerk.

**The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements.**





Permit Number: \_\_\_\_\_

Name of Permittee: \_\_\_\_\_

Date of Issuance: \_\_\_\_\_

Date of Completion: \_\_\_\_\_

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

SAC.RD.Greenville@usace.army.mil

OR mail to:

U.S. Army Corps of Engineers  
Regulatory Division  
750 Executive Center Drive  
Suite 103  
Greenville, South Carolina 29615

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

=====

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

\_\_\_\_\_  
Signature of Permittee

\_\_\_\_\_  
Date