



US Army Corps
of Engineers

Detroit District

Public Notice

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Date: February 23, 2022

REISSUANCE OF NATIONWIDE PERMITS AND FINAL REGIONAL CONDITIONS IN MICHIGAN

The U.S. Army Corps of Engineers (Corps) published a final rule in the Federal Register (86 FR 73522) on December 27, 2021 announcing the reissuance of 40 existing nationwide permits (NWP) and the issuance of one new NWP. The following 41 NWPs will go into effect on February 25, 2022, and will expire on March 14, 2026:

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

- 33. Temporary Construction, Access, and Dewatering
- 34. Cranberry Production Activities
- 35. Maintenance Dredging of Existing Basins
- 36. Boat Ramps
- 37. Emergency Watershed Protection and Rehabilitation
- 38. Cleanup of Hazardous and Toxic Waste
- 41. Reshaping Existing Drainage Ditches
- 45. Repair of Uplands Damaged by Discrete Events
- 46. Discharges in Ditches
- 49. Coal Remining Activities
- 53. Removal of Low-Head Dams
- 54. Living Shorelines
- 59. Water Reclamation and Reuse Facilities

The 2017 versions of the NWP's listed above expire on February 24, 2022. The 41 NWP's listed above, along with the 16 NWP's previously issued on March 15, 2021, all expire on March 14, 2026. The NWP general conditions and definitions that were issued in the final rule published in the January 13, 2021 issue of the *Federal Register* (86 FR 2744) apply to these 40 reissued NWP's and to the new NWP 59 that were published in the *Federal Register* on December 27, 2021. The general conditions are included in this public notice for your convenience. The December 27, 2021 Federal Register notice is available for viewing at <https://www.govinfo.gov/content/pkg/FR-2021-12-27/pdf/2021-27441.pdf>. As an alternative, interested parties can access the December 27, 2021 final rule and related documents at: <https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Nationwide-Permits/>

In addition, regional conditions for the State of Michigan were developed which will provide additional protection for the aquatic environment by ensuring that the NWP's authorize only those activities with minimal adverse effects on the aquatic environment. Regional conditions will help ensure protection of high value waters within Michigan. NWP 8 is not applicable in Michigan as it only authorizes work located on the outer continental shelf. NWP's 2 and 49 were revoked in Michigan because the District was unable to determine the work allowed under these two permits would result in no more than minimal individual and cumulative adverse impacts to the aquatic environment. NWP's 1, 3, 4, 6, 9, 11, 13, 15, 16, 17, 19, 20, 22, 23, 24, 25, 27, 28, 30, 31, 32, 33, 34, 35, 36, 37, 38, 45, 46, 54 and 59 were issued without additional regional conditions. NWP's 5, 7, 10, 14, 18, 41 and 53 were issued with additional District regional conditions.

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

On tribal lands in Michigan, the U.S. Environmental Protection Agency (EPA) administers WQC on all Federally recognized tribal lands except for the Keweenaw Bay Indian Community (KBIC) tribal lands. The KBIC administers WQC on their tribal lands. In response to the September 15, 2020 Federal Register Notice and the Detroit District's subsequent September 29, 2020 Public Notice, the three agencies made determinations regarding WQC and CZMA consistency as shown in the table included in Section A.

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

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

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

Charles M. Simon
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Section A

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

	<u>EGLE WQC/CZMA in MI</u>	<u>EPA WQC on Tribal Lands (Excluding KBIC Lands)</u>	<u>WQC on KBIC Tribal Lands</u>
<u>Nationwide Permit</u>			
1. Aids to Navigation	G	W	D
2. Structures in Artificial Canals [#]	#	#	#
3. Maintenance	C	I	D
4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devises and Activities	G	I	D
5. Scientific Measurement Devices	G	I	D
6. Survey Activities	C	I	D
7. Outfall Structures and Associated Intake Structures	C	C	D
8. Oil and Gas Structures on the Outer Continental Shelf *	*	*	*
9. Structures in Fleeting and Anchorage Areas	G	W	D
10. Mooring Buoys	G	W	D
11. Temporary Recreational Structures	C	W	D
13. Bank Stabilization	C	C	D
14. Lineal Transportation Projects	C	D	D
15. U.S. Coast Guard Approved Bridges	D	I	D
16. Return Water From Upland Contained Disposal Areas	G	I	D
17. Hydropower Projects	D	D	D
18. Minor Discharges	C	I	D
19. Minor Dredging	C	I	D
20. Response Operations for Oil or Hazardous Substances	C	I	D
22. Removal of Vessels	G	I	D
23. Approved Categorical Exclusions	D	D	D
24. Indian Tribe or State Administered Section 404 Programs	G	W	D
25. Structural Discharges	D	D	D
27. Aquatic Habitat Restoration, Establishment, and Enhancement	C	C	D
28. Modifications of Existing Marinas	C	W	D
30. Moist Soil Management for Wildlife	G	I	D
31. Maintenance of Existing Flood Control Facilities	G	I	D
32. Completed Enforcement Actions	D	D	D
33. Temporary Construction, Access, and Dewatering	C	I	D
34. Cranberry Production Activities	C	D	D
35. Maintenance Dredging of Existing Basins	C	W	D
36. Boat Ramps	C	I	D
37. Emergency Watershed Protection and Rehabilitation	D	I	D
38. Cleanup of Hazardous and Toxic Waste	C	I	D
41. Reshaping Existing Drainage Ditches	C	I	D
45. Repair of Uplands Damaged by Discrete Events	C	I	D
46. Discharges in Ditches	D	D	D
49. Coal Remining Activities	#	#	#
53. Removal of Low-Head Dams	C	D	D
54. Living Shorelines	C	D	D
59. Water Reclamation and Reuse Facilities	D	I	D

* Not applicable in Michigan, as NWP authorizes work in the outer continental shelf.

Revoked by Detroit District

I – Issued

G – Approved with General Conditions;

C – Approved with General & Specific Conditions;

D – WQC Denied;

W – Waived.

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

1. Aids to Navigation. (Authority: Section 10 of the Rivers and Harbors Act of 1899 (Section 10))

The placement of aids to navigation and regulatory markers that are approved by and installed in accordance with the requirements of the U.S. Coast Guard (see 33 CFR, chapter I, subchapter C, part 66).

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

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

EPA Water Quality Certification on All Tribal Lands Except for KBIC tribal lands for NWP 1: EPA indicated it was not making a determination on WQC for NWP 1 because the Corps was not requesting certification. Thus, WQC is considered waived.

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

2. Structures in Artificial Canals. (Authority: Section 10)

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

Detroit District NWP 2 Regional Conditions: The Detroit District has revoked NWP 2.

3. Maintenance. (Authorities: Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act (Sections 10 and 404))

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

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

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

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flows. After conducting the maintenance activity, temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

(d) This NWP does not authorize maintenance dredging for the primary purpose of navigation. This NWP does not authorize beach restoration. This NWP does not authorize new stream channelization or stream relocation projects. Notification: For activities authorized by paragraph (b) of this NWP, the permittee must submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 32). The pre-construction notification must include information regarding the original design capacities and configurations of the outfalls, intakes, small impoundments, and canals.

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

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

EGLE Water Quality Certification/CZMA consistency for NWP 3: EGLE granted certification/consistency subject to General Conditions and the following specific conditions:

- a. All stream crossings shall span the bankfull width and, where the structure has a bottom, the structure bottom must match the slope of the streambed.*
- b. An individual CZMA Concurrence and an individual CWA Section 401 Certification are required for projects in waters regulated under Part 305, Natural Rivers, of the NREPA.*
- c. The request for repair, rehabilitation, or replacement of structures destroyed by discrete events must be submitted to the USACE within 12 months of the date of damage.*

EPA Water Quality Certification on All Tribal Lands Except for KBIC tribal lands for NWP 3: EPA granted certification without conditions.

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

4. Fish and Wildlife Harvesting. (Authorities: Sections 10 and 404)

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

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

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

EPA Water Quality Certification on All Tribal Lands Except for KBIC tribal lands for NWP 4: EPA granted certification without conditions.

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

5. Scientific Measurement Devices. (Authorities: Sections 10 and 404)

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

practicable and the site restored to pre-construction elevations.

Detroit District NWP 5 Regional Conditions:

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

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

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

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

6. Survey Activities. (Authorities: Sections 10 and 404)

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

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

EGLE Water Quality Certification/CZMA consistency for NWP 6: EGLE granted certification/consistency subject to General Conditions and the following specific conditions:

- a. *Temporary fill pads shall be limited to a maximum area of 1,000 square feet.*
- b. *Exploratory trenching shall not be authorized below the OHWM of the Great Lakes.*

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

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

7. Outfall Structures and Associated Intake Structures. (Authorities: Sections 10 and 404)

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

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

Detroit District NWP 7 Regional Conditions:

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

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EGLE Water Quality Certification/CZMA consistency for NWP 7: EGLE granted certification/consistency subject to General Conditions and the following specific conditions:

- a. The face of the outfall structure shall not extend into the receiving water in a way that impairs navigation or creates shoreline pockets capable of trapping debris.*
- b. The outfall must be stabilized to prevent soil erosion. Excavation and riprap placement is limited to the minimum necessary to ensure stabilization.*
- c. Intake structures shall not be placed in wetlands and loss of any acreage of wetland habitat is prohibited.*

EPA Water Quality Certification on All Tribal Lands Except for KBIC tribal lands for NWP 7: EPA granted certification with the following conditions:

- 1. Notification to EPA: All project proponents for coverage under the specified NWP must provide notice to EPA Region 5 via R5Wetlands@epa.gov prior to commencing construction to provide EPA Region 5 with the opportunity to inspect the activity for the purposes of determining whether any discharge from the proposed project will violate this water quality certification. Where the Corps requires a Pre-construction Notification (PCN) for the applicable NWP, the project proponent shall also provide the PCN to Region 5. EPA Region 5 will provide written notification to the project proponent if the proposed project will violate the water quality certification of the NWP. Project proponents shall send a copy to the Tribal government of the proposed project location on the notification to the EPA.*
- 2. Special Aquatic Sites: Any activities resulting in a point source discharge to jurisdictional wetlands that are of ecological types considered rare or imperiled as defined by the Michigan Natural Features Inventory shall require project-specific 401 WQC review. Project-specific CWA 401 WQC review will also be required for impacts to riffle-pool complexes of streams.*
- 3. Sediment and Soil Erosion Control Measures: The project proponent shall implement and maintain erosion and siltation control measures prior to, during and after project construction. Prior to beginning work, the project proponent shall develop a sediment and erosion control plan. The plan, at a minimum, shall include:*
 - a. The types and locations of sediment and erosion control features that shall be used onsite. Examples of erosion control measures include sediment barriers such as straw bales, silt screens, temporary vegetation and/or mulching. Temporary erosion control measures shall be left in place until permanent native vegetative cover has been established. The project proponent shall actively maintain these features during construction.*
 - b. Processes for separation and storage of topsoil. Stockpiles shall be at least 100 feet away from a jurisdictional wetland or waterbody. If it is not possible to site the stockpile 100 feet away, project proponent shall explain additional measures in their sediment and erosion control plan. The project proponent shall demonstrate that there is no sediment migration into a jurisdictional wetland or waterbody. All clean, topsoil (free from invasive species) shall be reused in restoration. Stockpiles shall not be placed or stored within a jurisdictional wetland. Spoil piles shall be placed on landscaping fabric or some other material to separate the spoil material and allow retrieval of the spoil material with minimal impact. Wetland topsoil and vegetation shall be stored separately from other spoils.*
 - c. Monitoring and maintenance schedules, and adaptive management processes. The sediment and erosion control measures shall be evaluated prior to construction and within 24 hours of rain events until the site is restored; if any measures are determined to be ineffective at preventing sediment migration or erosion, additional measures shall be taken to ensure there is no further sediment migration or erosion that may cause excess turbidity in the waters of the United States.*
- 4. Pollution Release Prevention: Except as specified in the permit application, the project proponent shall not allow debris, silt, sand, cement, concrete, oil or petroleum, organic material, or other construction related materials or wastes to enter into or be stored within 100 feet of where it may enter into waters of the United States. The project proponent shall take measures to prevent pollutants from entering jurisdictional wetlands and waterways. These measures shall include:*
 - a. All equipment shall be cleaned prior to arriving on the project site. All equipment shall be inspected daily and prior to entering any streams or wetlands, for oil, gas, diesel, anti-freeze, hydraulic fluid and other petroleum leaks. All equipment detected with leaks shall be repaired promptly or moved offsite within 24 hours.*
 - b. Containment booms and/or absorbent material shall be available onsite. In the case of spills, containment booms and/or absorbent materials shall be employed immediately to prevent discharges from reaching waters of the United States.*
 - c. All contaminated areas shall be cleaned immediately, and contaminated soil removed from the site or*

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contained in enclosed containers. Containers shall be located no closer than 100 feet to a jurisdictional wetland or waterbody. If it is not possible to site the storage area 100 feet away, the project proponent shall explain additional measures in their sediment and erosion control plan (see Condition 3).

- d. Project proponents shall notify the appropriate Tribal government and EPA Region 5 within 24 hours if spills or unauthorized discharges occur during the project. As part of the notice, the project proponent shall provide plans for remedying the spill or unauthorized discharge.

5. **Projects or Activities Discharging to Impaired Waters:** Projects or activities are not authorized under the NWP's if the project will involve point source discharges into an active channel (e.g., flowing or open waters) of a water of the United States listed as impaired under CWA Section 303(d) and/or if the waterbody has an approved Total Maximum Daily Load (TMDL) and the discharge may result in further exceedance of a specific parameter (e.g., total suspended solids, dissolved oxygen, temperature) for which the waterbody is listed or has an approved TMDL. The current lists of impaired waters of the U.S. under CWA Section 303(d) and waters of the U.S. for which a TMDL has been approved are available on EPA Region 5's website at: <https://www.epa.gov/tmdl/impaired-waters-and-tmdls-region-5>

6. **Revegetation of Disturbed Areas:** The project proponent shall revegetate disturbed jurisdictional areas with perennial, native vegetation and return affected areas to pre-disturbance conditions. Non-native and invasive species shall not be used for restoration activities. Therefore, prior to commencing work, the project proponent shall develop a restoration plan that includes photo-documenting the entire site, and ensuring that pre-disturbance site conditions, such as riparian/wetland vegetation percent cover and native species diversity, are recorded for future proof of revegetation success. The pre- and post-construction photographs and information on the pre-disturbance site conditions shall be submitted to EPA, the correlating Tribal government, and the correlating Corps District within 2 weeks after construction. Revegetation monitoring is required at least once during the growing season, or annually until revegetation success criteria are achieved.

7. **Bank Stabilization Activities:** For any activities that include bank stabilization efforts, the project proponent shall use bioengineering techniques for bank stabilization activities instead of or in combination with hard armoring; this may be either the sole use of native vegetation or other bioengineered design techniques (e.g., willow plantings, root wads, large woody debris, etc.), or a combination of hard-armoring (e.g., rock) and native vegetation or bioengineered design techniques. If it is not possible to solely rely on bioengineering techniques, the project proponent shall submit project plans to EPA Region 5, the correlating Tribal government, and the correlating Corps District. Projects consisting entirely of riprap or similar rock techniques are limited to 300 linear feet under this conditional certification; project proponents with riprap or similar rock activities over 300 linear feet shall request a project-specific 401 WQC. For both partially bioengineered projects, and those composed of riprap, the project plans shall describe the design techniques and stabilization methods assessed to determine the final project design. The use of soil cement, concrete, and grouted rip-rap hard armoring methods are not authorized under this certification and project proponents shall submit a request for a project-specific 401 WQC.

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

8. Oil and Gas Structures on the Outer Continental Shelf. (Authority: Section 10)

NWP 8 does not apply in Michigan.

9. Structures in Fleeting and Anchorage Areas. (Authority: Section 10)

Structures, buoys, floats, and other devices placed within anchorage or fleeting areas to facilitate moorage of vessels where such areas have been established for that purpose.

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

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

EPA Water Quality Certification on All Tribal Lands Except for KBIC tribal lands for NWP 9: EPA indicated it was not making a determination on WQC for NWP 9 because the Corps was not requesting certification. Thus, WQC for NWP 9 is considered waived.

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

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

Non-commercial, single-boat, mooring buoys.

Detroit District NWP 10 Regional Conditions:

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

EGL E Water Quality Certification/CZMA consistency for NWP 10: EGL E granted certification/consistency subject to General Conditions.

EPA Water Quality Certification on All Tribal Lands Except for KBIC tribal lands for NWP 10: EPA indicated it was not making a determination on WQC for NWP 10 because the Corps was not requesting certification. Thus, WQC for NWP 10 is considered waived.

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

11. Temporary Recreational Structures. (Authority: Section 10)

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

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

EGL E Water Quality Certification/CZMA consistency for NWP 11: EGL E granted certification/consistency subject to General Conditions and the following specific conditions:

- a. *The structure must be removed immediately after the use has been discontinued or 30 days after placement, whichever is shorter.*
- b. *The purpose of the structure must support activities that are dependent upon being located on or in a lake, river, stream, or wetland.*
- c. *Structures located at a public road end are prohibited pursuant to MCL 324.30111b(1) and (2).*

EPA Water Quality Certification on All Tribal Lands Except for KBIC tribal lands for NWP 11: EPA indicated it was not making a determination on WQC for NWP 11 because the Corps was not requesting certification. Thus, WQC for NWP 11 is considered waived.

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

13. Bank Stabilization. (Authorities: Sections 10 and 404)

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

- (a) No material is placed in excess of the minimum needed for erosion protection;
- (b) The activity is no more than 500 feet in length along the bank, unless the district engineer waives this criterion by making a written determination concluding that the discharge of dredged or fill material will result in no more than minimal adverse environmental effects (an exception is for bulkheads – the district engineer cannot issue a waiver for a bulkhead that is greater than 1,000 feet in length along the bank);

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

This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to construct the bank stabilization activity.

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

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

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

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

EGLE Water Quality Certification/CZMA consistency for NWP 13: EGLE granted certification/consistency subject to General Conditions and the following specific conditions:

- a. *No material shall be placed in wetlands and loss of any acreage of wetland habitat is prohibited.*
- b. *The installation of a new vertical bulkhead or seawall, where one does not currently exist, is not authorized.*
- c. *Replacement of a vertical bulkhead or seawall is limited to 200 linear feet of shoreline. The replacement seawall shall have toe stone (i.e., riprap) placed waterward along 100 percent of the length to prevent undercutting by wave action, to mitigate for the loss of habitat, and to provide a use for fish and other aquatic life. The toe stone shall be placed at a 1-on-2 slope (e.g., 1-foot vertical to 2 feet horizontal) or gentler. The toe stone shall extend from the lake or stream bottom to at least 6 inches above the OHWM but cannot extend more than 6 feet into the water. This toe stone shall be placed unless it is determined by EGLE that less toe stone is required based on site conditions, navigation, or mooring.*
- d. *Installation of riprap shore protection is limited to 300 linear feet of shoreline. The riprap shall be placed at a 1-on-3 slope (e.g., 1-foot vertical to 3 feet horizontal) or gentler. For inland lakes, the riprap shall be a maximum of 18-inch diameter rock and must not extend more than six feet waterward of the OHWM. For the Great Lakes, the riprap shall be a maximum of 48-inch diameter rock and must not extend more than 15 feet lakeward of the OHWM. For streams, riprap shall be properly sized based on velocity and must not extend waterward of the existing banks upstream or downstream.*

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- e. All riprap discharged in the project shall consist only of clean natural field stone, rock, or gravel, free of fines and other materials, and shall be placed or contained in such a manner as not to erode into any waters. Woven wire gabion baskets are prohibited. Broken concrete and grouted or manufactured interlocking materials are not allowed.
- f. The amount of backfill shall be limited to the minimum volumes necessary for bank stabilization.
- g. An individual CZMA Concurrence and an individual CWA Section 401 Certification are required for projects in areas designated under Part 305, Natural Rivers; or Part 323, Shorelands Protection and Management, of the NREPA.

EPA Water Quality Certification on All Tribal Lands Except for KBIC tribal lands for NWP 13: EPA granted certification with the following conditions:

1. *Notification to EPA: All project proponents for coverage under the specified NWP must provide notice to EPA Region 5 via R5Wetlands@epa.gov prior to commencing construction to provide EPA Region 5 with the opportunity to inspect the activity for the purposes of determining whether any discharge from the proposed project will violate this water quality certification. Where the Corps requires a Pre-construction Notification (PCN) for the applicable NWP, the project proponent shall also provide the PCN to Region 5. EPA Region 5 will provide written notification to the project proponent if the proposed project will violate the water quality certification of the NWP. Project proponents shall send a copy to the Tribal government of the proposed project location on the notification to the EPA.*
2. *Special Aquatic Sites: Any activities resulting in a point source discharge to jurisdictional wetlands that are of ecological types considered rare or imperiled as defined by the Michigan Natural Features Inventory shall require project-specific 401 WQC review. Project-specific CWA 401 WQC review will also be required for impacts to riffle-pool complexes of streams.*
3. *Sediment and Soil Erosion Control Measures: The project proponent shall implement and maintain erosion and siltation control measures prior to, during and after project construction. Prior to beginning work, the project proponent shall develop a sediment and erosion control plan. The plan, at a minimum, shall include:*
 - a. *The types and locations of sediment and erosion control features that shall be used onsite. Examples of erosion control measures include sediment barriers such as straw bales, silt screens, temporary vegetation and/or mulching. Temporary erosion control measures shall be left in place until permanent native vegetative cover has been established. The project proponent shall actively maintain these features during construction.*
 - b. *Processes for separation and storage of topsoil. Stockpiles shall be at least 100 feet away from a jurisdictional wetland or waterbody. If it is not possible to site the stockpile 100 feet away, project proponent shall explain additional measures in their sediment and erosion control plan. The project proponent shall demonstrate that there is no sediment migration into a jurisdictional wetland or waterbody. All clean, topsoil (free from invasive species) shall be reused in restoration. Stockpiles shall not be placed or stored within a jurisdictional wetland. Spoil piles shall be placed on landscaping fabric or some other material to separate the spoil material and allow retrieval of the spoil material with minimal impact. Wetland topsoil and vegetation shall be stored separately from other spoils.*
 - c. *Monitoring and maintenance schedules, and adaptive management processes. The sediment and erosion control measures shall be evaluated prior to construction and within 24 hours of rain events until the site is restored; if any measures are determined to be ineffective at preventing sediment migration or erosion, additional measures shall be taken to ensure there is no further sediment migration or erosion that may cause excess turbidity in the waters of the United States.*
4. *Pollution Release Prevention: Except as specified in the permit application, the project proponent shall not allow debris, silt, sand, cement, concrete, oil or petroleum, organic material, or other construction related materials or wastes to enter into or be stored within 100 feet of where it may enter into waters of the United States. The project proponent shall take measures to prevent pollutants from entering jurisdictional wetlands and waterways. These measures shall include:*
 - a. *All equipment shall be cleaned prior to arriving on the project site. All equipment shall be inspected daily and prior to entering any streams or wetlands, for oil, gas, diesel, anti-freeze, hydraulic fluid and other petroleum leaks. All equipment detected with leaks shall be repaired promptly or moved offsite within 24 hours.*
 - b. *Containment booms and/or absorbent material shall be available onsite. In the case of spills, containment booms and/or absorbent materials shall be employed immediately to prevent discharges from reaching waters of the United States.*
 - c. *All contaminated areas shall be cleaned immediately, and contaminated soil removed from the site or*

contained in enclosed containers. Containers shall be located no closer than 100 feet to a jurisdictional wetland or waterbody. If it is not possible to site the storage area 100 feet away, the project proponent shall explain additional measures in their sediment and erosion control plan (see Condition 3).

- d. Project proponents shall notify the appropriate Tribal government and EPA Region 5 within 24 hours if spills or unauthorized discharges occur during the project. As part of the notice, the project proponent shall provide plans for remedying the spill or unauthorized discharge.

5. **Projects or Activities Discharging to Impaired Waters:** Projects or activities are not authorized under the NWP's if the project will involve point source discharges into an active channel (e.g., flowing or open waters) of a water of the United States listed as impaired under CWA Section 303(d) and/or if the waterbody has an approved Total Maximum Daily Load (TMDL) and the discharge may result in further exceedance of a specific parameter (e.g., total suspended solids, dissolved oxygen, temperature) for which the waterbody is listed or has an approved TMDL. The current lists of impaired waters of the U.S. under CWA Section 303(d) and waters of the U.S. for which a TMDL has been approved are available on EPA Region 5's website at: <https://www.epa.gov/tmdl/impaired-waters-and-tmdls-region-5>

6. **Revegetation of Disturbed Areas:** The project proponent shall revegetate disturbed jurisdictional areas with perennial, native vegetation and return affected areas to pre-disturbance conditions. Non-native and invasive species shall not be used for restoration activities. Therefore, prior to commencing work, the project proponent shall develop a restoration plan that includes photo-documenting the entire site, and ensuring that pre-disturbance site conditions, such as riparian/wetland vegetation percent cover and native species diversity, are recorded for future proof of revegetation success. The pre- and post-construction photographs and information on the pre-disturbance site conditions shall be submitted to EPA, the correlating Tribal government, and the correlating Corps District within 2 weeks after construction. Revegetation monitoring is required at least once during the growing season, or annually until revegetation success criteria are achieved.

7. **Bank Stabilization Activities:** For any activities that include bank stabilization efforts, the project proponent shall use bioengineering techniques for bank stabilization activities instead of or in combination with hard armoring; this may be either the sole use of native vegetation or other bioengineered design techniques (e.g., willow plantings, root wads, large woody debris, etc.), or a combination of hard-armoring (e.g., rock) and native vegetation or bioengineered design techniques. If it is not possible to solely rely on bioengineering techniques, the project proponent shall submit project plans to EPA Region 5, the correlating Tribal government, and the correlating Corps District. Projects consisting entirely of riprap or similar rock techniques are limited to 300 linear feet under this conditional certification; project proponents with riprap or similar rock activities over 300 linear feet shall request a project-specific 401 WQC. For both partially bioengineered projects, and those composed of riprap, the project plans shall describe the design techniques and stabilization methods assessed to determine the final project design. The use of soil cement, concrete, and grouted rip-rap hard armoring methods are not authorized under this certification and project proponents shall submit a request for a project-specific 401 WQC.

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

14. Linear Transportation Projects. (Authorities: Sections 10 and 404)

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

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

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

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

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

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

Note 3: For NWP 14 activities that require pre-construction notification, the PCN must include any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings that require Department of the Army authorization but do not require pre-construction notification (see paragraph (b)(4) of general condition 32). The district engineer will evaluate the PCN in accordance with Section D, "District Engineer's Decision." The district engineer may require mitigation to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see general condition 23).

Detroit District NWP 14 Regional Conditions:

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

EGLE Water Quality Certification/CZMA consistency for NWP 14: EGLE granted certification/consistency subject to General Conditions and the following specific conditions:

- a. All stream crossings shall span the bankfull width and where the structure has a bottom, the structure bottom must match the slope of the streambed.*
- b. The length of a wetland crossing for private road projects is limited to 200 feet. For public projects, the total impacts are limited to two acres of wetlands for all crossings associated with the same project.*

EPA Water Quality Certification on All Tribal Lands Except for KBIC tribal lands for NWP 14: EPA denied certification.

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

15. U.S. Coast Guard Approved Bridges. (Authority: Section 404)

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

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

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

EPA Water Quality Certification on All Tribal Lands Except for KBIC tribal lands for NWP 15: EPA granted certification without conditions.

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

16. Return Water From Upland Contained Disposal Areas. (Authority: Section 404)

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

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

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

EPA Water Quality Certification on All Tribal Lands Except for KBIC tribal lands for NWP 15: EPA granted certification without conditions.

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

17. Hydropower Projects. (Authority: Section 404)

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

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

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

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

EPA Water Quality Certification on All Tribal Lands Except for KBIC tribal lands for NWP 17: EPA denied certification.

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

18. Minor Discharges. (Authorities: Sections 10 and 404)

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

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

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(c) The discharge of dredged or fill material is not placed for the purpose of a stream diversion.

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

Detroit District NWP 18 Regional Conditions:

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

EGLE Water Quality Certification/CZMA consistency for NWP 18: EGLE granted certification/consistency subject to General Conditions and the following specific conditions:

- a. *The discharge shall not result in the loss of more than 1,000 square feet of waters of the state, and loss of any acreage of wetland habitat is prohibited.*
- b. *All fill must be placed outside the floodway.*
- c. *For discharges of sand and/or pea gravel for creation or maintenance of shoreline recreation areas, swim areas, and the like, the location and waterward extent of the discharge must be the least environmentally damaging practicable alternative.*

EPA Water Quality Certification on All Tribal Lands Except for KBIC tribal lands for NWP 18: EPA granted certification without conditions.

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

19. Minor Dredging. (Authorities: Sections 10 and 404)

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

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

EGLE Water Quality Certification/CZMA consistency for NWP 19: EGLE granted certification/consistency subject to General Conditions and the following specific conditions:

- a. *Any discharge that may result from the activities authorized under this NWP shall not disturb sediments in an area known or suspected to contain contamination (unless testing in accordance with the EGLE procedures provided by the applicant shows that the material does not contain contamination).*
- b. *Dredging shall be limited to a maximum of 25 cubic yards and 1,000 square feet within the waters of the state.*
- c. *NWP 19 shall not apply in wetlands.*
- d. *All dredged or excavated materials shall be properly disposed of in upland (i.e., outside of wetlands, floodplains, or inland lakes and streams).*

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

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

20. Response Operations for Oil or Hazardous Substances. (Authorities: Sections 10 and 404)

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

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

EGLE Water Quality Certification/CZMA consistency for NWP 20: EGLE granted certification/consistency subject to General Conditions and the following specific conditions:

- a. NWP 20 shall be limited to substance containment, stabilization, and removal activities. Waste disposal and site restoration activities are not authorized under this NWP.*
- b. All waters of the state, including wetlands, must be restored to the most practicable extent possible.*

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

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

22. Removal of Vessels. (Authorities: Sections 10 and 404)

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

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

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

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

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

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

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

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

23. Approved Categorical Exclusions. (Authorities: Sections 10 and 404)

Activities undertaken, assisted, authorized, regulated, funded, or financed, in whole or in part, by another Federal agency or department where:

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

(b) The Office of the Chief of Engineers (Attn: CECW-CO) has concurred with that agency's or department's determination that the activity is categorically excluded and approved the activity for authorization under NWP 23. The Office of the Chief of Engineers may require additional conditions, including pre-construction notification, for authorization of an agency's categorical exclusions under this NWP.

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

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

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

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

EPA Water Quality Certification on All Tribal Lands Except for KBIC tribal lands for NWP 23: EPA denied certification.

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

24. Indian Tribe or State Administered Section 404 Programs. (Authority: Section 10)

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

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

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

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

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

EPA Water Quality Certification on All Tribal Lands Except for KBIC tribal lands for NWP 24: EPA indicated it was not making a determination on WQC for NWP 24 because the Corps was not requesting certification. Thus, WQC for NWP 24 is considered waived.

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

25. Structural Discharges. (Authority: Section 404)

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

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

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

EPA Water Quality Certification on All Tribal Lands Except for KBIC tribal lands for NWP 25: EPA denied certification.

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

26. [Reserved]

27. Aquatic Habitat Restoration, Enhancement, and Establishment Activities. (Authorities: Sections 10 & 404)

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

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

To the extent that a Corps permit is required, activities authorized by this NWP include, but are not limited to the removal of accumulated sediments; releases of sediment from reservoirs to maintain sediment transport continuity to restore downstream habitats; the installation, removal, and maintenance of small water control structures, dikes, and berms, as well as discharges of dredged or fill material to restore appropriate stream channel configurations after small water control structures, dikes, and berms are removed; the installation of current deflectors; the enhancement, rehabilitation, or re-establishment of riffle and pool stream structure; the placement of in-stream habitat structures; modifications of the stream bed and/or banks to enhance, rehabilitate, or re-establish stream meanders; the removal of stream barriers, such as undersized culverts, fords, and grade control structures; the backfilling of artificial channels; the removal of existing drainage structures, such as drain tiles, and the filling, blocking, or reshaping of drainage ditches to restore wetland hydrology; the installation of structures or fills necessary to restore or enhance wetland or stream hydrology; the construction of small nesting islands; the construction of open water areas; the construction of oyster habitat over unvegetated bottom in tidal waters; coral restoration or relocation activities; shellfish seeding; activities needed to reestablish vegetation, including plowing or disking for seed bed preparation and the planting of appropriate wetland species; re-establishment of submerged aquatic vegetation in areas where those plant communities previously existed; re-establishment of tidal wetlands in tidal waters where those wetlands

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previously existed; mechanized land clearing to remove non-native invasive, exotic, or nuisance vegetation; and other related activities. Only native plant species should be planted at the site.

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

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

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

Reversion. For enhancement, restoration, and establishment activities conducted: (1) In accordance with the terms and conditions of a binding stream or wetland enhancement or restoration agreement, or a wetland establishment agreement, between the landowner and the U.S. Fish and Wildlife Service (FWS), the Natural Resources Conservation Service (NRCS), the Farm Service Agency (FSA), the National Marine Fisheries Service (NMFS), the National Ocean Service (NOS), U.S. Forest Service (USFS), or their designated state cooperating agencies; (2) as voluntary wetland restoration, enhancement, and establishment actions documented by the NRCS or USDA Technical Service Provider pursuant to NRCS Field Office Technical Guide standards; or (3) on reclaimed surface coal mine lands, in accordance with a Surface Mining Control and Reclamation Act permit issued by the Office of Surface Mining Reclamation and Enforcement (OSMRE) or the applicable state agency, this NWP also authorizes any future discharge of dredged or fill material associated with the reversion of the area to its documented prior condition and use (i.e., prior to the restoration, enhancement, or establishment activities). The reversion must occur within five years after expiration of a limited term wetland restoration or establishment agreement or permit, and is authorized in these circumstances even if the discharge 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, or an appropriate state cooperating agency. This NWP also authorizes discharges of dredged or fill material in waters of the United States for the reversion of wetlands that were restored, enhanced, or established on prior-converted cropland or on uplands, in accordance with a binding agreement between the landowner and NRCS, FSA, FWS, or their designated state cooperating agencies (even though the restoration, enhancement, or establishment activity did not require a section 404 permit). The prior condition will be documented in the original agreement or permit, and the determination of return to prior conditions will be made by the Federal agency or appropriate state agency executing the agreement or permit. Before conducting any reversion activity, the permittee or the appropriate Federal or state agency must notify the district engineer and include the documentation of the prior condition. Once an area has reverted to its prior physical condition, it will be subject to whatever the Corps Regulatory requirements are applicable to that type of land at the time. The requirement that the activity results in a net increase in aquatic resource functions and services does not apply to reversion activities meeting the above conditions. Except for the activities described above, this NWP does not authorize any future discharge of dredged or fill material associated with the reversion of the area to its prior condition. In such cases a separate permit would be required for any reversion.

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

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

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

However, the permittee must submit a copy of the appropriate documentation to the district engineer to fulfill the reporting requirement.

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

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

EGLE Water Quality Certification/CZMA consistency for NWP 27: EGLE granted certification/consistency subject to General Conditions and the following specific conditions:

- a. *The construction of small nesting islands is not authorized.*
- b. *Placement of discarded Christmas trees is not authorized.*
- c. *Removal of dams shall be limited to those with a height of less than two feet and that impound less than two acres.*
- d. *NWP 27 shall not authorize alteration of wetlands that are of ecological types considered rare or imperiled (S1, S2, or S3 ranked) as defined by the Michigan Natural Features Inventory.*
- e. *Stream restoration projects are limited to a pre-restoration maximum of 500 linear feet.*
- f. *Excavation of wetlands to provide shallow water habitat for wildlife (i.e. "pushouts") is limited to either: 1) In altered wetlands, 0.5 acres maximum, or 2) In wetlands that have been regularly farmed within the past five years or in wetlands documented to be dominated by invasive species (e.g., reed canary grass or Phragmites), each individual excavated area shall not exceed 1.5 acres and the cumulative impact of excavation associated with a project shall not exceed 3 acres.*
- g. *Placement of fill for construction of dikes, berms, or water control structures to reestablish original or natural hydrology is limited to a maximum of two acres.*
- h. *Construction of a dike or berm that is six feet or more in height and that impounds an area of five acres or more during a design flood is not authorized.*
- i. *"Enhancement" of hydrology (increasing water levels above original or natural levels) is not authorized unless the EGLE concurs that the wetland ecosystem has been farmed within the last five years or is dominated by invasive species.*
- j. *"Reversion" activities may be authorized under this NWP only if the EGLE has issued authorizations.*
- k. *Agency coordination between the USACE and EGLE is required for all activities under the NWP.*

EPA Water Quality Certification on All Tribal Lands Except for KBIC tribal lands for NWP 27: EPA granted certification with the following conditions:

1. *Notification to EPA: All project proponents for coverage under the specified NWP must provide notice to EPA Region 5 via R5Wetlands@epa.gov prior to commencing construction to provide EPA Region 5 with the opportunity to inspect the activity for the purposes of determining whether any discharge from the proposed project will violate this water quality certification. Where the Corps requires a Pre-construction Notification (PCN) for the applicable NWP, the project proponent shall also provide the PCN to Region 5. EPA Region 5 will provide written notification to the project proponent if the proposed project will violate the water quality certification of the NWP.*

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Project proponents shall send a copy to the Tribal government of the proposed project location on the notification to the EPA.

2. Special Aquatic Sites: Any activities resulting in a point source discharge to jurisdictional wetlands that are of ecological types considered rare or imperiled as defined by the Michigan Natural Features Inventory shall require project-specific 401 WQC review. Project-specific CWA 401 WQC review will also be required for impacts to riffle-pool complexes of streams.

3. Sediment and Soil Erosion Control Measures: The project proponent shall implement and maintain erosion and siltation control measures prior to, during and after project construction. Prior to beginning work, the project proponent shall develop a sediment and erosion control plan. The plan, at a minimum, shall include:

- a. The types and locations of sediment and erosion control features that shall be used onsite. Examples of erosion control measures include sediment barriers such as straw bales, silt screens, temporary vegetation and/or mulching. Temporary erosion control measures shall be left in place until permanent native vegetative cover has been established. The project proponent shall actively maintain these features during construction.*
- b. Processes for separation and storage of topsoil. Stockpiles shall be at least 100 feet away from a jurisdictional wetland or waterbody. If it is not possible to site the stockpile 100 feet away, project proponent shall explain additional measures in their sediment and erosion control plan. The project proponent shall demonstrate that there is no sediment migration into a jurisdictional wetland or waterbody. All clean, topsoil (free from invasive species) shall be reused in restoration. Stockpiles shall not be placed or stored within a jurisdictional wetland. Spoil piles shall be placed on landscaping fabric or some other material to separate the spoil material and allow retrieval of the spoil material with minimal impact. Wetland topsoil and vegetation shall be stored separately from other spoils.*
- c. Monitoring and maintenance schedules, and adaptive management processes. The sediment and erosion control measures shall be evaluated prior to construction and within 24 hours of rain events until the site is restored; if any measures are determined to be ineffective at preventing sediment migration or erosion, additional measures shall be taken to ensure there is no further sediment migration or erosion that may cause excess turbidity in the waters of the United States.*

4. Pollution Release Prevention: Except as specified in the permit application, the project proponent shall not allow debris, silt, sand, cement, concrete, oil or petroleum, organic material, or other construction related materials or wastes to enter into or be stored within 100 feet of where it may enter into waters of the United States. The project proponent shall take measures to prevent pollutants from entering jurisdictional wetlands and waterways. These measures shall include:

- a. All equipment shall be cleaned prior to arriving on the project site. All equipment shall be inspected daily and prior to entering any streams or wetlands, for oil, gas, diesel, anti-freeze, hydraulic fluid and other petroleum leaks. All equipment detected with leaks shall be repaired promptly or moved offsite within 24 hours.*
- b. Containment booms and/or absorbent material shall be available onsite. In the case of spills, containment booms and/or absorbent materials shall be employed immediately to prevent discharges from reaching waters of the United States.*
- c. All contaminated areas shall be cleaned immediately, and contaminated soil removed from the site or contained in enclosed containers. Containers shall be located no closer than 100 feet to a jurisdictional wetland or waterbody. If it is not possible to site the storage area 100 feet away, the project proponent shall explain additional measures in their sediment and erosion control plan (see Condition 3).*
- d. Project proponents shall notify the appropriate Tribal government and EPA Region 5 within 24 hours if spills or unauthorized discharges occur during the project. As part of the notice, the project proponent shall provide plans for remedying the spill or unauthorized discharge.*

5 Projects or Activities Discharging to Impaired Waters: Projects or activities are not authorized under the NWP's if the project will involve point source discharges into an active channel (e.g., flowing or open waters) of a water of the United States listed as impaired under CWA Section 303(d) and/or if the waterbody has an approved Total Maximum Daily Load (TMDL) and the discharge may result in further exceedance of a specific parameter (e.g., total suspended solids, dissolved oxygen, temperature) for which the waterbody is listed or has an approved TMDL. The current lists of impaired waters of the U.S. under CWA Section 303(d) and waters of the U.S. for which a TMDL has been approved are available on EPA Region 5's website at: <https://www.epa.gov/tmdl/impaired-waters-and-tmdls-region-5>

6. Revegetation of Disturbed Areas: The project proponent shall revegetate disturbed jurisdictional areas with perennial, native vegetation and return affected areas to pre-disturbance conditions. Non-native and invasive species shall not be used for restoration activities. Therefore, prior to commencing work, the project proponent

shall develop a restoration plan that includes photo-documenting the entire site, and ensuring that pre-disturbance site conditions, such as riparian/wetland vegetation percent cover and native species diversity, are recorded for future proof of revegetation success. The pre- and post-construction photographs and information on the pre-disturbance site conditions shall be submitted to EPA, the correlating Tribal government, and the correlating Corps District within 2 weeks after construction. Revegetation monitoring is required at least once during the growing season, or annually until revegetation success criteria are achieved.

7. Bank Stabilization Activities: For any activities that include bank stabilization efforts, the project proponent shall use bioengineering techniques for bank stabilization activities instead of or in combination with hard armoring; this may be either the sole use of native vegetation or other bioengineered design techniques (e.g., willow plantings, root wads, large woody debris, etc.), or a combination of hard-armoring (e.g., rock) and native vegetation or bioengineered design techniques. If it is not possible to solely rely on bioengineering techniques, the project proponent shall submit project plans to EPA Region 5, the correlating Tribal government, and the correlating Corps District. Projects consisting entirely of riprap or similar rock techniques are limited to 300 linear feet under this conditional certification; project proponents with riprap or similar rock activities over 300 linear feet shall request a project-specific 401 WQC. For both partially bioengineered projects, and those composed of riprap, the project plans shall describe the design techniques and stabilization methods assessed to determine the final project design. The use of soil cement, concrete, and grouted rip-rap hard armoring methods are not authorized under this certification and project proponents shall submit a request for a project-specific 401 WQC.

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

28. Modifications of Existing Marinas. (Authority: Section 10)

Reconfiguration of existing docking facilities within an authorized marina area. No dredging, additional slips, dock spaces, or expansion of any kind within waters of the United States is authorized by this NWP.

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

EGLE Water Quality Certification/CZMA consistency for NWP 28: EGLE granted certification/consistency subject to General Conditions and the following specific conditions:

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

EPA Water Quality Certification on All Tribal Lands Except for KBIC tribal lands for NWP 28: EPA indicated it was not making a determination on WQC for NWP 28 because the Corps was not requesting certification. Thus, WQC for NWP 28 is considered waived.

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

30. Moist Soil Management for Wildlife. (Authority: Section 404)

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

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

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

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

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

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

31. Maintenance of Existing Flood Control Facilities. (Authorities: Sections 10 and 404)

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

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

Mitigation: The district engineer will determine any required mitigation one-time only for impacts associated with maintenance work at the same time that the maintenance baseline is approved. Such one-time mitigation will be required when necessary to ensure that adverse environmental effects are no more than minimal, both individually

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

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

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

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

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

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

EPA Water Quality Certification on All Tribal Lands Except for KBIC tribal lands for NWP 31: EPA granted certification without conditions.

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

32. Completed Enforcement Actions.

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

- (i) The terms of a final written Corps non-judicial settlement agreement resolving a violation of Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899; or the terms of an EPA 309(a) order on consent resolving a violation of Section 404 of the Clean Water Act, provided that:
 - (a) The activities authorized by this NWP cannot adversely affect more than 5 acres of non-tidal waters or 1 acre of tidal waters;
 - (b) The settlement agreement provides for environmental benefits, to an equal or greater degree, than the environmental detriments caused by the unauthorized activity that is authorized by this NWP; and
 - (c) The district engineer issues a verification letter authorizing the activity subject to the terms and conditions of this NWP and the settlement agreement, including a specified completion date; or
- (ii) The terms of a final Federal court decision, consent decree, or settlement agreement resulting from an enforcement action brought by the United States under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899; or

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

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

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

EGLE Water Quality Certification/CZMA consistency for NWP 32: EGLE denied certification/consistency.

EPA Water Quality Certification on All Tribal Lands Except for KBIC tribal lands for NWP 32: EPA denied certification.

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

33. Temporary Construction, Access, and Dewatering.

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

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

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

EGLE Water Quality Certification/CZMA consistency for NWP 33: EGLE granted certification/consistency subject to General Conditions and the following specific conditions:

- a. Temporary fill impacts shall not exceed a maximum of 1,000 square feet and the placement of no more than 25 cubic yards of fill material. The placement of temporary structures or construction mats shall be limited to 0.1 acre.*

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- b. The temporary structures, construction mats, and fill must be removed immediately after use has been discontinued or within 90 days of initiation of the authorized activity, whichever is shorter.*
- c. Geotextile shall be placed prior to temporary fill. Following completion of construction, temporary fill must be entirely removed to upland areas and the affected areas must be restored to pre-construction grade and wetland type. A restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-construction grade and wetland type shall be provided by the applicant. Any re-vegetation shall use seeds and plants native to Michigan according to the Floristic Quality Assessment for the State of Michigan.*
- d. Cofferdams shall be maintained in good working order throughout the duration of the project. Upon project completion the accumulated materials shall be properly disposed of in an identified upland site excluding Great Lakes, inland lakes, streams, floodplains, or wetlands.*
- e. All slurry resulting from any dewatering operation shall be discharged through a filter bag or pumped to a sump located away from wetlands and surface waters and allowed to filter through natural upland vegetation, gravel filters, or other engineered devices for a sufficient distance and/or period of time necessary to remove sediment or suspended particles.*
- f. A construction sequence with dates when the structures will be installed and removed must be provided by the applicant. Structures left in place after construction are prohibited.*
- g. All stream crossings shall span the bankfull width and, where the structure has a bottom, the structure bottom must match the slope of the streambed.*
- h. An individual CZMA Concurrence and an individual CWA Section 401 Certification are required for projects in waters regulated under Part 325, Great Lakes Submerged Lands, of the NREPA.*

EPA Water Quality Certification on All Tribal Lands Except for KBIC tribal lands for NWP 33: EPA granted certification without conditions.

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

34. Cranberry Production Activities. (Authority: Section 404)

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

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

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

EGLE Water Quality Certification/CZMA consistency for NWP 34: EGLE granted certification/consistency subject to General Conditions and the following specific conditions:

- a. Only one permit under this and future NWP categories may be granted per cranberry production operation. For the purposes of this NWP, a cranberry production operation is defined as a group of (usually) contiguous beds and the water storage and handling system that serves them, all of which are managed as a unit.*
- b. NWP 34 shall not allow any fill below the OHWM, or connection (inlet or outlet) to, any inland lake, stream, or Great Lakes waters.*

EPA Water Quality Certification on All Tribal Lands Except for KBIC tribal lands for NWP 34: EPA denied certification.

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

35. Maintenance Dredging of Existing Basins. (Authority: Section 10)

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

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

EGLE Water Quality Certification/CZMA consistency for NWP 35: EGLE granted certification/consistency subject to General Conditions and the following specific conditions:

- a. Any discharge that may result from the activities authorized under NWP 35 shall not disturb sediments in an area known or suspected to contain contamination (unless testing in accordance with the EGLE procedures provided by the applicant shows that the material does not contain contamination).*
- b. All dredged or excavated materials shall be properly disposed in uplands (i.e., outside of wetlands, floodplains, inland lakes, or streams).*
- c. Dredging shall be limited to a maximum of 5,000 cubic yards.*

EPA Water Quality Certification on All Tribal Lands Except for KBIC tribal lands for NWP 35: EPA indicated it was not making a determination on WQC for NWP 35 because the Corps was not requesting certification. Thus, WQC for NWP 35 is considered waived.

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

36. Boat Ramps.

Activities required for the construction, repair, or replacement of boat ramps, provided the activity meets all of the following criteria:

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

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

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

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

EGLE Water Quality Certification/CZMA consistency for NWP 36: EGLE granted certification/consistency subject to General Conditions and the following specific conditions:

- a. The ramp shall be for the use of the riparian single-family residential lot owner.*

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b. Fill volume shall be limited to a maximum of 25 cubic yards, dredge volume limited to a maximum of 25 cubic yards, and width limited to a maximum of 12 feet.

EPA Water Quality Certification on All Tribal Lands Except for KBIC tribal lands for NWP 36: EPA granted certification without conditions.

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

37. Emergency Watershed Protection and Rehabilitation. (Authorities: Sections 10 and 404)

Work done by or funded by:

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

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

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

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

EGLE Water Quality Certification/CZMA consistency for NWP 37: EGLE denied certification/consistency.

EPA Water Quality Certification on All Tribal Lands Except for KBIC tribal lands for NWP 37: EPA granted certification without conditions.

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

38. Cleanup of Hazardous and Toxic Waste. (Authorities: Sections 10 and 404)

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

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

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

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

EGLE Water Quality Certification/CZMA consistency for NWP 38: EGLE granted certification/consistency subject to General Conditions and the following specific conditions:

- a. The cleanup shall minimize, to the most practicable extent, impacts to the public trust, riparian rights, and waters or wetlands.*
- b. Waters of the state, including wetlands, lost or damaged by activities authorized under NWP 38, shall be restored to the most practicable extent.*

EPA Water Quality Certification on All Tribal Lands Except for KBIC tribal lands for NWP 38: EPA granted certification without conditions.

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

41. Reshaping Existing Drainage Ditches. (Authority: Section 404)

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

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

Detroit District NWP 41 Regional Conditions:

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

EGLE Water Quality Certification/CZMA consistency for NWP 41: EGLE granted certification/consistency subject to General Conditions and the following specific conditions:

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

EPA Water Quality Certification on All Tribal Lands Except for KBIC tribal lands for NWP 41: EPA granted certification without conditions.

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

45. Repair of Uplands Damaged by Discrete Events. (Authorities: Sections 10 and 404)

This NWP authorizes discharges of dredged or fill material, including dredging or excavation, into all waters of the

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

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

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

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

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

EGLE Water Quality Certification/CZMA consistency for NWP 45: EGLE granted certification/consistency subject to General Conditions and the following specific conditions:

- a. The repair shall minimize, to the most practicable extent, impacts to the public trust, riparian rights, and waters or wetlands.*
- b. Bank stabilization must meet NWP 13 as conditioned by the State of Michigan.*

EPA Water Quality Certification on All Tribal Lands Except for KBIC tribal lands for NWP 45: EPA granted certification without conditions.

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

46. Discharges in Ditches. (Authority: Section 404)

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

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

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

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

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

EPA Water Quality Certification on All Tribal Lands Except for KBIC tribal lands for NWP 46: EPA denied certification.

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

49. Coal Remining Activities. (Authorities: Sections 10 and 404)

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

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

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

Detroit District has revoked NWP 49.

53. Removal of Low-Head Dams. (Authorities: Sections 10 and 404)

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

For the purposes of this NWP, the term "low-head dam" is generally defined as a dam or weir built across a stream to pass flows from upstream overall, or nearly all, of the width of the dam crest and does not have a separate spillway or spillway gates, but it may have an uncontrolled spillway. The dam crest is the top of the dam from left abutment to right abutment. A low-head dam may have been built for a range of purposes (e.g., check dam, mill dam, irrigation, water supply, recreation, hydroelectric, or cooling pond), but in all cases, it provides little or no storage function. The removed low-head dam structure must be deposited and retained in an area that has no waters of the United States unless otherwise specifically approved by the district engineer under separate authorization. Because the removal of the low-head dam will result in a net increase in ecological functions and services provided by the stream, as a general rule compensatory mitigation is not required for activities authorized by this NWP. However, the district engineer may determine for a particular low-head dam removal activity that compensatory mitigation is necessary to ensure that the authorized activity results in no more than minimal adverse environmental effects.

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

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

Detroit District NWP 53 Regional Conditions:

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

EGLE Water Quality Certification/CZMA consistency for NWP 53: EGLE granted certification/consistency subject to General Conditions and the following specific conditions:

- a. An individual CZMA Concurrence and an individual CWA Section 401 Certification are required for projects in waters regulated under Part 325, Great Lakes Submerged Lands, of the NREPA.*
- b. Dam removals authorized under NWP 53 shall be limited to dams with a height less than 2 feet and that impound less than 2 acres. The dam cannot serve as a sea lamprey barrier or have known areas of contaminated sediments that will be affected by the project.*
- c. Excavation and fill activities in wetlands are allowed only for the purposes of dam removal, stream channel establishment at the existing dam control structure, and bank stabilization. Impacts to wetlands from excavation and fill activities must be less than one-third of an acre.*

EPA Water Quality Certification on All Tribal Lands Except for KBIC tribal lands for NWP 53: EPA denied certification.

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

54. Living Shorelines. (Authorities: Sections 10 and 404)

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

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

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

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

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

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

EGLE Water Quality Certification/CZMA consistency for NWP 54: EGLE granted certification/consistency subject to General Conditions and the following specific conditions:

- a. An individual CZMA Concurrence and an individual CWA Section 401 Certification are required for projects in waters regulated under Part 325, Great Lakes Submerged Lands, of the NREPA.*
- b. Fill waterward of the existing shoreline is limited to temporary wave breaks or barriers made entirely of biodegradable materials and placed and anchored near the existing shoreline to facilitate vegetative establishment.*
- c. Rock and hard armoring shall be placed at or landward of the existing shoreline and are limited to 300 feet of shoreline. Placement of the rock and hard armoring must allow for the natural growth and spread of riparian vegetation. Vertical structures and structures perpendicular to the shoreline are not authorized.*
- d. Vegetation, including plantings and other potentially viable material, such as live stakes, brush bundles, or other gathered woody material, shall be comprised only of plant species that are considered native to Michigan according to the Floristic Quality Assessment for the State of Michigan. Engineered plant material, such as jute and coconut fabric, shall be comprised of inert plant fiber that may be nonnative.*
- e. The destruction or alteration of areas of existing native wetland or aquatic vegetation, or the expansion of beach areas shall not be authorized.*

EPA Water Quality Certification on All Tribal Lands Except for KBIC tribal lands for NWP 54: EPA denied certification.

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

59. Water Reclamation and Reuse Facilities. (Authorities: Sections 10 and 404)

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

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

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

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

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

EGLE Water Quality Certification/CZMA consistency for NWP 59: EGLE denied certification/consistency.

EPA Water Quality Certification on All Tribal Lands Except for KBIC tribal lands for NWP 59: EPA granted certification without conditions.

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

C. Detroit Regional Conditions applicable to all NWP in Michigan

1. Based on a joint processing agreement between the Corps of Engineers (Corps) and the Michigan Department of Environmental, Great Lakes, and Energy (EGLE) submittal of a joint Corps/EGLE permit application is required for activities in Michigan. The submittal of an application is not an authorization to perform the work. The application encompasses the same information as a pre-construction notification (PCN), thereby creating the circumstance that any proposed work in Michigan requires a PCN, irrespective of the National level requirements.
2. If EGLE has issued its authorization, we may presume that Coastal Zone Management certification has been satisfied.
3. Dredging will be performed during MDNR preferred dredge periods except when the Corps has specifically determined that the limits are unwarranted (for example, EGLE has issued a permit and has not restricted the dredging activities to these periods).
4. Critical Resource Waters: NWP General Condition 22 (GC 22) designates Critical Resource Waters, and allows for Regional additions to the list. The following Critical Resource Waters are located in the Detroit District and subject to the restrictions and limitations identified in NWP GC 22:
 - a. NOAA-Designated Marine Sanctuaries: The Thunder Bay National Marine Sanctuary and Underwater Preserve is located in Lake Huron off Alpena, Michigan.
 - b. National Estuarine Research Reserves (NERR): There are no NERRs within the Detroit District.
 - c. State Natural Heritage Sites: There are no areas designated as state natural heritage sites through a state legislative or regulatory process.
 - d. Outstanding National Resource Waters or Other Waters Officially Designated: The list of Critical Resource Waters (General Condition 22) in Michigan is amended to include the following:

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

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

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

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

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

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

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

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

Indian River – from Hovey Lake to Indian Lake.

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

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

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

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

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

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

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

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

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

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

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

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

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

Critical habitat for the piping plover (*Charadrius melodus*) in Michigan was designated in the May 7, 2001 Federal Register (Vol. 66, No. 88, pages 22938-22969).

Revised Critical habitat for the Hine’s Emerald Dragonfly (*Somatochlora hineana*) in Michigan was finalized April 23, 2010 Federal Register (Vol. 75, No. 78, pages 21394-21453).

Critical habitat for the Poweshiek skipperling (*Oarisma poweshiek*) was designated in the October 1, 2015 Federal Register (Vol. 80, No. 190, pages 59248-59384).

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

EGLE Section 401 WQC General Conditions for all NWPs:

The EGLE WQC for all NWPs is subject to the following general conditions for all activities in Michigan:

1. Any discharge that may result from the activities authorized under the NWP shall not disturb sediments in an area known or suspected to contain contamination (unless testing in accordance with EGLE procedures provided by the applicant shows that the material does not contain contamination).
2. All riprap discharged in the project shall consist only of clean natural field stone, rock or gravel, free of fines and other materials, and shall be placed or contained in such a manner as not to erode into any waters of the United States within Michigan. Woven wire gabion baskets are prohibited. Broken concrete and grouted or manufactured interlocking materials are not allowed.
3. The discharge of garbage, litter, sewage, oil, or other liquid or solid pollutants into the waters of the United States within Michigan is prohibited by a person or from any vessel or floating craft in the vicinity of the project that is owned, controlled, or operated by the federal permittee or a contractor of the federal permittee.
4. The discharge of dredge materials that are contaminated with toxic substances as defined in administrative rule R 323.1205 of the Michigan administrative code for disposal into the waters of the United States within Michigan is prohibited.
5. The discharge of dredge materials for disposal into the waters of the United States is prohibited within a Great Lakes Bottomland Preserve established under Part 761, Aboriginal Records and Antiquities, of the NREPA, a permitted submerged log removal area under Part 326, Great Lakes Submerged Logs Recovery, of the NREPA, a lake trout refuge, or a *Diporeia* refuge.
6. The discharge shall not impair navigation.
7. The discharge and introduction of any nonnative, invasive species of plant, plant fragment, or other organism into the waters of the United States within Michigan is prohibited from any vessel, floating craft, vehicle, or equipment used in the project that is owned, controlled, or operated by the permittee or a contractor of the permittee. The permittee and contractors shall take the following measures as feasible to prevent the introduction of nonnative, invasive species to waters and wetlands, including:
 - a. Visually inspect all vehicles, vessels, floating craft, boat trailers, and equipment to be used in the project and remove and properly dispose of all plants, plant fragments, and mud prior to entry into surface waters and wetlands where the project is located. Washing to remove mud and organisms must be conducted where the wash water will not enter surface waters or storm sewers.
 - b. Drain all water from vehicles, vessels, floating craft, and equipment prior to leaving the site and entering a new waterbody.
 - c. Thoroughly dry equipment between project sites, when possible.
 - d. Use only plants and seed for restorations and best management practices that are native to Michigan according to the Floristic Quality Assessment for the State of Michigan.
 - e. Disposal methods for nonnative plant material include bagging and transporting to a landfill, composting, or burning, as appropriate and in compliance with local and state laws.
 - f. The permittee and contractors are encouraged to review the "Watch List" of Michigan's high priority aquatic invasive species and instructions for reporting sightings at www.michigan.gov/aquaticinvasives.

EGLE CZMA Consistency General Conditions for all NWP:

The EGLE CZMA consistency is subject to the following general conditions for all NWPs in Michigan:

1. Activities that result in a discharge to surface waters must comply with the water quality standards promulgated pursuant to Part 31, comprising administrative rules R 323.1041 to R 323.1117.
2. The following activities require authorization under a state permit:
 - a. Activities to be conducted within a 100-year floodplain that are subject to regulation under Part 31, Water Resources Protection, of the NREPA must be authorized by a permit required under MCL 324.3104.
 - b. Activities that cause earth changes that are subject to regulation under Part 91, Soil Erosion and Sedimentation Control, of the NREPA must be authorized by a permit required under MCL 324.9112.
 - c. Activities to be conducted below the ordinary high watermark of an inland lake, river, or stream that are subject to regulation under Part 301, Inland Lakes and Streams, of the NREPA must be authorized by a permit required under MCL 324.30102.
 - d. Activities to be conducted in a wetland that are subject to regulation under Part 303, Wetlands Protection, of the NREPA must be authorized by a permit required under MCL 324.30304.
 - e. Activities to be conducted in a designated Natural River District that are subject to regulation under Part 305, Natural Rivers, of the NREPA must be authorized by a permit required under administrative rule R 281.56. The boundaries of designated Natural River Districts are established in administrative rules R 281.70, R 281.80, R 281.90, R 281.100, R 281.110, R 281.120, R 281.130, R 281.140, R 281.150, R 281.160, R 281.170, R 281.180, R 281.190, R 281.200, R 281.210, and R 281.220.
 - f. Activities to be conducted in a designated Environmental Area or High Risk Erosion Area that are subject to regulation under Part 323, Shorelands Protection and Management, of the NREPA must be authorized by a permit required under MCL 324.32312.
 - g. Activities to be conducted below the ordinary high watermark of a Great Lake or Lake St. Clair that are subject to regulation under Part 325, Great Lakes Submerged Lands, of the NREPA must be authorized by a permit required under MCL 324.32512.
 - h. Activities to be conducted in a designated Critical Dune Area that are subject to regulation under Part 353, Sand Dunes Protection and Management, of the NREPA must be authorized by a permit required under MCL 324.35304.
 - i. The following activities are prohibited under Part 761, Aboriginal Records and Antiquities, of the NREPA unless authorized under MCL 324.76105, 324.76107, 324.76108, and 324.76109: The recovery, alteration, or destruction of an abandoned vessel or other abandoned property, as defined in MCL 324.76101(a), which is in, on, under, or over the bottomlands of the Great Lakes, including those within a Great Lakes Bottomlands Preserve.
3. The following activities are prohibited:
 - a. The open water disposal of dredge materials that are contaminated with toxic substances as defined in administrative rule R 323.1205 is prohibited pursuant to MCL 324.3109c.
 - b. Pursuant to MCL 324.32515a(c), the discharge of dredge materials for disposal is prohibited within a Great Lakes Bottomland Preserve established under Part 761, Aboriginal Records and Antiquities, of the NREPA, a

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permitted submerged log removal area under Part 326, Great Lakes Submerged Logs Recovery, of the NREPA, a lake trout refuge, or a Diporeia refuge. Great Lakes Bottomland Preserves are established in administrative rules R 299.6001, R 299.6002, R 299.6003, R 299.6004, R 299.6005, R 299.6006, R 299.6007, R 299.6008, R 299.6009, R 299.6010, R 299.6011, R 299.6012, and R 299.6013. Lake trout refuges are established in Michigan Department of Natural Resources Fisheries Order FO-200.20A.

c. The following activities are prohibited pursuant to MCL 324.36505: Harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting of an animal subject to regulation under Part 365, Endangered Species Protection, of the NREPA, or the attempt to engage in such activity; and the collecting, picking, cutting, digging up, or destroying in any manner of a plant subject to regulation under Part 365, Endangered Species Protection, of the NREPA. Lists of animal and plant species subject to regulation are contained in administrative rules R 299.1021, R 299.1022, R 299.1023, R 299.1024, R 299.1025, R 299.1026, R 299.1027, and R 299.1028.

d. The following activities are prohibited under Part 761, Aboriginal Records and Antiquities, of the NREPA without the consent of the landowner pursuant to MCL 324.76106: The removal of any relics or records of antiquity such as human or other bones, shells, stone, bone, or copper implements, pottery or shards of pottery, or similar artifacts and objects from the premises where they have been discovered.

E. Nationwide Permit General Conditions

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E. Nationwide Permit General Conditions

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

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

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

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

2. Aquatic Life Movements. No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species. If a bottomless culvert cannot be used, then the crossing should be designed and constructed to minimize adverse effects to aquatic life movements.

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

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

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

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

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

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

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

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

11. Equipment. Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

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

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

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

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

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

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

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

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

18. Endangered Species. (a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such

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designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify designated critical habitat or critical habitat proposed for such designation. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless ESA section 7 consultation addressing the consequences of the proposed activity on listed species or critical habitat has been completed. See 50 CFR 402.02 for the definition of "effects of the action" for the purposes of ESA section 7 consultation, as well as 50 CFR 402.17, which provides further explanation under ESA section 7 regarding "activities that are reasonably certain to occur" and "consequences caused by the proposed action."

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

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

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

(e) Authorization of an activity by an NWP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the FWS or the NMFS, the Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word "harm" in the definition of "take" means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

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

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conduct a separate ESA section 7 consultation for the proposed NWP activity. The district engineer will notify the non-federal applicant within 45 days of receipt of a complete pre-construction notification whether the ESA section 10(a)(1)(B) permit covers the proposed NWP activity or whether additional ESA section 7 consultation is required.

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

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

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

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

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

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

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completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

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

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

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

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

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

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

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

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

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

basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects.

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

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

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

(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in no more than minimal adverse environmental effects. For the 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 discharge must be obtained or waived (see 33 CFR 330.4(c)). If the permittee cannot comply with all of the conditions of a water quality certification previously issued by certifying authority for the issuance of the NWP, then the permittee must obtain a water quality certification or waiver for the proposed discharge in order for the activity to be authorized by an NWP.

(b) If the NWP activity requires pre-construction notification and the certifying authority has not previously certified compliance of an NWP with CWA section 401, the proposed discharge is not authorized by an NWP until water quality certification is obtained or waived. If the certifying authority issues a water quality certification for the proposed discharge, the permittee must submit a copy of the certification to the district engineer. The discharge is not authorized by an NWP until the district engineer has notified the permittee that the water quality certification requirement has been satisfied by the issuance of a water quality certification or a waiver.

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

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

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

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

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

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

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

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

(Transferee)

(Date)

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

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

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

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

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

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

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

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

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

(2) Location of the proposed activity;

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

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

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

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

(5) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial and intermittent streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many wetlands, other special aquatic sites, and other waters. Furthermore, the 45-day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate;

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

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

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

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

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

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

(d) *Agency Coordination:*

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

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

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

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

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

F. Further Information

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