



**U S Army Corps  
of Engineers**  
Huntington District  
Pittsburgh District

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# Public Notice

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Please address all comments and inquiries to:

US Army Corps of Engineers, Pittsburgh District  
1000 Liberty Avenue  
Pittsburgh, PA 15222-4186

Phone: (412) 395-7155

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Issuance Date: February 24, 2022

Closing Date: NA

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## **NATIONWIDE PERMITS FOR THE STATE OF WEST VIRGINIA**

### **U.S. ARMY CORPS OF ENGINEERS REGULATORY PROGRAM REISSUANCE AND ISSUANCE OF NATIONWIDE PERMITS 1-11, 13-20, 22-28, 30- 38, 41, 45-47, 49, 53, 54 and 59**

#### **WITH WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION 401 WATER QUALITY CERTIFICATION**

On December 27, 2021, the U.S. Army Corps of Engineers (Corps) published a final rule in the *Federal Register* (86 FR 73522) announcing the reissuance of forty (40) existing nationwide permits (NWP) and one (1) new NWP. These forty-one (41) NWP will go into effect on February 25, 2022, and they will expire on March 14, 2026:

- NWP 1 – Aids to Navigation
- NWP 2 – Structures in Artificial Canals
- NWP 3 – Maintenance
- NWP 4 – Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
- NWP 5 – Scientific Measurement Devices
- NWP 6 – Survey Activities
- NWP 7 – Outfall Structures and Associated Intake Structures
- NWP 8 – Oil and Gas Structures on the Outer Continental Shelf
- NWP 9 – Structures in Fleeting and Anchorage Areas
- NWP 10 – Mooring Buoys
- NWP 11 – Temporary Recreational Structures
- NWP 13 – Bank Stabilization
- NWP 14 – Linear Transportation Projects
- NWP 15 – U.S. Coast Guard Approved Bridges
- NWP 16 – Return Water From Upland Contained Disposal Areas
- NWP 17 – Hydropower Projects
- NWP 18 – Minor Discharges
- NWP 19 – Minor Dredging
- NWP 20 – Response Operations for Oil or Hazardous Substances

- NWP 22 – Removal of Vessels
- NWP 23 – Approved Categorical Exclusions
- NWP 24 – Indian Tribe or State Administered Section 404 Programs
- NWP 25 – Structural Discharges
- NWP 27 – Aquatic Habitat Restoration, Establishment, and Enhancement Activities
- NWP 28 – Modifications of Existing Marinas
- NWP 30 – Moist Soil Management for Wildlife
- NWP 31 – Maintenance of Existing Flood Control Facilities
- NWP 32 – Completed Enforcement Actions
- NWP 33 – Temporary Construction, Access, and Dewatering
- NWP 34 – Cranberry Production Activities
- NWP 35 – Maintenance Dredging of Existing Basins
- NWP 36 – Boat Ramps
- NWP 37 – Emergency Watershed Protection and Rehabilitation
- NWP 38 – Cleanup of Hazardous and Toxic Waste
- NWP 41 – Reshaping Existing Drainage and Irrigation Ditches
- NWP 45 – Repair of Uplands Damaged by Discrete Events
- NWP 46 – Discharges in Ditches
- NWP 49 – Coal Remining Activities
- NWP 53 – Removal of Low-Head Dams
- NWP 54 – Living Shorelines (Revoked for use in the State of West Virginia)
- NWP 59 – Water Reclamation and Reuse Facilities

The 40 existing NWPs 1-11, 13-20, 22-28, 30-38, 41, 45-47, 49, 53, and 54 published in the December 27, 2021 final rule replace the 2017 versions of these NWPs. The 2017 versions of NWPs 1-11, 13-20, 22-28, 30-38, 41, 45-47, 49, 53, and 54 expire on February 24, 2022.

There are sixteen (16) existing NWPs that were not reissued or modified by the December 27, 2021 final rule. Those 16 NWPs were published in the January 13, 2021 final rule of the Federal Register (86 FR 2744) and those NWPs remain in effect until the Corps issues a final rule reissuing those NWPs or March 14, 2026, whichever comes first. The 16 NWPs that remain in effect are:

- NWP 12 – Oil or Natural Gas Pipeline Activities
- NWP 21 – Surface Coal Mining Activities
- NWP 29 – Residential Developments
- NWP 39 – Commercial and Institutional Developments
- NWP 40 – Agricultural Activities
- NWP 42 – Recreational Facilities
- NWP 43 – Stormwater Management Facilities

- NWP 44 – Mining Activities
- NWP 48 – Commercial Shellfish Mariculture Activities
- NWP 50 – Underground Coal Mining Activities
- NWP 51 – Land-Based Renewable Energy Generation Facilities
- NWP 52 – Water-Based Renewable Energy Generation Pilot Projects
- NWP 55 – Seaweed Mariculture Activities (revoked for use in the State of West Virginia)
- NWP 56 – Finfish Mariculture Activities (revoked for use in the State of West Virginia)
- NWP 57 – Electric Utility Line and Telecommunications Activities
- NWP 58 – Utility Line Activities for Water and Other Substances

The regional conditions for the 16 existing NWPs that were approved by the Great Lakes and Ohio River Division Engineer (LRD) in 2021 remain in effect.

An integral part of the Corps' Regulatory Program is the concept of NWPs authorizing regulated activities that result in no more than minimal individual and cumulative adverse environmental effects. NWPs are activity specific and are designed to relieve some of the administrative burdens associated with Section 10 of the Rivers and Harbors Act (Section 10) and/or Section 404 of the Clean Water Act (Section 404) permit processing for both the applicant and the federal government. The NWPs are issued by the Chief of Engineers and are intended to apply throughout the entire U.S. and its territories. Based on the recommendations provided by the Huntington and Pittsburgh Districts (Districts), the LRD has approved regional conditions for the 2021 NWPs, published in the December 27, 2021 *Federal Register* (86 FR 73522), that are applicable in the State of West Virginia. For convenience, the 2021 NWPs with the appropriate regional, general, and special conditions are attached. In addition to imposing regional conditions on certain NWPs, LRD has revoked NWP No. 54 (Living Shorelines) for use in the State of West Virginia.

Some regulated activities authorized by a NWP may proceed without notifying the Districts, as long as those regulated activities comply with all applicable terms and conditions of the NWPs, including regional conditions imposed by the Division Engineer. A non-reporting NWP may become a reporting NWP (requires the submittal of a Pre-Construction Notification (PCN) to the Districts in accordance with NWP General Condition 32) if the activity has the potential to affect a historic property (See NWP General Condition 20 and Regional General Condition 4), federally-listed endangered or threatened species or their habitat (See NWP General Condition 18 and Regional General Condition 1), waters of special concern (See Regional General Conditions 2 and 3), or National Wild and Scenic Rivers (See NWP General Condition 16 and Regional General Condition 2).

Many of the proposed NWPs require advance notification (i.e., PCN) to the District Engineer before commencing those regulated activities, to ensure that the regulated activities authorized by those NWPs cause no more than minimal individual

and cumulative adverse environmental effects. The PCN must be made in writing as early as possible prior to commencing the proposed regulated activity. The notification procedures are described in NWP General Condition 32. The District Engineer may require a Section 10 and/or Section 404 Individual Permit for any regulated activity determined to have more than minimal adverse environmental effects, individually or cumulatively, on the aquatic environment or that would be contrary to the public interest (33 CFR 320.4). More information about the Corps' Regulatory Program, including a fillable copy of the PCN form, is available at the following website:

<https://www.lrh.usace.army.mil/Missions/Regulatory/How-to-Apply-for-a-Permit/>

The NWPs are not valid until the appropriate state agency certifies the discharge of dredged or fill material into waters of the U.S. does not violate state water quality standards or waives certification. The West Virginia Department of Environmental Protection (WVDEP) granted a general Section 401 Water Quality Certification (WQC), with conditions, for the NWPs. The WVDEP denied Section 401 WQC for the following activities, and in accordance with the Corps' regulations at 33 CFR 330.4(c), the Districts will not issue any authorization for the below activities until the WVDEP issues an individual Section 401 WQC for the specific activity or waives the right to do so:

- **NWP 6 (Survey Activities)** when exploratory trenching is proposed;
- **NWP 7 (Outfall Structures and Associated Intake Structures)** for the discharge of material to an embayment, island back channel, or stream mouth on a Section 10 water and/or impacts to streams identified in West Virginia Section 401 WQC Standard Condition 15 that exceed 300 linear feet, and for water withdrawal;
- **NWP 13 (Bank Stabilization)** for the discharge of material to an embayment, island back channel, or stream mouth on a Section 10 water and/or impacts to streams identified in West Virginia Section 401 WQC Standard Condition 15 that exceed 300 linear feet;
- **NWP 14 (Linear Transportation Projects)** for the discharge of material to an embayment, island back channel, or stream mouth on a Section 10 water and/or impacts to streams identified in West Virginia Section 401 WQC Standard Condition 15 that exceed 300 linear feet;
- **NWP 15 (U.S. Coast Guard Approved Bridges)** for the use of this permit;
- **NWP 17 (Hydropower Projects)** for the discharge of material to an embayment, island back channel, or stream mouth on a Section 10 water and/or impacts to streams identified in West Virginia Section 401 WQC Standard Condition 15 that exceed 300 linear feet;
- **NWP 18 (Minor Discharges)** for the discharge of material to an embayment, island back channel, or stream mouth on a Section 10 water and/or impacts to streams identified in West Virginia Section 401 WQC Standard Condition 15 that exceed 300 linear feet;
- **NWP 19 (Minor Dredging)** for the discharge of material to an embayment, island back channel, or stream mouth on a Section 10 water and/or impacts to streams

identified in West Virginia Section 401 WQC Standard Condition 15 that exceed 300 linear feet;

- **NWP 23 (Approved Categorical Exclusions)** for the use of this permit;
- **NWP 33 (Temporary Construction, Access, and Dewatering)** to construct temporary causeways in Section 10 waters, or for fills in any water anticipated to exceed one (1) year;
- **NWP 45 (Repair of Uplands Damaged by Discrete Events)** for the discharge of material to an embayment, island back channel, or stream mouth on a Section 10 water and/or impacts to streams identified in West Virginia Section 401 WQC Standard Condition 15 that exceed 300 linear feet;
- **NWP 49 (Coal Remining Activities)** for activities impacting any classification of stream listed in West Virginia 401 WQC Standard Condition 15, for mining related activities cumulatively impacting greater than ½ acre of intermittent or perennial stream(s), for linear transportation projects which involve stream crossings for haul roads, access roads, conveyor belts, pipelines, etc. in intermittent or perennial stream(s) greater than ½ acre cumulative or 300 linear feet per individual crossing, and for cumulative permanent wetland impacts greater than ½ acre;
- **NWP 53 (Removal of Low-Head Dams)** for the discharge of material to Section 10 waters and streams identified in West Virginia Section 401 WQC Standard Condition 15; and
- **NWP 59 (Water Reclamation and Reuse Facilities)** for the use of this permit.

Applicants must review the Section 401 WQC standard and NWP-specific special conditions and submit to the WVDEP, at the address provided below, a request for an individual Section 401 WQC in accordance with the 1971 Clean Water Act Section 401 Certification Rule(40 CFR 121) and any applicable state requirements when an individual Section 401 WQC is required as indicated above.

West Virginia Department of Environmental Protection  
 Division of Water and Waste Management  
 601 57th Street SE  
 Charleston, WV 25304  
 Telephone Number: (304) 926-0495

The NWPs provide a simplified, expeditious means of project authorization under the various Corps authorities. We encourage prospective permit applicants to consider the advantages of NWP authorization during the preliminary design of their projects. Assistance and further information regarding all aspects of the Corps' regulatory program may be obtained by contacting:

### **HUNTINGTON DISTRICT**

Address: U.S. Army Corps of Engineers, Huntington District  
 502 Eighth Street  
 Huntington, West Virginia 25701-2070

Phone: (304) 399-5210

**PITTSBURGH DISTRICT**

Address: U.S. Army Corps of Engineers, Pittsburgh District  
William S. Moorhead Federal Building  
1000 Liberty Avenue  
Pittsburgh, Pennsylvania 15222-4186

Phone: (412) 395-7155



## **A. Special Note**

## **B. Regional General Conditions (Applies to All 2021 Nationwide Permits in West Virginia)**

1. Threatened and Endangered Species
2. High-Quality Waterway
3. Natural Streams Preservation Act Waterways
4. Historic Properties

## **C. 2021 Nationwide Permits Terms and Specific Regional Conditions**

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
50. Underground Coal Mining Activities
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 and Irrigation 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 (Revoked for use in the State of West Virginia)
59. Water Reclamation and Reuse Facilities

#### **D. 2021 Nationwide Permit General Conditions**

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

32. Pre-Construction Notification

**E. District Engineer's Decision**

**F. Further Information**

**G. General Limitations and Conditions for all West Virginia Department of Environmental Protection Clean Water Act Section 401 Certified Nationwide Permits**

**H. Definitions**

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Compensatory mitigation  
Currently serviceable  
Direct effects  
Discharge  
Ecological reference  
Enhancement  
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High Tide Line  
Historic property  
Independent utility  
Indirect effects  
Loss of waters of the United States  
Navigable waters  
Non-tidal wetland  
Open water  
Ordinary high water mark  
Perennial stream  
Practicable  
Pre-construction notification  
Preservation  
Re-establishment  
Rehabilitation  
Restoration  
Riffle and pool complex  
Riparian areas  
Shellfish seeding  
Single and complete linear project  
Single and complete non-linear project  
Stormwater management  
Stormwater management facilities  
Stream bed

Stream channelization  
 Structure  
 Tidal wetland  
 Tribal lands  
 Tribal rights  
 Vegetated shallows  
 Waterbody

**A. Special Note:** For NWP's that do not require pre-construction notification to the Corps, it is an applicant's responsibility to review the Water Quality Certification general and NWP-specific terms and conditions and submit information to the WVDEP as required by their water quality certification. A project that meets the terms and conditions of a NWP with no Pre-Construction Notification to the Corps is only valid when accompanied by a blanket or individual 401 Water Quality Certification from the WVDEP. No work in waters of the United States may commence until the required 401 water quality certification (or waiver) has been obtained from the WVDEP.

**B. Regional General Conditions (Applies to All 2021 Nationwide Permits in West Virginia):**

1. **Threatened and Endangered Species:** Section 7(a)(2) of the Endangered Species Act (ESA) states that each federal agency shall, in consultation with the Secretary, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat.. Section 7 of the ESA, called "Interagency Cooperation," is the mechanism by which Federal agencies ensure the actions they take, including those they fund or authorize, do not jeopardize the continued existence of any federally or proposed federally listed species. Consistent with NWP General Condition 18, information for federally threatened and endangered species must be provided in the PCN to determine the proposed activity's compliance with NWP General Condition 18 and to facilitate project-specific coordination with the USFWS. All relevant information obtained from the USFWS must be submitted with the PCN.
2. All regulated activities located in high-quality waterways listed below require PCN in accordance with NWP General Condition 32:
  - New River, which includes all river miles contained in the boundaries of the New River Gorge National Park and Preserve;
  - Bluestone River from the upstream boundary of Pipestem Park to Bluestone Reservoir;
  - Meadow River from an area near the US 19 Bridge to its junction with the Gauley River;

- All streams within the Monongahela National Forest designated as National Wild and Scenic Study Rivers;
- All streams and other bodies of water in State and National Forests and Recreation Areas (included are streams and bodies of water located within the Spruce Knob, Seneca Rocks and Gauley River National Recreation Areas); and
- Streams and their tributaries as contained within the boundaries of the designated National Wilderness Areas or the headwaters of such rivers and their tributaries, including but not limited to: Cranberry River, Red Creek, Laurel Fork and Otter Creek.

The Corps will consult, as necessary, with the National Park Service and/or the U.S. Forest Service upon receipt of the PCN.

3. Due to the ecological significance of the following waterways protection under the Natural Streams Preservation Act (WV Code Chapter 22 Article 13), all regulated activities located in these waterways require PCN in accordance with NWP General Condition 32:

- Greenbrier River from its confluence with Knapps Creek to its confluence with the New River;
- Anthony Creek from its headwaters to its confluence with the Greenbrier River;
- Cranberry River from its headwaters to its confluence with the Gauley River;
- Birch River from Cora Brown Bridge in Nicholas County to its confluence with the Elk River; and
- New River from its confluence with the Greenbrier River to its confluence with the Gauley River, which includes the length of the New River contained in the boundaries of the New River Gorge National Park and Preserve.

The Corps will consult, as necessary, with the National Park Service and/or the U.S. Forest Service upon receipt of the PCN.

4. **Historic Properties:** Under the National Historic Preservation Act (NHPA), the Corps must ensure no federal undertaking, including a Corps permit action, which may affect historic resources, is commenced before the impacts of such action are considered and the Advisory Council on Historic Preservation and the State Historic Preservation Office (SHPO) are provided an opportunity to comment as required by the NHPA, 36 CFR 800, and 33 CFR 325, Appendix C. Consistent with NWP General Condition 20, historic properties information must be provided in the PCN if the proposed undertaking 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. All relevant information obtained from the SHPO must be submitted with the PCN.

### **Helpful Information**

DISCLAIMER: The below information is intended to provide helpful contact information and other submittal recommendations. Contact the appropriate local, state, or federal agency for the most updated links to ensure compliance with the NWP General Conditions.

#### **General Condition 1 (Navigation)**

##### ***List of Section 10 Navigable Waters of the United States:***

Huntington District –

<https://www.lrh.usace.army.mil/Missions/Regulatory/Section-10-Streams/>

Pittsburgh District –

<https://www.lrp.usace.army.mil/Portals/72/docs/regulatory/RegulatoryBoundaries/PN12-2.pdf>

##### ***Navigation Charts:***

Huntington District –

<https://www.lrh.usace.army.mil/Missions/Civil-Works/Navigation/>

Pittsburgh District –

<https://www.lrp.usace.army.mil/Missions/Navigation/Navigation-Charts/>

##### ***Locks and Dams:***

Huntington District

<https://www.lrh.usace.army.mil/Missions/Civil-Works/Locks-and-Dams/>

Pittsburgh District

<https://www.lrp.usace.army.mil/Missions/Navigation/Locks-and-Dams/#:~:text=Locks%20and%20Dams%20%20%20Allegheny%20River%20,Locks%20%26%20Dam%20%205%20more%20rows%20>

##### ***Notice to Navigation Interests Request Sheets:***

Huntington District

<https://www.lrh.usace.army.mil/Portals/38/docs/navigation/Notice%20Info%20sheet.pdf>

Pittsburgh District

<https://www.lrp.usace.army.mil/Portals/72/docs/regulatory/NavNoticeRequestForm.pdf>

### **General Condition 3 (Spawning Areas)**

In stream work in designated warm water streams and their adjacent tributaries during the fish spawning season, April - June and trout waters and their adjacent tributaries during the trout water fish spawning season September 15 to March 31 requires a spawning season waiver from the West Virginia Division of Natural Resources Coordination Unit, at (304) 637-0245. For information about specific stream designations contact West Virginia Department of Environmental Protection, Water Quality Standards Section at (304) 926-0495.

### **General Condition 5 (Shellfish Beds)**

Shellfish beds in West Virginia include concentrations of freshwater mussels. All mussels are protected in the State of West Virginia pursuant to West Virginia §20-2-4 and CSR 58-605.11. In addition, nine (9) federally endangered freshwater mussel species are known to occur in the state. These species are protected by the Endangered Species Act (87 Stat. 884, as amended; 16 U.S.C. 1531 et seq.). All streams that contain mussels or potential mussel habitat must be surveyed prior to any proposed streambed disturbance. Please contact the West Virginia Department of Natural Resources (WVDNR) and/or the USFWS for assistance in determining if a mussel survey is or is not required. The WVDNR contact information can be found at: <http://www.wvdnr.gov/contact.shtm>. Currently accepted protocol and supporting materials can be found at the WVDNRs' website: <http://www.wvdnr.gov/Mussels/Main.shtm>

### **General Condition 7 (Water Supply Intakes)**

Locations of public water supply intakes can be found at the following link: <http://gis.wvinfrastructure.com/>

### **General Condition 10 (Fills Within 100-year Floodplains)**

The following website provides a statewide listing of Floodplain Managers in West Virginia: <http://www.dhsem.wv.gov/MitigationRecovery/Pages/Floodplain-Management.aspx>

### **General Condition 16 (Wild and Scenic Rivers)**

The following website provides information on wild and scenic rivers within West Virginia:

<https://www.rivers.gov/west-virginia.php>

**General Condition 18 (Endangered Species)**

To obtain the most up to date information on federally threatened and endangered species applicants are encouraged to utilize the U.S. Fish and Wildlife Service's (USFWS) Information for Planning and Consultation System (IPaC) found at <https://ecos.fws.gov/ipac/>

Prior to the submittal of a PCN, applicants may also contact the USFWS, West Virginia Field Office, Ecological Services at:

Address: 6263 Appalachian Highway  
Davis, West Virginia 26260

Email: [fw5\\_wvfo@fws.gov](mailto:fw5_wvfo@fws.gov)

The West Virginia Mussel Survey Protocol may be found at the following link:

<http://www.wvdnr.gov/Mussels/Main.shtm>

**General Condition 4 (Migratory Bird Breeding Areas) and General Condition 19 (Migratory Birds and Bald and Golden Eagles)**

Prior to the submittal of a PCN, information to assist in complying with NWP General Conditions 4 and 19 may be obtained from the USFWS, West Virginia Field Office, Ecological Services at:

Address: 6263 Appalachian Highway  
Davis, West Virginia 26260

Email: [fw5\\_wvfo@fws.gov](mailto:fw5_wvfo@fws.gov)

The West Virginia Division of Natural Resources Coordination Unit may be contacted at (304) 637-0245.

**General Condition 20 (Historic Properties)**

The West Virginia National Register of Historic Places can be found at the following link: <https://wvculture.org/research/national-register-of-historical-places/>

The West Virginia State Historic Preservation Office (SHPO) Interactive Map Viewer can be found at the following link: <https://mapwv.gov/shpo/>

When reviewing a PCN, the Corps will scope appropriate historic property identification efforts and if applicable work with the applicant to take into account the effect of the proposed activity on historic properties. In these instances, information and coordination may include:

- Requesting comments directly from the West Virginia Division of Culture and History SHPO on the effect the proposed regulated activity may have on historic properties. The West Virginia Division of Culture and History SHPO may be contacted at:

Address: 1900 Kanawha Blvd E  
Charleston, West Virginia 25305  
Phone: (304) 558-0220

- To identify potential historic properties that may be affected by a proposed project, the following historic properties information may be reviewed and/or provided with the PCN when applicable:
  - A detailed description of the project site in its current condition (i.e. prior to construction activities) including information on the terrain and topography of the site, the acreage of the site, the proximity of the site to major waterways, and any known disturbances within the site.
  - A detailed description of past land uses in the project site.
  - Photographs and mapping showing the site conditions and all buildings or structures within the project site and on adjacent parcels are useful. Photographs and maps supporting past land uses should be provided as available.
  - Information regarding any past cultural resource studies or coordination pertinent to the project area, if available.
  - U.S. Geological Survey (USGS) 7.5' series topographic maps;
  - West Virginia Division of Culture and history files including:
    - Historic Property Inventory Form;
    - Archaeological Site Forms;
    - Cemetery Inventory Forms;
    - National Register of Historic Places nomination forms including Historic Districts; and
    - County atlases, histories and historic USGS 15' series topographic map(s).
- When needed to evaluate effects to historic properties, the applicant is encouraged to consult with professionals meeting the Professional Qualification Standards as set forth in the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (48 FR 44716) during this data gathering process. These professionals can assist with compiling the project information discussed above and should provide recommendations as to whether



the proposal has the potential to affect historic properties and if further effort is needed to identify or assess potential effects to historic properties. These professionals can also compile preliminary review information to submit to the district engineer as part of the PCN.

**General Condition 23 (Mitigation)**

Information pertaining to mitigation can be found at the following link:

<https://www.lrh.usace.army.mil/Missions/Regulatory/Mitigation.aspx>

**General Condition 25 (Water Quality)**

The West Virginia Department of Environmental Protection may be contacted at:

Address: 601 57th Street  
Charleston, West Virginia 25304

Phone: (304) 926-0440

Information pertaining to the West Virginia Department of Environmental Protection water quality certification (WQC) program, including the Section 401 Clean Water Act WQC application form, can be obtained at the following link:

<https://dep.wv.gov/WWE/Programs/Pages/401Certification.aspx>

**General Condition 32 (Pre-Construction Notification)**

The nationwide permit pre-construction notification form (Form ENG 6082) may be obtained at the following link:

[https://www.publications.usace.army.mil/Portals/76/Eng\\_Form\\_6082\\_2019Oct.pdf?ver=2019-10-22-081550-710/](https://www.publications.usace.army.mil/Portals/76/Eng_Form_6082_2019Oct.pdf?ver=2019-10-22-081550-710/)

A checklist of information that must be provided in a pre-construction notification can be obtained at the following link:

<https://www.lrh.usace.army.mil/Missions/Regulatory/How-to-Apply-for-a-Permit/Nationwide-Permits/>

***Electronic Submittal:***

- PCNs should be saved as a PDF document, and then submitted as an attachment in an email to the appropriate Regulatory Office:

Huntington District – LRH.permits@usace.army.mil

Pittsburgh District – Regulatory.Permits@usace.army.mil

- Electronic documents must have sufficient resolution to show project details. The PCN and supporting documents submitted electronically must not exceed 10 megabytes (10MB) per email. Multiple emails may be required to transmit documents to ensure the 10MB limit is not exceeded. Alternatively, use of the Department of Defense Secure Access File Exchange (DoD SAFE) service to transfer large files may be requested in your email.
- For tracking and processing purposes, the email should include the following:
  - Email Subject Line: include the name of the applicant, type of NWP request, and location (County and State). Example: RE: Doe, John, NWP (or Pre-Construction Notification) and Section 401 WQC Request, Cabell County, West Virginia;
  - Email Body: 1) Brief description of the proposed project, 2) contact information (phone number, mailing address, and email address) for the applicant and/or their agent, and 3) the project location: Address and Latitude/Longitude in decimal degrees (e.g. 42.92788°, - 88.36257°).
- If you do not have internet access, information may be submitted through the U.S. Postal Service to the appropriate Regulatory Office:

U.S. Army Corps of Engineers, Huntington District  
ATTN: Regulatory Division  
502 Eighth Street  
Huntington, West Virginia 25701-2070  
Phone: (304) 399-5610  
Fax: (304) 399-5805

U.S. Army Corps of Engineers, Pittsburgh District  
ATTN: Regulatory Division  
William S. Moorhead Federal Building  
1000 Liberty Avenue  
Pittsburgh, Pennsylvania 15222-4186  
Phone: (412) 395-7155  
Fax: (412) 644-4211

**C. 2021 Nationwide Permits Terms and Specific Regional Conditions:**

1. Aids to Navigation. The placement of aids to navigation and regulatory markers that are approved by and installed in accordance with the requirements of the U.S. Coast

Guard (see 33 CFR, chapter I, subchapter C, part 66). (Authority: Section 10 of the Rivers and Harbors Act of 1899 (Section 10))

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

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

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

(c) This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to conduct the maintenance activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges 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 conducting the maintenance activity, temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

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

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

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

**Corps NWP 3 Specific Regional Condition:**

- PCN in accordance with NWP General Condition 32 is required for all regulated activities in Section 10 navigable waters.

**4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities.**

Fish and wildlife harvesting devices and activities such as pound nets, crab traps, crab dredging, eel pots, lobster traps, duck blinds, and clam and oyster digging, fish aggregating devices, and small fish attraction devices such as open water fish concentrators (sea kites, etc.). This NWP does not authorize artificial reefs or impoundments and semi-impoundments of waters of the United States for the culture or holding of motile species such as lobster, or the use of covered oyster trays or clam racks. (Authorities: Sections 10 and 404)

**5. Scientific Measurement Devices.** Devices, whose purpose is to measure and record scientific data, such as staff gages, tide and current gages, meteorological stations, water recording and biological observation devices, water quality testing and improvement devices, and similar structures. Small weirs and flumes constructed

primarily to record water quantity and velocity are also authorized provided the discharge 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. (Authorities: Sections 10 and 404)

**NWP 5 West Virginia 401 Water Quality Certification Special Conditions:**

To protect the biological integrity of the aquatic ecosystem permanent measurement devices shall not restrict stream flow. No permanent structure authorized by this permit shall entrain or impinge fish or any other aquatic life; or impede or prevent fish movement upstream or downstream; or cause more than minimal impact without specific written authorization from the WV DEP. This condition is required in accordance with; Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-3.2 (2016), Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1, et seq. (2008) and Wildlife Resources Declaration of Policy, W.Va. Code §20-2-4 (2017).

6. Survey Activities. Survey activities, such as core sampling, seismic exploratory operations, plugging of seismic shot holes and other exploratory-type bore holes, exploratory trenching, soil surveys, sampling, sample plots or transects for wetland delineations, and historic resources surveys. For the purposes of this NWP, the term “exploratory trenching” means mechanical land clearing of the upper soil profile to expose bedrock or substrate, for the purpose of mapping or sampling the exposed material. The area in which the exploratory trench is dug must be restored to its pre-construction elevation upon completion of the work and must not drain a water of the United States. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench. This NWP authorizes the construction of temporary pads, provided the discharge 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. (Authorities: Sections 10 and 404)

**Corps NWP 6 Specific Regional Conditions:**

- PCN in accordance with NWP General Condition 32 and Regional General Condition 6 is required for the discharge of greater than 25 cubic yards of dredged or fill material into rivers, lakes, and tributaries.

**NWP 6 West Virginia 401 Water Quality Certification Special Conditions:**

A. To ensure avoidance and minimization considerations are made prior to impacting aquatic resources an individual water quality certification is required for use of this permit when exploratory trenching is proposed. This condition is required in accordance with; Rules for Individual State Certification of Activities Requiring a Federal Permit, W.Va. C.S.R. §47-5A-4.2 (2014), Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-1, et seq, (2016), and Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1, et seq. (2008).

B. To protect the biological integrity of the aquatic ecosystem and prevent contamination of surface waters all test holes which penetrate solid rock shall be abandoned so that the lateral and vertical movement of fluids is prevented, provided that the test hole need not be plugged if subsequent excavation will remove the full depth of the test hole. This condition is required in accordance with; Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-1, et seq. (2016), WV Water Pollution Control Act, W.Va. Code §22-1-6.d (2020), and Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1, et seq. (2008).

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

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

**NWP 7 West Virginia 401 Water Quality Certification Special Conditions:**

A. To maintain and protect Tier 3 waters and protect the integrity of special aquatic resources of the state, individual water quality certification is required when this permit is being used for the discharge of material to an embayment, island back channel, or stream mouth on a Section 10 water and/or impacts to streams identified in Standard Condition 15 A, B, and C herein that exceed 300 linear feet. This condition is required in accordance with; W.Va. Code §22-1-6.d (2020), WV Water Pollution Control Act, W.Va. Code §22-11-7A (2014) and Individual State Certification of Activities Requiring a Federal Permit, W.Va.

C.S.R. §47-5A-1, et seq. (2014), Tier 3 Protection Review Procedures, W.Va. C.S.R. §§60-5-6 (2008), Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-1, et seq. (2016) and the Natural Streams Preservation Act, W.Va. Code §22-13-1, et seq. (2011).

B. To prevent cumulative adverse impact to the integrity of aquatic resources associated with the structure and to remain consistent with other nationwide permit bank stabilization thresholds, the permanent bank disturbance shall be limited to 500 linear feet in accordance with Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-1 et seq. (2016) and Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1, et seq. (2008).

C. To prevent scour and erosion, the structure will be properly designed and utilize outlet protection in accordance with the WV DEP Erosion and Sediment Control Manual, Best Management Practices. This condition is required in accordance with Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-1, et seq. (2016) and Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1, et seq. (2008).

D. To ensure water availability in perennial streams and to protect the integrity of aquatic resources, an individual water quality certification is required when this permit is being used for water withdrawal. This condition is required in accordance with Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-1, et seq. (2016) and Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1, et seq. (2008).

E. To protect the biological integrity of the aquatic ecosystem, no permanent structure authorized by this permit shall prevent fish movement upstream or downstream in accordance with Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-1, et seq. (2016) and Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1, et seq. (2008).

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

such structures be permitted in EPA or Corps-designated dredged material disposal areas.

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

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

**NWP 9 West Virginia 401 Water Quality Certification Special Conditions:**

To address the loss of public access to aquatic resources, when utilized for fleeting or anchorage, compensatory mitigation is required in accordance with Rules for Individual State Certification of Activities Requiring a Federal Permit, and Impacts to Recreational Resources Associated with a Section 10 Permit, W.Va. C.S.R. § 47-5A-6.2.k (2014) for barge fleeting areas resulting in a discharge to waters.

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

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

**Corps NWP 11 Specific Regional Condition:**

- PCN in accordance with NWP General Condition 32 is required for all regulated activities in Section 10 navigable waters.

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

(a) No material is placed in excess of the minimum needed for erosion protection;

(b) The activity is no more than 500 feet in length along the bank, unless the district engineer waives this criterion by making a written determination concluding that the



discharge 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);

(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.

**Corps NWP 13 Specific Regional Condition:**

- PCN in accordance with NWP General Condition 32 is required for all regulated activities proposed to be located within the area between the upstream and the downstream arrival points of any Corps of Engineers lock and dam, or within 1,500 feet of any federal-mooring cell at any lock, as shown on the navigation charts.

**NWP 13 West Virginia 401 Water Quality Certification Special Conditions:**

A. To maintain and protect Tier 3 waters and protect the integrity of special aquatic resources of the state, individual water quality certification is required when this permit is being used for the discharge of material to an embayment, island back channel, or stream mouth on a Section 10 water and/or impacts to streams identified in Standard Condition 15 A, B, and C herein that exceed 300 linear feet. This condition is required in accordance with; W.Va. Code §22-1-6.d (2020), WV Water Pollution Control Act, W.Va. Code §22-11-7A (2014) and Individual State Certification of Activities Requiring a Federal Permit, W.Va. C.S.R. §47-5A-1, et seq. (2014), Tier 3 Protection Review Procedures, W.Va. C.S.R. §§60-5-6 (2008), Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-1, et seq. (2016) and the Natural Streams Preservation Act, W.Va. Code §22-13-1, et seq. (2011).

B. Bank protection measures may not be extended into the bed of the stream except as necessary to provide proper footing of the bank stabilization measure. This condition is required in order to ensure no significant adverse impact to resources without appropriate compensation in accordance with Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-1, et seq. (2016) and Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1, et seq. (2008).

C. To reduce erosion and sedimentation of aquatic resources stabilized streambanks, where possible and practicable, shall be sloped and revegetated for erosion control purposes. This condition is required in accordance with Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-1, et

seq. (2016) and Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1, et seq. (2008).

D. To reduce erosion and sedimentation the use of unconsolidated river gravel (river jack) for streambank stabilization is not allowed. Unconsolidated river material may be used to reconstruct streambanks or form bankfull benches provided they are stabilized by material and/or methods which prevent further erosion under normal or expected high flows. Acceptable material and/or methods are; quarried or shot rock, clean concrete rubble, gabions, cribbing, woody vegetation, and flow diversion structures such as rock vanes. All of the foregoing are to be used in combination with appropriate sloping and engineering specifications. This condition is required in accordance with Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-1, et seq. (2016), and Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1, et seq. (2008).

14. Linear Transportation Projects. Activities required for crossings of waters of the United States associated with the construction, expansion, modification, or improvement of linear transportation projects (e.g., roads, highways, railways, trails, 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.

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).

**Corps NWP 14 Specific Regional Condition:**

- PCN in accordance with NWP General Condition 32 is required for all regulated activities in Section 10 navigable waters.

**NWP 14 West Virginia 401 Water Quality Certification Special Conditions:**

A. To reduce potential erosion and sedimentation associated with temporary access fills; all temporary cofferdams or other discharges related to accessing the stream for maintenance activities require the use of clean and coarse non-erodible materials with 15% or less of like fines that is properly sized to withstand expected high flows. This condition is required in accordance with; WV Water Pollution Control Act, W.Va. Code §22-11-8 (2014), Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1, et seq. (2008), and Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-1, et seq. (2016).

B. Pipe, box, and arched culvert crossings are required to adhere to the following:

- i. The volume of fill for culverted structures is limited to the amount required to achieve transportation purpose.
- ii. The inlet/outlets must be designed in such a manner as to maintain substrate in the bottom of the culvert (culverts installed in bedrock or with a stream gradient of 4% or greater do not need to be countersunk). Countersinking the culvert to the sub-pavement of the streambed, backwatering or the use of a bottomless culvert will generally fulfill this requirement.
- iii. If fills associated with the crossing extend onto the floodplain, the use of floodplain culverts is strongly encouraged.

This condition is required to ensure the protection of the chemical, physical and biological integrity of the aquatic resource in accordance with; WV Water Pollution Control Act, W.Va. Code §22-11-8 (2014), Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1, et seq. (2008), and Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-1, et seq. (2016).

C. To maintain the hydrologic and physical integrity of aquatic resources, the volume of fill for a bridge abutment or piers below the ordinary high-water mark is not to exceed 200 cubic yards for a single bridge project. This condition is required in accordance with; WV Water Pollution Control Act, W.Va. Code §22-11-8 (2014), Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1, et seq. (2008), and Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-1, et seq. (2016).

D. To maintain and protect Tier 3 waters and protect the integrity of special aquatic resources of the state, individual water quality certification is required when this permit is being used for the discharge of material to an embayment, island back channel, or stream mouth on a Section 10 water and/or impacts to streams identified in Standard Condition 15 A, B, and C herein that exceed 300 linear feet. This condition is required in accordance with; W.Va. Code §22-1-6.d (2020), WV Water Pollution Control Act, W.Va. Code §22-11-7A (2014) and Individual State Certification of Activities Requiring a Federal Permit, W.Va. C.S.R. §47-5A-1, et seq. (2014), Tier 3 Protection Review Procedures, W.Va. C.S.R. §§60-5-6 (2008), Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-1, et seq. (2016) and the Natural Streams Preservation Act, W.Va. Code §22-13-1, et seq. (2011).

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

require a separate Clean Water Act Section 404 permit. (Authority: Section 404 of the Clean Water Act (Section 404))

**NWP 15 West Virginia 401 Water Quality Certification Special Conditions:**

An individual water quality certification is required for the use of this permit and to ensure no significant adverse impact to the chemical, physical, hydrologic, or biological integrity of aquatic ecosystems. This condition is required in accordance with Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-1, et seq. (2016) and the Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1, et seq. (2008).

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

17. Hydropower Projects. 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.) (Authority: Section 404)

**NWP 17 West Virginia 401 Water Quality Certification Special Conditions:**

An individual water quality certification is required for use of this permit. This condition is required to ensure that the activity has no significant adverse impact to water resources, fish and wildlife, recreation, critical habitats, wetlands and other natural resources in accordance with Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2- 1, et seq. (2016) and the Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1, et seq. (2008).

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

(a) The quantity of discharged 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

(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.) (Authorities: Sections 10 and 404)

#### **NWP 18 West Virginia 401 Water Quality Certification Special Conditions:**

To maintain and protect Tier 3 waters and protect the integrity of special aquatic resources of the state, individual water quality certification is required when this permit is being used for the discharge of material to an embayment, island back channel, or stream mouth on a Section 10 water and/or impacts to streams identified in Standard Condition 15 A, B, and C herein that exceed 300 linear feet. This condition is required in accordance with; W.Va. Code §22-1-6.d (2020), WV Water Pollution Control Act, W.Va. Code §22-11-7A (2014) and Individual State Certification of Activities Requiring a Federal Permit, W.Va. C.S.R. §47-5A-1, et seq. (2014), Tier 3 Protection Review Procedures, W.Va. C.S.R. §§60-5-6 (2008), Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-1, et seq. (2016) and the Natural Streams Preservation Act, W.Va. Code §22-13-1, et seq. (2011).

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

retained in an area that has no waters of the United States unless otherwise specifically approved by the district engineer under separate authorization. (Authorities: Sections 10 and 404)

**Corps NWP 19 Specific Regional Condition:**

- PCN in accordance with NWP General Condition 32 is required for all regulated activities in Section 10 navigable waters.

**NWP 19 West Virginia 401 Water Quality Certification Special Conditions:**

To maintain and protect Tier 3 waters and protect the integrity of special aquatic resources of the state, individual water quality certification is required when this permit is being used for the discharge of material to an embayment, island back channel, or stream mouth on a Section 10 water and/or impacts to streams identified in Standard Condition 15 A, B, and C herein that exceed 300 linear feet. This condition is required in accordance with; W.Va. Code §22-1-6.d (2020), WV Water Pollution Control Act, W.Va. Code §22-11-7A (2014) and Individual State Certification of Activities Requiring a Federal Permit, W.Va. C.S.R. §47-5A-1, et seq. (2014), Tier 3 Protection Review Procedures, W.Va. C.S.R. §§60-5-6 (2008), Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-1, et seq. (2016) and the Natural Streams Preservation Act, W.Va. Code §22-13-1, et seq. (2011).

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

**NWP 20 West Virginia 401 Water Quality Certification Special Conditions:**

To protect the chemical, physical, and biological components of the State's aquatic resources, all substances contained during cleanup or other contaminated dredged or spill material cannot be discharged or disposed of in sensitive areas such as islands, embayments, wetlands, or any water course, but



only in disposal areas approved by WV DEP DWWM. This condition is required in accordance with the Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-1, et seq. (2016), Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1, et seq. (2008), and the Hazardous Waste Management Act, W.Va. Code §22-18-8 (1994).

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

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) the vessel is listed or eligible for listing in the National Register of Historic Places; or (2) the activity is conducted in a special aquatic site, including coral reefs and wetlands. (See general condition 32.) If 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. (Authorities: Sections 10 and 404)

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.

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

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

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

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

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

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

#### **NWP 23 West Virginia 401 Water Quality Certification Special Conditions:**

An individual water quality certification is required for use of this permit. This condition is required to ensure that the activity has no significant adverse impact to water resources, fish and wildlife, recreation, critical habitats, wetlands and other natural resources in accordance with; Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-1, et seq. (2016), the Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1, et seq. (2008), and Individual State Certification of Activities Requiring a Federal Permit, W.Va. C.S.R. §47-5A-1, et seq. (2014).

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

Note 1: As of the date of the promulgation of this NWP, only 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)).

25. Structural Discharges. 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. (Authority: Section 404)

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

To be authorized by this NWP, the aquatic habitat restoration, enhancement, or establishment activity must be planned, designed, and implemented so that it results in aquatic habitat that resembles an ecological reference. An ecological reference may be based on the characteristics of 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 discing for seed bed preparation and the planting of appropriate wetland species; re-establishment of submerged aquatic vegetation in areas where those plant communities previously existed; re-establishment of tidal wetlands in tidal waters where those wetlands previously existed; mechanized land clearing to remove non-native invasive, exotic, or nuisance vegetation; and other related activities. Only native plant species should be planted at the site.

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

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

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

*Reversion.* For enhancement, restoration, and establishment activities conducted: (1) In accordance with the terms and conditions of a binding stream or wetland enhancement or restoration agreement, or a wetland establishment agreement, between the landowner and the U.S. Fish and Wildlife Service (FWS), the Natural Resources Conservation Service (NRCS), the Farm Service Agency (FSA), the National Marine Fisheries Service (NMFS), the National Ocean Service (NOS), U.S. Forest Service (USFS), or their designated state cooperating agencies; (2) as voluntary wetland restoration, enhancement, and establishment actions documented by the NRCS or USDA Technical Service Provider pursuant to NRCS Field Office Technical Guide standards; or (3) on reclaimed surface coal mine lands, in accordance with a Surface Mining Control and Reclamation Act permit issued by the Office of Surface Mining Reclamation and Enforcement (OSMRE) or the applicable state agency, this NWP also authorizes any future discharge of dredged or fill material associated with the reversion of the area to its documented prior condition and use (i.e., prior to the restoration, enhancement, or establishment activities). The reversion must occur within five years after expiration of a limited term wetland restoration or establishment agreement or permit, and is authorized in these circumstances even if the discharge 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.

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. (Authorities: Sections 10 and 404)

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

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

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

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

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

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

abandoned if the prospective permittee is in the process of obtaining other authorizations or approvals required for maintenance activities and is experiencing delays in obtaining those authorizations or approvals.

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

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

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

Note: If the maintenance baseline was approved by the district engineer under a prior version of NWP 31, and the district engineer imposed the one-time compensatory mitigation requirement on maintenance for a specific reach of a flood control project authorized by that prior version of NWP 31, during the period this version of NWP 31 is in effect, 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.

**NWP 31 West Virginia 401 Water Quality Certification Special Conditions:**

In non-emergency situations, written notification 60-days in advance of project construction is required to WV DEP DWWM. This is required to ensure both the minimization of impacts to fisheries and wildlife habitat and the consideration of habitat enhancements. This condition is required in accordance with; Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-1, et seq. (2016), Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1, et seq. (2008) and Wildlife Resources Declaration of Policy, W.Va. Code §20-2-4 (2017).

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

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

(a) The activities authorized by this NWP cannot adversely affect more than 5 acres of non-tidal waters or 1 acre of tidal waters;

(b) The settlement agreement provides for environmental benefits, to an equal or greater degree, than the environmental detriments caused by the unauthorized activity that is authorized by this NWP; and

(c) The district engineer issues a verification letter authorizing the activity subject to the terms and conditions of this NWP and the settlement agreement, including a specified completion date; or

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

(iii) The terms of a final court decision, consent decree, settlement agreement, or non-judicial settlement agreement resulting from a natural resource damage claim brought by a trustee or trustees for natural resources (as defined by the National Contingency Plan at 40 CFR subpart G) under Section 311 of the Clean Water Act, Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, Section 312 of the National Marine Sanctuaries Act, Section 1002 of the Oil Pollution Act of

1990, or the Park System Resource Protection Act at 16 U.S.C. 19jj, to the extent that a Corps permit is required.

Compliance is a condition of the NWP itself; non-compliance of 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)

### **NWP 32 West Virginia 401 Water Quality Certification Special Conditions:**

To ensure compliance with applicable state water quality requirements, notification to the WV DEP DWWM is required for use of this permit. This condition is required in accordance with Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-1, et seq. (2016) and the Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1, et seq. (2008).

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)

**Corps NWP 33 Specific Regional Condition:**

- The applicant must submit a PCN to the Corps in accordance with NWP General Condition 32 whenever the work is conducted in a perennial tributary or is expected to take more than one (1) year to complete to allow the Corps to consider the temporal effects of the regulated activity.

**NWP 33 West Virginia 401 Water Quality Certification Special Conditions:**

An individual water quality certification is required for use of this permit to construct temporary causeways in Section 10 waters, or for fills in any water anticipated to exceed one (1) year. This condition is required to ensure that the activity has no significant adverse impact to water resources, fish and wildlife, recreation, critical habitats, wetlands and other natural resources in accordance with; Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-1, et seq. (2016), the Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1, et seq. (2008), and Individual State Certification of Activities Requiring a Federal Permit, W.Va. C.S.R. §47-5A-1, et seq (2014).

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

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

35. Maintenance Dredging of Existing Basins. The removal of accumulated sediment for maintenance of existing marina basins, access channels to marinas or boat slips, and boat slips to previously authorized depths or controlling depths for ingress/egress,

whichever is less. All dredged material must be deposited and retained in an area that has no waters of the United States unless otherwise specifically approved by the district engineer under separate authorization. Proper sediment controls must be used for the disposal site. (Authority: Section 10)

**Corps NWP 35 Specific Regional Condition:**

- PCN in accordance with NWP General Condition 32 and Regional General Condition 6 is required for use of this NWP.

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)

**Corps NWP 36 Specific Regional Conditions:**

- PCN in accordance with NWP General Condition 32 is required for use of

this NWP for regulated activities located at a tributary confluence.

- PCN in accordance with NWP General Condition 32 is required for any boat ramp proposed to be located within the area between the upstream and the downstream arrival points of any Corps of Engineers lock and dam, or within 1,500 feet of any federal-mooring cell at any lock, as shown on the navigation charts.

### **NWP 36 West Virginia 401 Water Quality Certification Special Conditions:**

To ensure compliance with applicable state water quality requirements, notification to the WV DEP DWWM is required for use of this permit. This condition is required in accordance with Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2- 1, et seq. (2016) and the Antidegradation Implementation Procedures, W.Va. C.S.R. §60- 5-1, et seq. (2008).

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

- (a) The Natural Resources Conservation Service for a situation requiring immediate action under its emergency Watershed Protection Program (7 CFR part 624);
- (b) The U.S. Forest Service under its Burned-Area Emergency Rehabilitation Handbook (FSH 2509.13);
- (c) The Department of the Interior for wildland fire management burned area emergency stabilization and rehabilitation (DOI Manual part 620, Ch. 3);
- (d) The Office of Surface Mining, or states with approved programs, for abandoned mine land reclamation activities under Title IV of the Surface Mining Control and Reclamation Act (30 CFR subchapter R), where the activity does not involve coal extraction; or
- (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). (Authorities: Sections 10 and 404)

**NWP 37 West Virginia 401 Water Quality Certification Special Conditions:**

Projects that have been coordinated with and obtained concurrence from WV DEP DWWM in the early project planning phase are certified. This condition is required to ensure that the activity has no significant adverse impact to water resources, fish and wildlife, recreation, critical habitats, wetlands and other natural resources in accordance with; Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-1, et seq (2016), the Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1, et seq (2008), and Individual State Certification of Activities Requiring a Federal Permit, W.Va. C.S.R. §47-5A-1, et seq (2014).

Note: This certification applies only to those emergency situations that involve threats to life, threat of loss of primary residence, and loss or threat of loss to the areas' infrastructure and/or other community services.

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

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

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

**NWP 38 West Virginia 401 Water Quality Certification Special Conditions:**

To protect the public health and safety and the environment from the effects of the improper, inadequate, or unsound management of hazardous wastes, notification must be provided to WV DEP DWWM and notice of the proposed activity must be provided to the WV DEP, Division of Land Restoration, Office of

Environmental Remediation, 601 57<sup>th</sup> Street, Charleston, West Virginia 25304, as early as possible. This condition is required in accordance with; Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2- 1, et seq. (2016), Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1, et seq. (2008), and the Hazardous Waste Management Act, W.Va. Code §22-18-8 (1994).

41. Reshaping Existing Drainage and Irrigation Ditches. Discharges of dredged or fill material into non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters, to modify the cross-sectional configuration of currently serviceable drainage 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. (Authority: Section 404)

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

This NWP does not authorize beach restoration or nourishment.

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

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

Note: The uplands themselves that are lost as a result of a storm, flood, or other discrete event can be replaced without a 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.

#### **NWP 45 West Virginia 401 Water Quality Certification Special Conditions:**

To maintain and protect Tier 3 waters and protect the integrity of special aquatic resources of the state, individual water quality certification is required when this permit is being used for the discharge of material to an embayment, island back channel, or stream mouth on a Section 10 water and/or impacts to streams identified in Standard Condition 15 A, B, and C herein that exceed 300 linear feet. This condition is required in accordance with; W.Va. Code §22-1-6.d (2020), WV Water Pollution Control Act, W.Va. Code §22-11-7A (2014) and Individual State Certification of Activities Requiring a Federal Permit, W.Va. C.S.R. §47-5A-1, et seq. (2014), Tier 3 Protection Review Procedures, W.Va. C.S.R. §§60-5-6 (2008), Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-1, et seq. (2016) and the Natural Streams Preservation Act, W.Va. Code §22-13-1, et seq. (2011).

46. Discharges in Ditches. Discharges of dredged or fill material into non-tidal ditches that are (1) constructed in uplands, (2) receive water from an area determined to be a water of the United States prior to the construction of the ditch, (3) divert water to an area determined to be a water of the United States prior to the construction of the ditch, and (4) determined to be waters of the United States. The discharge 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.) (Authority: Section 404)

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

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

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

**NWP 49 West Virginia 401 Water Quality Certification Special Conditions:**

A. An individual water quality certification is required for activities impacting any classification of stream listed in West Virginia 401 Water Quality Certification Standard Condition 15. To ensure the protection of West Virginia's high quality and special aquatic resources, this condition is required in accordance with Tier 3 Protection Review Procedures, W.Va. C.S.R. §60-5-6 (2008) and is required consistent with the authority and requirements of the Natural Streams Preservation Act, W.Va. Code §22-13-1 et seq. (2011).

B. An individual water quality certification is required for mining related activities cumulatively impacting greater than ½ acre of intermittent or perennial stream(s). To ensure no significant adverse impact to the chemical, physical, hydrologic, or biological integrity of aquatic ecosystems in accordance with Individual State Certification of Activities Requiring a Federal Permit, W.Va. C.S.R. §47-5A-1 et seq. (2014), Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-3.2 (2016), WV Water Pollution Control Act, W.Va. Code §22-11-1 et seq.

(2014) and Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1 et seq. (2008).

C. An individual water quality certification is required for linear transportation projects which involve stream crossings for haul roads, access roads, conveyor belts, pipelines, etc. in intermittent or perennial stream(s) greater than ½ acre cumulative or 300 linear feet per individual crossing. To ensure no significant adverse impact to the chemical, physical, hydrologic, or biological integrity of aquatic ecosystems in accordance with Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-3.2 (2016), WV Water Pollution Control Act, W.Va. Code §22-11-1 et seq. (2014), Individual State Certification of Activities Requiring a Federal Permit, W.Va. C.S.R. §47-5A-1 et seq. (2014) and Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1 et seq. (2008).

D. An individual water quality certification is required for cumulative permanent wetland impacts greater than ½ acre. To ensure no significant adverse impact to the chemical, physical, hydrologic, or biological integrity of aquatic ecosystems in accordance with Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-3.2 (2016), Individual State Certification of Activities Requiring a Federal Permit, W.Va. C.S.R. §47-5A-1 et seq. (2014), and Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1 et seq. (2008).

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

For the purposes of this NWP, the term “low-head dam” is generally defined as a dam or weir built across a stream to pass flows from upstream over all, 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.) (Authorities: Sections 10 and 404)

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

#### **NWP 53 West Virginia 401 Water Quality Certification Special Conditions:**

To maintain and protect Tier 3 waters, and protect the integrity of special aquatic resources of the state, individual water quality certification is required when this permit is being used for the discharge of material to Section 10 waters and streams identified in Standard Condition 15 A, B, and C herein. This condition is required in accordance with; W.Va. Code §22-1-6.d (2020), WV Water Pollution Control Act, W.Va. Code §22-11-7A (2014) and Individual State Certification of Activities Requiring a Federal Permit, W.Va. C.S.R. §47-5A-1, et seq. (2014), Tier 3 Protection Review Procedures, W.Va. C.S.R. §§60-5-6 (2008), requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-1, et seq. (2016) and the Natural Streams Preservation Act, W.Va. Code §22-13-1, et seq. (2011).

54. Living Shorelines. Revoked for use in the State of West Virginia.

59. Water reclamation and reuse facilities. 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.) (Authorities: Sections 10 and 404)

#### **NWP 59 West Virginia 401 Water Quality Certification Special Conditions:**

An individual water quality certification is required for use of this permit. This condition is required to ensure that the activity has no significant adverse impact to water resources, fish and wildlife, recreation, critical habitats, wetlands and other natural resources in accordance with; Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-1, et seq. (2016), the Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1, et seq. (2008), and Individual State Certification of Activities Requiring a Federal Permit, W.Va. C.S.R. §47-5A-1, et seq (2014).

#### **D. Nationwide Permit General Conditions:**

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

##### **1. Navigation.**

- a. No activity may cause more than a minimal adverse effect on navigation.
- b. Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.

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

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

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

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

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

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

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

**8. Adverse Effects From Impoundments.** If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water,

and/or restricting its flow must be minimized to the maximum extent practicable.

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

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

- g. If the non-federal permittee has a valid ESA section 10(a)(1)(B) incidental take permit with an approved Habitat Conservation Plan for a project or a group of projects that includes the proposed NWP activity, the non-federal applicant should provide a copy of that ESA section 10(a)(1)(B) permit with the PCN required by paragraph (c) of this general condition. The district engineer will coordinate with the agency that issued the ESA section 10(a)(1)(B) permit to determine whether the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation conducted for the ESA section 10(a)(1)(B) permit. If that coordination results in concurrence from the agency that the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation for the ESA section 10(a)(1)(B) permit, the district engineer does not need to conduct a separate ESA section 7 consultation for the proposed NWP activity. The district engineer will notify the non-federal applicant within 45 days of receipt of a complete pre-construction notification whether the ESA section 10(a)(1)(B) permit covers the proposed NWP
- h. activity or whether additional ESA section 7 consultation is required.
- i. 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 preconstruction 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 preconstruction notification must state which historic properties might have the potential to be affected by the proposed NWP activity or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of, or potential for, the presence of historic properties can be sought from the State Historic Preservation Officer, Tribal Historic Preservation Officer, or designated tribal representative, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts commensurate with potential impacts, which may include background research, consultation, oral history interviews, sample field investigation, and/or field survey. Based on the information submitted in the PCN and these identification efforts, the district engineer shall determine whether the proposed NWP activity has the potential to cause effects on the historic properties. Section 106 consultation is not required when the district engineer determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). Section 106 consultation is required when the district engineer determines that the activity has the potential to cause effects on historic properties. The district engineer will conduct consultation with consulting parties identified under 36 CFR 800.2(c) when he or she makes any of the

- following effect determinations for the purposes of section 106 of the NHPA: No historic properties affected, no adverse effect, or adverse effect.
- d. Where the non-Federal applicant has identified historic properties on which the proposed NWP activity might have the potential to cause effects and has so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects to historic properties or that NHPA section 106 consultation has been completed. For non-federal permittees, the district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA section 106 consultation is required. If NHPA section 106 consultation is required, the district engineer will notify the non-Federal applicant that he or she cannot begin the activity until section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.
  - e. Prospective permittees should be aware that section 110k of the NHPA (54 U.S.C. 306113) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

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

**22. Designated Critical Resource Waters.** Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research

Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment.

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

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

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

- a. The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site).
- b. Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal.
- c. Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require preconstruction 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 preconstruction 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 preconstruction 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 preconstruction 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
    2. district engineer may approve the use of permittee-responsible mitigation.

3. 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).)
  4. 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
  5. considered for permittee-responsible mitigation.
  6. 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.
  7. 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)).
  8. 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. (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 preconstruction notification and the certifying authority has not previously certified compliance of an NWP with CWA section 401, the proposed discharge is not authorized by an NWP until water quality certification is obtained or waived. If the certifying authority issues a water quality certification for the proposed discharge, the permittee must submit a copy of the certification to the district engineer. The discharge is not authorized by an NWP until the district engineer has notified the permittee

that the water quality certification requirement has been satisfied by the issuance of a water quality certification or a waiver.

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

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

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

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

- a. If only one of the NWPs used to authorize the single and complete project has a specified acreage limit, the acreage loss of waters of the United States cannot exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.
- b. If one or more of the NWPs used to authorize the single and complete project has specified acreage limits, the acreage loss of waters of the United States authorized by those NWPs cannot exceed their respective specified acreage limits. For example, if a commercial development is constructed under NWP 39, and the single and complete project includes the filling of an upland ditch authorized by NWP 46, the maximum acreage loss of waters of the United States for the commercial development under NWP 39 cannot exceed 1/2-acre, and the total acreage loss of waters of United States due to the NWP 39 and 46 activities cannot exceed 1 acre.



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

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

\_\_\_\_\_  
(Transferee)

\_\_\_\_\_  
(Date)

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

- a. A statement that the authorized activity was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions;
- b. A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(l)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and
- c. The signature of the permittee certifying the completion of the activity and mitigation. The completed certification document must be submitted to the district engineer within 30 days of completion of the authorized activity or the implementation of any required compensatory mitigation, whichever occurs later.

**31. Activities Affecting Structures or Works Built by the United States.** If an NWP activity also requires 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
- iv. decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);
  5. The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial and intermittent streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many wetlands, other special aquatic sites, and other waters. Furthermore, the 45-day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate;
  6. If the proposed activity will result in the loss of greater than 1/10-acre of wetlands or 3/100-acre of stream bed and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse environmental effects are no more than minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.
  7. For non-federal permittees, if any listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat (or critical habitat proposed for such designation), the PCN must include the name(s) of those endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or utilize the designated critical habitat (or critical habitat proposed for such designation) that might be affected by the proposed activity. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with the Endangered Species Act;
  8. For non-federal permittees, if the NWP activity might have the potential to cause effects to a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, the PCN must state which historic property might have the potential to be affected by the proposed activity or include a vicinity map indicating the location of the historic property. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with section 106 of the National Historic Preservation Act;

9. For an activity that will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, the PCN must identify the Wild and Scenic River or the “study river” (see general condition 16); and
  10. For an NWP activity that requires permission from, or review by, the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers federally authorized civil works project, the pre-construction notification must include a statement confirming that the project proponent has submitted a written request for section 408 permission from, or review by, the Corps office having jurisdiction over that USACE project.
- c. **Form of Pre-Construction Notification:** The nationwide permit pre-construction notification form (Form ENG 6082) should be used for NWP PCNs. A letter containing the required information may also be used. Applicants may provide electronic files of PCNs and supporting materials if the district engineer has established tools and procedures for electronic submittals.
- d. **Agency Coordination:**
1. The district engineer will consider any comments from Federal and state agencies concerning the proposed activity’s compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the activity’s adverse environmental effects so that they are no more than minimal.
  2. Agency coordination is required for:
    - i. All NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States;
    - ii. NWP 13 activities in excess of 500 linear feet, fills greater than one cubic yard per running foot, or involve discharges of dredged or fill material into special aquatic sites; and
    - iii. NWP 54 activities in excess of 500 linear feet, or that extend into the waterbody more than 30 feet from the mean low water line in tidal waters or the ordinary high water mark in the Great Lakes.
  3. When agency coordination is required, the district engineer will immediately provide (e.g., via email, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (FWS, state natural resource or water quality agency, EPA, and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to notify the district engineer via telephone, facsimile transmission, or email that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse environmental effects will be more than minimal. If so

contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the preconstruction 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 NWP, 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 preconstruction notifications to expedite agency coordination.

#### **E. District Engineer's Decision**

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

determination that the NWP activity will result in only minimal individual and cumulative adverse environmental effects.

2. When making minimal adverse environmental effects determinations the district engineer will consider the direct and indirect effects caused by the NWP activity. He or she will also consider the cumulative adverse environmental effects caused by activities authorized by an NWP and whether those cumulative adverse environmental effects are no more than minimal. The district engineer will also consider site specific factors, such as the environmental setting in the vicinity of the NWP activity, the type of resource that will be affected by the NWP activity, the functions provided by the aquatic resources that will be affected by the NWP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the NWP activity (e.g., partial or complete loss), the duration of the adverse effects (temporary or permanent), the importance of the aquatic resource functions to the region (e.g., watershed or ecoregion), and mitigation required by the district engineer. If an appropriate functional or condition assessment method is available and practicable to use, that assessment method may be used by the district engineer to assist in the minimal adverse environmental effects determination. The district engineer may add case-specific special conditions to the NWP authorization to address site-specific environmental concerns.
3. If the proposed activity requires a PCN and will result in a loss of greater than 1/10-acre of wetlands or 3/100-acre of stream bed, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for NWP activities with smaller impacts, or for impacts to other types of waters. The district engineer will consider any proposed compensatory mitigation or other mitigation measures the applicant has included in the proposal in determining whether the net adverse environmental effects of the proposed activity are no more than minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse environmental effects are no more than minimal, after considering mitigation, the district engineer will notify the permittee and include any activity-specific conditions in the NWP verification the district engineer deems necessary. Conditions for compensatory mitigation requirements must comply with the appropriate provisions at 33 CFR 332.3(k). The district engineer must approve the final mitigation plan before the permittee commences work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan.

The district engineer must review the proposed compensatory mitigation plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure that the NWP activity results in no more than minimal adverse environmental effects. If the net adverse environmental effects of the NWP activity (after consideration of the mitigation proposal) are determined by the district engineer to be no more than minimal, the district engineer will provide a timely written response to the applicant. The response will state that the NWP activity can proceed under the terms and conditions of the NWP, including any activity-specific conditions added to the NWP authorization by the district engineer.

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

#### **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. NWP's do not authorize interference with any existing or proposed Federal project (see general condition 31).

**G. General Limitations and Conditions for all West Virginia Department of Environmental Protection Clean Water Act Section 401 Certified Nationwide Permits**

1. To ensure project compliance with state water quality requirements applicable to these Nationwide Permits, notification is to be provided prior to construction to West Virginia Department of Environmental Protection (WV DEP) for any permitted activity for which the U.S. Army Corps of Engineers (USACE) requires pre-construction notification (PCN), in accordance with Nationwide Permit General Condition 32. This condition is required through authority provided in State Certification of Activities Requiring a Federal License or Permit, 40 C.F.R §121.3 (2020) and WV Water Pollution Control Act, W.Va. Code §22- 11-1, et seq. (2014).
2. To compensate for unavoidable impacts to aquatic resources as a result of the discharge of dredged or fill material, the applicant must provide proof of compensatory mitigation (as outlined in Standard Condition 16 below) to WV DEP prior to construction, for an activity resulting in cumulative permanent impacts to streams greater than 300 linear feet or causing the loss of greater than 1/10 acre of wetlands. This condition is required in accordance with the following; Rules for Individual State Certification of Activities Requiring a Federal Permit, W.Va. C.S.R. §47-5A-6(2014), Antidegradation Implementation Procedures, W.Va. C.S.R §60-5-1, et seq. (2008), and Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-1 et seq. (2016).
3. To protect the biological integrity of the aquatic ecosystem, culverted crossings shall be sized and installed in a manner to allow the passage of aquatic life and freely pass bankfull flows. Exceptions to this requirement would be when culvert placement is on bedrock, or when stream gradient is equal to or greater than 4%, or when bankfull elevation is greater than final surface elevation. This condition is required in accordance with Antidegradation Implementation Procedures, W.Va. C.S.R §60-5-1, et seq. (2008), and Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-1, et seq. (2016).
4. To protect the designated uses of waters of the state, the permittee shall investigate for the presence of water supply intakes or other activities within 1/2 mile downstream of the activity, which may be affected by increased suspended solids and turbidity, caused by work in the watercourse. The permittee shall give notice to operators of any such water supply intakes and such other water quality dependent activities as necessary before beginning work in the watercourse in sufficient time to allow preparation for any change in water quality. This condition

is required in accordance with Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-7.2.a.2 (2016) and Antidegradation Implementation Procedures, W.Va. C.S.R §60-5-1, et seq (2008).

5. To ensure that temporary stream and wetland crossings have no significant adverse impact to aquatic resources, the following procedures and requirements shall be followed and met in accordance with Requirements Governing Water Quality Standards, W.Va. C.S.R. §47- 2-3.2 (2016) and Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1, et seq. (2008). At each stream crossing, substrate in the channel will be removed and stockpiled separately from other excavated material. This native material must be reused in restoration of the stream channel, which is to be completed within 72 hours or as soon as practicable after completion of the crossing. Upon final stream bed restoration, the stream must have similar physical characteristics to include substrate, pattern, profile, dimension and embeddedness of the original stream channel. At each wetland crossing, any excavated material from the top 12 inches of soil will be removed and stockpiled separately from other excavated material. This native material must be reused in restoration of the wetlands temporarily impacted by the open cut crossing and restoration must be completed within 72 hours or as soon as practicable after completion of the crossing. Stream crossings will be conducted as close to a right angle to the watercourse as practicable and the area of in stream activity will be limited to reduce disturbance.
6. Spoil materials from the watercourse or onshore operations, including sludge deposits, shall not be dumped in the watercourse, or deposited in wetlands or other areas where the deposit may adversely affect the surface waters of the state consistent with the requirements set forth in WV Water Pollution Control Act, W.Va. Code §22-11-4.a.16 (2014) and Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-1, et seq. (2016).
7. To protect aquatic resources from unauthorized discharge of pollutants, storage and refueling areas shall not be located within any surface water body. All spills shall be promptly reported to the State Center for Pollution, Toxic Chemical and Oil Spills, 1-800-642-3074. This condition is required in accordance with; Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-3 (2016) and WV Water Pollution Control Act, W.Va. Code §22-11-8 (2014).
8. To reduce sedimentation of aquatic resources and increased turbidity, it is required that proper stabilization of all disturbances below the ordinary high-water mark of waters shall be installed within 24 hours or as soon as practicable to prevent erosion. Where possible, stabilization shall incorporate revegetation using bioengineering as an alternative to riprap. If riprap is utilized, it must be of such weight and size that bank stress or slump conditions shall not be created

due to its placement. Fill must be clean, nonhazardous and of such composition that it shall not adversely affect the biological, chemical or physical properties of the receiving waters. Unsuitable materials include but are not limited to: copper chromium arsenate (CCA) and creosote treated lumber, car bodies, tires, large household appliances, and asphalt. To reduce potential slope failure and/or erosion behind the material, fill containing concrete must be of such weight and size that promotes stability during expected high flows. Loose large slab placement of concrete sections from demolition projects greater than thirty-six (36) inches in its longest dimension are prohibited. Rebar or wire in concrete shall not protrude further than one (1) inch. All activities require the use of clean and coarse non-erodible materials with 15% or less of like fines that is properly sized to withstand expected high flows. This condition is required in accordance with; Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-3 (2016), WV Water Pollution Control Act, W.Va. Code §22-11-8 (2014) and Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1, et seq. (2008).

9. To protect the water quality of aquatic resources, runoff from any storage areas or spills shall not be allowed to enter storm sewers without acceptable removal of solids, oils and toxic compounds. Discharges from retention/detention ponds must comply with permit requirements of the National Pollutant Discharge Elimination System permit program of the WV DEP. This condition is required in accordance with; WV Water Pollution Control Act, W.Va. Code §22-11-4.a.16 (2014) and Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-1, et seq. (2016).
10. To protect aquatic resources from discharge associated with land disturbance activities, which are one (1) acre or greater in total area, the project proponent must comply with the National Pollutant Discharge Elimination System or other state stormwater permit requirements as established by the WV DEP, if applicable. Any land disturbances are required to use Best Management Practices for Sediment and Erosion Control, as described in the latest West Virginia Department of Environmental Protection's Erosion and Sediment Control Best Management Practice Manual, or similar documents prepared by the West Virginia Division of Highways. These handbooks are available from the respective agency offices. This condition is required in accordance with; WV Water Pollution Control Act, W.Va. Code §22-11-4.a.16 (2014) and Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-3 (2016).
11. To protect aquatic resources from unpermitted discharges consistent with the requirements of WV Water Pollution Control Act, W.Va. Code §22-11-4.a.16 (2014) and Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-1, et seq. (2016), concrete shall not be permitted to enter the watercourse unless contained by tightly sealed forms or cells. Concrete handling equipment

shall not discharge waste washwater into wetlands or watercourses at any time without adequate wastewater treatment as approved by the WV DEP.

12. To maintain the biological integrity of the state's fisheries, a spawning waiver is required for in-stream work in designated warm water streams and their adjacent tributaries during the fish spawning season of April to June and for trout waters and their adjacent tributaries during the trout water fish spawning season of September 15 to March 31. Fish spawning waivers may be requested from West Virginia Division of Natural Resources (WV DNR) Coordination Unit, at (304) 637-0245. For information about specific stream designations contact West Virginia Department of Environmental Protection, Water Quality Standards Section at (304) 926-0440. This condition is required in accordance with Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-3.2 (2016) and Wildlife Resources Declaration of Policy, W.Va. Code §20-2-4 (2017).
13. To protect stream stability and avoid unnecessary degradation of aquatic resources, the project proponent should avoid removal of riparian vegetation to the greatest extent practicable. This condition is required in accordance with Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-3 (2016) and Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1, et seq. (2008).
14. To protect aquatic life and reduce turbidity and disturbance to aquatic resources, the operation of equipment in-stream shall be minimized and accomplished during low flow periods when practical. Ingress and egress for equipment outside the immediate work area requires prior approval of the WV DNR Office of Land and Stream. This condition is required in accordance with; Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-3 (2016) and Wildlife Resources Declaration of Policy, W.Va. Code §20-2- 4 (2017).
15. To ensure the protection of West Virginia's high quality and special aquatic resources, notification must be provided to the WV DEP 60-days prior to construction describing the project purpose, location, and impacts for use of any Nationwide Permit(s) resulting in work in streams set forth in Sections A, B, and C below. The WV DEP will provide applicant coordination within 15 days of receipt of a complete notification.

A. Tier 3 Protection is provided for aquatic resources in accordance with West Virginia Code of State Regulations, Requirements Governing Water Quality Standards, Antidegradation Policy, Title 47, Series 2, Section 4 for Outstanding National Resource Waters to include, but are not limited to, all streams and rivers within the boundaries of Wilderness Areas designated by The Wilderness Act (16 U.S.C. §1131, et seq.) within the state, all federally designated rivers under the Wild and Scenic Rivers Act,

16 U.S.C. §1271, et seq.; all streams and other bodies of water in state parks which are high quality waters or naturally reproducing trout streams; waters in national parks and forests which are high quality waters or naturally reproducing trout streams; waters designated under the National Parks and Recreation Act of 1978, as amended; and pursuant to W.Va. C.S.R. §§60-5-6, 7 (2008) those waters whose unique character, ecological or recreational value, or pristine nature constitutes a valuable national or state resource. This condition is required in accordance with Tier 3 Protection Review Procedures, W.Va. C.S.R. §§60-5-6, 7 (2008). The listing of Tier 3 streams is located at: [https://dep.wv.gov/WWE/Programs/wqs/Documents/Tier%203%20Info/WVTier\\_3\\_Nov2013\\_web.xlt](https://dep.wv.gov/WWE/Programs/wqs/Documents/Tier%203%20Info/WVTier_3_Nov2013_web.xlt)

B. Naturally-Reproducing Trout Streams are protected to ensure the continued propagation and maintenance of naturally-reproducing trout. For information about specific streams contact WV DEP, Water Quality Standards, at 304-926-0440. This condition is required in accordance with Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-1, et seq. (2016) and Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1, et seq. (2008).

C. West Virginia Natural Stream Preservation Act identifies the following streams or rivers as protected from activities that would impound, divert or flood the body of water: Greenbrier River from its confluence with Knapps Creek to its confluence with the New River, Anthony Creek from its headwaters to its confluence with the Greenbrier River, Cranberry River from its headwaters to its confluence with the Gauley River, Birch River from Cora Brown Bridge in Nicholas County to the confluence of the river with the Elk River, and New River from its confluence with the Greenbrier River to its confluence with the Gauley River. This condition is required consistent with the authority and requirements of the Natural Streams Preservation Act, W.Va. Code §22-13-1, et seq. (2011).

16. The following mitigation guidelines are established to ensure no significant adverse impact to the chemical, physical, hydrologic, or biological integrity of wetlands and streams without compensating for the aquatic resource functions that will be lost as a result of the permitted activity. The discharge of dredged or fill material into a stream or wetland is authorized based upon the following criteria:

A. Greater than one-tenth (1/10) acre of cumulative permanent impact to wetland(s) (including wetland type conversion) requires prior notification describing the project location, impacts, and plan for mitigation to be submitted to the WV DEP.

B. The amount of fill in a wetland, wetland complex or wetland system without mitigation is not to cumulatively exceed 1/10 acre.

C. Cumulative permanent impacts to stream(s) greater than 300 linear feet requires prior notification describing the project location, impacts, and plan for mitigation to be submitted to the WV DEP. The West Virginia Stream Wetland Valuation Metric (SWVM) is the preferred assessment methodology to assist with the determination of required mitigation. The metric is available at the Huntington and Pittsburgh USACE web sites. In all instances, mitigation for all impacts incurred through use of these Nationwide Permits must first be directed to elimination of the impacts, then minimization of the impacts and lastly through compensatory mitigation. In many cases, the environmentally preferable compensatory mitigation may be provided through an approved mitigation bank or the West Virginia In-Lieu Fee Program. Permittee responsible compensatory mitigation may be performed using the methods of; restoration, enhancement, establishment, and in certain circumstances, preservation. In general, the required compensatory mitigation should be located in the same watershed as the impact site and located where it is most likely to successfully replace lost functions and services as the impacted site. However, the use of mitigation banks or in-lieu fee for in-kind replacement is not restricted to the same watershed in which the impact has occurred until such time as mitigation banks or in-lieu projects are developed in each major watershed.

**Wetlands.** When permittee responsible in-kind replacement mitigation is used, it is to be accomplished at the following ratios until such time an approved functional assessment methodology is established for the state of West Virginia.

Permanent impacts to open water wetlands are to be one (1) acre replaced for one (1) acre impacted.

Permanent impacts to wet meadow/emergent wetlands are to be two (2) acres replaced for one (1) acre impacted.

Permanent impacts to scrub-shrub and forested wetlands are to be three (3) acres replaced for one (1) acre impacted.

In instances where compensatory in-kind mitigation is completed 12 months prior to the impact of the aquatic resource, the replacement ratio may be reduced to as low as one (1) acre created/restored to every one (1) acre impacted.

NOTE: The ratio of created/restored wetlands to impacted wetlands not only ensures no net loss but assures the adequate replacement of the impacted wetlands functions and values at the level existing prior to the impact. For many of the more complicated type wetlands, such as scrub-shrub and forested, the values and functions cannot readily be replaced through creation. Furthermore, not all wetland creation is successful.

In certain instances, the WV DEP DWWM may consider the acquisition of existing wetlands. Acquisition ratios include the following:

Five (5) to one (1) for open water wetlands;  
Ten (10) to one (1) for wet meadow/emergent wetlands; and  
Fifteen (15) to one (1) for scrub-shrub and forested wetlands.

Under extenuating circumstances, the Secretary may accept lower ratios for high quality wetlands under significant threat of development.

All wetlands acquired, using the acquisition method of mitigation, shall either be deeded to the WVDNR Public Land Corporation for management by the Wildlife Resources Section or placed under a conservation easement and be protected from disturbance by the permittee or their designee. Third party oversight of the conservation easement by a nonprofit conservation organization is preferred.

**Streams.** When proposing permittee responsible compensatory mitigation, projects shall attempt to replace lost functions for permanent stream impacts. Mitigation shall be determined on a case-by-case basis based on the pre- and post- condition stream quality and complexity of the mitigation project preferably utilizing the most current version of the SWVM worksheets. Compensatory mitigation may require protection through deed restrictions or conservation easements by the permittee or their designee.

These requirements are established in accordance with; Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1, et seq, (2008), Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-3 (2016), WV Water Pollution Control Act, W.Va. Code §22-11-1, et seq. (2014), Rules for Individual State Certification of Activities Requiring a Federal Permit, W.Va. C.S.R. §47-5A-6 (2014), and Compensatory Mitigation for Losses of Aquatic Resources; Final Rule, 33 C.F.R. §332 (2008).

17. To protect mussel populations in accordance with state and federal requirements, should native freshwater mussels be encountered during the use of any Nationwide Permit, all activity reasonably expected to jeopardize the population is to cease immediately and the WV DNR Wildlife Resources Section,

Wildlife Diversity Program is to be contacted (304-637-0245) to determine significance of the mussel population and the action to be taken.

This condition is required in accordance with; Rules for Individual State Certification of Activities Requiring a Federal Permit, W.Va. C.S.R. §47-5A-3.1 (2014), Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-1, et seq. (2016), Possession of Wildlife, W.Va. Code §20-2-4 (2017) and Fishing Regulations W.Va. C.S.R. §58-60-5.11 (2020).

## NOTES

- In some cases, the USACE may determine that an activity shall not impact waters of the United States because the waters are considered federally non-jurisdictional and therefore does not require a §404 Clean Water Act permit. However, under West Virginia Code §22-11-8(b) et seq., a permit is needed to place a waste into any water of the State. Accordingly, any applicant proposing to impact a federally non-jurisdictional waters must contact WV DEP to obtain all necessary approvals. Ephemeral streams are not considered for review under WV DEP authority identified in the WV Water Pollution Control Act. This condition is required in accordance with the WV Water Pollution Control Act, W.Va. Code §22-11-1, et seq. (2014)
- To ensure appropriate agency coordination stream activities permitted under the Nationwide Permit Program may require that a West Virginia Public Lands Corporation Right of Entry be obtained. Application for Stream Activity should be made to the WV DNR, Office of Lands and Streams, at <http://www.wvdnr.gov/REM/default.shtm> or (304) 558-3225.
- Activity within the Federal Emergency Management Agency delineated 100-year floodplain may require notification to the appropriate county Floodplain Manager. The following website provides a statewide listing of Floodplain Managers in West Virginia. <http://www.dhsem.wv.gov/MitigationRecovery/Pages/Floodplain-Management.aspx>
- Applicants should give consideration to utilizing WVDNR's Wildlife Data Base Inquiry process. This resource is designed for the applicant as an informative preplanning tool. It allows the applicant to know, in advance, if they will be encountering any federally listed threatened or endangered species, state species of concern and high quality fish and wildlife habitats such as trout streams, warm water fisheries, wetlands, karst and cave habitats. This inquiry can be obtained from the: Wildlife Data Base Coordinator, PO Box 67, Elkins West Virginia 26241. Information on what to submit to receive an inquiry should be directed to data base coordinator at 304-637-0245.



- If applicable, the permittee must measure and report Large Quantity Water use pursuant to the Water Resources Protection Act, W.Va. Code §22-26-1 (2014).

## H. Definitions

**Best management practices (BMPs):** Policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural. Compensatory mitigation: The restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

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

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

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

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

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

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

**High Tide Line:** The line of intersection of the land with the water’s surface at the

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

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

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

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

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

Water Act, are not considered when calculating the loss of waters of the United States.

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

**Non-tidal wetland:** A non-tidal wetland is a wetland that is not subject to the ebb and flow of tidal waters. Nontidal 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 NWRPs, an open water is any area that in a year with normal patterns of precipitation has water flowing or standing above ground to the extent that an ordinary high water mark can be determined. Aquatic vegetation within the area of flowing or standing water is either non-emergent, sparse, or absent. Vegetated shallows are considered to be open waters. Examples of “open waters” include rivers, streams, lakes, and ponds.

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

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

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

**Pre-construction notification:** A request submitted by the project proponent to the Corps for confirmation that a particular activity is authorized by nationwide permit. The request may be a permit application, letter, or similar document that includes information about the proposed work and its anticipated environmental effects. Preconstruction 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 preconstruction 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 and functions.

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

**Restoration:** The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: 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 coarse substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas associated with riffles. A slower stream velocity, a streaming flow, a smooth surface, and a finer substrate characterize pools.

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

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

**Single and complete linear project:** A linear project is a project constructed for the purpose of getting people, goods, or services from a point of origin to a terminal point, which often involves multiple crossings of one or more waterbodies at separate and distant locations. The term “single and complete project” is defined as that portion of the total linear project proposed or accomplished by one owner/developer or partnership or other association of owners/developers that includes all crossings of a single water of the United States (i.e., a single waterbody) at a specific location. For linear projects crossing a single or multiple waterbodies several times at separate and distant

locations, each crossing is considered a single and complete project for purposes of NWP authorization. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately.

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

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

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

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

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

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

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

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

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

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

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