DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, ST. PAUL DISTRICT
ST. PAUL DISTRICT OFFICE
332 MINNESOTA STREET SUITE E1500
ST. PAUL MINNESOTA 55101

October 7, 2026

Regulatory File No. MVP-2026-01041

Eric Knepp
City of Madison Parks Division
1402 Wingra Creek Parkway
Madison, WI 53715
rstenjem@cityofmadison.com

Dear Eric Knepp,

We are responding to your request for authorization to discharge dredge and fill material in waters of the U.S. associated with the Castle Creek and Wetland Enhancement Project to improve floodplain connectivity and stream habitat. Remove a failing concrete liner and excess sediment accumulation and construct a two-stage channel with a floodplain shelf to improve conveyance and flood resilience for the purpose of restoring natural stream hydrology within Castle Creek. The proposed work is located in Section 36, Township 08N, Range 09E, Dane County, Wisconsin (Latitude 43.126340, Longitude -89.367480).

Project Authorization:

The regulated activities associated with the project described above include stream and wetland habitat improvements along 2,054 linear feet of Castle Creek. The project is detailed on the attached drawings and include:

- Permanent discharge of fill material into 0.261 acre of wetland for grading and RipRap placement for the conversion of wetland.
    - Grading 0.047 acre of wetland to convert to upland.
    - Grading and RipRap placement in 0.117 acre of wetland for bank and channel stabilization.
    - Grading 0.097 acre of wetland to convert to Castle Creek channel.
- Permanent discharge of fill material into 1.129 acres of wetland for grading to enhance wetland.
- Grading 0.638 acre of upland to create wetland.
- Permanent discharge of dredged and fill material into 0.266 acre of Castle Creek to convert into wetland.
- Permanent discharge of dredged and fill material into 0.061 acre of wetland to remove concrete lined channel from Castle Creek.

We have determined that these activities required verification and are authorized by a Nationwide Permit (NWP) or a Regional General Permit (RGP), specifically, NWP 27, Aquatic Habitat Restoration, Enhancement, and Establishment Activities. This work is shown on the enclosed figures, labeled MVP-2026-01041.

The clear span bridge, as proposed, does not require authorization because it would not result in a regulated discharge of dredged or fill material or structures or work in navigable waters.

Conditions of Your Permit:

You must ensure the authorized work is performed in accordance with the enclosed applicable terms and conditions.

You are also required to complete and return the enclosed Compliance Certification form within 30 days of completing your project. Please email the completed form to the contact identified in the last paragraph.

A change in location or project plans may require re-evaluation of your project. Proposed changes should be coordinated with this office prior to construction. Failure to comply with all terms and conditions of this permit invalidates this authorization and could result in a violation of Section 301 of the Clean Water Act or Section 10 of the Rivers and Harbors Act. You must also obtain all local, State, Tribal, and other Federal permits that apply to this project.

Water Quality Certification:

You must also comply with the enclosed Water Quality Certification conditions associated with this General Permit.

Permit Expiration:

The 2026 NWP is valid until March 15, 2031 unless modified, suspended, or revoked. If the work has not been completed by that time, you should contact this office to verify that the permit is still valid. Furthermore, if you commence or are under contract to commence this activity before the date of General Permit expiration, modification, or revocation, you have 12 months to complete the activity under the present terms and conditions of the General Permit.

Jurisdictional Determination:

No jurisdictional determination was requested or prepared for this permit decision. While not required for this project, you may contact the Corps representative listed below with any questions concerning jurisdictional determinations.

Contact Information:

If you have any questions, please contact Benjamin LaCount of the Green Bay at 651-290-5315 or by email at benjamin.j.lacount@usace.army.mil.

Sincerely,

Benjamin LaCount
Project Manager

Enclosures
GP Conditions, Project Drawings, WQC, Compliance Certification Form

CC:
Eric Knepp, City of Madison (eknepp@cityofmadison.com)
Sarah Bogen, WDNR (sarah.bogen@wisconsin.gov)

Figure 1: Castle Creek Greenway Project and Surrounding Area

Madison, Wisconsin

Legend

- Castle Creek Greenway Project Area
- Castle Creek Greenway Drainage Area
- City Ponds and Greenways
- Abandoned; Removed Storm Pipe
- Accepted; As-Built; As-Designed Storm Pipe



Castle Creek Channel Wetland and Waterway Impacts

Warner Park

Legend

- Grading Limits
- Existing Storm Pipe
- Project Contours - 1 ft

Pre Project Land

Type

- Castle Creek
- Upland
- Wetland
- CastleCreek-Concrete

Post Project Land

Type

- CastleCreek
- RipRap
- Upland
- Wetland

Pre Project Land Type	Area (ac)		Post Project Land Type	Area (ac)
Castle Creek	0.34		Castle Creek	0.66
Castle Creek-Concrete	0.34		RipRap	0.15
Upland	3.37		Upland	2.53
Wetland	1.39		Wetland	2.10
Total	5.44		Total	5.44

Detailed Wetland Impacts

Pre Project Land Type	Impact	Area (ac)		
Wetland	Perm -Fill Regraded to Upland	0.047		
	Perm -Regrade and Fill RipRap	0.117		Wetland Converted
	Perm - Regraded to Castle Creek	0.097	0.261	ac
	Perm - Regraded to Wetland	0.826		
	Temp Construction Impacts/Traffic	0.303		Wetland Retained
	No Impacts from Project	0.003	1.132	ac
Upland	New Wetland-Graded	0.638		
Castle Creek	New Wetland-Graded	0.266		Wetland Created
Castle Creek-Concrete	New Wetland-Graded	0.061	0.965	ac

Preproject Wetland areas

Postproject Wetland areas

TRAILSWAY

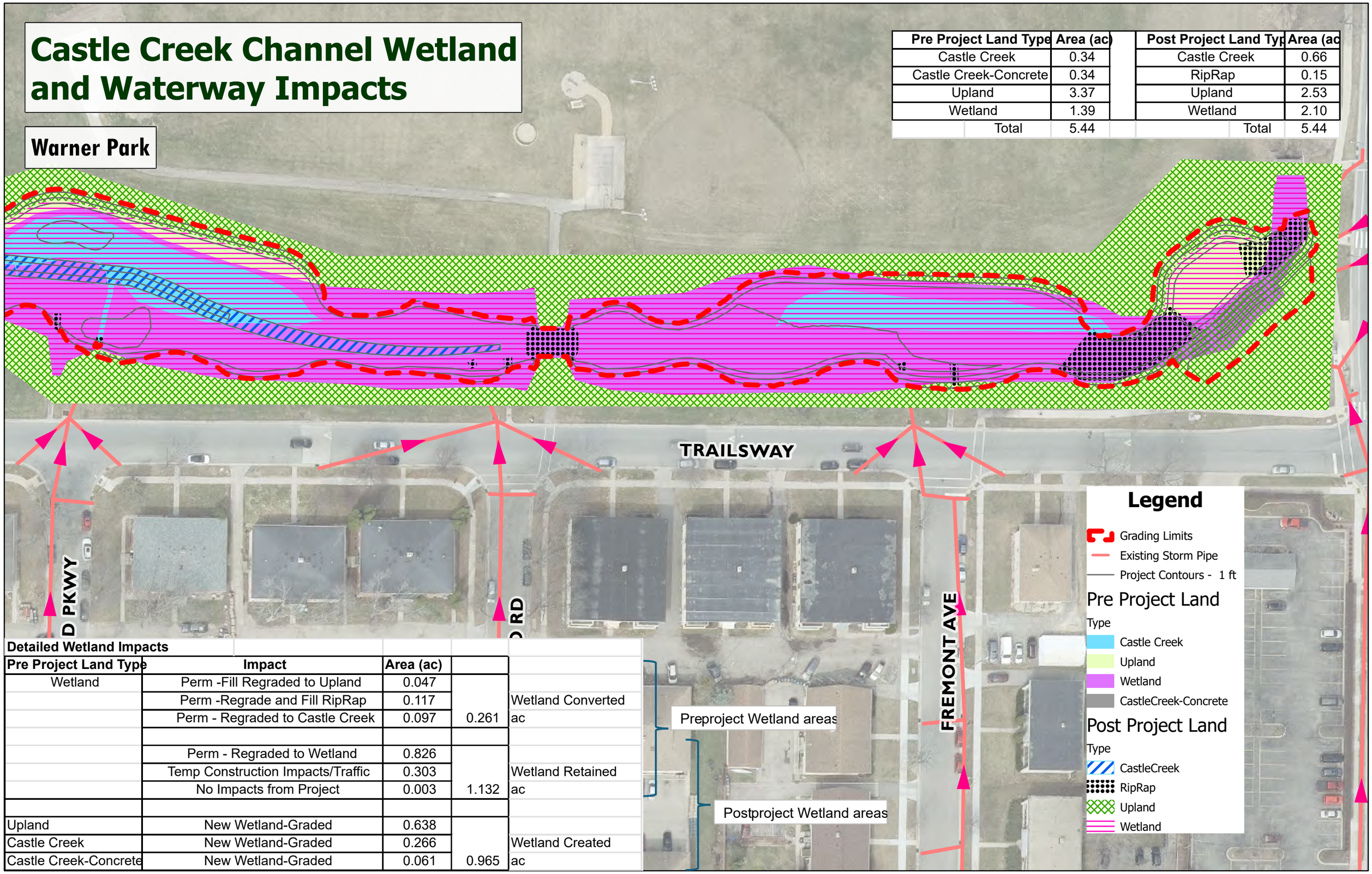
MONTEREY DR

Castle Creek Channel Wetland and Waterway Impacts

Warner Park

Pre Project Land Type	Area (ac)
Castle Creek	0.34
Castle Creek-Concrete	0.34
Upland	3.37
Wetland	1.39
Total	5.44

Post Project Land Type	Area (ac)
Castle Creek	0.66
RipRap	0.15
Upland	2.53
Wetland	2.10
Total	5.44



Detailed Wetland Impacts

Pre Project Land Type	Impact	Area (ac)		
Wetland	Perm -Fill Regraded to Upland	0.047		
	Perm -Regrade and Fill RipRap	0.117		Wetland Converted
	Perm - Regraded to Castle Creek	0.097	0.261	ac
	Perm - Regraded to Wetland	0.826		
	Temp Construction Impacts/Traffic	0.303		Wetland Retained
	No Impacts from Project	0.003	1.132	ac
Upland	New Wetland-Graded	0.638		
Castle Creek	New Wetland-Graded	0.266		Wetland Created
Castle Creek-Concrete	New Wetland-Graded	0.061	0.965	ac

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

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

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

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

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

Reversion. For aquatic ecosystem restoration, enhancement, and establishment activities conducted: (1) In accordance with the terms and conditions of a binding stream or wetland enhancement or restoration agreement, or a wetland establishment agreement, between the landowner and the U.S. Fish and Wildlife Service (FWS), the Natural Resources Conservation Service (NRCS), the Farm Service Agency (FSA), the National Marine Fisheries Service (NMFS), the National Ocean Service (NOS), U.S. Forest Service (USFS), Bureau of Land Management (BLM), or their designated state cooperating agencies; (2) as voluntary wetland restoration, enhancement, and establishment actions documented by the NRCS or USDA Technical Service Provider pursuant to NRCS Field Office Technical Guide standards; or

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

Reporting. The permittee must submit a report containing information on the proposed aquatic ecosystem restoration, enhancement, and establishment activity to the district

engineer at least 30 days prior to commencing activities in waters of the United States authorized by this NWP. The report must include the following information:

(1) Name, address, and telephone numbers of the prospective permittee;

(2) Location of the proposed activity;

(3) Information on baseline ecological conditions at the project site, including a general description and map of aquatic and terrestrial habitat types on that site. The map of existing aquatic and terrestrial habitat types and their approximate boundaries on the project site should be based on recent aerial imagery or similar information, and verified with photo points or other field-based data points for each mapped habitat type;

(4) A sketch of the proposed project elements of the NWP 27 activity drawn over a copy of the map of existing aquatic and terrestrial habitat types on the project site;

(5) The objectives of the proposed aquatic ecosystem restoration, enhancement, or establishment activity and a description of the techniques or mechanisms that are proposed to be used to increase aquatic ecosystem functions and services on the project site to meet the objectives;

(6) And if applicable, a copy of: (a) the binding stream enhancement or restoration agreement or wetland enhancement, restoration, or establishment agreement with the FWS, NRCS, FSA, NMFS, NOS, USFS, BLM, or their designated state cooperating agencies; (b) the NRCS or USDA Technical Service Provider documentation for the voluntary stream enhancement or restoration action or wetland restoration, enhancement, or establishment action; or (c) the SMCRA permit issued by OSMRE or the applicable state agency.

(Authorities: Sections 10 and 404)

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

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

2026 Nationwide Permits (NWP)

St. Paul District Regional Conditions for Minnesota and Wisconsin

To qualify for NWP authorization, the prospective permittee must comply with the following general and regional conditions, as applicable, in addition to any case specific conditions imposed by the division engineer. The St. Paul District Regulatory website will provide current information regarding NWPs and the necessary 401 Water Quality Certifications at https://www.mvp.usace.army.mil/missions/regulatory/nwp/. Every person who wishes to obtain permit authorization under one or more NWPs, or who is currently relying on an existing or prior permit authorization under one or more NWPs, has been and is on notice that all of the provisions of 33 CFR
330.1 through 330.6 apply to every NWP authorization. Note especially 33 CFR 330.5 relating to the modification, suspension, or revocation of any NWP authorization.

The following NWPs have been revoked and are not available for use in St. Paul District: NWPs 8, 12, 14, 15, 21, 23, 24, 34, 48, 49, 50, 55, 57, and 58.

Information on other permits available for use in St. Paul District can be found at: https://www.mvp.usace.army.mil/Missions/Regulatory/Permitting-Process-Procedures/.

Any regulated activity eligible for authorization under a St. Paul District Special Area Management Plan (SAMP) general permit is not eligible for authorization by NWPs.

The following regional conditions are applicable to all NWPs:

A. **Linear Projects:** Regulated activities associated with linear utility or linear transportation projects are not eligible for authorization by NWPs. These projects will be reviewed for authorization under the St. Paul District's regional general permits or an individual permit.

B. **Temporary Impacts:** All regulated temporary fill in waters of the U.S. must comply with the following criteria:

   (1) If the temporary fill in waters of the U.S., including wetlands, that occur as a result of the regulated activity would remain in place for longer than 90 days between May 15 and November 15, a PCN is required.

   (2) Any PCN with temporary fill must specify how long and the dates the temporary fill will remain and include a restoration plan showing how all temporary fills and structures will be removed and the area restored to preconstruction contours and elevations. Native, non-invasive vegetation must be used unless otherwise authorized by a St. Paul District NWP verification.

C. **PCNs for Apostle Islands National Lakeshore and Madeline Island**: A project proponent must notify the St. Paul District by submitting a PCN if the regulated activity would result in excavation, fill, or the placement of a new structure within the boundaries of Apostle Islands National Lakeshore and Madeline Island in Wisconsin. Regulated activities authorized under NWP 3 (Maintenance) are not subject to this condition unless they include bank shaping or excavation.

D. **Calcareous fens**[1]**:**

   WISCONSIN: No work in a calcareous fen is authorized by a NWP unless the Wisconsin Department of Natural Resources (WI DNR) has approved a permit for the proposed regulated activity. Project proponents must provide evidence of an approved permit to the St. Paul District.

MINNESOTA: No work in a calcareous fen is authorized by a NWP unless the Minnesota Department of Natural Resources (MN DNR) has approved a calcareous fen management plan specific to a project that otherwise qualifies for authorization by a NWP. Project proponents must provide evidence of an approved fen management plan to the St. Paul District.

E. **Special Aquatic Resources:** A project proponent must notify the St. Paul District by submitting a PCN if a regulated activity would occur in any of the following aquatic resources:

(1) Designated wild rice waters[2,3]

(2) Bog and Fen wetlands[4];

(3) Coastal plain marshes, interdunal wetlands, Great Lakes ridge and swale complexes (WI only)[2];

(4) Aquatic resources within Lake Superior National Estuarine Research Reserve[5];

(5) Ramsar wetland sites[6]

The following regional conditions are applicable to a specific NWP:

F. **NWP 52. Water-Based Renewable Energy Generation Pilot Projects:** NWP 52 does not authorize structures or work in Lake Michigan and Lake Superior within the geographic regulatory boundaries of the St. Paul District.

G. **NWP 3, 33, and 41. Aquatic Resource Impacts:** A project proponent must notify the St. Paul District by submitting a PCN if a regulated activity, including but not limited to, filling, flooding, excavating, or drainage of waters of the U.S., involves:

(1) A permanent loss of greater than 1/10 acre of waters of the U.S. for NWP 3 and 41; or
(2) over 1/2 acre of temporary fill within waters of the U.S. for NWP 3, 33, and 41.

H. **NWP 27. Aquatic Ecosystem Restoration, Enhancement, and Establishment Activities:** A project proponent must notify the St. Paul District by submitting a PCN if a regulated activity would result in the conversion of, or loss of, waters of the United States. For example, but not limited to, conversion of forested wetland to shallow marsh, perennial stream to open water, etc.

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[1] A list of known Minnesota calcareous fens can be found at: http://files.dnr.state.mn.us/eco/wetlands/calcareous_fen_list.pdf.

[2] Information about Wisconsin plant community types may be obtained from: https://apps.dnr.wi.gov/biodiversity/Home/index/communities

[3] Information regarding wild rice waters and their extent may be obtained from: https://www.dnr.state.mn.us/wildlife/shallowlakes/wildrice.html in Minnesota, https://dnr.wisconsin.gov/topic/wildlifehabitat/rice.html in Wisconsin, and an interactive map is provided at: http://maps.glifwc.org/ (under Treaty Resources – Gathering).

[4] Additional information on bog and fen communities can be found at: http://www.mvp.usace.army.mil/missions/regulatory.aspx and in Minnesota at http://www.dnr.state.mn.us/npc/classification.html.

[5] More information regarding the Lake Superior National Estuarine Research Reserve is available at: https://coast.noaa.gov/nerrs/reserves/lake-superior.html.

[6] The complete up to date Ramsar list is available at: https://rsis.ramsar.org.

2026 Nationwide Permits General Conditions

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

1. Navigation. (a) No activity may cause more than a minimal adverse effect on navigation.

(b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.

(c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his or her authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

2. Aquatic Life Movements. No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the

movement of those aquatic species. If a bottomless culvert cannot be used, then the crossing should be designed and constructed to minimize adverse effects to aquatic life movements.

3. Spawning Areas. Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

4. Migratory Bird Breeding Areas. Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

5. Shellfish Beds. No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWPs 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.

6. Suitable Material. No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see section 307 of the Clean Water Act).

7. Water Supply Intakes. No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.

8. Adverse Effects From Impoundments. If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.

9. Management of Water Flows. To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization, storm water management activities, and temporary and permanent road crossings, except as provided below. The activity must be constructed to withstand expected high flows, including tidal flows. The activity must not restrict or impede the passage of normal or high flows, including tidal flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

10. Fills Within 100-Year Floodplains. The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

11. Equipment. Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance. If mats are used to minimize soil disturbance, the affected areas must be returned to pre-construction elevations, and revegetated as appropriate. In circumstances where the use of mats has caused significant soil compaction, efforts using techniques (e.g., soil reaeration techniques) to break up the

compaction should be employed to return the soil to a pre-construction state prior to returning to pre-construction elevations.

12. Soil Erosion and Sediment Controls. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow, or during low tides.

13. Removal of Temporary Structures and Fills. Temporary structures must be removed, to the maximum extent practicable, after their use has been discontinued. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

14. Proper Maintenance. Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.

15. Single and Complete Project. The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

16. Wild and Scenic Rivers. (a) No NWP activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status.

(b) If a proposed NWP activity will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, the permittee must submit a pre-construction notification (see general condition 32). The district engineer will coordinate the PCN with the Federal agency with direct management responsibility for that river. Permittees shall not begin the NWP activity until notified by the district engineer that the Federal agency with direct management responsibility for that river has determined in writing that the proposed NWP activity will not adversely affect the Wild and Scenic River designation or study status.

(c) Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service). Information on these rivers is also available at: http://www.rivers.gov/.

17. Tribal Rights. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

18. Endangered Species. (a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify designated critical habitat or critical habitat proposed for such designation. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless ESA section 7 consultation addressing the consequences of the proposed activity on listed species or critical habitat has been completed. See 50 CFR 402.02 for the definition of "effects of the action" for the purposes of ESA section 7 consultation.

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA (see 33 CFR 330.4(f)(1)). If pre-construction notification is required for the proposed activity, the federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation has not been submitted, additional ESA section 7 consultation may be necessary for the activity and the respective federal agency would be responsible for fulfilling its obligation under section 7 of the ESA.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat or critical habitat proposed for such designation, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect federally-listed endangered or threatened species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation), the pre-construction notification must include the name(s) of the endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or that utilize the designated critical habitat (or critical habitat proposed for such designation) that might be affected by the proposed activity. The district engineer will determine whether the proposed activity "may affect" or will have "no effect" to listed species and designated critical habitat and will notify the non-federal applicant of the Corps' determination within 45 days of receipt of a complete pre-construction notification. For activities where the non-federal applicant has identified listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) that might be affected or is in the vicinity of the activity, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification that the proposed activity will have "no effect" on listed species (or species proposed for listing or designated critical habitat (or critical habitat proposed for such designation), or until ESA section 7 consultation or conference has been completed. If the non-federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(d) As a result of formal or informal consultation or conference with the FWS or NMFS the district engineer may add species-specific permit conditions to the 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 permittee should provide a copy of that ESA section 10(a)(1)(B) permit with the PCN required by paragraph (c) of this general condition. The district engineer will coordinate with the agency that issued the ESA section 10(a)(1)(B) permit to determine whether the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation conducted for the ESA section 10(a)(1)(B) permit. If that coordination results in concurrence from the agency that the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation for the ESA section 10(a)(1)(B) permit, the district engineer does not need to conduct a separate ESA section 7 consultation for the proposed NWP activity. The district engineer will notify the non-federal applicant within 45 days of receipt of a complete pre-construction notification whether the ESA section 10(a)(1)(B) permit covers the proposed NWP activity or whether additional ESA section 7 consultation is required.

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

19. Migratory Birds and Bald and Golden Eagles. The permittee is responsible for ensuring that an action authorized by an NWP complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting the appropriate local office of the U.S. Fish and Wildlife Service to determine what measures, if any, are necessary or appropriate to reduce adverse effects to migratory birds or eagles, including whether "incidental take" permits are necessary and available under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for a particular activity.

20. Historic Properties. (a) No activity is authorized under any NWP which may have the potential to cause effects on properties listed, or eligible for listing, in the National Register of Historic Places until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)(1)). If pre-construction notification is required for the proposed NWP activity, the federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation is not submitted, then additional consultation under section 106 may be necessary. The respective federal agency is responsible for fulfilling its obligation to comply with section 106.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the NWP activity might have the potential to cause effects on any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties might have the potential to be affected by the proposed NWP activity or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of, or potential for, the presence of historic properties can be sought from the State Historic Preservation Officer, Tribal Historic Preservation Officer, or designated tribal representative, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts commensurate with potential impacts, which may include background research, consultation, oral history interviews, sample field investigation, and/or field survey. Based on the information submitted in the PCN and these identification efforts, the district engineer shall determine whether the proposed NWP activity has the potential to cause effects on historic properties. Section 106 consultation is not required when the district engineer determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). Section 106 consultation is required when the district engineer determines that the activity has the potential to cause effects on historic properties. The district engineer will conduct consultation with consulting parties identified under 36 CFR 800.2(c) when he or she makes any of the following effect determinations for the purposes of section 106 of the NHPA: no historic properties affected, no adverse effect, or adverse effect.

(d) Where the non-federal applicant has identified historic properties on which the proposed NWP activity might have the potential to cause effects and has so notified the Corps, the non-federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects on historic properties or that NHPA section 106 consultation has been completed. For non-federal permittees, the district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA section 106 consultation is required. If NHPA section 106 consultation is required, the district engineer will notify the non-federal applicant that he or she cannot begin the activity until section 106 consultation is completed. If the non-federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(e) Prospective permittees should be aware that section 110k of the NHPA (54 U.S.C. 306113) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

21. Discovery of Previously Unknown Remains and Artifacts. Permittees that discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activities authorized by NWPs, must immediately notify the district engineer of what they have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the federal, tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

22. Designated Critical Resource Waters. Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment.

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, 52, 57 and 58 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, 38, and 54, notification is required in accordance with general condition 32, for any activity proposed by permittees in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after she or he determines that the impacts to the critical resource waters will be no more than minimal.

23. Mitigation. The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal:

(a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects.

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

(e) Compensatory mitigation plans for NWP activities in or near streams or other open waters will normally include a requirement for the restoration or enhancement, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, the restoration or maintenance/protection of riparian areas may be the only compensatory mitigation required. If restoring riparian areas involves planting vegetation, only native species should be planted. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to restore or maintain/protect a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or maintaining/protecting a riparian area

along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of minimization or compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

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

(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in no more than minimal adverse environmental effects. For the NWPs, the preferred mechanism for providing compensatory mitigation is mitigation bank credits or in-lieu fee program credits (see 33 CFR 332.3(b)(2) and (3)). However, if an appropriate number and type of mitigation bank or in-lieu credits are not available at the time the PCN is submitted to the district engineer, the district engineer may approve the use of permittee-responsible mitigation.

(2) The amount of compensatory mitigation required by the district engineer must be sufficient to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see 33 CFR 330.1(e)(3)). (See also 33 CFR 332.3(f).)

(3) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, aquatic resource restoration should be the first compensatory mitigation option considered for permittee-responsible mitigation.

(4) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) through (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)). If permittee-responsible mitigation is the proposed option, and the proposed compensatory mitigation site is located on land in which another federal agency holds an easement, the district engineer will coordinate with that federal agency to determine if proposed compensatory mitigation project is compatible with the terms of the easement.

(5) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan needs to address only the baseline conditions at the impact site and the number of credits to be provided (see 33 CFR 332.4(c)(1)(ii)).

(6) Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan (see 33 CFR 332.4(c)(1)(ii)).

(g) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any NWP activity resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that an NWP activity already meeting the established acreage limits also satisfies the no more than minimal impact requirement for the NWPs.

(h) Permittees may propose the use of mitigation banks, in-lieu fee programs, or permittee-responsible mitigation. When developing a compensatory mitigation proposal, the permittee must consider appropriate and practicable options consistent with the framework at 33 CFR 332.3(b). For activities resulting in the loss of marine or estuarine resources, permittee-responsible mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.

(i) Where certain functions and services of waters of the United States are permanently adversely affected by a regulated activity, such as discharges of dredged or fill material into waters of the United States that will convert a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse environmental effects of the activity to the no more than minimal level.

24. Safety of Impoundment Structures. To ensure that all impoundment structures are safely designed, the district engineer may require non-federal applicants to demonstrate that the structures comply with established state or federal, dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

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

which may result in any discharge from a point source into waters of the United States in order for the activity to be authorized by an NWP.

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

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

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

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

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

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

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

specified acreage limit), the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

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

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

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

_____

(Transferee)

_____

(Date)

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

(a) A statement that the authorized activity was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions;

(b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(l)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and

(c) The signature of the permittee certifying the completion of the activity and mitigation.

The completed certification document must be submitted to the district engineer within 30 days of completion of the authorized activity or the implementation of any required compensatory mitigation, whichever occurs later.

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

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

(1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or

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

been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

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

(1) Name, address and telephone numbers of the prospective permittee;

(2) Location of the proposed activity;

(3) Identify the specific NWP or NWP(s) the prospective permittee wants to use to authorize the proposed activity;

(4) (i) A description of the proposed activity; the activity's purpose; direct and indirect adverse environmental effects the activity would cause, including the anticipated amount of loss of wetlands, other special aquatic sites, and other waters expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; a description of any proposed mitigation measures intended to reduce the adverse environmental effects caused by the proposed activity; and any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings for linear projects that require Department of the Army authorization but do not require pre-construction notification. The description of the proposed activity and any proposed mitigation measures should be sufficiently detailed to allow the district engineer to determine that the adverse environmental effects of the activity will be no more than minimal and to determine the need for compensatory mitigation or other mitigation measures.

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

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

(5) The PCN must include a delineation of waters, wetlands, and other special aquatic sites on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does

the delineation, especially if the project site is large or contains many wetlands, other special aquatic sites, and other waters. Furthermore, the 45-day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate. For NWP 27 activities that require PCNs because of other general conditions or regional conditions imposed by division engineers, see Note 2 of that NWP;

(6) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands or 3/100-acre of stream bed and a PCN is required, the prospective permittee must submit a statement describing how the compensatory mitigation requirement will be satisfied, or explaining why the adverse environmental effects are no more than minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(7) For non-federal permittees, if any listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat (or critical habitat proposed for such designation), the PCN must include the name(s) of those endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or utilize the designated critical habitat (or critical habitat proposed for such designation) that might be affected by the proposed activity. For NWP activities that require pre-construction notification, federal permittees must provide documentation demonstrating compliance with the Endangered Species Act;

(8) For non-federal permittees, if the NWP activity might have the potential to cause effects to a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, the PCN must state which historic property might have the potential to be affected by the proposed activity or include a vicinity map indicating the location of the historic property. For NWP activities that require pre-construction notification, federal permittees must provide documentation demonstrating compliance with section 106 of the National Historic Preservation Act;

(9) For an activity that will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, the PCN must identify the Wild and Scenic River or the “study river” (see general condition 16); and

(10) For an NWP activity that requires permission from, or review by, the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers federally authorized civil works project, the pre-construction notification must include a statement confirming that the project proponent has submitted a written request for section 408 permission from, or review by, the Corps office having jurisdiction over that USACE project.

(c) *Form of Pre-Construction Notification*: The nationwide permit pre-construction notification form (Form ENG 6082) should be used for NWP PCNs. A letter containing the required information may also be used. Applicants may provide electronic files of PCNs and

supporting materials if the district engineer has established tools and procedures for electronic submittals.

(d) *Agency Coordination*: (1) The district engineer will consider any comments from federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the activity's adverse environmental effects so that they are no more than minimal.

(2) Agency coordination is required for: (i) all NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States; (ii) NWP 13 activities in excess of 500 linear feet, fills greater than one cubic yard per running foot, or involve discharges of dredged or fill material into special aquatic sites; and (iii) NWP 54 activities in excess of 500 linear feet, or that extend into the waterbody more than 30 feet from the mean low water line in tidal waters or the ordinary high water mark in the Great Lakes.

(3) When agency coordination is required, the district engineer will immediately provide (e.g., via e-mail, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate federal or state offices (FWS, state natural resource or water quality agency, EPA, and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to notify the district engineer via telephone, facsimile transmission, or e-mail that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse environmental effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure that the net adverse environmental effects of the proposed activity are no more than minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

(4) In cases where the prospective permittee is not a federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

(5) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of pre-construction notifications to expedite agency coordination.

B. District Engineer's Decision

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

2. When making minimal adverse environmental effects determinations the district engineer will consider the direct and indirect effects caused by the NWP activity. He or she will also consider the cumulative adverse environmental effects caused by activities authorized by an NWP and whether those cumulative adverse environmental effects are no more than minimal. The district engineer will also consider site specific factors, such as the environmental setting in the vicinity of the NWP activity, the type of resource that will be affected by the NWP activity, the functions provided by the aquatic resources that will be affected by the NWP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the NWP activity (e.g., partial or complete loss), the duration of the adverse effects (temporary or permanent), the importance of the aquatic resource functions to the region (e.g., watershed or ecoregion), and mitigation required by the district engineer. If an appropriate functional or condition assessment method is available and practicable to use, that assessment method may be used by the district engineer to assist in the minimal adverse environmental effects determination. The district engineer may add activity-specific conditions to the NWP authorization to address site-specific environmental concerns.

3. If the proposed NWP activity requires a PCN and will result in a loss of greater than 1/10-acre of wetlands or 3/100-acre of stream bed, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for NWP activities with smaller impacts, or for impacts to other types of waters. However, compensatory mitigation shall not be required for activities authorized by NWP 27 because those activities must result in net increases in aquatic resource functions and services (see the text of NWP 27). The district engineer will consider any proposed compensatory mitigation or other mitigation measures the applicant has included in the proposal when determining whether the net adverse environmental effects of the proposed NWP activity are no more than minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the

district engineer determines that the proposed activity complies with the terms and conditions of the NWP and that the adverse environmental effects are no more than minimal, after considering mitigation, the district engineer will notify the permittee and include any activity-specific conditions in the NWP verification the district engineer deems necessary. Conditions for compensatory mitigation requirements must comply with the appropriate provisions at 33 CFR 332.3(k). The district engineer must approve the final mitigation plan before the permittee commences work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the proposed compensatory mitigation plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure that the NWP activity results in no more than minimal adverse environmental effects. If the net adverse environmental effects of the NWP activity (after consideration of the mitigation proposal) are determined by the district engineer to be no more than minimal, the district engineer will provide a timely written response to the applicant. The response will state that the NWP activity can proceed under the terms and conditions of the NWP, including any activity-specific conditions added to the NWP authorization by the district engineer.

4. If the district engineer determines that the adverse environmental effects of the proposed NWP activity are more than minimal, then the district engineer will notify the applicant either: (a) that the activity does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (b) that the activity is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal; or (c) that the activity is authorized under the NWP with specific modifications or conditions. Where the district engineer determines that mitigation is required to ensure no more than minimal adverse environmental effects, the activity will be authorized within the 45-day PCN review period (unless additional time is required to comply with general conditions 16, 18, 20, and/or 31), with activity-specific conditions that state the mitigation requirements. The authorization will include the necessary conceptual or detailed mitigation plan or a requirement that the applicant submit a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal. When compensatory mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan or has determined that prior approval of a final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation.

C. 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).

D. Nationwide Permit Definitions

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

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

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

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

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

Ecological reference: A model used to plan and design an aquatic ecosystem restoration, enhancement, or establishment activity under NWP 27. An ecological reference may be based on: (1) the structure, functions, and dynamics of an aquatic ecosystem type or a riparian area type that currently exists in the region; (2) the structure, functions, and dynamics of an aquatic ecosystem type or riparian area type that existed in the region in the past; and/or (3) indigenous and local ecological knowledge that apply to the aquatic ecosystem type or riparian area type (i.e., a cultural ecosystem). Cultural ecosystems are ecosystems that have developed under the joint influence of natural processes and human management activities (e.g., fire stewardship). An ecological reference takes into account the range of variation of the aquatic habitat type or riparian area type in the region.

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

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

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

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

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

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

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

Nature-based solutions: Actions to protect, sustainably manage, and restore natural or modified ecosystems, that address societal challenges effectively and adaptively, simultaneously providing human well-being and biodiversity benefits.

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

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

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

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

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

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

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

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

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

establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area and functions.

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

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

Riffle and pool complex: Riffle and pool complexes are special aquatic sites under the 404(b)(1) Guidelines. Riffle and pool complexes sometimes characterize steep gradient sections of streams. Such stream sections are recognizable by their hydraulic characteristics. The rapid movement of water over a course substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas associated with riffles. A slower stream velocity, a streaming flow, a smooth surface, and a finer substrate characterize pools.

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

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

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

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

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

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

Stream bed: The substrate of the stream channel between the ordinary high water marks. The substrate may be bedrock or inorganic particles that range in size from clay to boulders. The substrate may also be comprised, in part, of organic matter, such as large or small wood fragments, leaves, algae, and other organic materials. Wetlands contiguous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.

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

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

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

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

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

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

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

BEFORE THE WISCONSIN DEPARTMENT OF NATURAL RESOURCES

Application of the United States Department of the Army)
Corps of Engineers, for Water Quality Certification for the)
Final Regulations Pertaining to the Issuance, Reissuance,)
And Modification of Nationwide Permits)

On June 18, 2025, the United States Department of the Army, Corps of Engineers (Corps), published its notice regarding the reissuance of Nationwide Permits (NWPs) in the Federal Register (agency docket COE-2025-0002). The publication includes reissuance of fifty-six (56) NWPs and revocation of fourteen (14) existing NWPs. Publication of these NWPs serves as the Corps' request to the State for *water quality certification* (WQC or Certification) under Section 401 of the Federal *Clean Water Act* (CWA).

The Wisconsin Department of Natural Resources (WDNR) has examined the regulations promulgated by the Corps and United States Environmental Protection Agency pursuant to Section 401, CWA, and Chapters NR 102, 103, and 299, Wisconsin Administrative Code (Wis. Adm. Code).

The WDNR has determined the following conditions for the NWPs are required to ensure compliance with state water quality standards enumerated in s. 299.04, Wis. Adm. Code. Water quality in Wisconsin will be adequately protected so long as these conditions are met, and the final NWPs are consistent with the public noticed drafts. This certification shall expire when the nationwide permits expire.

Section 401 Certification does not release the permittee from obtaining all other necessary federal, state, and local permits, licenses, certificates, approvals, registrations, charters, or similar forms of permission required by law. It does not limit any other state permit, license, certificate, approval, registration, charter, or similar form of permission required by law that imposes more restrictive requirements. It does not eliminate, waive, or vary the permittee's obligation to comply with all other laws and state statutes and rules throughout the construction, installation, and operation of the project. This Certification does not release the permittee from any liability, penalty, or duty imposed by Wisconsin or federal statutes, regulations, rules, or local ordinances, and it does not convey a property right or an exclusive privilege.

This WQC does not apply to other permit decisions, permit types, or licenses that are not expressly listed in the agency docket number COE–2025–0002. Pursuant to 40 CFR 121.5, a WQC request must be submitted to the state of Wisconsin for all individual license or permit requests. This includes projects undertaken by federal agencies including Corps projects.

This Certification does not replace or satisfy any environmental review requirements, including those under the *Wisconsin Environmental Policy Act* (WEPA) or the *National Environmental Policy Act* (NEPA).

STATE CONDITIONS AND LIMITATIONS OF CERTIFICATION

Section A. Nationwide Permits (NWPs) granted Water Quality Certification (WQC):

The below NWPs are granted WQC under CWA Section 401:

- NWP A – Activities to Improve Passage of Fish and Other Aquatic Organisms
- NWP 2 – Structures in Artificial Canals
- NWP 3 – Maintenance
- NWP 4 – Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
- NWP 5 – Scientific Measurement Devices
- NWP 6 – Survey Activities
- NWP 7 – Outfall Structures and Associated Intake Structures
- NWP 9 – Structures in Fleeting and Anchorage Areas
- NWP 10 – Mooring Buoys
- NWP 11 – Temporary Recreational Structures
- NWP 13 – Bank Stabilization
- NWP 16 – Return Water from Upland Contained Disposal Areas
- NWP 18 – Minor Discharges
- NWP 19 – Minor Dredging
- NWP 20 –Response Operations for Oil or Hazardous Substances
- NWP 22 –Removal of Vessels
- NWP 25 – Structural Discharges
- NWP 27 – Aquatic Ecosystem Restoration, Enhancement, and Establishment Activities
- NWP 28 – Modifications of Existing Marinas
- NWP 29 – Residential Developments
- NWP 30 – Moist Soil Management for Wildlife
- NWP 31 – Maintenance of Existing Road Control Facilities
- NWP 32 – Completed Enforcement Actions
- NWP 33 – Temporary Construction, Access, and Dewatering
- NWP 35 – Maintenance dredging of existing basins
- NWP 36 – Boat Ramps
- NWP 37 – Emergency Watershed Protection and Rehabilitation
- NWP 38 – Cleanup of Hazardous and Toxic Waste
- NWP 39 – Commercial and Institutional Development
- NWP 40 – Agricultural Activities
- NWP 41 – Reshaping Existing Drainage and Irrigation Ditches
- NWP 42 – Recreational Facilities

- NWP 45 – Repair of Uplands Damaged by Discrete Events
- NWP 46 – Discharges in Ditches
- NWP 51 – Land-based Renewable Energy Generation Facilities
- NWP 53 –Removal of Low-Head Dams
- NWP 54 – Living Shorelines
- NWP 59 – Water Reclamation and Reuse Facilities

Section A.1. General Water Quality Conditions applicable to all NWPs granted WQC:

Projects and activities that require a *water quality certificatio*n must meet all of the following conditions:

1. The permittee shall allow the WDNR reasonable entry and access to the discharge site to inspect the discharge for compliance with the WQC and applicable laws including the following:
    a. Justification: On-site inspection is a critical element to gather necessary information for water quality certification decisions and quality control and assurance of data provided by the permittee. This authorization is required pursuant to s. NR 299.05(3)(d)2.c, Wis. Adm. Code.

2. The permittee shall notify the WDNR:
    - At least 5 business days prior to the beginning of the discharge, the permittee shall notify the department of its intent to commence the discharge, and
    - Within 5 business days after the completion of the discharge, the permittee shall notify the department of the completion of the discharge.

    a. Justification: Notification provides an opportunity to schedule and conduct on-site inspections as a critical element to gather necessary information for water quality certification decisions and quality control and assurance of data provided by the permittee. This authorization is required pursuant to s. NR 299.05(3)(d)2.a-b, Wis. Adm. Code.

3. Temporary stockpiling of dredged or fill material in navigable waters of the state, including wetlands, must be removed within 60 days of initial placement of material in a waterway or wetland. The project or activity shall not result in the permanent stockpiling of dredged or fill material in navigable waters of the state, including wetlands.
    a. Justification: Physical alterations can degrade surface waters through the filling, dredging or stockpiling of materials. Pursuant to ss. NR 102.05, Wis. Adm. Code, no waters of the state, including wetlands, shall be lowered in quality unless it has been affirmatively demonstrated to the department that such a change is justifiable. In addition, pursuant to s. NR 103.03, Wis. Adm. Code, wetlands and

other waters of the state influenced by wetlands shall be protected. To satisfy these antidegradation and water quality protection requirements, individual certification is required to properly demonstrate that temporary stockpiling of dredged or fill material is warranted.

4. The project or activity may not significantly adversely impact a state waterbody considered an *Area of Special Natural Resource Interest* (ASNRI) as defined under s. 30.01(1am), Wis. Stats. Significant adverse impacts may result in direct, indirect, secondary, or cumulative change to wetlands or water quality. Significant impacts may also injure public rights and interests, cause water pollution, or result in material injury.
    a. Justification: Pursuant to s. NR 207, Wis. Adm. Code, Wisconsin's antidegradation standards prohibit degradation of outstanding resource waters and limits degradations to exceptional resource waters. Additionally, formal consultation with the Voigt Task Force is needed on projects or activities which could have impacts on wild rice or wild rice habitat. For these reasons, all projects or activities that have the potential to degrade ASNRI waters designated under s. 30.01(1am), Wis. Stats., are denied WQC without prejudice. ASNRI waters are available on the DNR's surface water data viewer at https://dnr.wisconsin.gov/topic/SurfaceWater/swdv.

5. Projects or activities may not negatively impact the functional values of a wetland, create water quality impacts. Projects or activities may not result in significant adverse environmental consequences considered a *significant adverse impact*.
    a. Justification: Pursuant to s. NR 207, Wis. Adm. Code, Wisconsin's antidegradation standards prohibit degradation of outstanding resource waters and limits degradations to exceptional resource waters. Additionally, formal consultation with the Voigt Task Force is needed on projects or activities which could have impacts on wild rice or wild rice habitat. For these reasons, all projects or activities that have the potential to degrade ASNRI waters designated under s. 30.01(1am), Wis. Stats., are denied WQC without prejudice. ASNRI waters are available on the DNR's surface water data viewer at https://dnr.wisconsin.gov/topic/SurfaceWater/swdv.

6. The project or activity may not significantly adversely impact state *Public Rights Features* (PRFs) designated under s. NR 1.06, Wis. Adm. Code.
    - A PRF includes fish and wildlife habitat (including breeding, nesting, nursery, and feeding sites); physical features of lakes and streams that ensure the protection of water quality; reaches of banks, shores, or bed that are predominantly natural in appearance (not artificial) or that screen artificial features; and navigational thoroughfares or areas traditionally used for navigation during recreational boating, angling, hunting, or enjoyment of natural scenic beauty.

- Significant adverse impacts may result in direct, indirect, secondary, or cumulative change to wetlands or water quality. Significant impacts may also injure public rights and interests, cause water pollution, or result in material injury. Projects or activities that negatively impact the functional values of a wetland, create water quality impacts, and/or have environmental consequences are considered a *significant adverse impact*.

    a. Justification: Pursuant to s. NR 102.04(1)(a) and NR 102.04(1)(b), Wis. Adm. Code, objectionable deposits or debris shall not be present in such amounts as to interfere with public rights in waters of the state. Public Rights Features are most sensitive to these types of deposits and warrant individual water quality certification to ensure that wildlife, recreation, and fish and aquatic life standards under ch. NR 102, Wis. Adm. Code, are satisfied. PRFs are available on the DNR's surface water data viewer at https://dnr.wisconsin.gov/topic/SurfaceWater/swdv.

7. No discharges of dredged or fill material below the *ordinary high-water mark* (OHWM) of a navigable stream may take place during annual fish spawning periods or times when nursery areas would be adversely impacted unless a waiver request has been submitted and a waiver provided by the Department. These periods are:
    - September 15th through May 15th for all trout streams identified on DNR published maps. To determine if a waterway is a trout stream, you may use the WDNR website trout maps at http://dnr.wi.gov/topic/fishing/trout/streammaps.html.
    - September 15th through June 15th on all Great Lakes tributaries upstream to the first dam or barrier.
    - November 1st through June 15th for Lake Michigan waters surrounding Door County including Green Bay and all harbors and bays.
    - September 15th through July 1st for Lake Superior waters surrounding Douglas County including St. Louis River and all harbors and bays.
    - March 1st through June 15th for ALL OTHER waters.

        a. Justification: Pursuant to s. NR 102.04(3), Wis. Adm. Code, aquatic life designations include spawning areas for cold water and warm water fish and aquatic life habitat. WQC conditions are derived to ensure spawning activities in Wisconsin are protected.

8. The permittee must install in-water *best management practices* (BMPs) to minimize *total suspended solids* (TSS), sedimentation and nutrient loadings for any work conducted below the *ordinary high-water mark* (OHWM). Any visual increase in turbidity outside of the approved impact area shall result in the project operations ceasing until BMPs have been modified to address the issue.

a. Justification: Pursuant to ss. NR 102.04(1) and NR 102.06, Wis. Adm. Code, objectionable deposits and nutrients may not be present in amounts that interfere with public rights and interests or exceed state standards for surface water. In-water BMPs also help ensure excessive sedimentation, TSS, and nutrient loadings will not result in a violation of state wetland water quality standards under s. NR 103.03, Wis. Adm. Code.

9. The permittee may not use any materials that are considered hazardous substances. A "hazardous substance" is defined in s. 292.01(5), Wis. Stats., as any substance or combination of substances including any waste of a solid, semisolid, liquid or gaseous form which may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or which may pose a substantial present or potential hazard to human health or the environment because of its quantity, concentration or physical, chemical or infectious characteristics. This term includes, but is not limited to, substances which are toxic, corrosive, flammable, irritants, strong sensitizers or explosives as determined by the department. Project materials may include materials used for structure placement, beneficially reused materials, or fill. If the materials proposed for use in a project or activity are considered to be a "hazardous substance," the WQC is denied.
    a. Justification: Pursuant to chs. NR 102, NR 103, NR 105, and s. NR 299.04(1)(b), Wis. Adm. Code, water quality criteria and limitations must be satisfied to grant WQC.

10. The permittee must ensure that any material used to construct a project is properly contained and stabilized in a manner that will prevent the material from being eroded.
    a. Justification: Pursuant to ss. NR 102.04(1)(a), NR 102.04(1)(b), and NR 103.03, Wis. Adm. Code, objectionable deposits or debris shall not be present in amounts that interfere with public rights and interests in waterways or the functions and values of wetlands in Wisconsin.

11. The project or activity must implement planning and pretreatment of equipment to minimize spread of invasive or noxious species, designated under ch. 40, Wis. Adm. Code.
    a. Justification: Pursuant to s. NR 103.03(2)(f)3., Wis. Adm. Code, WQC must prevent conditions conducive to the establishment or proliferation of nuisance organisms in order to protect existing waterways and wetland habitat and ecosystems. Invasive species threaten the "protection and propagation of a balanced fish and other aquatic life community" under the "Fish and other aquatic life" designated use in s. NR 102.04(3), Wis. Adm. Code.

12. Whenever a permittee is completing sediment sampling and analysis, monitoring or disposal of materials from any dredging project, proper sampling and quality assurance methods shall be implemented in alignment with ch. NR 347, Wis. Adm. Code.
    a. Justification: In order to protect the public rights and interests in the waters of the state and to ensure that data quality is representative of site conditions to make informed WQC decisions, all data gathering, sampling, monitoring, data analysis and disposal shall be completed using proper sampling and quality assurance methods in alignment with ch. NR 347, Wis. Adm. Code.

13. For projects or activities within streams, the project must maintain base flow of the stream at all times during construction.
    a. Justification: Pursuant to chs. NR 102 and 103, Wis. Adm. Code, the project or activity shall not adversely impact public rights and interests in waterways or the functions and values of wetlands in Wisconsin. Reducing and/or eliminating base flow in a stream channel results in significant adverse impacts to the aquatic resource and public interests by means of thermal and physical impacts, degrading water quality. Pursuant to s. NR 102.04(4) and ch. NR 102, Subch. II, Wis. Adm. Code, objectionable changes in a stream's base flow may not be reduced to lower flows that interfere with public rights and interests or exceed temperature standards for surface waters. Construction practices to maintain base flow also help ensure the project or activity will not result in a violation of state wetland water quality standards under s. NR 103.03, Wis. Adm. Code.

14. The project or activity will not result in a conversion of state navigable waters to uplands or an enclosure of state navigable waters that would result in an interference with the public rights in those waters.
    a. Justification: Pursuant to s. NR 102.04(1)(a) and (b), Wis. Adm. Code, objectionable deposits or debris shall not be present in such amounts as to interfere with public rights in waters of the state. The State of Wisconsin holds all navigable waters within the State in trust for the benefit of the public. These public rights include recreational uses such as hunting, fishing, swimming, and boating. *See Muench v. Public Service Comm*., 261 Wis. 492 (1952).

Section A.2. Certain Water Quality Conditions applicable to Specific NWPs granted WQC:

In addition to meeting all standards described in Section A.1., projects eligible to proceed under a specific NWP listed below must also meet the additional standards listed below:

NWP 16. Return Water from Upland Contained Disposal Areas: The permittee must ensure that return water from dredging that is directly returned to the original source water meets the same water quality standards that apply to the original source water. If the return water is discharged into a receiving water that is not the original source water, then the permittee must ensure that the discharge water will meet the more stringent water quality standard of the receiving water and the original source water.

Justification: The return water shall not violate state water quality standards established under chs. NR 102, 103, 104, 105, 106, 207, and 217, Wis. Adm. Code.

NWP 18. Minor Discharges:

- The permittee must ensure that direct and secondary impacts to wetlands do not exceed 400 sq. ft. (SF). If the project or activity results in more than 400 SF of wetland impacts, WQC is denied to NWP 18 activities.

  Justification: Pursuant to s. NR 103.03(2)(d), Wis. Adm. Code, wetlands shall be protected from cumulative impacts of discharges which may result in concentrations or combinations of substances which are toxic or harmful to human, animal, or plant life. Ensuring that the eligibility standard for wetland impacts encompasses primary and secondary impacts will help provide adequate protection from cumulative impacts.
- The activity or project scope shall not include installation of perforated drain tile which would have a hydrologic impact to a waterway or wetland. If the proposed activity includes the installation of perforated drain tile, WQC is denied for NWP 18 activities.

  Justification: Section NR 103.03(1)(a) and (b), Wis. Adm. Code, requires that waterway and wetland hydrology and storm and flood water storage be adequately protected.

NWP 46 – Discharges in Ditches: The permittee must remove temporary fill within 60 days of placing the material in a waterway or wetland unless mitigation is provided for the temporary loss of function.

Justification: This material can be a source of TSS and nutrients, particularly phosphorus to the receiving water (chs. NR 102 and 103, Wis. Adm. Code).

NWP 51 – Land-based Renewable Energy Generation Facilities:

- The permittee must remove temporary fill, including construction access matting, within 60 days of placing the material in a waterway or wetland unless a restoration plan or appropriate wetland mitigation is provided for the temporary loss of function.

  Justification: This material can be a source of TSS and nutrients, particularly phosphorus, to the receiving water (chs. NR 102 and 103, Wis. Adm. Code).
- The project or activity may not convert wetlands to stormwater treatment facilities.

  Justification: Pursuant to s. NR 103.03(1)(a), Wis. Adm. Code, state wetland water quality standards require that wetlands are maintained within natural variation from storm and flood water storage and retention and the moderation of water level fluctuation extremes.

❖ The project or activity shall not impact more than 300 linear feet (LF) of the stream tributary. If the proposed project or activity would impact more than 300 LF of a stream tributary, WQC is denied for NWP 51 activities.

Justification: Activities and disturbances in or near navigable waterways impact and influence the health of the aquatic resource. Construction and land disturbances are a known source of TSS and nutrients (particularly phosphorus) to the receiving water (chs. NR 102 and 103, Wis. Adm. Code). Pursuant to ch. NR 207, Wis. Adm. Code, antidegradation requirements must be satisfied for new or increased discharges to waters of the state. This analysis requires individual WQC.

NWP 53 – Removal of Low-Head Dams: The permittee shall ensure that accumulated sediment is adequately controlled to ensure a sediment release does not result from the removal of low-head dams. If a sediment release would occur as part of this activity, WQC is denied for NWP 53 activities.

Justification: This material can be a source of TSS and nutrients, particularly phosphorus to the receiving water (chs. NR 102 and 103, Wis. Adm. Code).

Section B. Justifications for specific NWPs denied WQC without prejudice:

The following NWPs are highly diverse and include a wide range of activities. An Individual WQC will ensure the project or activity is designed and constructed according to state waterway and wetland standards. Therefore, the following NWPs are not granted WQC at this time:

- NWP 17 – Hydropower Projects
  - Justification: The NWP is overly broad and can include a wide range of activities. The broad category of activities covered could significantly impact phosphorus and thermal impacts to waterways. Because Wisconsin has numeric standards for phosphorus and temperature pursuant to ch. NR 102, Wis. Adm. Code, individual WQC is required to determine thermal and nutrient loadings from these areas. Individual WQC will also help ensure that state wetlands standards under ch. NR 103, Wis. Adm. Code are satisfied.
- NWP 43 – Stormwater Management Facilities
  - Justification: The permittee may not convert state navigable waterways or wetlands to treat stormwater. Pursuant to s. NR 103.03(1)(a), Wis. Adm. Code, state wetland water quality standards require that wetlands are maintained within natural variation from storm and flood water storage and retention and the moderation of water level fluctuation extremes. Pursuant to s. NR 102.04(1)(a) and (b), Wis. Adm. Code, objectionable deposits and debris shall not be present in amounts that will interfere with public rights.

- NWP 44 – Mining Activities
    - Justification: The NWP is overly broad and can include a range of activities. Given the proximity of these activities to surface waters, there is an increased risk that heavy metals or other toxic substances regulated under chs. NR 105 and 106, Wis. Adm. Code, may be discharged in surface waters at levels that may not comply with state standards.
- NWP 52 – Water-based Renewable Energy Generation Pilot Facilities
    - Justification: The NWP is broad and can include a range of activities. Given the water-based necessity of these energy generation pilot facilities, there is potential for unknown risk for water quality impacts that may be discharged in surface waters at levels that may not comply with state standards. Individual WQC is appropriate to ensure that state water quality standards for fish and aquatic life uses and criteria under s. NR 102.04, Wis. Adm. Code, are satisfied.

Section C. NWPs not requiring WQC:

The following NWPs are either outside of state authority or are activities that are not reasonably expected to result in a discharge to navigable waterways or wetlands:

- NWP 1 – Aids to Navigation

Section D. NWPs revoked within the St. Paul District - WQC not required:

The following NWPs have been revoked and are not available for use in the St. Paul District; therefore, the department is not taking action on these NWPs and concludes that a new notification and pre-filing meeting would be required for these NWPs should the position of the St. Paul District change and these NWPS become available for use in the St. Paul District:

- NWP 8 – Oil and Gas Structures on the Outer Continental Shelf
- NWP 12 – Oil or Natural Gas Pipeline Activities
- NWP 14 – Linear Transportation Projects
- NWP 15 – U.S. Coast Guard Approved Bridges
- NWP 21 – Surface Coal Mining Activities
- NWP 23 – Approved Categorical Exclusions
- NWP 24 – Indian Tribe or State Administered Section 404 Programs
- NWP 34 – Cranberry Production Activities
- NWP 48 – Commercial Shellfish Mariculture Activities
- NWP 49 – Coal Remining Activities
- NWP 50 – Underground Coal Mining Activities
- NWP 55 - Seaweed Mariculture Activities
- NWP 57 – Electric Utility Line and Telecommunications Activities
- NWP 58 – Utility Line Activities for Water and Other Substances

NOTICE OF APPEAL RIGHTS

If you believe that you have a right to challenge this decision, you should know that Wisconsin Statutes and administrative rules establish time periods within which requests to review Department decisions must be filed.

To request a contested case hearing pursuant to section 227.42, Wis. Stats., you have 30 days after the decision is mailed, or otherwise served by the Department, to serve a petition for hearing on the Secretary of the Department of Natural Resources. A request for a contested case hearing shall include a written statement giving specific reasons why a proposed activity violates the standards under s. NR 299.04(1)(b), Wis. Adm. Code, as applicable, and provide specific information explaining why the petitioner's interests are adversely affected by the Department's determination. The request for hearing shall also include a written statement specifying that the petitioner will appear and present information supporting the petitioner's objections in a contested case hearing. This determination becomes final in accordance with the provisions of s. NR 299.05(7), Wis. Adm. Code and is judicially reviewable when final. For judicial review of a decision pursuant to Sections 227.52 and 227.53, Wis. Stats., you have 30 days after the decision becomes final to file your petition with the appropriate circuit court and to serve the petition on the Secretary of the Department of Natural Resources. The petition must name the Department of Natural Resources as the respondent.

Reasonable accommodation, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request.

Dated at Madison, Wisconsin on November 13, 2025.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

BY



Benjamin Callan, Director
Waterways Program

US Army Corps of Engineers ®
St. Paul District

COMPLIANCE CERTIFICATION

Regulatory File Number: MVP-2026-01041

Name of Permittee: Eric Knepp

County/State: Dane, Wisconsin

Date of Issuance: 10/7/2026

Upon completion of the activity authorized by this permit and any mitigation required by the permit, sign this certification and return it to the Corps contact identified in your verification letter within 30 days.

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

By signing below, the permittee is certifying that the work authorized by the above referenced permit has been completed in accordance with the terms and conditions of the permit, and any required mitigation was completed in accordance with the permit conditions.

Signature of Permittee **Date**