

*****Information Update*****

CLARIFICATION ON 2017 NATIONWIDE PERMITS

The attached document is an annotated copy of the U.S. Army Corps of Engineers (Corps) Detroit District's March 20, 2017 Public Notice for the 2017 Nationwide permits. On January 13, 2021, the Corps published a final rule in the *Federal Register* (86 FR 2744) announcing the reissuance of 12 existing nationwide permits (NWP) and four new NWP, as well as the reissuance of NWP general conditions and definitions with some modifications. These 16 NWP went into effect March 15, 2021 and expire March 14, 2026.

The 40 existing NWP not reissued or modified by the January 13, 2021 final rule remain in effect until the Corps issues a final rule reissuing those NWP, or March 18, 2022, whichever comes first. The 2017 general and regional conditions for the 40 NWP remain in effect.

The following copy of the Detroit District's March 20, 2017 Public Notice is marked to clarify which of the existing 2017 NWP were reissued and which remain in effect. For more details regarding the reissued NWP in 2021, see the Detroit District's March 8, 2021 Public Notice on our Regulatory website.



US Army Corps
of Engineers

Detroit District

Public Notice

Corps File No. LRE-2016-00006

Date: March 20, 2017

REISSUANCE OF NATIONWIDE PERMITS AND FINAL REGIONAL CONDITIONS IN MICHIGAN

On January 6, 2017, in the *Federal Register* (82 FR 1860), the U.S. Army Corps of Engineers (Corps) announced the reissuance of 50 existing nationwide permits (NWP), general conditions, and definitions, with some modifications. The Corps is also issuing two new NWPs and one new general condition. The effective date for the new and reissued NWPs is March 19, 2017. These NWPs will expire on March 18, 2022. The NWPs will protect the aquatic environment and the public interest while effectively authorizing activities that have no more than minimal individual and cumulative adverse environmental effects.

In addition, the Detroit District developed regional conditions which will provide additional protection for the aquatic environment by ensuring that the NWPs authorize only those activities with minimal adverse effects on the aquatic environment. Regional conditions will help ensure protection of high value waters within the District. The Detroit District suspended the use of NWP 2 because the District has a Regional General Permit in place to evaluate these activities. The Detroit District determined that NWPs 8 and 44 were inapplicable because the work allowed under these permits does not occur in Michigan. The Detroit District revoked NWP 52 because the District was unable to determine that the work allowed under this permit would result in no more than minimal individual and cumulative adverse impacts to the aquatic environment. The Detroit District issued NWPs 1, 3, 4, 6, 9, 11, 13, 15-17, 19-25, 27, 28, 30-38, 40, 45-46, 48-51 and 54 without additional regional conditions. The Detroit District issued NWPs 5, 7, 10, 12, 14, 18, 29, 39, 41-43, and 53 with additional District regional conditions.

In response to the 06 January 2017 Federal Register Notice, the Michigan Department of Environmental Quality (MDEQ) made a final determination on Section 401 Water Quality Certification (WQC) and Coastal Zone Management Act (CZMA) consistency for the reissuance of the new NWPs. MDEQ granted WQC/CZMA consistency for NWPs 1, 4, 9, 16, 22, 24, 26, 30, 31, 37, and 47 without conditions. MDEQ granted WQC/CZMA consistency for NWPs 3, 5, 6, 7, 10, 11, 12, 13, 14, 18, 19, 20, 27, 28, 29, 32, 33, 34, 35, 36, 38, 40, 41, 42, 43, 45, 53, and 54 with conditions. MDEQ denied

WQC/CZMA consistency for NWP 2, 8, 15, 17, 21, 23, 25, 39, 44, 46, 48, 49, 50, 51, and 52.

In response to the 15 June 2016 Federal Register Notice and Detroit District's subsequent communications with all tribes with affiliations or interests in Michigan, we did not receive any comments concerning the proposed new regional conditions. On Tribal lands in Michigan, the U.S. Environmental Protection Agency (EPA) granted certification with no comments based on the National and Regional Detroit District conditions, with the exception of the Match-E-Be-Nash-E-Wish (Gun Lake) Reservation. Certification for the Gun Lake Reservation is denied.

The January 6, 2017 *Federal Register* notice of the final NWP reissuance is available at the Corps of Engineers Detroit District, Regulatory Office, 477 Michigan Avenue, Detroit, Michigan. Copies of the Federal Register notice and the national decision documents are available at <http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits/NationwidePermits.aspx>. The Corps home page is: <http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits.aspx>. As an alternate, internet users can access the Federal Register through the Government Printing Office (GPO) at <http://www.gpo.gov/fdsys/>.

The Detroit District issued final supplemental decision documents for the Michigan regional conditions for the reissued NWP. These documents are available at Detroit District office and on the Internet at <http://www.lre.usace.army.mil/Missions/Regulatory-Program-and-Permits/>. The Division Engineer for the Great Lakes & Ohio River Division approved the Detroit District supplemental decision documents for the Michigan regional conditions.

Attached is an index of the NWP with a summary of the WQC/CZMA status in Michigan (Section A), the text of the NWP and regional conditions applicable to specific NWP in Michigan (Section B), the Detroit District regional conditions applicable to all NWP in Michigan (Section C), the MDEQ regional conditions applicable to all NWP for WQC /CZMA consistency (Section D), the General Conditions (Section E), and Further Information (Section F).

If you have questions on the regional conditions or Nationwide permits in the Detroit District contact Robert Morningstar, at 313-226-2015, or e-mail at Robert.L.Morningstar@usace.army.mil.

Charles Simon
Chief, Regulatory Office
Engineering and Technical Service

Section A

A. Index of the Nationwide Permits and WQC/CZMA status in Michigan:

<u>Nationwide Permit</u>	<u>WQC/CZMA in MI</u>	<u>WQC on Tribal Lands</u>
1. Aids to Navigation	I	<div style="border: 1px solid black; padding: 5px; width: fit-content;"> <p><u>WQC/CZMA Status</u> I = Issued C= Conditioned D = Denied</p> </div> <p>I = Issued with no comment*</p>
2. Structures in Artificial Canals	D	
3. Maintenance	C	
4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities	I	
5. Scientific Measurement Devices	C	
6. Survey Activities	C	
7. Outfall Structures and Associated Intake Structures	C	
8. Oil and Gas Structures on the Outer Continental Shelf	D	
9. Structures in Fleeting and Anchorage Areas	I	
10. Mooring Buoys	C	
11. Temporary Recreational Structures	C	
12. Utility Line Activities	C	
13. Bank Stabilization	C	
14. Linear Transportation Projects	C	
15. U.S. Coast Guard Approved Bridges	D	
16. Return Water from Upland Contained Disposal Areas	I	
17. Hydropower Projects	D	
18. Minor Discharges	C	
19. Minor Dredging	C	
20. Response Operations for Oil and Hazardous Substances	C	
21. Surface Coal Mining Activities	D	
22. Removal of Vessels	I	
23. Approved Categorical Exclusions	D	
24. Indian Tribe or State Administered Section 404 Programs	I	
25. Structural Discharges	D	
26. [Reserved]	-	
27. Aquatic Habitat Restoration, Establishment, and Enhancement Activities	C	
28. Modifications of Existing Marinas	C	
29. Residential Developments	C	
30. Moist Soil Management for Wildlife	I	
31. Maintenance of Existing Flood Control Facilities	I	
32. Completed Enforcement Actions	C	
33. Temporary Construction, Access, and Dewatering	C	
34. Cranberry Production Activities	C	
35. Maintenance Dredging of Existing Basins	C	
36. Boat Ramps	C	
37. Emergency Watershed Protection and Rehabilitation	C	
38. Cleanup of Hazardous and Toxic Waste	C	
39. Commercial and Institutional Developments	D	
40. Agricultural Activities	C	
41. Reshaping Existing Drainage Ditches	C	
42. Recreational Facilities	C	
43. Stormwater Management Facilities	C	
44. Mining Activities	D	
45. Repair of Uplands Damaged by Discrete Events	C	
46. Discharges in Ditches	D	
47. [Reserved]	-	
48. Existing Commercial Shellfish Aquaculture Activities	D	
49. Coal Remining Activities	D	
50. Underground Coal Mining Activities	D	
51. Land Based Renewable Energy Generation Facilities	D	
52. Water Based Renewable Energy Generation Pilot Projects	D	
53. Removal of Low Head Dams	C	
54. Living Shorelines	C	

* NOTE: EPA granted Section 401 WQC for all tribal lands/reservations in Michigan without comment, with the exception of the Match-E-Be-Nash-She-Wish (Gun Lake) Reservation. WQC is denied for the Gun Lake Reservation.

B. Nationwide Permits and regional conditions applicable to specific NWP:

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

MDEQ Water Quality Certification/CZMA consistency for NWP 1: MDEQ granted certification without conditions.

Tribal Lands Water Quality Certification for NWP 1: EPA granted certification based on all National and Regional conditions.

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

Detroit District NWP 2 Regional Conditions: The Detroit District has suspended this Nationwide Permit.

MDEQ Water Quality Certification/CZMA consistency for NWP 2: MDEQ denied certification/consistency.

Tribal Lands Water Quality Certification for NWP 2: EPA granted certification based on all National and Regional conditions.

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

(b) This NWP also authorizes the removal of accumulated sediments and debris outside the immediate vicinity of existing structures (e.g., bridges, culverted road crossings, water intake structures, etc.). The removal of sediment is limited to the minimum necessary to restore the waterway in the vicinity of the structure to the approximate dimensions that existed when the structure was built, but cannot extend farther than 200 feet in any direction from the structure. This 200 foot limit does not apply to maintenance dredging to remove accumulated sediments blocking or restricting outfall and intake structures or to maintenance dredging to remove accumulated sediments from canals associated with outfall and intake structures. All dredged or excavated materials must be deposited and retained in an area that has no waters of the United States unless otherwise specifically approved by the district engineer under separate authorization.

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

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

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

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

MDEQ Water Quality Certification/CZMA consistency for NWP 3: MDEQ granted certification based on the following conditions:

- a. Request for repair, rehabilitation, or replacement of structures destroyed by discrete events must be submitted to the USACE within 12 months of the date of damage.
- b. The USACE will conduct agency coordination with the MDEQ for activities proposing restoration of Great Lakes coastal areas.
- c. All stream crossings shall span the bankfull width and, in cases where the structures have a bottom, the structure bottom shall match stream slope.
- d. Certification is denied for activities in rivers designated under Part 305, Natural Rivers, of Michigan's Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA). Case-specific Water Quality Certification is required for activities conducted in these waters.

Tribal Lands Water Quality Certification for NWP 3: EPA granted certification based on all National and Regional conditions.

4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities. Fish and wildlife harvesting devices and activities such as pound nets, crab traps, crab dredging, eel pots, lobster traps, duck blinds, and clam and oyster digging, fish aggregating

devices, and small fish attraction devices such as open water fish concentrators (sea kites, etc.). This NWP does not authorize artificial reefs or impoundments and semi-impoundments of waters of the United States for the culture or holding of motile species such as lobster, or the use of covered oyster trays or clam racks. (Authorities: Sections 10 and 404)

MDEQ Water Quality Certification/CZMA consistency for NWP 4: MDEQ granted certification without conditions.

Tribal Lands Water Quality Certification for NWP 4: EPA granted certification based on all National and Regional conditions.

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

Detroit District NWP 5 Regional Conditions:

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

MDEQ Water Quality Certification/CZMA consistency for NWP 5: MDEQ granted certification based on the following conditions:

- a. Meteorological stations are not authorized.

Tribal Lands Water Quality Certification for NWP 5: EPA granted certification based on all National and Regional conditions.

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

MDEQ Water Quality Certification/CZMA consistency for NWP 6: MDEQ granted certification based on the following conditions:

- a. Temporary fill pads shall be limited to a maximum 1,000 square feet.
- b. Exploratory trenching shall not be authorized below the Ordinary High Water Mark (OHWM) of any waters of the United States.

Tribal Lands Water Quality Certification for NWP 6: EPA granted certification based on all National and Regional conditions.

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

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

Detroit District NWP 7 Regional Conditions:

- a. The face of the outfall structure shall not extend into the receiving water to impair navigation.
- b. The face of the outfall structure shall not create shoreline pockets capable of trapping debris.

MDEQ Water Quality Certification/CZMA consistency for NWP 7: MDEQ granted certification based on the following conditions:

- a. The face of the outfall structure shall not extend into the receiving water to impair navigation or create shoreline pockets capable of trapping debris.
- b. Intake structures shall not be placed in wetlands.

Tribal Lands Water Quality Certification for NWP 7: EPA granted certification based on all National and Regional conditions.

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

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

Detroit District NWP 8 Regional Conditions: The Detroit District has revoked this Nationwide Permit.
MDEQ Water Quality Certification/CZMA consistency for NWP 8: MDEQ denied certification/consistency.
Tribal Lands Water Quality Certification for NWP 8: EPA granted certification based on all National and Regional conditions.

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

MDEQ Water Quality Certification/CZMA consistency for NWP 9: MDEQ granted certification without conditions.
Tribal Lands Water Quality Certification for NWP 9: EPA granted certification based on all National and Regional conditions.

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

Detroit District NWP 10 Regional Conditions:

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

MDEQ Water Quality Certification/CZMA consistency for NWP 10: MDEQ granted certification based on the following conditions:

- a. The latitude and longitude of the buoy and a scaled site plan showing the distance of the buoy offshore must be provided.
- b. The buoy must be clearly marked with the MDEQ and Corps of Engineers' File Numbers in letters and numbers at least one inch high and of contrasting color to the background color of the buoy.
- c. The buoy must meet all relevant United States Coast Guard requirements.

Tribal Lands Water Quality Certification for NWP 10: EPA granted certification based on all National and Regional conditions.

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

MDEQ Water Quality Certification/CZMA consistency for NWP 11: MDEQ granted certification based on the following conditions:

- a. Structures are removed immediately after use has been discontinued.
- b. The purpose of the proposed structures must support uses that are dependent upon being located on or in a lake, river, stream, or wetland.

Tribal Lands Water Quality Certification for NWP 11: EPA granted certification based on all National and Regional conditions.

Replaced by
2021 NWP

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

~~—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, 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, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, and internet, radio, and television communication. 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 power line or 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 into non-tidal wetlands adjacent to tidal waters of the United States to construct, maintain, or expand substation facilities.~~

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

~~—Access roads: This NWP authorizes the construction of access roads for the construction and maintenance of utility lines, including overhead power lines and 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 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, 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 any of the following criteria are met: (1) The activity involves mechanized land clearing in a forested wetland for the utility line right of way; (2) a section 10 permit is required; (3) the utility line in waters of the United States, excluding overhead lines, exceeds 500 feet; (4) the utility line is placed within a jurisdictional area (i.e., water of the United States), and it runs parallel to or along a stream bed that is within that jurisdictional area; (5) discharges that result in the loss of greater than 1/10 acre of waters of the United States; (6) permanent access roads are constructed above grade in waters of the United States for a distance of more than 500 feet; or (7) permanent access roads are constructed in waters of the United States with impervious materials. (See general condition 32.) (Authorities: Sections 10 and 404)

Note 1: Where the utility line is constructed or installed 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: Utility lines consisting of aerial electric power transmission lines crossing navigable waters of the United States (which are defined at 33 CFR part 329) must comply with the applicable minimum clearances specified in 33 CFR 322.5(i).

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

Note 5: 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 section 9 of the Rivers and Harbors Act of 1890. 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 6: 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 7: For overhead utility lines authorized by this NWP, a copy of the PCN and NWP verification will be provided to the Department of Defense Siting Clearinghouse, which will evaluate potential effects on military activities.

Note 8: For NWP 12 activities that require pre-construction notification, the PCN must include any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings that require Department of the Army authorization but do not require pre-construction notification (see paragraph (b) of general condition 32). The district engineer will evaluate the PCN in accordance with Section D, "District Engineer's Decision." The district engineer may require mitigation to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see general condition 23).

Detroit District NWP 12 Regional Conditions:

- a. For substations and permanent access roads, no discharge is authorized in areas below the OHWM, areas subject to inundation by the adjacent water body, or areas which otherwise provide fish habitat functions.
- b. Impacts for substations and permanent access roads are limited to 1/4 acre in wetlands adjacent to navigable waters of the U.S. Applicants must demonstrate that upland alternatives are not practicable.
- c. Impacted wetlands outside of permanently maintained rights of way shall be restored to the same or more valuable wetland type (e.g., forested wetlands shall be restored to forested wetlands). Within permanently maintained rights of way, impacted wetlands shall be restored, unless otherwise authorized by the Corps.
- d. For utility lines placed across the channel of an authorized Federal navigation project, the following conditions apply:
 - 1) The line must be embedded at least 6 feet below the authorized Federal channel depth;
 - 2) Existing and proposed elevation information on precise plan and section scale drawings are required;
 - 3) Within 60 days after construction, an as-built survey must be provided indicating the points of entry and exit of the installation.
- e. The application must provide the latitude and longitude (or UTM coordinates) of each end of the utility line at the limits of Corps

jurisdiction (OHWM or upland limit of wetlands), and for each point between where the utility changes direction.

- f. All excavated and dredged material, other than that used to backfill the trench as authorized pursuant to NWP 12, shall be disposed of on uplands.

MDEQ Water Quality Certification/CZMA consistency for NWP 12: MDEQ granted certification based on the following conditions:

- ~~a. For substations and access roads, no discharge is authorized in areas below the OHWM, areas subject to inundation by the adjacent water body, or areas which otherwise provide fish habitat functions.~~
- ~~b. Impacts for substations and access roads are limited to 0.10 acre. Applicants must demonstrate that upland alternatives are not practicable. Permanent access roads shall not be authorized.~~
- ~~c. Impacted wetlands outside of permanently maintained rights of way shall be restored to the same or more valuable wetland type (e.g., forested wetlands shall be restored to forested wetlands). Within permanently maintained rights of way, impacted wetlands shall be restored, unless otherwise authorized by the MDEQ and the USACE.~~
- ~~d. All excavated and dredged material, other than that used to backfill the trench as authorized pursuant to NWP12, shall be disposed of in uplands.~~
- ~~e. All revegetation of wetland sites must be with plant species that are native to Michigan according to the Floristic Quality Assessment for the State of Michigan.~~
- ~~f. The USACE must conduct agency coordination with the MDEQ for overall projects proposing more than two crossings of waters of the United States and/or more than 1 acre of impacts to waters of the United States.~~

Tribal Lands Water Quality Certification for NWP 12: EPA granted certification based on all National and Regional conditions.

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

- (a) No material is placed in excess of the minimum needed for erosion protection;
- (b) The activity is no more than 500 feet in length along the bank, unless the district engineer waives this criterion by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects (an exception is for bulkheads—the district engineer cannot issue a waiver for a bulkhead that is greater than 1,000 feet in length along the bank);
- (c) The activity will not exceed an average of one cubic yard per running foot, as measured along the length of the treated bank, below the plane of the ordinary high water mark or the high tide line, unless the district engineer waives this criterion by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects;
- (d) The activity does not involve discharges of dredged or fill material into special aquatic sites, unless the district engineer waives this criterion by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects;
- (e) No material is of a type, or is placed in any location, or in any manner, that will impair surface water flow into or out of any waters of the United States;
- (f) No material is placed in a manner that will be eroded by normal or expected high flows (properly anchored native trees and treetops may be used in low energy areas);
- (g) Native plants appropriate for current site conditions, including salinity, must be used for bioengineering or vegetative bank stabilization;
- (h) The activity is not a stream channelization activity; and
- (i) The activity must be properly maintained, which may require repairing it after severe storms or erosion events. This NWP authorizes those maintenance and repair activities if they require authorization.

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

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

(Authorities: Sections 10 and 404)

MDEQ Water Quality Certification/CZMA consistency for NWP 13: MDEQ granted certification based on the following conditions:

- a. No material is placed in any special aquatic site, including wetlands.
- b. The installation of new vertical bulkheads or seawalls, where one does not currently exist, is not authorized.
- c. Replacement of vertical bulkheads or seawalls is limited to 200 feet.
- d. Installation of riprap shore protection is limited to 300 feet.
- e. This NWP may apply in areas designated under Part 305, Natural Rivers, or Part 323 Shorelands Protection and Management, of the NREPA, only if the MDEQ has issued authorizations.

Tribal Lands Water Quality Certification for NWP 13: EPA granted certification based on all National and Regional conditions.

14. Linear Transportation Projects. Activities required for crossings of waters of the United States associated with the construction, expansion, modification, or improvement of linear transportation projects (e.g., roads, highways, railways, trails, airport runways, and taxiways) in waters of the United States. For linear transportation projects in non-tidal waters, the discharge cannot cause the loss of greater than 1/2-acre of waters of the United States. For linear transportation projects in tidal waters, the discharge cannot cause the loss

of greater than 1/3-acre of waters of the United States.

Any stream channel modification, including bank stabilization, is limited to the minimum necessary to construct or protect the linear transportation project; such modifications must be in the immediate vicinity of the project.

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

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

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

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

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

Note 3: For NWP 14 activities that require pre-construction notification, the PCN must include any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings that require Department of the Army authorization but do not require pre-construction notification (see paragraph (b) of general condition 32). The district engineer will evaluate the PCN in accordance with Section D, "District Engineer's Decision." The district engineer may require mitigation to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see general condition 23).'

Detroit District NWP 14 Regional Conditions:

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

MDEQ Water Quality Certification/CZMA consistency for NWP 14: MDEQ granted certification based on the following conditions:

- a. For private road projects, the base width of the fill is limited to 16 feet. For private paths, the base width of the fill is limited to 6 feet. These limits apply unless the applicant provides a written statement supporting a variation, and the Corps accepts the justification. Culverts or other appropriate measures are required to maintain existing drainage patterns.
- b. For private road projects, the length of the crossing is limited to 200 feet.
- c. The selected route must be the least damaging practicable alternative.
- d. For public projects, the total impacts are limited to 2 acres for all crossings associated with the same project.
- e. All stream crossings shall span the bankfull width and, in cases where the structures have a bottom, the structure shall match stream slope.
- f. The USACE must conduct agency coordination with the MDEQ for overall projects proposing more than two crossings of waters of the United States.

Tribal Lands Water Quality Certification for NWP 14: EPA granted certification based on all National and Regional conditions.

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

MDEQ Water Quality Certification/CZMA consistency for NWP 15: MDEQ denied certification/consistency.

Tribal Lands Water Quality Certification for NWP 15: EPA granted certification based on all National and Regional conditions.

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

MDEQ Water Quality Certification/CZMA consistency for NWP 16: MDEQ granted certification without conditions.

Tribal Lands Water Quality Certification for NWP 16: EPA granted certification based on all National and Regional conditions.

17. Hydropower Projects. Discharges of dredged or fill material associated with hydropower projects having: (a) Less than 5000 kW of total generating capacity at existing reservoirs, where the project, including the fill, is licensed by the Federal Energy Regulatory Commission (FERC) under the Federal Power Act of 1920, as amended; or (b) a licensing exemption granted by the FERC pursuant to section 408 of the Energy Security Act of 1980 (16 U.S.C. 705 and 2708) and section 30 of the Federal Power Act, as amended.

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

MDEQ Water Quality Certification/CZMA consistency for NWP 17: MDEQ denied certification/consistency.

Tribal Lands Water Quality Certification for NWP 17: EPA granted certification based on all National and Regional conditions.

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

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

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

Detroit District NWP 18 Regional Conditions:

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

MDEQ Water Quality Certification/CZMA consistency for NWP 16: MDEQ granted certification without conditions.

- a. The discharge shall not result in the loss of more than 1,000 square feet of waters of the U.S.
- b. This NWP does not apply in wetlands adjacent to the Great Lakes or connecting channels.
- c. This NWP may apply in areas covered under Part 301, Inland Lakes and Streams, Part 305, Natural Rivers, Part 323, Shorelands Protection and Management, and Part 325, Great Lakes Submerged Lands, of the NREPA, only if the MDEQ has issued authorizations.

Tribal Lands Water Quality Certification for NWP 18: EPA granted certification based on all National and Regional conditions.

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

MDEQ Water Quality Certification/CZMA consistency for NWP 19: MDEQ granted certification without conditions.

- a. Sediment disposal locations must comply with MDEQ standards for dredged sediment disposal (i.e. non-wetland, non-floodplain).
- b. The activity shall not disturb sediments in an area known or suspected to contain contamination (unless testing in accordance with the MDEQ procedures provided by the applicant shows that the material does not contain contamination).
- c. Dredging shall be a maximum of 25 cubic yards and 1000 square feet within the waters of the United States.
- d. This nationwide permit does not apply in wetlands adjacent to the Great Lakes or connecting channels.

Tribal Lands Water Quality Certification for NWP 19: EPA granted certification based on all National and Regional conditions.

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

MDEQ Water Quality Certification/CZMA consistency for NWP 20: MDEQ granted certification with conditions.

- a. NWP 20 shall be limited to interim response activities; a separate permit may be required for final restoration response. The waters of the state, including wetlands, will be restored to the most practicable extent possible.
- b. The USACE will conduct agency coordination with MDEQ Wetland/Water Program staff on all applications submitted under this

NWP category.

Tribal Lands Water Quality Certification for NWP 20: EPA granted certification based on all National and Regional conditions.

Replaced by
2021 NWP

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

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

(b) The discharge must not cause the loss of greater than $\frac{1}{2}$ acre of non-tidal waters of the United States. The discharge must not cause the loss of more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in no more than minimal individual and cumulative adverse environmental effects. The loss of stream bed plus any other losses of jurisdictional wetlands and waters caused by the NWP activity cannot exceed $\frac{1}{2}$ acre. This NWP does not authorize discharges into tidal waters or non-tidal wetlands adjacent to tidal waters; and

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

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

MDEQ Water Quality Certification/CZMA consistency for NWP 21: MDEQ denied certification/consistency.

Tribal Lands Water Quality Certification for NWP 21: EPA granted certification based on all National and Regional conditions.

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

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

Note 1: If a removed vessel is disposed of in waters of the United States, a permit from the U.S. EPA may be required (see 40 CFR 229.3). If a Department of the Army permit is required for vessel disposal in waters of the United States, separate authorization will be required.

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

MDEQ Water Quality Certification/CZMA consistency for NWP 22: MDEQ granted certification without conditions.

Tribal Lands Water Quality Certification for NWP 22: EPA granted certification based on all National and Regional conditions.

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

(a) That agency or department has determined, pursuant to the Council on Environmental Quality's implementing regulations for the National Environmental Policy Act (40 CFR part 1500 et seq.), that the activity is categorically excluded from the requirement to prepare an environmental impact statement or environmental assessment analysis, because it is included within a category of actions which neither individually nor cumulatively have a significant effect on the human environment; and

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

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

Notification: Certain categorical exclusions approved for authorization under this NWP require the permittee to submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 32). The activities that require pre-construction notification are listed in the appropriate Regulatory Guidance Letters. (Authorities: Sections 10 and 404)

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

<http://www.usace.army.mil/Portals/2/docs/civilworks/RGLS/rgl05-07.pdf>. Any future approved categorical exclusions will be announced in Regulatory Guidance Letters and posted on this same Web site.

MDEQ Water Quality Certification/CZMA consistency for NWP 23: MDEQ denied certification/consistency.

Tribal Lands Water Quality Certification for NWP 23: EPA granted certification based on all National and Regional conditions.

24. Indian Tribe or State Administered Section 404 Programs. Any activity permitted by a state or Indian Tribe administering its own

section 404 permit program pursuant to 33 U.S.C. 1344(g)–(l) is permitted pursuant to section 10 of the Rivers and Harbors Act of 1899. (Authority: Section 10)

Note 1: As of the date of the promulgation of this NWP, only New Jersey and Michigan administer their own section 404 permit programs.

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

MDEQ Water Quality Certification/CZMA consistency for NWP 24: MDEQ granted certification without conditions.

Tribal Lands Water Quality Certification for NWP 24: EPA granted certification based on all National and Regional conditions.

25. Structural Discharges. Discharges of material such as concrete, sand, rock, etc., into tightly sealed forms or cells where the material will be used as a structural member for standard pile supported structures, such as bridges, transmission line footings, and walkways, or for general navigation, such as mooring cells, including the excavation of bottom material from within the form prior to the discharge of concrete, sand, rock, etc. This NWP does not authorize filled structural members that would support buildings, building pads, homes, house pads, parking areas, storage areas and other such structures. The structure itself may require a separate section 10 permit if located in navigable waters of the United States. (Authority: Section 404)

MDEQ Water Quality Certification/CZMA consistency for NWP 25: MDEQ denied certification/consistency.

Tribal Lands Water Quality Certification for NWP 25: EPA granted certification based on all National and Regional conditions.

26. [Reserved]

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

To be authorized by this NWP, the aquatic habitat restoration, enhancement, or establishment activity must be planned, designed, and implemented so that it results in aquatic habitat that resembles an ecological reference. An ecological reference may be based on the characteristics of an intact aquatic habitat or riparian area of the same type that exists in the region. An ecological reference may be based on a conceptual model developed from regional ecological knowledge of the target aquatic habitat type or riparian area.

To the extent that a Corps permit is required, activities authorized by this NWP include, but are not limited to: The removal of accumulated sediments; the installation, removal, and maintenance of small water control structures, dikes, and berms, as well as discharges of dredged or fill material to restore appropriate stream channel configurations after small water control structures, dikes, and berms, are removed; the installation of current deflectors; the enhancement, rehabilitation, or re-establishment of riffle and pool stream structure; the placement of in-stream habitat structures; modifications of the stream bed and/or banks to enhance, rehabilitate, or re-establish stream meanders; the removal of stream barriers, such as undersized culverts, fords, and grade control structures; the backfilling of artificial channels; the removal of existing drainage structures, such as drain tiles, and the filling, blocking, or reshaping of drainage ditches to restore wetland hydrology; the installation of structures or fills necessary to restore or enhance wetland or stream hydrology; the construction of small nesting islands; the construction of open water areas; the construction of oyster habitat over unvegetated bottom in tidal waters; shellfish seeding; activities needed to reestablish vegetation, including plowing or discing for seed bed preparation and the planting of appropriate wetland species; re-establishment of submerged aquatic vegetation in areas where those plant communities previously existed; re-establishment of tidal wetlands in tidal waters where those wetlands previously existed; mechanized land clearing to remove non-native invasive, exotic, or nuisance vegetation; and other related activities. Only native plant species should be planted at the site.

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

Except for the relocation of non-tidal waters on the project site, this NWP does not authorize the conversion of a stream or natural wetlands to another aquatic habitat type (e.g., the conversion of a stream to wetland or vice versa) or uplands. Changes in wetland plant communities that occur when wetland hydrology is more fully restored during wetland rehabilitation activities are not considered a conversion to another aquatic habitat type. This NWP does not authorize stream channelization. This NWP does not authorize the relocation of tidal waters or the conversion of tidal waters, including tidal wetlands, to other aquatic uses, such as the conversion of tidal wetlands into open water impoundments.

Compensatory mitigation is not required for activities authorized by this NWP since these activities must result in net increases in aquatic resource functions and services.

Reversion. For enhancement, restoration, and establishment activities conducted: (1) In accordance with the terms and conditions of a binding stream or wetland enhancement or restoration agreement, or a wetland establishment agreement, between the landowner and the U.S. Fish and Wildlife Service (FWS), the Natural Resources Conservation Service (NRCS), the Farm Service Agency (FSA), the National Marine Fisheries Service (NMFS), the National Ocean Service (NOS), U.S. Forest Service (USFS), or their designated state cooperating agencies; (2) as voluntary wetland restoration, enhancement, and establishment actions documented by the NRCS or USDA Technical Service Provider pursuant to NRCS Field Office Technical Guide standards; or (3) on reclaimed surface coal mine lands, in accordance with a Surface Mining Control and Reclamation Act permit issued by the Office of Surface Mining Reclamation and Enforcement (OSMRE) or the applicable state agency, this NWP also authorizes any future discharge of dredged or fill material associated with the reversion of the area to its documented prior condition and use (i.e., prior to the restoration, enhancement, or establishment activities). The reversion must occur within five years after expiration of a limited term wetland restoration or establishment agreement or permit, and is authorized in these circumstances even if the discharge occurs after this NWP expires. The five-year reversion limit does not apply to agreements without time limits reached between the landowner and the FWS, NRCS, FSA, NMFS, NOS, USFS, or an appropriate state cooperating agency. This NWP also authorizes discharges of dredged or fill material in waters of the United States for the reversion of wetlands that were restored, enhanced, or established on prior-converted cropland or on uplands, in accordance with a binding agreement between the

landowner and NRCS, FSA, FWS, or their designated state cooperating agencies (even though the restoration, enhancement, or establishment activity did not require a section 404 permit). The prior condition will be documented in the original agreement or permit, and the determination of return to prior conditions will be made by the Federal agency or appropriate state agency executing the agreement or permit.

Before conducting any reversion activity the permittee or the appropriate Federal or state agency must notify the district engineer and include the documentation of the prior condition. Once an area has reverted to its prior physical condition, it will be subject to whatever the Corps Regulatory requirements are applicable to that type of land at the time. The requirement that the activity results in a net increase in aquatic resource functions and services does not apply to reversion activities meeting the above conditions. Except for the activities described above, this NWP does not authorize any future discharge of dredged or fill material associated with the reversion of the area to its prior condition. In such cases a separate permit would be required for any reversion.

Reporting. For those activities that do not require pre-construction notification, the permittee must submit to the district engineer a copy of: (1) The binding stream enhancement or restoration agreement or wetland enhancement, restoration, or establishment agreement, or a project description, including project plans and location map; (2) the NRCS or USDA Technical Service Provider documentation for the voluntary stream enhancement or restoration action or wetland restoration, enhancement, or establishment action; or (3) the SMCRA permit issued by OSMRE or the applicable state agency. The report must also include information on baseline ecological conditions on the project site, such as a delineation of wetlands, streams, and/or other aquatic habitats. These documents must be submitted to the district engineer at least 30 days prior to commencing activities in waters of the United States authorized by this NWP.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing any activity (see general condition 32), except for the following activities:

- (1) Activities conducted on non-Federal public lands and private lands, in accordance with the terms and conditions of a binding stream enhancement or restoration agreement or wetland enhancement, restoration, or establishment agreement between the landowner and the FWS, NRCS, FSA, NMFS, NOS, USFS or their designated state cooperating agencies;
- (2) Voluntary stream or wetland restoration or enhancement action, or wetland establishment action, documented by the NRCS or USDA Technical Service Provider pursuant to NRCS Field Office Technical Guide standards; or
- (3) The reclamation of surface coal mine lands, in accordance with an SMCRA permit issued by the OSMRE or the applicable state agency.

However, the permittee must submit a copy of the appropriate documentation to the district engineer to fulfill the reporting requirement. (Authorities: Sections 10 and 404)

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

MDEQ Water Quality Certification/CZMA consistency for NWP 27: MDEQ granted certification with the following conditions:

- a. The construction of small nesting islands is not authorized.
- b. Small dams shall be limited as follows:
 1. The height of the dam is less than two feet.
 2. The impoundment from the dam covers less than two acres.
 3. The dam does not serve as the first dam upstream from the Great Lakes or their connecting waterways.
 4. The dam is not serving as a sea lamprey barrier.
 5. There are no threatened or endangered species that have been identified in the area that will be affected by the project.
 6. There are no known areas of contaminated sediments in the area that will be affected by the project.
- c. This NWP shall not authorize alteration of wetlands that are of ecological types considered rare or imperiled as defined by the Michigan Natural Features Inventory.
- d. Stream restoration projects are limited to a pre-restoration maximum of 500 linear feet.
- e. Excavation of wetlands to provide shallow water habitat for wildlife (i.e. "pushouts") is limited to either:
 1. In altered wetlands, 0.5 acres maximum.
 2. In wetlands that have been regularly farmed within the past five years or in wetlands documented to be dominated by invasive species (e.g., reed canary grass or Phragmites). Each individual excavated area shall not exceed 1.5 acres and the cumulative impact of excavation associated with a project shall not exceed 3 acres.
- f. Placement of fill for construction of dikes, berms, or water control structures to reestablish original or natural hydrology is limited to a maximum of two acres.
- g. Construction of a dike or berm that is six feet or more in height and that impounds an area of five acres or more during a design flood is not authorized.
- h. Enhancement" of hydrology (increasing water levels above original or natural levels) is not authorized unless the MDEQ concurs that the wetland ecosystem has been farmed within the last five years or is dominated by invasive species.
- i. The section on "Reversion" shall not apply in Michigan.
- j. The USACE shall conduct agency coordination with the MDEQ for all activities under the NWP.

Tribal Lands Water Quality Certification for NWP 27: EPA granted certification based on all National and Regional conditions.

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

MDEQ Water Quality Certification/CZMA consistency for NWP 28: MDEQ granted certification with the following conditions:

- a. The mooring structures do not occupy areas of the waters of the United States that were not previously authorized by construction permits issued by the USACE and the MDEQ.
- b. The minimum maneuvering distance for an outside slip (a slip that is accessed from a location between the boundary of the marina's

riparian interest area and the mooring structure) is 1.5 times the length of the slip, measured from the end of the slip or, for broadside dockage, from the outside beam of a watercraft moored at the slip, to the boundary of the marina's riparian interest area.

Tribal Lands Water Quality Certification for NWP 28: EPA granted certification based on all National and Regional conditions.

Replaced by
2021 NWP

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

—The discharge must not cause the loss of greater than $\frac{1}{2}$ acre of non-tidal waters of the United States. The discharge must not cause the loss of more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters. The loss of stream bed plus any other losses of jurisdictional wetlands and waters caused by the NWP activity cannot exceed $\frac{1}{2}$ acre.

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

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

Detroit District NWP 29 Regional Conditions:

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

MDEQ Water Quality Certification/CZMA consistency for NWP 29: MDEQ granted certification with the following conditions:

- This NWP is limited to the construction or expansion of a single family residence with less than 0.1 acre of wetland impact on properties that have been owned within an immediate family since 1980.
- Use of this NWP is not authorized where rare or imperiled habitat types as defined by the Michigan Natural Features Inventory would be impacted, or where the proposed project would result in adverse impacts to state or federally listed threatened or endangered species or their habitat.
- The following attendant features are authorized under this NWP: garage, driveway (not to exceed 16 feet in base width), parking/turn areas, lawn up to 15 feet surrounding the buildings, septic field, utilities, deck foundations, and access paths.
- The site plan must ensure maximum use of upland areas and must minimize adverse impacts to wetlands and other aquatic resources.

Tribal Lands Water Quality Certification for NWP 29: EPA granted certification based on all National and Regional conditions.

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

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

MDEQ Water Quality Certification/CZMA consistency for NWP 30: MDEQ granted certification without conditions.

Tribal Lands Water Quality Certification for NWP 30: EPA granted certification based on all National and Regional conditions.

31. Maintenance of Existing Flood Control Facilities. Discharges of dredged or fill material resulting from activities associated with the maintenance of existing flood control facilities, including debris basins, retention/ detention basins, levees, and channels that: (i) Were previously authorized by the Corps by individual permit, general permit, or 33 CFR 330.3, or did not require a permit at the time they were constructed, or (ii) were constructed by the Corps and transferred to a non-Federal sponsor for operation and maintenance. Activities authorized by this NWP are limited to those resulting from maintenance activities that are conducted within the "maintenance baseline," as described in the definition below. Discharges of dredged or fill materials associated with maintenance activities in flood control facilities in any watercourse that have previously been determined to be within the maintenance baseline are authorized under this NWP. To the extent that a Corps permit is required, this NWP authorizes the removal of vegetation from levees associated with the flood control project. This NWP does not authorize the removal of sediment and associated vegetation from natural water courses except when these activities have been included in the maintenance baseline. All dredged and excavated material must be deposited and retained in an area that has no

waters of the United States unless otherwise specifically approved by the district engineer under separate authorization. Proper sediment controls must be used.

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

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

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

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

Note: If the maintenance baseline was approved by the district engineer under a prior version of NWP 31, and the district engineer imposed the one-time compensatory mitigation requirement on maintenance for a specific reach of a flood control project authorized by that prior version of NWP 31, during the period this version of NWP 31 is in effect (March 19, 2017, to March 18, 2022) the district engineer will not require additional compensatory mitigation for maintenance activities authorized by this NWP in that specific reach of the flood control project.

MDEQ Water Quality Certification/CZMA consistency for NWP 31: MDEQ granted certification without conditions.

Tribal Lands Water Quality Certification for NWP 31: EPA granted certification based on all National and Regional conditions.

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

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

- (a) The activities authorized by this NWP cannot adversely affect more than 5 acres of non-tidal waters or 1 acre of tidal waters;
- (b) The settlement agreement provides for environmental benefits, to an equal or greater degree, than the environmental detriments caused by the unauthorized activity that is authorized by this NWP; and
- (c) The district engineer issues a verification letter authorizing the activity subject to the terms and conditions of this NWP and the settlement agreement, including a specified completion date; or

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

(iii) The terms of a final court decision, consent decree, settlement agreement, or non-judicial settlement agreement resulting from a natural resource damage claim brought by a trustee or trustees for natural resources (as defined by the National Contingency Plan at 40 CFR subpart G) under Section 311 of the Clean Water Act, Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, Section 312 of the National Marine Sanctuaries Act, section 1002 of the Oil Pollution Act of 1990, or the Park System Resource Protection Act at 16 U.S.C. 19jj, to the extent that a Corps permit is required.

Compliance is a condition of the NWP itself; non-compliance of an NWP 32 authorization may result in an additional enforcement action (e.g., a Class I civil administrative penalty). Any authorization under this NWP is automatically revoked if the

permittee does not comply with the terms of this NWP or the terms of the court decision, consent decree, or judicial/non-judicial settlement agreement. This NWP does not apply to any activities occurring after the date of the decision, decree, or agreement that are not for the purpose of mitigation, restoration, or environmental benefit. Before reaching any settlement agreement, the Corps will ensure compliance with the provisions of 33 CFR part 326 and 33 CFR 330.6(d)(2) and (e). (Authorities: Sections 10 and 404)

MDEQ Water Quality Certification/CZMA consistency for NWP 32: MDEQ granted certification with the following conditions:

- a. The state must be a party to the lawsuit, or have reviewed the consent or settlement agreement.

Tribal Lands Water Quality Certification for NWP 32: EPA granted certification based on all National and Regional conditions.

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

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

MDEQ Water Quality Certification/CZMA consistency for NWP 33: MDEQ granted certification with the following conditions:

- a. Temporary fill impacts shall not exceed a maximum of 1,000 square feet and the placement of no more than 25 cubic yards of fill material. The placement of temporary structures or construction mats shall be limited to 0.1 acre.
- b. The temporary structures, construction mats, and fill must be removed immediately after use has been discontinued or within 90 days of initiation of the authorized activity, whichever is shorter.
- c. Geotextile shall be placed prior to temporary fill. Following completion of construction, temporary fill must be entirely removed to upland areas and the affected areas must be restored to pre-construction grade and wetland type. A restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-construction grade and wetland type shall be provided by the applicant. Any re-vegetation shall use seeds and plants native to Michigan according to the Floristic Quality Assessment for the State of Michigan.
- d. Cofferdams shall be maintained in good working order throughout the duration of the project. Upon project completion the accumulated materials shall be disposed of in an identified upland site excluding Great Lakes, Inland Lakes and Streams, floodplains, or wetlands.
- e. All slurry resulting from any dewatering operation shall be discharged through a filter bag or pumped to a sump located away from wetlands and surface waters and allowed to filter through natural upland vegetation, gravel filters, or other engineered devices for a sufficient distance and/or period of time necessary to remove sediment or suspended particles.
- f. A construction sequence with dates when the structures will be installed and removed must be provided by the applicant. Structures left in place after construction are not included.
- g. Temporary culverts and bridges in streams shall match the bankfull width and stream slope.
- h. This NWP shall not authorize activities below the OHWM of the Great Lakes or connecting waters.

Tribal Lands Water Quality Certification for NWP 33: EPA granted certification based on all National and Regional conditions.

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

Notification: The permittee must submit a pre-construction notification to the district engineer once during the period that this NWP is valid, and the NWP will then authorize discharges of dredge or fill material at an existing operation for the permit term, provided the 10-acre limit is not exceeded. (See general condition 32.) (Authority: Section 404)

MDEQ Water Quality Certification/CZMA consistency for NWP 34: MDEQ granted certification with the following conditions:

- a. Only one permit under this and future NWP categories may be granted per cranberry production operation. For the purposes of this NWP, cranberry production operation is defined as a group of (usually) contiguous beds and the water storage and handling system that serves them, all of which are managed as a unit.
- b. This NWP should not allow any fill below the OHWM, or connection (inlet or outlet) to, any inland lakes, streams, or Great Lakes waters.

Tribal Lands Water Quality Certification for NWP 34: EPA granted certification based on all National and Regional conditions.

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

MDEQ Water Quality Certification/CZMA consistency for NWP 35: MDEQ granted certification with the following conditions:

- a. Sediment disposal locations must comply with MDEQ standards for dredged sediment disposal (i.e. non-wetland, non-floodplain).
- b. The activity shall not disturb sediments in an area known or suspected to contain contamination (unless testing in accordance with the MDEQ procedures provided by the applicant shows that the material does not contain contamination).
- c. Dredging shall be a maximum of 5,000 cubic yards per five-year period.

Tribal Lands Water Quality Certification for NWP 35: EPA granted certification based on all National and Regional conditions.

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

- (a) The discharge into waters of the United States does not exceed 50 cubic yards of concrete, rock, crushed stone or gravel into forms, or in the form of pre-cast concrete planks or slabs, unless the district engineer waives the 50 cubic yard limit by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects;
- (b) The boat ramp does not exceed 20 feet in width, unless the district engineer waives this criterion by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects;
- (c) The base material is crushed stone, gravel or other suitable material;
- (d) The excavation is limited to the area necessary for site preparation and all excavated material is removed to an area that has no waters of the United States; and,
- (e) No material is placed in special aquatic sites, including wetlands.

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

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

MDEQ Water Quality Certification/CZMA consistency for NWP 36: MDEQ granted certification with the following conditions:

- a. The ramp shall be for the use of the individual riparian lot owner.
- b. The USACE shall conduct agency coordination with the MDEQ if the district engineer considers waiving the fill or width limits.
- c. Use of this NWP is not certified as Natural Rivers, unless authorized by the under Part 305 within the previous 12-month period.
- d. Fill shall be limited to a maximum of 25 cubic yards, dredging shall be limited to 25 cubic yards, and the width a maximum of 12 feet.

Tribal Lands Water Quality Certification for NWP 36: EPA granted certification based on all National and Regional conditions.

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

- (a) The Natural Resources Conservation Service for a situation requiring immediate action under its emergency Watershed Protection Program (7 CFR part 624);
- (b) The U.S. Forest Service under its Burned-Area Emergency Rehabilitation Handbook (FSH 2509.13);
- (c) The Department of the Interior for wildland fire management burned area emergency stabilization and rehabilitation (DOI Manual part 620, Ch. 3);
- (d) The Office of Surface Mining, or states with approved programs, for abandoned mine land reclamation activities under Title IV of the Surface Mining Control and Reclamation Act (30 CFR subchapter R), where the activity does not involve coal extraction; or The Farm Service Agency under its Emergency Conservation Program (7 CFR part 701).

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

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

MDEQ Water Quality Certification/CZMA consistency for NWP 37: MDEQ granted certification with the following conditions:

- a. The USACE shall conduct agency coordination with MDEQ Wetland Program staff on all activities authorized under this NWP.

Tribal Lands Water Quality Certification for NWP 37: EPA granted certification based on all National and Regional conditions.

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

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See

general condition 32. (Authorities: Sections 10 and 404)

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

MDEQ Water Quality Certification/CZMA consistency for NWP 38: MDEQ granted certification with the following conditions:

- a. The plan shall minimize, to the most practicable extent possible, impacts to waters or wetlands.
- b. The waters of the state, including wetlands, will be restored to the most practicable extent possible.
- c. The USACE will conduct agency coordinating with MDEQ Wetland Program staff on all applications submitted under this NWP category.

Tribal Lands Water Quality Certification for NWP 38: EPA granted certification based on all National and Regional conditions.

Replaced by
2021 NWP

39. Commercial and Institutional Developments. Discharges of dredged or fill material into non-tidal waters of the United States for the construction or expansion of commercial and institutional building foundations and building pads and attendant features that are necessary for the use and maintenance of the structures. Attendant features may include, but are not limited to, roads, parking lots, garages, yards, utility lines, storm water management facilities, wastewater treatment facilities, and recreation facilities such as playgrounds and playing fields. Examples of commercial developments include retail stores, industrial facilities, restaurants, business parks, and shopping centers. Examples of institutional developments include schools, fire stations, government office buildings, judicial buildings, public works buildings, libraries, hospitals, and places of worship. The construction of new golf courses and new ski areas is not authorized by this NWP. The discharge must not cause the loss of greater than $\frac{1}{2}$ acre of non-tidal waters of the United States. The discharge must not cause the loss of more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects. The loss of stream bed plus any other losses of jurisdictional wetlands and waters caused by the NWP activity cannot exceed $\frac{1}{2}$ acre. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters.
— Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) (Authorities: Sections 10 and 404)

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

Detroit District NWP 39 Regional Conditions:

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

MDEQ Water Quality Certification/CZMA consistency for NWP 39: MDEQ denied certification/consistency.

Tribal Lands Water Quality Certification for NWP 39: EPA granted certification based on all National and Regional conditions.

Replaced by
2021 NWP

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

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

— This NWP also authorizes discharges of dredged or fill material into non-tidal waters of the United States to relocate existing serviceable drainage ditches constructed in non-tidal streams.

— The discharge must not cause the loss of greater than $\frac{1}{2}$ acre of non-tidal waters of the United States. The discharge must not cause the loss of more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects. The loss of stream bed plus any other losses of jurisdictional wetlands and waters caused by the NWP activity cannot exceed $\frac{1}{2}$ acre. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters.

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

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

MDEQ Water Quality Certification/CZMA consistency for NWP 40: MDEQ granted certification with the following conditions:

- a. This NWP shall be limited to building pads for farm buildings impacting a maximum of 0.50 acre of wetland within areas that have been in existing, ongoing agricultural production since at least 1980.

Tribal Lands Water Quality Certification for NWP 40: EPA granted certification based on all National and Regional conditions.

41. Reshaping Existing Drainage Ditches. Discharges of dredged or fill material into non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters, to modify the cross-sectional configuration of currently serviceable drainage ditches constructed in waters of the United States, for the purpose of improving water quality by regrading the drainage ditch with gentler slopes, which can reduce erosion, increase growth of vegetation, and increase uptake of nutrients and other substances by vegetation. The reshaping of the ditch cannot increase drainage capacity beyond the original as-built capacity nor can it expand the area drained by the ditch as originally constructed (i.e., the capacity of the ditch must be the same as originally constructed and it cannot drain additional wetlands or other waters of the United States). Compensatory mitigation is not required because the work is designed to improve water quality. This NWP does not authorize the relocation of drainage ditches constructed in waters of the United States; the location of the centerline of the reshaped drainage ditch must be approximately the same as the location of the centerline of the original drainage ditch. This NWP does not authorize stream channelization or stream relocation projects. (Authority: Section 404)

Detroit District NWP 41 Regional Conditions:

- a. All excavated materials shall be placed on uplands unless specifically authorized.

MDEQ Water Quality Certification/CZMA consistency for NWP 41: MDEQ granted certification with the following conditions:

- a. The permit applicant must provide evidence, such as construction drawings, of the original design capacity of the ditch.
- b. Spoil material shall not be sidecast or deposited in a floodway.
- c. This NWP is limited to one mile of drainage ditch impact (cumulatively) for the entire authorized project, and alteration of the drain cross section may not directly impact more than 1/3 acre of wetland outside of the existing channel.
- d. This NWP is limited to activities carried out by the county drain commissioner or their agents in conjunction with routine management of county and inter-county drains established pursuant to Michigan's Drain Code of 1956.
- e. The USACE shall conduct agency coordination with the MDEQ for all activities under this NWP.

Tribal Lands Water Quality Certification for NWP 41: EPA granted certification based on all National and Regional conditions.

Replaced by
2021 NWP

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

—The discharge must not cause the loss of greater than 1/2 acre of non-tidal waters of the United States. The discharge must not cause the loss of more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects. The loss of stream bed plus any other losses of jurisdictional wetlands and waters caused by the — NWP activity cannot exceed 1/2 acre. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters.

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

Detroit District NWP 42 Regional Conditions:

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

MDEQ Water Quality Certification/CZMA consistency for NWP 42: MDEQ granted certification with the following conditions:

- a. This NWP is limited to fill pathways on public lands and open pile or floating boardwalks/docks.
- b. Fill pathways shall be limited to 6 feet in width and a maximum of 200 feet in length.

Tribal Lands Water Quality Certification for NWP 42: EPA granted certification based on all National and Regional conditions.

43. Stormwater Management Facilities. Discharges of dredged or fill material into non-tidal waters of the United States for the construction of stormwater management facilities, including stormwater detention basins and retention basins and other stormwater management facilities; the construction of water control structures, outfall structures and emergency spillways; the construction of low impact development integrated management features such as bioretention facilities (e.g., rain gardens), vegetated filter strips, grassed swales, and infiltration trenches; and the construction of pollutant reduction green infrastructure features designed to reduce inputs of sediments, nutrients, and other pollutants into waters to meet reduction targets established under Total Daily Maximum Loads set under the Clean Water Act.

—This NWP authorizes, to the extent that a section 404 permit is required, discharges of dredged or fill material into non-tidal waters of the United States for the maintenance of stormwater management facilities, low impact development integrated management features, and pollutant reduction green infrastructure features. The maintenance of stormwater management facilities, low impact development integrated management features, and pollutant reduction green

infrastructure features that are not waters of the United States does not require a section 404 permit.

—The discharge must not cause the loss of greater than 1/2 acre of non-tidal waters of the United States. The discharge must not cause the loss of more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters. The loss of stream bed

Replaced by
2021 NWP

~~plus any other losses of jurisdictional wetlands and waters caused by the NWP activity cannot exceed $\frac{1}{2}$ acre. This NWP does not authorize discharges of dredged or fill material for the construction of new stormwater management facilities in perennial streams.~~

~~— Notification: For discharges into non-tidal waters of the United States for the construction of new stormwater management facilities or pollutant reduction green infrastructure features, or the expansion of existing stormwater management facilities or pollutant reduction green infrastructure features, the permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) Maintenance activities do not require pre-construction notification if they are limited to restoring the original design capacities of the stormwater management facility or pollutant reduction green infrastructure feature. (Authority: Section 404)~~

~~Detroit District NWP 43 Regional Conditions:~~

~~a. Construction of new facilities is not authorized.~~

~~b. Maintenance activities are limited to $\frac{1}{2}$ acre, in facilities which were designed for the primary purpose of stormwater detention, retention, and/or treatment.~~

~~MDEQ Water Quality Certification/CZMA consistency for NWP 43: MDEQ granted certification with the following conditions:~~

~~a. The NWP may be used only to authorize maintenance activities in facilities constructed and used for the primary purpose of providing storm water detention, retention, and treatment.~~

~~b. Any contaminated materials shall be appropriately handled and disposed.~~

~~Tribal Lands Water Quality Certification for NWP 43: EPA granted certification based on all National and Regional conditions.~~

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

~~(a) For mining activities involving discharges of dredged or fill material into non-tidal wetlands, the discharge must not cause the loss of greater than $\frac{1}{2}$ acre of non-tidal wetlands;~~

~~(b) For mining activities involving discharges of dredged or fill material in non-tidal open waters (e.g., rivers, streams, lakes, and ponds) the mined area, including permanent and temporary impacts due to discharges of dredged or fill material into jurisdictional waters, must not exceed $\frac{1}{2}$ acre; and~~

~~(c) The acreage loss under paragraph (a) plus the acreage impact under paragraph (b) does not exceed $\frac{1}{2}$ acre.~~

~~The discharge must not cause the loss of more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects. The loss of stream bed plus any other losses of jurisdictional wetlands and waters caused by the NWP activity cannot exceed $\frac{1}{2}$ acre.~~

~~— This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters.~~

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

~~Detroit District NWP 44 Regional Conditions: The Detroit District has revoked this Nationwide Permit.~~

~~MDEQ Water Quality Certification/CZMA consistency for NWP 44: MDEQ denied certification/consistency.~~

~~Tribal Lands Water Quality Certification for NWP 44: EPA granted certification based on all National and Regional conditions.~~

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

This NWP does not authorize beach restoration or nourishment.

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

Notification: The permittee must submit a pre-construction notification to the district engineer (see general condition 32) within 12 months of the date of the damage; for major storms, floods, or other discrete events, the district engineer may waive the 12-month limit for submitting a pre-construction notification if the permittee can demonstrate funding, contract, or other similar delays. The pre-construction notification must include documentation, such as a recent topographic survey or photographs, to justify the extent of the proposed restoration. (Authority: Sections 10 and 404)

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

MDEQ Water Quality Certification/CZMA consistency for NWP 45: MDEQ granted certification with the following conditions:

a. Repair or replacement of damaged structures may not result in an overall increase in the area of the footprint of the original structure, although limited reconfiguration of the fill area is acceptable. Any expansion of the original fill area must be authorized by an individual

Replaced by
2021 NWP

permit.

- b. Bank stabilization must meet NWP 13 as conditioned by the USACE, Detroit District, and the State of Michigan.
- c. The USACE must conduct agency coordination with the MDEQ for all activities proposing restoration of Great Lakes coastal areas.

Tribal Lands Water Quality Certification for NWP 45: EPA granted certification based on all National and Regional conditions.

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

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

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

MDEQ Water Quality Certification/CZMA consistency for NWP 46: MDEQ denied certification/consistency.

Tribal Lands Water Quality Certification for NWP 46: EPA granted certification based on all National and Regional conditions.

47. [Reserved]

Replaced by
2021 NWP

48. Commercial Shellfish Aquaculture Activities. Discharges of dredged or fill material into waters of the United States or structures or work in navigable waters of the United States necessary for new and continuing commercial shellfish aquaculture operations in authorized project areas. For the purposes of this NWP, the project area is the area in which the operator is authorized to conduct commercial shellfish aquaculture activities, as identified through a lease or permit issued by an appropriate state or local government agency, a treaty, or any easement, lease, deed, contract, or other legally binding agreement that establishes an enforceable property interest for the operator. A "new commercial shellfish aquaculture operation" is an operation in a project area where commercial shellfish aquaculture activities have not been conducted during the past 100 years.

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

This NWP does not authorize:

- (a) The cultivation of a nonindigenous species unless that species has been previously cultivated in the waterbody;
- (b) The cultivation of an aquatic nuisance species as defined in the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990;
- (c) Attendant features such as docks, piers, boat ramps, stockpiles, or staging areas, or the deposition of shell material back into waters of the United States as waste; or
- (d) Activities that directly affect more than $\frac{1}{2}$ acre of submerged aquatic vegetation beds in project areas that have not been used for commercial shellfish aquaculture activities during the past 100 years.

— Notification: The permittee must submit a pre-construction notification to the district engineer if: (1) The activity will include a species that has never been cultivated in the waterbody; or (2) the activity occurs in a project area that has not been used for commercial shellfish aquaculture activities during the past 100 years. If the operator will be conducting commercial shellfish aquaculture activities in multiple contiguous project areas, he or she can either submit one PCN for those contiguous project areas or submit a separate PCN for each project area. (See general condition 32.)

In addition to the information required by paragraph (b) of general condition 32, the pre-construction notification must also include the following information: (1) A map showing the boundaries of the project area(s), with latitude and longitude coordinates for each corner of each project area; (2) the name(s) of the species that will be cultivated during the period this NWP is in effect; (3) whether canopy predator nets will be used; (4) whether suspended cultivation techniques will be used; and (5) general water depths in the project area(s) (a detailed survey is not required). No more than one pre-construction notification per project area or group of contiguous project areas should be submitted for the commercial shellfish operation during the effective period of this NWP. The pre-construction notification should describe all species and culture activities the operator expects to undertake in the project area or group of contiguous project areas during the effective period of this NWP. If an operator intends to undertake unanticipated changes to the commercial shellfish aquaculture operation during the effective period of this NWP, and those changes require Department of the Army authorization, the operator must contact the district engineer to request a modification of the NWP verification; a new pre-construction notification does not need to be submitted (Authorities: Sections 10 and 404)

Note 1: The permittee should notify the applicable U.S. Coast Guard office regarding the project.

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

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

MDEQ Water Quality Certification/CZMA consistency for NWP 48: MDEQ denied certification/consistency.

Tribal Lands Water Quality Certification for NWP 48: EPA granted certification based on all National and Regional conditions.

49. Coal Remining Activities. Discharges of dredged or fill material into non-tidal waters of the United States associated with the remining and reclamation of lands that were previously mined for coal. The activities must already be authorized, or they must currently be in process as part of an integrated permit processing procedure, by the Department of the Interior Office of Surface Mining Reclamation and Enforcement, or by states with approved programs under Title IV or Title V of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Areas previously mined include reclaimed mine sites, abandoned mine land areas, or lands under bond forfeiture contracts.

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

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

MDEQ Water Quality Certification/CZMA consistency for NWP 49: MDEQ denied certification/consistency.

Tribal Lands Water Quality Certification for NWP 49: EPA granted certification based on all National and Regional conditions.

Replaced by
2021 NWP

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

~~— The discharge must not cause the loss of greater than 1/2 acre of non-tidal waters of the United States. The discharge must not cause the loss of more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300-linear-foot limit by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects. The loss of stream bed plus any other losses of jurisdictional wetlands and waters caused by the NWP activity cannot exceed 1/2 acre. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters. This NWP does not authorize coal preparation and processing activities outside of the mine site.~~

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

~~— Note: Coal preparation and processing activities outside of the mine site may be authorized by NWP 21.~~

~~MDEQ Water Quality Certification/CZMA consistency for NWP 50: MDEQ denied certification/consistency.~~

~~Tribal Lands Water Quality Certification for NWP 50: EPA granted certification based on all National and Regional conditions.~~

Replaced by
2021 NWP

~~**51. Land-Based Renewable Energy Generation Facilities.** Discharges of dredged or fill material into non-tidal waters of the United States for the construction, expansion, or modification of land-based renewable energy production facilities, including attendant features. Such facilities include infrastructure to collect solar (concentrating solar power and photovoltaic), wind, biomass, or geothermal energy. Attendant features may include, but are not limited to roads, parking lots, and stormwater management facilities within the land-based renewable energy generation facility. The discharge must not cause the loss of greater than 1/2 acre of non-tidal waters of the United States. The discharge must not cause the loss of more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300-linear-foot limit by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects. The loss of stream bed plus any other losses of jurisdictional wetlands and waters caused by the NWP activity cannot exceed 1/2 acre. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters.~~

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

~~— Note 1: Utility lines constructed to transfer the energy from the land-based renewable energy generation facility to a distribution system, regional grid, or other facility are generally considered to be linear projects and each separate and distant crossing of a waterbody is eligible for treatment as a separate single and complete linear project. Those utility lines may be authorized by NWP 12 or another Department of the Army authorization.~~

~~— Note 2: If the only activities associated with the construction, expansion, or modification of a land-based renewable energy generation facility that require Department of the Army authorization are discharges of dredged or fill material into waters of the United States to construct, maintain, repair, and/or remove utility lines and/or road crossings, then NWP 12 and/or NWP 14 shall be used if those activities meet the terms and conditions of NWPs 12 and 14, including any applicable regional conditions and any case-specific conditions imposed by the district engineer.~~

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

~~MDEQ Water Quality Certification/CZMA consistency for NWP 51: MDEQ denied certification/consistency.~~

~~Tribal Lands Water Quality Certification for NWP 51: EPA granted certification based on all National and Regional conditions.~~

Replaced by
2021 NWP

~~**52. Water-Based Renewable Energy Generation Pilot Projects.** Structures and work in navigable waters of the United States and discharges of dredged or fill material into waters of the United States for the construction, expansion, modification, or removal of water~~

based wind, water-based solar, wave energy, or hydrokinetic renewable energy generation pilot projects and their attendant features. Attendant features may include, but are not limited to land-based collection and distribution facilities, control facilities, roads, parking lots, and stormwater management facilities.

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

—The discharge must not cause the loss of greater than 1/2 acre of waters of the United States, including the loss of more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects. The loss of stream bed plus any other losses of jurisdictional wetlands and waters caused by the NWP activity cannot exceed 1/2 acre.

—The placement of a transmission line on the bed of a navigable water of the United States from the renewable energy generation unit(s) to a land-based collection and distribution facility is considered a structure under Section 10 of the Rivers and Harbors Act of 1899 (see 33 CFR 322.2(b)), and the placement of the transmission line on the bed of a navigable water of the United States is not a loss of waters of the United States for the purposes of applying the 1/2-acre or 300 linear foot limits.

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

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

—Upon completion of the pilot project, the generation units, transmission lines, and other structures or fills associated with the pilot project must be removed to the maximum extent practicable unless they are authorized by a separate Department of the Army authorization, such as another NWP, an individual permit, or a regional general permit.

—Completion of the pilot project will be identified as the date of expiration of the Federal Energy Regulatory Commission (FERC) license, or the expiration date of the NWP authorization if no FERC license is required.

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

—Note 1: Utility lines constructed to transfer the energy from the land-based collection facility to a distribution system, regional grid, or other facility are generally considered to be linear projects and each separate and distant crossing of a waterbody is eligible for treatment as a separate single and complete linear project. Those utility lines may be authorized by NWP 12 or another Department of the Army authorization.

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

—Note 3: If the pilot project generation units, including any transmission lines, are placed in navigable waters of the United States (i.e., section 10 waters) within the coastal United States, the Great Lakes, and United States territories, copies of the NWP verification will be sent by the Corps to the National Oceanic and Atmospheric Administration, National Ocean Service, for charting the generation units and associated transmission line(s) to protect navigation.

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

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

Detroit District NWP 52 Regional Conditions: The Detroit District has revoked this Nationwide Permit.

MDEQ Water Quality Certification/CZMA consistency for NWP 52: MDEQ denied certification/consistency.

Tribal Lands Water Quality Certification for NWP 52: EPA granted certification based on all National and Regional conditions.

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

For the purposes of this NWP, the term “low-head dam” is defined as a dam built across a stream to pass flows from upstream over all, or nearly all, of the width of the dam crest on a continual and uncontrolled basis. (During a drought, there might not be water flowing over the dam crest.) In general, a low-head dam does not have a separate spillway or spillway gates but it may have an uncontrolled spillway.

The dam crest is the top of the dam from left abutment to right abutment, and if present, an uncontrolled spillway. A low-head dam provides little storage function.

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

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

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

Note: This NWP does not authorize discharges of dredged or fill material into waters of the United States or structures or work in navigable waters to restore the stream in the vicinity of the low-head dam, including the former impoundment area. Nationwide permit 27

or other Department of the Army permits may authorize such activities. This NWP does not authorize discharges of dredged or fill material into waters of the United States or structures or work in navigable waters to stabilize stream banks. Bank stabilization activities may be authorized by NWP 13 or other Department of the Army permits.

Detroit District NWP 53 Regional Conditions:

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

MDEQ Water Quality Certification/CZMA consistency for NWP 53: MDEQ granted certification based on the following conditions:

- a. This category shall not be used in waters regulated under Part 325, Great Lakes Submerged Lands, of the NREPA.
- b. Small dams authorized under this NWP shall be limited to the following:
 1. The height of the dam is less than 2 feet.
 2. The impoundment from the dam covers less than 2 acres.
 3. The dam does not serve as the first dam upstream from the Great Lakes or their connecting waterways.
 4. The dam is not serving as a sea lamprey barrier.
 5. There are no threatened or endangered species that have been identified in the area that will be affected by the project.
 6. There are no known areas of contaminated sediments in the area that will be affected by the project.

Tribal Lands Water Quality Certification for NWP 53: EPA granted certification based on all National and Regional conditions.

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

- (a) The structures and fill area, including sand fills, sills, breakwaters, or reefs, cannot extend into the waterbody more than 30 feet from the mean low water line in tidal waters or the ordinary high water mark in the Great Lakes, unless the district engineer waives this criterion by making a written determination concluding that the activity will result in no more than minimal adverse environmental effects;
- (b) The activity is no more than 500 feet in length along the bank, unless the district engineer waives this criterion by making a written determination concluding that the activity will result in no more than minimal adverse environmental effects;
- (c) Coir logs, coir mats, stone, native oyster shell, native wood debris, and other structural materials must be adequately anchored, of sufficient weight, or installed in a manner that prevents relocation in most wave action or water flow conditions, except for extremely severe storms;
- (d) For living shorelines consisting of tidal or lacustrine fringe wetlands, native plants appropriate for current site conditions, including salinity, must be used if the site is planted by the permittee;
- (e) Discharges of dredged or fill material into waters of the United States, and oyster or mussel reef structures in navigable waters, must be the minimum necessary for the establishment and maintenance of the living shoreline;
- (f) If sills, breakwaters, or other structures must be constructed to protect fringe wetlands for the living shoreline, those structures must be the minimum size necessary to protect those fringe wetlands;
- (g) Activity must be designed, constructed, and maintained so that it has no more than minimal adverse effects on water movement between the waterbody and the shore and the movement of aquatic organisms between the waterbody and the shore; and
- (h) The living shoreline must be properly maintained, which may require periodic repair of sills, breakwaters, or reefs, or replacing sand fills after severe storms or erosion events. Vegetation may be replanted to maintain the living shoreline. This NWP authorizes those maintenance and repair activities, including any minor deviations necessary to address changing environmental conditions. This NWP does not authorize beach nourishment or land reclamation activities.

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

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

MDEQ Water Quality Certification/CZMA consistency for NWP 54: MDEQ granted certification based on the following conditions:

- a. The category shall not be used in waters regulated under Part 325, Great Lakes Submerged Lands, of the NREPA.
- b. Fill waterward of the existing shoreline is limited to wave breaks or barriers placed not more than 5 feet from the existing shoreline to facilitate vegetative establishment.
- c. Rock and hard armoring shall be placed at or landward of the existing shoreline and are limited to 300 feet of shoreline. Vertical structures and structures perpendicular to the shoreline shall not be authorized.
- d. Vegetation, including plantings and other potentially viable material, such as live stakes, brush bundles, or other gathered woody material, shall be comprised only of plant species that are considered native to Michigan according to the Floristic Quality Assessment for the State of Michigan. Engineered plant material, such as jute and coconut fabric, shall be comprised of inert plant fiber that may be nonnative.
- e. The destruction or alteration of areas of existing native wetland or aquatic vegetation, or the expansion of beach areas shall not be authorized.

Tribal Lands Water Quality Certification for NWP 54: EPA granted certification based on all National and Regional conditions.

C. Detroit Regional Conditions applicable to all NWP in Michigan

1. Based on a joint processing agreement between the Corps of Engineers (Corps) and the Michigan Department of Environmental Quality (MDEQ), submittal of a joint Corps/MDEQ permit application is required for all activities in Michigan. The submittal of an application is not an authorization to perform the work. The application encompasses the same information as a pre-construction notification (PCN), thereby creating the circumstance that any proposed work in Michigan requires a PCN, irrespective of the National level requirements.
2. In NWP verification letters, the Corps will state that: "The permittee shall not initiate activities authorized under the NWP until all required State authorizations have been received."
3. If the Michigan Department of Environmental Quality has issued its authorization, we shall presume that 401 Water Quality Certification and Coastal Zone Management certification has been satisfied.
4. Excavation/dredging from areas of known or suspected contamination requires:
 - a. Placement of the material in a Confined Disposal Facility or MDEQ Class II landfill; or
 - b. Placement of the material shoreward of a bulkhead or in uplands, and covered with at least 2 feet of clay and a layer of sod; or
 - c. Testing to demonstrate that the material is not contaminated. If the material is determined to be contaminated, it must be disposed of in a. or b. above.
5. Dredging will be performed during MDNR preferred dredge periods except when the Corps has specifically determined that the limits are unwarranted (for example, MDEQ has issued a permit and has not restricted the dredging activities to these periods).
6. Critical Resource Waters: NWP General Condition 22 (GC 22) designates Critical Resource Waters and allows for Regional additions to the list. The following Critical Resource Waters are located in the Detroit District and subject to the restrictions and limitations identified in GC 22:
 - a. NOAA-Designated Marine Sanctuaries: The Thunder Bay National Marine Sanctuary and Underwater Preserve is located in Lake Huron off Alpena, Michigan.
 - b. National Estuarine Research Reserves (NERR): There are no NERRs within the Detroit District.
 - c. State Natural Heritage Sites: There are no areas designated as state natural heritage sites through a state legislative or regulatory process.
 - d. Outstanding National Resource Waters or Other Waters Officially Designated: The list of Critical Resources Waters (General Condition 22) in Michigan is amended to include the following:
 - i. All areas designated under Part 351, Wilderness and Natural Areas, of the Natural Resources and Environmental Protection Act, Public Act 451, 1994.
 - ii. All rivers designated under Part 305, Natural Rivers, of the Natural Resources and Environmental Protection Act.
 - iii. All Environmental Areas designated under Part 323, Shorelands Protection And Management, of the Natural Resources and Environmental Protection Act.
7. National Wild and Scenic Rivers (NWSR): NWP General Condition 16 (GC 16) designates Wild and Scenic Rivers, and the restrictions applicable to them. The following are Wild and Scenic Rivers located within the Detroit District and subject to the restrictions and limitations identified in GC 16:

Au Sable River – main stem from the Mio Pond project boundary downstream to the Alcona Pond project boundary.

Bear Creek (Manistee County) – Coates Highway to the confluence with the Manistee River.

Black River (Gogebic County) - from the Ottawa National Forest boundary to Lake Superior.

Carp River – from the west section line of section 30, T43N, R5W to Lake Huron.

Indian River – from Hovey Lake to Indian Lake.

Manistee River – from the MDNR boat ramp below Tippy Dam to the Michigan State Highway 55 bridge.

Ontonagon River – East Branch from its origin to the Ottawa NF boundary; the Middle Branch from its origin to the northern boundary of the Ottawa NF, the Cisco Branch from its origin at Cisco Lake Dam to its confluence with Ten-Mile Creek south of Ewen, the West Branch from its confluence with Cascade Falls to Victoria Reservoir.

Paint River – main stem from the confluence of the North and South Branches to the Ottawa NF boundary, the North Branch from its origin to its confluence with the South Branch, the South Branch from its origin to its confluence with the North Branch.

Pere Marquette River – the segment downstream from the junction of the Middle and Little south Branches to its junction with Pere Marquette Highway (old US Highway 31).

Pine River – the segment from Lincoln Bridge to the east 1/16th line of Section 16, T21N, R13W.

Presque Isle River – the main stem from the confluence of the East and West Branches to the Minnewawa Falls, the East Branch within the Ottawa NF, the South Branch within the Ottawa NF, the West Branch within the Ottawa NF.

Sturgeon River (Baraga and Houghton Counties) – from its entry into the Ottawa NF to the northern boundary of the Ottawa NF.

Sturgeon River (Alger and Delta Counties) – from the north line of Section 26, T43N, R19W to Lake Michigan.

Tahquamenon River East Branch – from its origin to the Hiawatha National Forest boundary.

Whitefish River – The main stem from its confluence with the East and West Branches to Lake Michigan. The East Branch from the crossing of County Road 003 to its confluence with the West Branch. The West Branch from County Road 444 to its confluence with the East Branch.

Yellow Dog River – From its origin at the outlet of Bulldog Lake Dam to the boundary of the Ottawa NF.

Section C

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

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

- a. Critical habitat for the piping plover (*Charadrius melodus*) in Michigan was designated in the May 7, 2001 Federal Register (Vol. 66, No. 88, pages 22938-22969).
- b. Revised Critical habitat for the Hine’s Emerald Dragonfly (*Somatochlora hineana*) in Michigan was finalized April 23, 2010 Federal Register (Vol. 75, No. 78, pages 21394-21453).
- c. Critical habitat for the gray wolf (*Canis lupus*) in Michigan was reinstated in the February 20, 2015 Federal Register (Vol. 80, No. 34, pages 9218-9229).
- d. Critical habitat for the Poweshiek skipperling (*Oarisma poweshiek*) was designated in the October 1, 2015 Federal Register (Vol. 80, No. 190, pages 59248-59384).

Section D

D. MDEQ Regional Conditions applicable to all NWPs in Michigan for Water Quality Certification and Coastal Zone Management consistency determination

1. In sensitive natural resource areas NWPs may only be issued if a state permit is also issued. These areas include: Designated Natural Rivers, Designated High Risk Erosion Areas, Designated Wilderness and Natural Areas, Designated Environmental Areas, areas containing state or federally listed or proposed threatened or endangered species, Designated Trout Streams, Designated Critical Dune Areas, and identified historic or archeological areas. NWPs issued absent state permit in these areas are denied Section 401 water quality certification and would be inconsistent with Michigan’s Coastal Zone Management (CZM) Program.

2. As used in the conditions above, the MDEQ requires that agency coordination include notification of the USACE’s intent to authorize activities under an NWP prior to MDEQ approval.

Section E

E. Nationwide Permit General Conditions

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

E: Nationwide Permit General Conditions

Note: To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as applicable, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer.

Prospective permittees should contact the appropriate Corps district office to determine if regional conditions have been imposed on an NWP. Prospective permittees should also contact the appropriate Corps district office to determine the status of Clean Water Act Section 401 water quality certification and/ or Coastal Zone Management Act consistency for an NWP. Every person who may wish to obtain permit authorization under one or more NWPs, or who is currently relying on an existing or prior permit authorization under one or more NWPs, has been and is on notice that all of the provisions of 33 CFR 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 authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.
2. **Aquatic Life Movements.** No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species. If a bottomless culvert cannot be used, then the crossing should be designed and constructed to minimize adverse effects to aquatic life movements.
3. **Spawning Areas.** Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.
4. **Migratory Bird Breeding Areas.** Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.
5. **Shellfish Beds.** No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWPs 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.
6. **Suitable Material.** No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see section 307 of the Clean Water Act).
7. **Water Supply Intakes.** No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.
8. **Adverse Effects From Impoundments.** If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.
9. **Management of Water Flows.** To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization, storm water management activities, and temporary and permanent road crossings, except as provided below. The activity must be constructed to withstand expected high flows. 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 Fills.** 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. The permittee 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 NWP activity may cause more than minimal adverse effects on tribal rights (including treaty rights), protected tribal resources, or tribal lands.
- 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 the critical habitat of such species. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless ESA section 7 consultation addressing the effects of the proposed activity has been completed. Direct effects are the immediate effects on listed species and critical habitat caused by the NWP activity. Indirect effects are those effects on listed species and critical habitat that are caused by the NWP activity and are later in time, but still are reasonably certain to occur.
- (b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. 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 designated critical habitat might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat, 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 designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that might be affected by the proposed activity or that utilize the designated critical habitat 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. In cases where the non-Federal applicant has identified listed species or critical habitat 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 critical habitat, or until ESA section 7 consultation 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 with the FWS or NMFS the district engineer may add species-specific permit conditions to the NWPs.
- (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 their action complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting appropriate local office of the U.S. Fish and Wildlife Service to determine applicable measures to reduce impacts 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) In cases where the district engineer determines that the activity may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

- (b) Federal permittees should follow their own procedures for complying with the requirements of section 106 of the National Historic Preservation Act. 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, which may include background research, consultation, oral history interviews, sample field investigation, and 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. Where the non-Federal applicant has identified historic properties on which the activity might have the potential to cause effects and 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.
- (d) 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. If you discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by this permit, you must immediately notify the district engineer of what you 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, and 52 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 in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after it is determined 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 $\frac{1}{10}$ -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 $\frac{1}{10}$ -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) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation to ensure that the activity results in no more than 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. Restored riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to restore or maintain/protect a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or maintaining/protecting a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (*e.g.*, riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of minimization or compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.
- (f) Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.
 - (1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in no more than minimal adverse environmental effects. For the NWPs, the preferred mechanism for providing compensatory mitigation is mitigation bank credits or in-lieu fee program credits (see 33 CFR 332.3(b)(2) and (3)). However, if an appropriate number and type of mitigation bank or in-lieu credits are not available at the time the PCN is submitted to the district engineer, the district engineer may approve the use of permittee-responsible mitigation.
 - (2) The amount of compensatory mitigation required by the district engineer must be sufficient to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see 33 CFR 330.1(e)(3)). (See also 33 CFR 332.3(f)).
 - (3) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, aquatic resource restoration should be the first compensatory mitigation option considered for permittee-responsible mitigation.
 - (4) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) through (14) must be approved by the district engineer before the permittee begins work in waters of the United States,

unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)).

- (5) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan only needs to address the baseline conditions at the impact site and the number of credits to be provided.
- (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 $\frac{1}{2}$ -acre, it cannot be used to authorize any NWP activity resulting in the loss of greater than $\frac{1}{2}$ -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 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.** Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA section 401, individual 401 Water Quality Certification must be obtained or waived (see 33 CFR 330.4(c)). The district engineer or State or Tribe 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)). 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 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 prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not 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 $\frac{1}{3}$ -acre.
- 29. Transfer of Nationwide Permit Verifications.** If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature:
- When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.
- _____
- (Transferee) _____ (Date)
- 30. Compliance Certification.** Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and implementation of any required compensatory mitigation. The 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 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 is not authorized by NWP until the appropriate Corps office issues the section 408 permission 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. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. 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) 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. For single and complete linear projects, 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. 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, intermittent, and ephemeral 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 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 designated critical habitat might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat, the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed activity or utilize the designated critical habitat 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 activity that requires 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 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 the Corps office having jurisdiction over that USACE project.
- (c) *Form of Pre-Construction Notification:* The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is an NWP PCN and must include all of the applicable information required in paragraphs (b)(1) through (10) of this general condition. 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 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 activities that require pre-construction notification and will result in the loss of greater than 300 linear feet of stream bed; (iii) 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 (iv) 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 email, 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 email 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 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

Section E

- 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.

Section F

F. Further Information

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