39. Commercial and Institutional Developments.
Discharges of dredged or fill material into non-tidal waters of the United States for the construction or expansion of commercial and institutional building foundations and building pads and attendant features that are necessary for the use and maintenance of the structures. Attendant features may include, but are not limited to, roads, parking lots, garages, yards, utility lines, storm water management facilities, and recreation facilities such as playgrounds and playing fields. Examples of commercial developments include retail stores, industrial facilities, restaurants, business parks, and shopping centers. Examples of institutional developments include schools, fire stations, government office buildings, judicial buildings, public works buildings, libraries, hospitals, and places of worship. The construction of new golf courses, new ski areas, or oil and gas wells is not authorized by this NWP. The discharge must not cause the loss of greater than ½-acre of non-tidal waters of the United States, including the loss of no more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds this 300 linear foot limit is waived in writing by the district engineer.

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

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 27.) (Sections 10 and 404)

A. Nationwide Permit General Conditions

Note: To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as appropriate, 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.

☐ **1. Navigation.**

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

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

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

☐ **2. Aquatic Life Movements.** No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. Culverts placed in streams must be installed to maintain low flow conditions.

☐ **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.

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

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

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

☐ **9. Management of Water Flows.** To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization and storm water management activities, 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.

☐ **13. Removal of Temporary Fills**. Temporary fills must be removed in their entirety and the affected areas returned to preconstruction 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.

☐ **15. Wild and Scenic Rivers**. No 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. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).

☐ **16. 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.

☐ **17. Endangered Species.**

☐ (a) No activity is authorized under any NWP which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.

☐ (b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements.

☐ (c) Non-federal permittees shall notify the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that may be affected by the proposed work or that utilize the designated critical habitat that may be affected by the proposed work. 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 preconstruction notification. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed activities will have "no effect" on listed species or critical habitat, or until Section 7 consultation has been completed.

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

☐ (e) Authorization of an activity by a 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 U.S. FWS or the NMFS, both lethal and nonlethal "takes" of protected species are in violation of the ESA. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. FWS and NMFS or their world wide Web pages at http://www.fws.gov/ and http://www.noaa.gov/fisheries.html respectively.

☐ **18. Historic Properties.**

☐ (a) In cases where the district engineer determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

☐ (b) Federal permittees should follow their own procedures for complying with the requirements of Section 106 of the National Historic Preservation Act. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements.

☐ (c) Non-federal permittees must submit a preconstruction notification to the district engineer if the authorized activity may have the potential to cause effects to any historic properties listed, 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 preconstruction notification must state which historic properties may be affected by the proposed work 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 resources can be sought from the State Historic Preservation Officer or Tribal Historic Preservation Officer, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted and these efforts, the district engineer shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where the non-Federal applicant has identified historic properties which the activity may have the potential to cause effects and so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed.

☐ (d) 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. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR §800.3(a)). If NHPA section 106 consultation is required and will occur, the district engineer will notify the non-Federal applicant that he or she cannot begin work until Section 106 consultation is completed.

☐ (e) Prospective permittees should be aware that section 110k of the NHPA (16 U.S.C. 470h-2(k)) 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, explaining 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.

☐ **19. Designated Critical Resource Waters.** Critical resource waters include, NOAA-designated marine sanctuaries, National Estuarine Research Reserves, state natural heritage sites, and outstanding national resource waters or other waters officially designated by a state as having particular environmental or ecological significance and identified by the district engineer after notice and opportunity for public comment. The district engineer may also designate additional critical resource waters after notice and opportunity for 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, and 50 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, and 38, notification is required in accordance with general condition 27, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

☐ **20 Mitigation.** The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are 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) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are 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 some other form of mitigation would be more environmentally appropriate and provides a project 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 minimal adverse effects on the aquatic environment. Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, wetland restoration should be the first compensatory mitigation option considered.

☐ (d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation, such as stream restoration, to ensure that the activity results in minimal adverse effects on the aquatic environment.

☐ (e) 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 project 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 a project already meeting the established acreage limits also satisfies the minimal impact requirement associated with the NWPs.

☐ (f) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the establishment, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, riparian areas may be the only compensatory mitigation required. Riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. 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 compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

☐ (g) Permittees may propose the use of mitigation banks, in-lieu fee arrangements or separate activity-specific compensatory mitigation. In all cases, the mitigation provisions will specify the party responsible for accomplishing and/or complying with the mitigation plan.

☐ (h) Where certain functions and services of waters of the United States are permanently adversely affected, such as the conversion of a forested or scrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse effects of the project to the minimal level.

☐ **21. Water Quality.** Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA Section 401, individual 401 Water Quality Certification must be obtained or waived (see 33 CFR 330.4(c)). The district engineer or State or Tribe may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

☐ **22. Coastal Zone Management**. In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). The district engineer or a State may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

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

☐ **24. Use of Multiple Nationwide Permits**. The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

☐ **25. 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)

☐ **26. Compliance Certification**. Each permittee who received an NWP verification from the Corps must submit a signed certification regarding the completed work and any required mitigation. The certification form must be forwarded by the Corps with the NWP verification letter and will include:

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

☐ (b) A statement that any required mitigation was completed in accordance with the permit conditions; and
☐ (c) The signature of the permittee certifying the completion of the work and mitigation.

☐ **27. 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, as a general rule, 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) Forty-five 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 17 that listed species or critical habitat might affected or in the vicinity of the project, or to notify the Corps pursuant to general condition 18 that the activity may have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that 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 (see 33 CFR 330.4(g)) is completed. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee cannot 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 project;

□(3) A description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause; 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. The description should be sufficiently detailed to allow the district engineer to determine that the adverse effects of the project will be minimal and to determine the need for compensatory mitigation. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the project and when provided result in a quicker decision.);

□(4) The PCN must include a delineation of special aquatic sites and other waters of the United States 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 of the United States, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many waters of the United States. Furthermore, the 45 day period will not start until the delineation has been submitted to or completed by the Corps, where appropriate;

□(5) If the proposed activity will result in the loss of greater than 1/10 acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

□(6) If any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated criticalhabitat, for non-Federal applicants the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed work or utilize the designated critical habitat that may be proposed work. Federal applicants must provide documentation demonstrating compliance with the Endangered Species Act; and

□(7) For an activity that may affect a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, for non-Federal applicants the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property. Federal applicants must provide documentation demonstrating compliance with Section 106 of the National Historic Preservation Act.

□ (c) Form of Pre-Construction Notification: The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is a PCN and must include all of the information required in paragraphs (b)(1) through (7) of this general condition. A letter containing the required information may also be used.

□ (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 project's adverse environmental effects to a minimal level.

□(2) For all NWP 48 activities requiring pre-construction notification and for other NWP activities requiring pre-construction notification to the district engineer that result in the loss of greater than 1/2-acre of waters of the United States, the district engineer will immediately provide (e.g., via facsimile transmission, overnight mail, or other expeditious manner) a copy of the PCN to the appropriate Federal or state offices (U.S. FWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Office (THPO), and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will then have 10 calendar days from the date the material is transmitted to telephone or fax the district engineer notice that they intend to provide substantive, site-specific comments. 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, but 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.

□(3) 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.

□(4) Applicants are encouraged to provide the Corps multiple copies of pre-construction notifications to expedite agency coordination.

□(5) For NWP 48 activities that require reporting, the district engineer will provide a copy of each report within 10 calendar days of receipt to the appropriate regional office of the NMFS.

□ (e) In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If the proposed activity requires a PCN and will result in a loss of greater than 1/10 acre of wetlands, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for projects with smaller impacts. The district engineer will consider any proposed compensatory mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects to the aquatic environment of the proposed work are minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse effects on the aquatic environment are minimal, after considering mitigation, the district engineer will notify the permittee and include any conditions the district engineer deems necessary. The district engineer must approve any compensatory mitigation proposal before the permittee commences work. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure no more than minimal adverse effects on the aquatic environment. If the net adverse effects of the project on the aquatic environment (after consideration of the compensatory mitigation proposal) are determined by the district engineer to be minimal, the district engineer will provide a timely written response to the applicant. The response will state that the project can proceed under the terms and conditions of the NWP.

If the district engineer determines that the adverse effects of the proposed work are more than minimal, then the district engineer will notify the applicant either: (1) That the project does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (2) that the project is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level; or (3) that the project is authorized under the NWP with specific modifications or conditions. Where the district engineer determines that mitigation is required to ensure no more than minimal adverse effects occur to the aquatic environment, the activity will be authorized within the 45-day PCN period. The authorization will include the necessary conceptual or specific mitigation or a requirement that the applicant submit a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level. When mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan.

□ **28. 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.

B. Regional Conditions:

STATE OF LOUISIANA

PART I - REGIONAL CONDITIONS FOR ALL NWPS:

Regional Condition 1. No activity may cause the permanent loss of greater than 1/2 acre of seasonally inundated cypress swamp and/or cypress-tupelo swamp.

Regional Condition 2. No activity may cause the permanent loss of greater than 1/2 acre of pine savanna, pine flatwoods and/or pitcher plant bogs.

Regional Condition 3. No activity is authorized under any NWP permit which has been determined to have an adverse impact upon a federal or state designated rookery and/or bird sanctuary

Regional Condition 4. No existing den or candidate den trees may be felled within areas known to be occupied by the threatened Louisiana black bear. (Candidate den trees are defined as bald cypress and/or tupelo gum with visible cavities, having a minimum diameter-at-breast-height of 36 inches, and associated with rivers, lakes, streams, bayous, sloughs or other waterbodies.)

Regional Condition 5. Due to the occurrence of threatened or endangered species,

> **Pre-Construction Notification** shall be required for **ALL** instream activities in the following waterways:
> Bayou Boeuf Tributaries in Rapides Parish: (Brown Creek, Mack Branch, Clear Creek, Little Brushy Creek, Loving Creek, Little Loving Creek, Long Branch, Bayou Clear, Castor Creek, Valentine Creek, and Little Bayou Clear), Amite River (LA Highway 37 at Grangeville to Port Vincent), Bogue Falaya River and Tributaries, Abita River and Tributaries, Bayou Chinchuba (between U.S. 190 and Louisiana Highway 59), West Pearl River, Bogue Chitto River and Tributaries, and Red River tributaries in Grant Parish (Black Creek, Swafford Creek, Cypress Creek, Beaver Creek, Cress Creek, Jordon Creek, Hudson Creek, Gray Creek, Moccosin Branch and James Branch).

Regional Condition 6. The Department of the Army (DA) authorization shall be conditioned to require that any excavated and/or fill material placed within wetlands must be free of contaminants, to the best of the applicant's knowledge.

Regional Condition 7. For work within the Louisiana Coastal Zone and/or the Outer Continental Shelf off Louisiana;

> a. An application for work must first be submitted to the Louisiana Department of Natural Resources, Coastal Management Division who will then forward the request to the Corps of Engineers.
>
> b. NWP requests that have not received a Coastal Use Permit or other consistency determination from the CMD would be processed by the Corps but granted authorization would be conditioned to require the applicant to obtain appropriate authorization from CMD before the NWP is valid.
>
> c. The New Orleans District's Programmatic General Permit generally supersedes the Nationwide Permit authorization for activities located within the Louisiana Coastal Zone as 2 incorporated within the New Orleans Corps District boundaries. Projects will not qualify for a Nationwide Permit if they qualify for the Programmatic General Permit.

Regional Condition 8. A Pre-Construction Notification, as defined under nationwide general condition 27, will be provided for all activities (except those covered by the **pipeline safety program designated time-sensitive inspections and repairs – NWP 47**) that meet one or both of the following criteria:

> a. Adversely affects greater than 1/10 acre of wetlands, and/or
>
> b. Adversely impacts a designated Natural and Scenic River, a state or federal wildlife management area and/or refuge.

PART II - REGIONAL CONDITIONS FOR SPECIFIC NWPS

NWP 1. *Aids to Navigation*:
No additional regional conditions are in effect.

NWP 2. *Structures in Artificial Canals*:
No additional regional conditions are in effect.

NWP 3. *Maintenance*:
This NWP, via disavowal of Coastal Zone certification by the Louisiana Department of Natural Resources, is considered **denied** without prejudice within the Louisiana Coastal Zone. Individual requests for approval under this NWP will ***be conditioned to require the applicant to obtain a Louisiana Department of Natural Resources determination/certification before the NWP is valid.***

NWP 4. *Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities*:
No additional regional conditions are in effect.

NWP 5. *Scientific Measurement Devices*:
A Pre-Construction Notification, as defined under nationwide general condition 27, is required for all weirs and flumes in any water of the United States.

NWP 6. *Survey Activities*:
Pre-Construction Notification, as defined under nationwide general condition 27, is required for all **seismic survey activities.** The state and federal resource agencies will be forwarded a copy of the Pre-Construction Notification regardless of acreage impact.

NWP 7. *Outfall Structures and Maintenance*:
This NWP, via disavowal of Coastal Zone certification by the Louisiana Department of Natural Resources, is considered **denied** without prejudice within the Louisiana Coastal Zone. Individual requests for approval under this NWP will ***be conditioned to require the applicant to obtain a Louisiana Department of Natural Resources determination/certification before the NWP is valid.*** Activities that include the construction of intake structures must include adequate fish screening devices.

NWP 8. *Oil and Gas Structures*:
No additional regional conditions are in effect.

NWP 9. *Structures in Fleeting and Anchorage Areas*:
No additional regional conditions are in effect.

NWP 10. *Mooring Buoys*:
No additional regional conditions are in effect.

NWP 11. *Temporary Recreational Structures*:
No additional regional conditions are in effect.

NWP 12. *Utility Line Activities*:
This NWP, via disavowal of Coastal Zone certification by the Louisiana Department of Natural Resources, is considered **denied** without prejudice within the Louisiana Coastal Zone. Individual requests for approval under this NWP will ***be conditioned to require the applicant to obtain a Louisiana Department of Natural Resources determination/certification before the NWP is valid.*** A 50-foot gap shall be required for every 500 linear feet of sidecast material resulting from trench excavation activities associated with utility line construction. Under certain circumstances the gap intervals may be modified. Additionally, no fill shall be placed in a manner which would impede natural watercourses. Pre-Construction Notification, as defined under nationwide general condition 27, is required for **utility line activities** regardless of impact acreage. The US Fish and Wildlife Service and National Marine Fisheries Service will be forwarded a copy of the Pre-Construction Notification.

NWP 13. *Bank Stabilization*:
This NWP, via disavowal of Coastal Zone certification by the Louisiana Department of Natural Resources, is considered **denied** without prejudice within the Louisiana Coastal Zone. Individual requests for approval under this NWP will ***be conditioned to require the applicant to obtain a Louisiana Department of Natural Resources determination/certification before the NWP is valid.***

NWP 14. *Linear Transportation Projects*:
Pre-Construction Notification, as defined under nationwide general condition 27, is required for all **linear transportation crossings** regardless of impact acreage. The US Fish and Wildlife Service and National Marine Fisheries Service will be forwarded a copy of the Pre-Construction Notification for all NWP #14 activities. This NWP, via disavowal of Coastal Zone certification by the Louisiana Department of Natural Resources, is considered **denied** without prejudice within the Louisiana Coastal Zone. Individual requests for approval under this NWP will ***be conditioned to require the applicant to obtain a Louisiana Department of Natural Resources determination/certification before the NWP is valid.***

NWP 15. *U.S. Coast Guard Approved Bridges*:
No additional regional conditions are in effect.

NWP 16. *Return Water from Upland Contained Disposal Areas*:
No additional regional conditions are in effect.

NWP 17. *Hydropower Projects*:
No additional regional conditions are in effect.

NWP 18. *Minor Discharges*:
This NWP, via disavowal of Coastal Zone certification by the Louisiana Department of Natural Resources, is considered **denied** without prejudice within the Louisiana Coastal Zone. Individual requests for approval under this NWP will ***be conditioned to require the applicant to obtain a Louisiana Department of Natural Resources determination/certification before the NWP is valid.***

NWP 19. *Minor Dredging*:
No additional regional conditions are in effect.

NWP 20. *Oil Spill Cleanup*:
This NWP, via disavowal of Coastal Zone certification by the Louisiana Department of Natural Resources, is considered **denied** without prejudice within the Louisiana Coastal Zone. Individual requests for approval under this NWP will ***be conditioned to require the applicant to obtain a Louisiana Department of Natural Resources determination/certification before the NWP is valid.***

NWP 21. *Surface Coal Mining Activities*:
This NWP, via disavowal of water quality certification by the Louisiana Department of Environmental Quality, is considered **denied** without prejudice. Individual requests for approval under this NWP will be considered on a case-by-case basis only after receipt by the appropriate Corps district of an individual water quality certification, waiver, or other approval by the Louisiana Department of Environmental Quality.

NWP 22. *Removal of Vessels*:
This NWP, via disavowal of Coastal Zone certification by the Louisiana Department of Natural Resources, is considered **denied** without prejudice within the Louisiana Coastal Zone. Individual requests for approval under this NWP will ***be conditioned to require the applicant to obtain a Louisiana Department of Natural Resources determination/certification before the NWP is valid.***

NWP 23. *Approved Categorical Exclusions*:
This NWP, via disavowal of Coastal Zone certification by the Louisiana Department of Natural Resources, is considered **denied** without prejudice within the Louisiana Coastal Zone. Individual requests for approval under this NWP will ***be conditioned to require the applicant to obtain a Louisiana Department of Natural Resources determination/certification before the NWP is valid.***

NWP 24. *State Administered Section 404 Programs*:
Not applicable in the state of Louisiana.

NWP 25. *Structural Discharges*:
No additional regional conditions are in effect.

NWP 26. *(RESERVED)*

NWP 27. *Stream and Wetland Restoration Activities*:
This NWP, via disavowal of Coastal Zone certification by the Louisiana Department of Natural Resources, is considered **denied** without prejudice within the Louisiana Coastal Zone. Individual requests for approval under this NWP will ***be conditioned to require the applicant to obtain a Louisiana Department of Natural Resources determination/certification before the NWP is valid.*** No activities shall be authorized that would convert tidal wetlands to another aquatic habitat type.

NWP 28. *Modifications of Existing Marinas*:
No additional regional conditions are in effect.

NWP 29. *Single-Family Housing*:
This NWP, via disavowal of water quality certification by the Louisiana Department of Environmental Quality, is considered **denied** without prejudice. Individual requests for approval under this NWP will be considered on a case-by-case basis only after receipt by the appropriate Corps district of an individual water quality certification, waiver, or other approval by the Louisiana Department of Environmental Quality. This NWP, via disavowal of Coastal Zone certification by the Louisiana Department of Natural Resources, is considered **denied** without prejudice within the Louisiana Coastal Zone. Individual requests for approval under this NWP will ***be conditioned to require the applicant to obtain a Louisiana Department of Natural Resources determination/certification before the NWP is valid.***

NWP 30. *Moist Soil Management for Wildlife*:
Pre-Construction Notification, as defined under nationwide general condition 27, is required for all activities regardless of the impact acreage. The U.S. Fish and Wildlife Service and the Louisiana Wildlife and Fisheries will be forwarded a copy of the complete Pre-Construction Notification. A copy of the water-level management plan must be submitted as part of the Pre-Construction Notification.

NWP 31. *Maintenance of Existing Flood Control Facilities*:
This NWP, via disavowal of water quality certification by the Louisiana Department of Environmental Quality, is considered **denied** without prejudice. Individual requests for approval under this NWP will be considered on a case-by-case basis only after receipt by the appropriate Corps district of an individual water quality certification, waiver, or other approval by the Louisiana Department of Environmental Quality. This NWP, via disavowal of Coastal Zone certification by the Louisiana Department of Natural Resources, is considered **denied** without prejudice within the Louisiana Coastal Zone. Individual requests for approval under this NWP will ***be conditioned to require the applicant to obtain a Louisiana Department of Natural Resources determination/certification before the NWP is valid.***

NWP 32. *Completed Enforcement Actions*:
No additional regional conditions are in effect.

NWP 33. *Temporary Construction, Access and Dewatering*:
This NWP, via disavowal of Coastal Zone certification by the Louisiana Department of Natural Resources, is considered **denied** without prejudice within the Louisiana Coastal Zone. Individual requests for approval under this NWP will ***be conditioned to require the applicant to obtain a Louisiana Department of Natural Resources determination/certification before the NWP is valid.***

NWP 34. *Cranberry Production*:
Not applicable within the state of Louisiana.

NWP 35. *Maintenance Dredging of Existing Basins*:
This NWP, via disavowal of Coastal Zone certification by the Louisiana Department of Natural Resources, is considered **denied** without prejudice within the Louisiana Coastal Zone. Individual requests for approval under this NWP will ***be conditioned to require the applicant to obtain a Louisiana Department of Natural Resources determination/certification before the NWP is valid.***

NWP 36. *Boat Ramps*:
This NWP, via disavowal of Coastal Zone certification by the Louisiana Department of Natural Resources, is considered **denied** without prejudice within the Louisiana Coastal Zone. Individual requests for approval under this NWP will ***be conditioned to require the applicant to obtain a Louisiana Department of Natural Resources determination/certification before the NWP is valid.***

NWP 37. *Emergency Watershed Protection and Rehabilitation*:
No additional regional conditions are in effect.

NWP 38. *Cleanup of Hazardous and Toxic Waste*:
This NWP, via disavowal of Coastal Zone certification by the Louisiana Department of Natural Resources, is considered **denied** without prejudice within the Louisiana Coastal Zone. Individual requests for approval under this NWP will ***be conditioned to require the applicant to obtain a Louisiana Department of Natural Resources determination/certification before the NWP is valid.***

NWP 39. *Residential, Commercial and Institutional Developments*:
This NWP, via disavowal of water quality certification by the Louisiana Department of Environmental Quality, is considered **denied** without prejudice. Individual requests for approval under this NWP will be considered on a case-by-case basis only after receipt by the appropriate Corps district of an individual water quality certification, waiver, or other approval by the Louisiana Department of Environmental Quality. This NWP, via disavowal of Coastal Zone certification by the Louisiana Department of Natural Resources, is considered **denied** without prejudice within the Louisiana Coastal Zone. Individual requests for approval under this NWP will ***be conditioned to require the applicant to obtain a Louisiana Department of Natural Resources determination/certification before the NWP is valid.*** Work which would result in the resuspension of dredged material shall be prohibited in Bayou d'Inde, the Inner Harbor Canal, Calcasieu River at the mouth of Bayou d'Inde, Harvey Canal, California Canal, and Bayous Trepagnier, Rigaud, Olsen and Verdine, Capitol Lake, Coon Island Loop, Devil's Swamp, and Tensas River (areas within and upstream of Tensas National Wildlife Refuge), Ouachita River (areas within and upstream of the Upper Ouachita National Wildlife Refuge), Wham Brake drainage (Staulkinghead Creek, Little Bayou Boeuf, Bayou Lafourche and Lake Irwin).

NWP 40. *Agricultural Activities*:
This NWP, via disavowal of water quality certification by the Louisiana Department of Environmental Quality, is considered **denied** without prejudice. Individual requests for approval under this NWP will be considered on a case-by-case basis only after receipt by the appropriate Corps district of an individual water quality certification, waiver, or other approval by the Louisiana Department of Environmental Quality. This NWP, via disavowal of Coastal Zone certification by the Louisiana Department of Natural Resources, is considered **denied** without prejudice within the Louisiana Coastal Zone. Individual requests for approval under this NWP will ***be conditioned to require the applicant to obtain a Louisiana Department of Natural Resources determination/certification before the NWP is valid.***

NWP 41. *Reshaping Existing Drainage Ditches*:
No discharges shall be allowed under this NWP that would adversely impact mature riparian corridors. Work which would result in the resuspension of dredged material shall be prohibited in Bayou d'Inde, the Inner Harbor Canal, Calcasieu River at the mouth of Bayou d'Inde, Harvey Canal, California Canal, and Bayous Trepagnier, Rigaud, Olsen and Verdine, Capitol Lake, Coon Island Loop, Devil's Swamp, and Tensas River (areas within and upstream of Tensas National Wildlife Refuge), Ouachita River (areas within and upstream of the Upper Ouachita National Wildlife Refuge), Wham Brake drainage (Staulkinghead Creek, Little Bayou Boeuf, Bayou Lafourche and Lake Irwin). This NWP, via disavowal of Coastal Zone certification by the Louisiana Department of Natural Resources, is considered **denied** without prejudice within the Louisiana Coastal Zone. Individual requests for approval under this NWP will ***be conditioned to require the applicant to obtain a Louisiana Department of Natural Resources determination/certification before the NWP is valid.***

NWP 42. *Recreational Facilities*:
This NWP, via disavowal of Coastal Zone certification by the Louisiana Department of Natural Resources, is considered **denied** without prejudice within the Louisiana Coastal Zone. Individual requests for approval under this NWP will ***be conditioned to require the applicant to obtain a Louisiana Department of Natural Resources determination/certification before the NWP is valid.*** Work which would result in the resuspension of dredged material shall be prohibited in Bayou d'Inde, the Inner Harbor Canal, Calcasieu River at the mouth of Bayou d'Inde, Harvey Canal, California Canal, and Bayous Trepagnier, Rigaud, Olsen and Verdine, Capitol Lake, Coon Island Loop, Devil's Swamp, and Tensas River (areas within and upstream of Tensas National Wildlife Refuge), Ouachita River (areas within and upstream of the Upper Ouachita National Wildlife Refuge), Wham Brake drainage (Staulkinghead Creek, Little Bayou Boeuf, Bayou Lafourche and Lake Irwin).

NWP 43. *Stormwater Management Facilities*:
This NWP, via disavowal of water quality certification by the Louisiana Department of Environmental Quality, is considered **denied** without prejudice. Individual requests for approval under this NWP will be considered on a case-by-case basis only after receipt by the appropriate Corps district of an individual water quality certification, waiver, or other approval by the Louisiana Department of Environmental Quality. This NWP, via disavowal of Coastal Zone certification by the Louisiana Department of Natural Resources, is considered **denied** without prejudice within the Louisiana Coastal Zone. Individual requests for approval under this NWP will ***be conditioned to require the applicant to obtain a Louisiana Department of Natural Resources determination/certification before the NWP is valid.*** Work which would result in the resuspension of dredged material shall be prohibited in Bayou d'Inde, the Inner Harbor Canal, Calcasieu River at the mouth of Bayou d'Inde, Harvey Canal, California Canal, and Bayous Trepagnier, Rigaud, Olsen and Verdine, Capitol Lake, Coon Island Loop, Devil's Swamp, and Tensas River (areas within and upstream of Tensas National Wildlife Refuge), Ouachita River (areas within and upstream of the Upper Ouachita National Wildlife Refuge), Wham Brake drainage (Staulkinghead Creek, Little Bayou Boeuf, Bayou Lafourche and Lake Irwin).

NWP 44. *Mining Activities*:
This NWP, via disavowal of water quality certification by the Louisiana Department of Environmental Quality, is considered **denied** without prejudice. Individual requests for approval under this NWP will be considered on a case-by-case basis only after receipt by the appropriate Corps district of an individual water quality certification, waiver, or other approval by the Louisiana Department of Environmental Quality. This NWP, via disavowal of Coastal Zone certification by the Louisiana Department of Natural Resources, is considered **denied** without prejudice within the Louisiana Coastal Zone. Individual requests for approval under this NWP will ***be conditioned to require the applicant to obtain a Louisiana Department of Natural Resources determination/certification before the NWP is valid.*** Work which would result in the resuspension of dredged material shall be prohibited in Bayou d'Inde, the Inner Harbor Canal, Calcasieu River at the mouth of Bayou d'Inde, Harvey Canal, California Canal, and Bayous Trepagnier, Rigaud, Olsen and Verdine, Capitol Lake, Coon Island Loop, Devil's Swamp, and Tensas River (areas within and upstream of Tensas National Wildlife Refuge), Ouachita River (areas within and upstream of the Upper Ouachita National Wildlife Refuge), Wham Brake drainage (Staulkinghead Creek, Little Bayou Boeuf, Bayou Lafourche and Lake Irwin).

NWP 45. *Emergency Repair Activities*:
This NWP, via disavowal of Coastal Zone certification by the Louisiana Department of Natural Resources, is considered **denied** without prejudice within the Louisiana Coastal Zone. Individual requests for approval under this NWP will ***be conditioned to require the applicant to obtain a Louisiana Department of Natural Resources determination/certification before the NWP is valid.***

NWP 46. *Discharges into Ditches and Canals*:
This NWP, via disavowal of Coastal Zone certification by the Louisiana Department of Natural Resources, is considered **denied** without prejudice within the Louisiana Coastal Zone. Individual requests for approval under this NWP will ***be conditioned to require the applicant to obtain a Louisiana Department of Natural Resources determination/certification before the NWP is valid.***

NWP 47. *Pipeline Safety Program Designated Time Sensitive Inspections and Repairs:*
This NWP, via disavowal of Coastal Zone certification by the Louisiana Department of Natural Resources, is considered **denied** without prejudice within the Louisiana Coastal Zone. Individual requests for approval under this NWP will ***be conditioned to require the applicant to obtain a Louisiana Department of Natural Resources determination/certification before the NWP is valid.***

NWP 48. *Commercial Shellfish Aquaculture Activities*:
This NWP, via disavowal of Coastal Zone certification by the Louisiana Department of Natural Resources, is considered **denied** without prejudice within the Louisiana Coastal Zone. Individual requests for approval under this NWP will ***be conditioned to require the applicant to obtain a Louisiana Department of Natural Resources determination/certification before the NWP is valid.***

NWP 49. *Coal Remining Activities*:
This NWP, via disavowal of Coastal Zone certification by the Louisiana Department of Natural Resources, is considered **denied** without prejudice within the Louisiana Coastal Zone. Individual requests for approval under this NWP will ***be conditioned to require the applicant to obtain a Louisiana Department of Natural Resources determination/certification before the NWP is valid.***

NWP 50. *Underground Coal Mining Activities*:
This NWP, via disavowal of Coastal Zone certification by the Louisiana Department of Natural Resources, is considered **denied** without prejudice within the Louisiana Coastal Zone. Individual requests for approval under this NWP will ***be conditioned to require the applicant to obtain a Louisiana Department of Natural Resources determination/certification before the NWP is valid.***

PART III - WATER QUALITY REGIONAL NWPS CONDITIONS FOR "INDIAN COUNTRY" LANDS

The Environmental Protection Agency (EPA) is the agency required to address water quality certification of the 2007 nationwide permits (NWPs) in Indian country[1] where a tribe has not received treatment in the same manner as a state for the Clean Water Act (CWA) Section 401 program. Tribes which have received treatment in the same manner as a state (TAS) for the water quality standards and §401 certification programs and which have EPA-approved water quality standards will be contacted by the Corps of Engineers for the water quality certification process. EPA is the agency required to address water quality certification for tribes that have not received TAS for the water quality standards and 401 certification programs. At this time, no Indian tribes in Louisiana have CWA Section 401 authority.

1. The permittee shall conduct all work in such a manner to comply with all U.S. Army Corps of Engineers §404 permit conditions.

2. The permittee shall keep a copy of this certification with conditions at the project site during all phases of construction. All contractors or subcontractors involved in the project must be provided a copy of this certification prior to commencement of activities.

3. All heavy equipment used in the project areas shall be steam cleaned before the start of the project and inspected daily for leaks. Leaking equipment must not be used in or near surface water or in a wetland area. Equipment shall be parked outside the waterbody when not in use.

4. All fuels, oil, hydraulic fluid, or other substances of this nature must not be stored, temporarily or otherwise, within the normal floodplain or the wetland. A secondary containment system for these items shall be used in the event the primary containment system leaks. Refueling or servicing of equipment must not take place within 100 feet of any watercourse or within the wetland area.

5. The construction area shall be protected such that a runoff event will not move soil or contaminants to surface water or away from the construction site. These measures shall be in place prior to the commencement of activities and inspected daily.

6. Temporary mats must be placed on stream banks, riparian areas, and wetlands, to minimize impacts to soil and vegetation from heavy equipment. Temporary access roads must be restored to pre-project conditions.

7. All asphalt, concrete, and other construction materials must be properly handled and contained to prevent releases to the stream channels. All concrete that is to be poured must be fully contained in mortar-tight forms to prevent accidental releases to surface water or ground.

8. Work in a stream channel should be limited to periods of no flow when practicable, and must be limited to periods of low flow. Avoid working within the channel during spring runoff or summer thunderstorm season.

9. When working in a stream channel, flowing water must be temporarily diverted around the work area to minimize sedimentation and turbidity problems. Acceptable diversion structures are non-erosive and include (but are not limited to) sand bags, water bladders, concrete barriers lined with plastic, and flumes.

10. The permittee shall restore all areas disturbed by construction activities to pre-project conditions. This shall include restoration of surface contours, stabilization of the soil, and restoration of appropriate native vegetation to establish permanent cover.

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[1]"Indian Country", as defined in 18 U.S.C. 1151, means: (1) all land within the limits of any Indian reservation under the jurisdiction of the United States government, not withstanding the issuance of any patent, and including rights-of-way running through the reservation; (2) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and (3) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same water. No discharge of any concrete to surface water or ground water may occur. Dumping of waste materials near watercourses is strictly prohibited.

C. Further Information

1. District Engineers have authority to determine if an activity complies with the terms and conditions of an NWP.

2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.

3. NWPs do not grant any property rights or exclusive privileges.

4. NWPs do not authorize any injury to the property or rights of others.

5. NWPs do not authorize interference with any existing or proposed Federal project.

D. Definitions

Best management practices (BMPs): Policies, practices, procedures, or structures implemented to mitigate the adverse

environmental effects on surface water quality resulting from development. BMPs are categorized as structural or nonstructural.

Compensatory mitigation: The restoration, establishment (creation), enhancement, or preservation of aquatic resources for the purpose of compensating for unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

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

Discharge: The term "discharge" means any discharge of dredged or fill material.

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

Ephemeral stream: An ephemeral stream has flowing water only during, and for a short duration after, precipitation events in a typical year. Ephemeral stream beds are located above the water table year-round. Groundwater is not a source of water for the stream. Runoff from rainfall is the primary source of water for stream flow.

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

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

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

Intermittent stream: An intermittent stream has flowing water during certain times of the year, when groundwater provides water for stream flow. During dry periods, intermittent streams may not have flowing water. Runoff from rainfall is a supplemental source of water for stream flow.

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

Non-tidal wetland: A non-tidal wetland is a wetland that is not subject to the ebb and flow of tidal waters. The definition of a wetland can be found at 33 CFR 328.3(b). Non-tidal wetlands contiguous to tidal waters are located landward of the high tide line (i.e., spring high tide line).

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

Ordinary High Water Mark: An ordinary high water mark is a line on the shore established by the fluctuations of water and indicated by physical characteristics, or by other appropriate means that consider the characteristics of the surrounding areas (see 33 CFR 328.3(e)).

Perennial stream: A perennial stream has flowing water year-round during a typical year. The water table is located above the stream bed for most of the year. Groundwater is the primary source of water for stream flow. Runoff from rainfall is a supplemental source of water for stream flow.

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

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

Preservation: The removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the

implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

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

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

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

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

Riparian areas: Riparian areas are lands adjacent to streams, lakes, and estuarine-marine shorelines. Riparian areas are transitional between terrestrial and aquatic ecosystems, through which surface and subsurface hydrology connects waterbodies with their adjacent uplands. Riparian areas provide a variety of ecological functions and services and help improve or maintain local water quality. (See general condition 20.)

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

Single and complete project: The term "single and complete project" is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete project must have independent utility (see definition). For linear projects, a "single and complete project" is all crossings of a single water of the United States (i.e., a single waterbody) at a specific location. For linear projects crossing a single waterbody several times at separate and distant locations, each crossing is considered a single and complete project. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately.

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

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

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

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

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

Tidal wetland: A tidal wetland is a wetland (i.e., water of the United States) that is inundated by tidal waters. The definitions of a wetland and tidal waters can be found at 33 CFR 328.3(b) and 33 CFR 328.3(f), respectively. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line, which is defined at 33 CFR 328.3(d).

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

Waterbody: For purposes of the NWPs, a waterbody is a jurisdictional water of the United States that, during a year with normal patterns of precipitation, has water flowing or standing above ground to the extent that an ordinary high water mark (OHWM) or other indicators of jurisdiction can be determined, as well as any wetland area (see 33 CFR 328.3(b)). If a jurisdictional wetland is adjacent--meaning bordering, contiguous, or neighboring--to a jurisdictional waterbody displaying an OHWM or other indicators of jurisdiction, that waterbody and its adjacent wetlands are considered together as a single aquatic unit (see 33 CFR 328.4(c)(2)). Examples of "waterbodies" include streams, rivers, lakes, ponds, and wetlands.