PUBLIC NOTICE ANNOUNCING THE NATIONWIDE PERMITS FINAL REGIONAL CONDITIONS FOR THE STATE OF NEW YORK WITHIN THE BUFFALO DISTRICT


After the publication of the Federal Register notice, Corps districts began finalizing their regional conditions for the new and reissued NWPs. Regional conditions provide additional protection for the aquatic environment, by ensuring that the NWPs authorize only those activities with minimal adverse effects on the aquatic environment. Regional conditions help ensure protection of high value waters within the District. The Buffalo District Regional Conditions for the portion of New York State within our area of responsibility (see attached map) were approved and finalized by the Corps Division Office on June 20, 2008. These include general regional conditions that apply to all NWPs as well as permit-specific conditions for NWP nos. 3, 10, 12, 13, 29, 40, 41, 44 and 46. These regional conditions are effective in 30 days of the date of this public notice. Permit applications received after August 27, 2008 will be subject to these conditions, unless the District Engineer has made a written determination that these rules would result in a substantial hardship to the permit applicant. The Regional Conditions have been incorporated into the attached NWP document (See specific NWP and Section F).
All documents pertaining to the NWP program are available via the Buffalo District webpage at: http://www.lrb.usace.army.mil/regulatory/nwp.htm

The New York State Department of Environmental Conservation issued the Section 401 Water Quality Certification (WQC) for the NWP Program on May 11, 2007. In summary, the NYSDEC denied WQC for the following NWPs: 15,16,17,21,23, 29,31,34,38,39,40,42,44,45,46,49&50 and issued WQC with special and/or general conditions for the following NWPs: 3,4,5,6,7,12,13,14,18,19,20,22,25, 27,30, 32,33,36,37,41,43,47 &48. Note that NWPs: 1,2,8,9,10,11,24,28&35 do not authorize activities regulated under Section 404 of the Clean Water Act and therefore do not require a WQC. For projects where the WQC has been denied or that do not meet the general or special conditions, the use of an NWP to authorize a discharge into waters of the United States is contingent upon obtaining an individual WQC or case-specific waiver from the NYSDEC Regional Office. (See attached agency contact information in Section J.) The WQC determinations and conditions have been incorporated into the attached NWP document (See specific NWP and Section G). In addition, a copy of their certification letter is available for viewing at the Buffalo District webpage noted above.

On December 8, 2006, the New York State Department of State (NYS DOS) completed their Coastal Zone Management Act (CZMA) consistency determination process. On March 14, 2007, NYS DOS determined upon review of the final NWPs that their December 8, 2006 decision remains in effect without change. In summary, the NYS DOS concurred with the Corps consistency determination for the following NWPs: 2,4,5,10,15,20,21,24,34,37,47,49,50; objected to the Corps consistency determination for the following NWPs where activities would occur anywhere within the coastal zone: 8, 13 & 17 and; objected to the Corps consistency determination for the following NWPs where the activities would occur within listed areas within the coastal zone: 1,3,6,7,9,11,12,13,14,16,18,19,22,23, 25,27,28,29,30,31,32,33, 35,36,38,39,40,41,42, 43,44,45,46 &48. A copy of their determination is available at the Buffalo District webpage noted above. In addition, the NYS DOS determination has been incorporated into the attached NWP document. (See section H). For projects where NYS DOS has objected to the Corps consistency determination, the use of an NWP to authorize an activity within, New York State’s (NYS) coastal zone that will affect land or water uses or natural resources of NYS coastal zone, is contingent upon obtaining an individual CZMA consistency determination, or a case-specific presumption of CZMA concurrence from NYS DOS. Note: for projects requiring an individual review by NYS DOS a joint permit application package, including a completed NYS Federal Coastal consistency form and all information and data necessary to assess the effects of the proposed activity and it’s consistency with the coastal management program, shall be sent by the applicant to NYS DOS simultaneous with the submission of the preconstruction notification application package to the Corps, if required, and NYSDEC. For additional information regarding the NYS DOS CZMA and their application forms and requirements, please contact NYS DOS. (See agency contact information in Section J.)

Questions pertaining to the Regulatory Program or requests for paper copies of any materials identified in this notice should be directed to the USACE, Buffalo District...
Regulatory Branch by calling 716-879-4330 or writing to: 1776 Niagara Street, Buffalo, NY 14207 or via email: LRB.Regulatory@usace.army.mil

SIGNED

Thomas C. Switala
Chief, Regulatory Branch

NOTICE TO POSTMASTER: It is requested that this notice be posted continuously and conspicuously for 30 days from the date of issuance.
USACE Buffalo District Final Nationwide Permits For New York State*
Expiration March 18, 2012

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B. Nationwide Permits

1. Aids to Navigation. The placement of aids to navigation and regulatory markers which 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). (Section 10)

Water Quality Certification
Water Quality Certification, pursuant to Section 401 of the Clean Water Act, is not required because this Nationwide Permit only authorizes activities that are regulated under Section 10 of the Rivers and Harbors Act.

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)). (Section 10)

Water Quality Certification
Water Quality Certification, pursuant to Section 401 of the Clean Water Act, is not required because this Nationwide Permit only authorizes activities that are regulated under Section 10 of the Rivers and Harbors Act.

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, or current construction codes or safety standards that are necessary to make the repair, rehabilitation, or replacement are authorized. This NWP 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 in the vicinity of and within existing structures (e.g., bridges, culverted road crossings, water intake structures, etc.) and the placement of new or additional riprap to protect the structure. The removal of sediment is limited to the minimum necessary to restore the waterway in the immediate vicinity of the structure to the approximate dimensions that existed when the structure was built, but cannot extend further 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 upland area unless otherwise specifically approved by the district engineer under separate authorization. The placement of riprap must be the minimum necessary to protect the structure or to ensure the safety of the structure. Any bank stabilization measures not directly associated with the structure will require a separate authorization from the district engineer.

(c) This NWP also authorizes temporary structures, fills, and work necessary to conduct the maintenance activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by
expected high flows. 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 or 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 27). Where maintenance dredging is proposed, the pre-construction notification must include information regarding the original design capacities and configurations of the outfalls, intakes, small impoundments, and canals. (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.

Buffalo District Specific Regional Conditions for NWP #3:

1. The Pre-Construction Notification (PCN) (Nationwide Permit General Condition No. 27– Notification) for activities involving the removal of accumulated sediments and debris in the vicinity of existing structures to restore the waterway to previously existing depths, must include evidence of such depths. If this information in not available, the PCN must include evidence of the existing depths immediately outside the proposed work area.

2. Every effort should be made to prevent additional encroachment into the beds of New York’s waterbodies. All repair or rehabilitation activities should focus on using the area immediately behind the existing structure. Bulkhead replacement shall be completed in-place or landward of the existing structure and shall not extend waterward more than eighteen (18) inches from the existing bulkhead. A waiver of this requirement may be requested with the submission of a PCN. The PCN must include justification for a waterward extension exceeding eighteen (18) inches, such as geologic conditions, engineering requirements, etc.

Section 401 Water Quality Certification
Pursuant to Section 401 of the Clean Water Act and 6 NYCRR Part 608, Section 608.9, the New York State Department of Environmental Conservation hereby certifies that the activities listed below, undertaken in accordance with all the listed Special and General Conditions, will comply with the applicable provisions of the Clean Water Act and applicable New York State water quality standards. Those NWPs with no Special Conditions remain subject to General Conditions unless otherwise indicated.

Water Quality Certification – Special Conditions for NWP #3:

1. This certification does not authorize maintenance activities associated with hydropower projects.

2. This certification does not authorize any activity that results in an alteration to waters of the United States such as draining or altering water levels.

3. Authorized dewatering is limited to immediate work areas that are coffer-dammed or otherwise isolated from the larger water body or waters of the United States. Dewatering must be localized and not drain extensive areas of a water body or reduce the water level such that fish and other aquatic vertebrates are killed or their eggs and nests are exposed to dessication, freezing or depredation in areas outside of the immediate work site.

4. Coffer dams or diversions shall not be constructed in a manner that causes or exacerbates erosion of the bed or banks of a watercourse.

5. Impoundment drawdowns (for maintenance activities) shall occur prior to October 15th (before November 1st for Long Island waters) or after March 1st. If a drawdown is necessary during this
period, then both the air and water temperature must be 50° F or higher, and the cloud cover must be less than 50 percent during the drawing down of water.

6. This certification does not authorize replacement of existing bulkheads or vertical retaining walls that extends waterward from the present footprint of the structure.

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, 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. (Sections 10 and 404)

Section 401 Water Quality Certification
Pursuant to Section 401 of the Clean Water Act and 6 NYCRR Part 608, Section 608.9, the New York State Department of Environmental Conservation hereby certifies that the activities listed below, undertaken in accordance with all the listed Special and General Conditions, will comply with the applicable provisions of the Clean Water Act and applicable New York State water quality standards. Those NWPs with no Special Conditions remain subject to General Conditions unless otherwise indicated.

Water Quality Certification -- Special Conditions: None

5. Scientific Measurement Devices. Devices, whose purpose is to measure and record scientific data, such as staff gages, tide gages, water recording devices, water quality testing and improvement devices, and similar structures. Small weirs and flumes constructed primarily to record water quantity and velocity are also authorized provided the discharge is limited to 25 cubic yards. (Sections 10 and 404)

Section 401 Water Quality Certification
Pursuant to Section 401 of the Clean Water Act and 6 NYCRR Part 608, Section 608.9, the New York State Department of Environmental Conservation hereby certifies that the activities listed below, undertaken in accordance with all the listed Special and General Conditions, will comply with the applicable provisions of the Clean Water Act and applicable New York State water quality standards. Those NWPs with no Special Conditions remain subject to General Conditions unless otherwise indicated.

Water Quality Certification -- Special Conditions: None

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, 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. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench. This NWP authorizes the construction of temporary pads, provided the discharge does not exceed 25 cubic yards. Discharges and structures associated with the recovery of historic resources are not authorized by this NWP. Drilling and the discharge of excavated material from test wells for oil and gas exploration are not authorized by this NWP; the plugging of such wells is authorized. Fill placed for roads and other similar activities is not authorized by this NWP. The NWP does not authorize any permanent structures. The discharge of drilling mud and cuttings may require a permit under Section 402 of the Clean Water Act. (Sections 10 and 404)
Section 401 Water Quality Certification
Pursuant to Section 401 of the Clean Water Act and 6 NYCRR Part 608, Section 608.9, the New York State Department of Environmental Conservation hereby certifies that the activities listed below, undertaken in accordance with all the listed Special and General Conditions, will comply with the applicable provisions of the Clean Water Act and applicable New York State water quality standards. Those NWPs with no Special Conditions remain subject to General Conditions unless otherwise indicated.

Water Quality Certification -- Special Conditions: None

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 that are 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 27.) (Sections 10 and 404)

Section 401 Water Quality Certification
Pursuant to Section 401 of the Clean Water Act and 6 NYCRR Part 608, Section 608.9, the New York State Department of Environmental Conservation hereby certifies that the activities listed below, undertaken in accordance with all the listed Special and General Conditions, will comply with the applicable provisions of the Clean Water Act and applicable New York State water quality standards. Those NWPs with no Special Conditions remain subject to General Conditions unless otherwise indicated.

Water Quality Certification -- Special Conditions for NWP #7:

1. This certification does not authorize outfalls proposed for construction in any Special Aquatic Site as defined and identified in federal regulation at 40 CFR Chapter 1, Part 230, Section 230.3(q-1) and Subpart E.

2. The applicant must provide the location of the any intake structure; the maximum design flow (in gallons per day) and velocity (in feet per second); and the name and general operational information, including design drawings, of any device that proposed to prevent impingement or entrainment of fish and wildlife.

3. All intake structures constructed for the withdrawal of cooling water must adhere to the requirements of Part 316(b) of the Clean Water Act and 6NYCRR Section 704.5.

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, Minerals Management Service. 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). 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 27.) (Section 10)

Water Quality Certification
Water Quality Certification, pursuant to Section 401 of the Clean Water Act, is not required because this Nationwide Permit only authorizes activities that are regulated under Section 10 of the Rivers and Harbors Act.

9. Structures in Fleeting and Anchorage Areas. Structures, buoys, floats and other devices placed within anchorage or fleeting areas to facilitate mooring of vessels where the U.S. Coast Guard has established such areas for that purpose. (Section 10)

Water Quality Certification
Water Quality Certification, pursuant to Section 401 of the Clean Water Act, is not required because this Nationwide Permit only authorizes activities that are regulated under Section 10 of the Rivers and Harbors Act.

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

Buffalo District Specific Regional Condition for NWP #10:
1. Mooring buoys must be tagged with the name and the address of the owner. The placement of buoys must not hinder navigation, create unsafe conditions to the public, or hinder safe access to and from a person’s property. Buoys must be placed so that each moored vessel will avoid contact or interference with any other moored vessel or structure.

Water Quality Certification
Water Quality Certification, pursuant to Section 401 of the Clean Water Act, is not required because this Nationwide Permit only authorizes activities that are regulated under Section 10 of the Rivers and Harbors Act.

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 manager must approve each buoy or marker individually. (Section 10)

Water Quality Certification
Water Quality Certification, pursuant to Section 401 of the Clean Water Act, is not required because this Nationwide Permit only authorizes activities that are regulated under Section 10 of the Rivers and Harbors Act.

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

Utility lines: This NWP authorizes the construction, maintenance, or repair of utility lines, including outfall and intake structures, and the associated excavation, backfill, or bedding for the utility lines, in all waters of the United States, provided there is no change in pre-construction contours. A “utility line” is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquefied, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical
energy, telephone, and telegraph messages, and radio and television communication. The term “utility line” does not include activities that drain a water of the United States, such as drainage tile or french drains, but it does apply to pipes conveying drainage from another area.

Material resulting from trench excavation may be temporarily sidecast into waters of the United States for no more than three months, provided the material is not placed in such a manner that it is dispersed by currents or other forces. The district engineer may extend the period of temporary side casting for no more than a total of 180 days, where appropriate. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench. The trench cannot be constructed or backfilled in such a manner as to drain waters of the United States (e.g., backfilling with extensive gravel layers, creating a french drain effect). Any exposed slopes and stream banks must be stabilized immediately upon completion of the utility line crossing of each waterbody.

**Utility line substations:** This NWP authorizes the construction, maintenance, or expansion of substation facilities associated with a power line or utility line in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not result in the loss of greater than 1/2 acre of waters of the United States. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters of the United States to construct, maintain, or expand substation facilities.

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

**Access roads:** This NWP authorizes the construction of access roads for the construction and maintenance of utility lines, including overhead power lines and utility line substations, in non-tidal waters of the United States, provided the total discharge from a single and complete project does not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters for access roads. Access roads must be the minimum width necessary (see Note 2, below). Access roads must be constructed so that the length of the road minimizes any adverse effects on waters of the United States and must be as near as possible to pre-construction contours and elevations (e.g., at grade corduroy roads or geotextile/gravel roads). Access roads constructed above pre-construction contours and elevations in waters of the United States must be properly bridged or culverted to maintain surface flows.

This NWP may authorize utility lines in or affecting navigable waters of the United States even if there is no associated discharge of dredged or fill material (See 33 CFR Part 322). Overhead utility lines constructed over section 10 waters and utility lines that are routed in or under section 10 waters without a discharge of dredged or fill material require a section 10 permit.

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

**Notification:** The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if any of the following criteria are met: (1) the activity involves mechanized land clearing in a forested wetland for the utility line right-of-way; (2) a section 10 permit is required; (3) the utility line in waters of the United States, excluding overhead lines, exceeds 500 feet; (4) the utility line is placed within a jurisdictional area (i.e., water of the United States), and it runs parallel to a stream bed that is within that jurisdictional area; (5) discharges that result in the loss of greater than 1/10-acre of waters of the United States; (6) permanent access roads are constructed above grade in waters of the United States for a distance of more than 500 feet; or (7) permanent access roads are constructed in waters of the United States with impervious materials. (See general condition 27.) (Sections 10 and 404)

**Note 1:** Where the proposed utility line is constructed or installed in navigable waters of the United States (i.e., section 10 waters), copies of the pre-construction notification and NWP verification will be sent
by the Corps to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), for charting the utility line to protect navigation.

Note 2: Access roads used for both construction and maintenance may be authorized, provided they meet the terms and conditions of this NWP. Access roads used solely for construction of the utility line must be removed upon completion of the work, accordance with the requirements for temporary fills.

Note 3: Pipes or pipelines used to transport gaseous, liquid, liquefied, or slurry substances over navigable waters of the United States are considered to be bridges, not utility lines, and may require a permit from the U.S. Coast Guard pursuant to Section 9 of the Rivers and Harbors Act of 1899. However, any discharges of dredged or fill material into waters of the United States associated with such pipelines will require a section 404 permit (see NWP 15).

**Buffalo District Specific Regional Conditions for NWP #12:**

1. For aerial transmission lines across navigable waters:

   a. The following minimum clearances are required for aerial transmission lines across navigable waters of the United States. These clearances are related to the clearances over the navigable channel provided by existing fixed bridges or clearances which would be required by the United States Coast Guard for new fixed bridges in the vicinity of the proposed aerial transmission line. These clearances are based on the low point of the line under conditions producing the greatest sag, taking into consideration temperature, load, wind, length of span, and type of supports as outlined in the National Electrical Safety Code:

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<th>Nominal System Voltage (kV)</th>
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   b. Clearances for communication lines and other aerial crossings must be a minimum of 10 feet above clearances required for bridges, unless specifically authorized otherwise by the District Engineer.

   c. Within 60 days of completion of the work, the permittee shall furnish the Corps and the National Oceanic and Atmospheric Administration, National Ocean Service, N/CS261, Marine Chart Division, Nautical Data Branch, Station 7317, 1315 East-West Highway, Silver Springs, MD 20910-3282, with certification that the aerial wire has been installed in compliance with the approved plans. The certification shall include a survey, conducted by a licensed surveyor, which clearly shows the minimum clearance of the aerial wire above the mean high water line at the time of the survey. The certification shall also include a statement by the permittee that the clearance of the wire(s), at maximum sag conditions, shall never be less than the clearance shown on the approved plans.
2. For Buried Cables and Pipelines Across Navigable Waters and Federal Navigation Channels:
   
a. The top of the cable or pipeline crossing any Federal project channel shall be located a minimum of 15 feet below the authorized project channel depth. The District Engineer, on a case-by-case basis, may modify this depth requirement where circumstances are deemed appropriate. In areas outside of Federal project channels, the top of the cable or pipeline shall be located a minimum of 4 feet below the existing level of the waterway substrate. Where trenching and backfilling are proposed, backfill material shall consist of suitable heavy materials and shall be placed no higher or lower than the adjacent river bottom elevation.

b. Within 15 days after completion of the authorized work, the permittee shall post and maintain visible signage on weatherproof placards no smaller than 4 feet by 4 feet on each shoreline at the location of the authorized crossing. The placard shall contain language informing waterway users of the presence of a cable or pipeline crossing (e.g., "WARNING - CABLE [or PIPELINE] CROSSING"), unless specifically authorized otherwise by the District Engineer.

c. Within 60 days of completion of the work, the permittee shall furnish the Corps and the National Oceanic and Atmospheric Administration, National Ocean Service, N/CS261, Marine Chart Division, Nautical Data Branch, Station 7317, 1315 East-West Highway, Silver Springs, MD 20910-3282, with certification that the cable or pipeline has been installed in compliance with the approved plans. The certification shall include a survey, conducted by a licensed surveyor, which clearly shows the elevations and alignment of the cable or pipeline across the waterway. If the post-completion survey reveals a discrepancy between the authorized and actual alignment of the cable or pipeline, the permittee shall note clearly these discrepancies in the survey.

3. A PCN is required for any utility line or transmission facility that is subject to the jurisdiction of the Federal Energy Regulatory Commission (FERC).

Section 401 Water Quality Certification

Pursuant to Section 401 of the Clean Water Act and 6 NYCRR Part 608, Section 608.9, the New York State Department of Environmental Conservation hereby certifies that the activities listed below, undertaken in accordance with all the listed Special and General Conditions, will comply with the applicable provisions of the Clean Water Act and applicable New York State water quality standards. Those NWPs with no Special Conditions remain subject to General Conditions unless otherwise indicated.

Water Quality Certification — Special Conditions for NWP #12:

1. This certification does not authorize the construction of substation facilities or access roads in wetlands or floodplains.

2. This certification does not authorize utility line discharges in a Special Aquatic Site as defined and identified in federal regulation at 40 CFR Chapter 1, Part 230, Section 230.3(q-1) and Subpart E.

3. Materials resulting from trench excavation that are temporarily sidecast into waters of the United States must be backfilled or removed within 30 days of deposition.

4. This certification does not authorize discharges greater than 1/10 acre in size or more than 200 feet of stream disturbance.
13. **Bank Stabilization.** Bank stabilization activities necessary for erosion prevention, 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 this criterion is waived in writing by the district engineer;
(c) The activity will not exceed an average of one cubic yard per running foot placed along the bank below the plane of the ordinary high water mark or the high tide line, unless this criterion is waived in writing by the district engineer;
(d) The activity does not involve discharges of dredged or fill material into special aquatic sites, unless the criterion is waived in writing by the district engineer;
(e) No material is of the type, or is placed in any location, or in any manner, to impair surface water flow into or out of any water of the United States;
(f) No material is placed in a manner that will be eroded by normal or expected high flows (properly anchored trees and treetops may be used in low energy areas); and,
(g) The activity is not a stream channelization activity.

**Notification:** The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if the bank stabilization activity: (1) involves discharges into special aquatic sites; (2) is in excess of 500 feet in length; or (3) will involve the discharge of greater than an average of one cubic yard per running foot along the bank below the plane of the ordinary high water mark or the high tide line. (See general condition 27.) (Sections 10 and 404)

**Buffalo District Specific Regional Condition for NWP #13:**
1. Every effort should be made to prevent hardening of the shoreline in New York waterbodies by selection of rip-rap stone material and/or vegetative stabilization measures, in lieu of vertical structures (i.e. wood, concrete or sheet pile bulkheads/retaining walls).

**Section 401 Water Quality Certification**

Pursuant to Section 401 of the Clean Water Act and 6 NYCRR Part 608, Section 608.9, the New York State Department of Environmental Conservation hereby certifies that the activities listed below, undertaken in accordance with all the listed Special and General Conditions, will comply with the applicable provisions of the Clean Water Act and applicable New York State water quality standards. Those NWPs with no Special Conditions remain subject to General Conditions unless otherwise indicated.

**Water Quality Certification -- Special Conditions for NWP #13:**

1. This certification does not authorize bank stabilization actions in a Special Aquatic Site as defined and identified in federal regulation at 40 CFR Chapter 1, Part 230, Section 230.3(q-1) and Subpart E.

2. This certification only authorizes bank stabilization projects less than 200 feet in length or discharges of one cubic yard or less per running foot along the bank below the plane of mean high water mark or the high tide line.

3. This certification does not authorize projects in Coastal Erosion Hazard Areas, as identified in NYS Environmental Conservation Law (ECL) Article 34, and its implementing regulations, 6 NYCRR Part 505.

4. This certification does not authorize vertical bulkheads or breakwalls.

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

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

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

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) the loss of waters of the United States exceeds 1/10 acre; or (2) there is a discharge in a special aquatic site, including wetlands. (See general condition 27.) (Sections 10 and 404)

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

Section 401 Water Quality Certification
Pursuant to Section 401 of the Clean Water Act and 6 NYCRR Part 608, Section 608.9, the New York State Department of Environmental Conservation hereby certifies that the activities listed below, undertaken in accordance with all the listed Special and General Conditions, will comply with the applicable provisions of the Clean Water Act and applicable New York State water quality standards. Those NWPs with no Special Conditions remain subject to General Conditions unless otherwise indicated.

Water Quality Certification -- Special Conditions for NWP #14:

1. This certification does not authorize projects in Coastal Erosion Hazard Areas, as identified in NYS Environmental Conservation Law (ECL) Article 34, and its implementing regulations, 6 NYCRR Part 505.

2. This certification does not authorize discharges greater than 1/10 acre in size or more than 200 linear feet of stream disturbance, whether used singly or in conjunction with other linear transportation projects.

3. All stream crossings must adhere to construction best management practices, in particular the Best Management Practices for the placement and replacement of culverts as set forth in the regional conditions for the Buffalo and New York Districts.

15. U.S. Coast Guard Approved Bridges. Discharges of dredged or fill material incidental to the construction of bridges across navigable waters of the United States, including cofferdams, abutments, foundation seals, piers, and temporary construction and access fills, provided such discharges have been authorized by the U.S. Coast Guard as part of the bridge permit. Causeways and approach fills are not included in this NWP and will require a separate section 404 permit. (Section 404)

Water Quality Certification
General Water Quality Certification, pursuant to Section 401 of the Clean Water Act, has been denied for this Nationwide Permit. Individual Water Quality Certification must be obtained from the New York State Department of Environmental Conservation prior to undertaking activities described by this permit. This permit will then be subject to all terms and conditions placed upon the individual Water Quality Certification issued by the New York State Department of Environmental Conservation.

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 on the upland and does not require a section 404 permit. This NWP satisfies the technical requirement for a section 404 permit for the return water where the quality of the return water is controlled by the state through the section 401 certification procedures. The dredging activity may require a section 404 permit (33 CFR 323.2(d)), and will require a section 10 permit if located in navigable waters of the United States. (Section 404)

Water Quality Certification
General Water Quality Certification, pursuant to Section 401 of the Clean Water Act, has been denied for this Nationwide Permit. Individual Water Quality Certification must be obtained from the New York State Department of Environmental Conservation prior to undertaking activities described by this permit. This permit will then be subject to all terms and conditions placed upon the individual Water Quality Certification issued by the New York State Department of Environmental Conservation.

17. Hydropower Projects. Discharges of dredged or fill material associated with hydropower projects having: (a) Less than 5000 kW of total generating capacity at existing reservoirs, where the project, including the fill, is licensed by the Federal Energy Regulatory Commission (FERC) under the Federal Power Act of 1920, as amended; or (b) a licensing exemption granted by the FERC pursuant to Section 408 of the Energy Security Act of 1980 (16 U.S.C. 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 27.) (Section 404)

Water Quality Certification
General Water Quality Certification, pursuant to Section 401 of the Clean Water Act, has been denied for this Nationwide Permit. Individual Water Quality Certification must be obtained from the New York State Department of Environmental Conservation prior to undertaking activities described by this permit. This permit will then be subject to all terms and conditions placed upon the individual Water Quality Certification issued by the New York State Department of Environmental Conservation.

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

(a) The quantity of discharged material and the volume of area excavated do not exceed 25 cubic yards below the plane of the ordinary high water mark or the high tide line;

(b) The discharge will not cause the loss of more than 1/10 acre of waters of the United States; and

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

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) The discharge or the volume of area excavated exceeds 10 cubic yards below the plane of the ordinary high water mark or the high tide line, or (2) the discharge is in a special aquatic site, including wetlands. (See general condition 27.) (Sections 10 and 404)

Section 401 Water Quality Certification
Pursuant to Section 401 of the Clean Water Act and 6 NYCRR Part 608, Section 608.9, the New York State Department of Environmental Conservation hereby certifies that the activities listed below, undertaken in accordance with all the listed Special and General Conditions, will comply with the applicable provisions of the Clean Water Act and applicable New York State water quality standards. Those NWPs with no Special Conditions remain subject to General Conditions unless otherwise indicated.

**Water Quality Certification -- Special Conditions: None**

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)). (Sections 10 and 404)

Section 401 Water Quality Certification
Pursuant to Section 401 of the Clean Water Act and 6 NYCRR Part 608, Section 608.9, the New York State Department of Environmental Conservation hereby certifies that the activities listed below, undertaken in accordance with all the listed Special and General Conditions, will comply with the applicable provisions of the Clean Water Act and applicable New York State water quality standards. Those NWPs with no Special Conditions remain subject to General Conditions unless otherwise indicated.

**Water Quality Certification -- Special Conditions: None**

20. **Oil Spill Cleanup.** Activities required for the containment and cleanup of oil and hazardous substances that are subject to the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR part 300) provided that the work is done in accordance with the Spill Control and Countermeasure Plan required by 40 CFR 112.3 and any existing state contingency plan and provided that the Regional Response Team (if one exists in the area) concurs with the proposed containment and cleanup action. 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. (Sections 10 and 404)

Section 401 Water Quality Certification
Pursuant to Section 401 of the Clean Water Act and 6 NYCRR Part 608, Section 608.9, the New York State Department of Environmental Conservation hereby certifies that the activities listed below, undertaken in accordance with all the listed Special and General Conditions, will comply with the applicable provisions of the Clean Water Act and applicable New York State water quality standards. Those NWPs with no Special Conditions remain subject to General Conditions unless otherwise indicated.

**Water Quality Certification -- Special Conditions: None**

21. **Surface Coal Mining Operations.** Discharges of dredged or fill material into waters of the United States associated with surface coal mining and reclamation operations provided the activities are already authorized, or are currently being processed as part of an integrated permit processing procedure, by the Department of Interior (DOI), Office of Surface Mining (OSM), or by states with approved programs under Title V of the Surface Mining Control and Reclamation Act of 1977.
Notification: The permittee must submit a pre-construction notification to the district engineer and receive written authorization prior to commencing the activity. (See general condition 27.) (Sections 10 and 404)

Water Quality Certification
General Water Quality Certification, pursuant to Section 401 of the Clean Water Act, has been denied for this Nationwide Permit. Individual Water Quality Certification must be obtained from the New York State Department of Environmental Conservation prior to undertaking activities described by this permit. This permit will then be subject to all terms and conditions placed upon the individual Water Quality Certification issued by the New York State Department of Environmental Conservation.

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 27.) If condition 1 above is triggered, the permittee cannot commence the activity until informed by the district engineer that compliance with the “Historic Properties” general condition is completed. (Sections 10 and 404)

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

Note 2: Compliance with general condition 17, Endangered Species, and general condition 18, Historic Properties, is required for all NWPs. The concern with historic properties is emphasized in the notification requirements for this NWP because of the likelihood that submerged vessels may be historic properties.

Section 401 Water Quality Certification
Pursuant to Section 401 of the Clean Water Act and 6 NYCRR Part 608, Section 608.9, the New York State Department of Environmental Conservation hereby certifies that the activities listed below, undertaken in accordance with all the listed Special and General Conditions, will comply with the applicable provisions of the Clean Water Act and applicable New York State water quality standards. Those NWPs with no Special Conditions remain subject to General Conditions unless otherwise indicated.

Water Quality Certification -- Special Condition for NWP #22:
1. This certification does not authorize activities within 1,000 feet of areas that are designated as Significant Coastal Fish and Wildlife Habitats pursuant to 19 NYCRR Part 602; Title 19 Chapter 13, Waterfront Revitalization and Coastal Resources.

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 environmental documentation, 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.
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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 27). The activities that require pre-construction notification are listed in the appropriate Regulatory Guidance Letters. (Sections 10 and 404)

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

Water Quality Certification
General Water Quality Certification, pursuant to Section 401 of the Clean Water Act, has been denied for this Nationwide Permit. Individual Water Quality Certification must be obtained from the New York State Department of Environmental Conservation prior to undertaking activities described by this permit. This permit will then be subject to all terms and conditions placed upon the individual Water Quality Certification issued by the New York State Department of Environmental Conservation.

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. (Section 10)

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

Note 2: Those activities that do not involve an Indian Tribe or State section 404 permit are not included in this NWP, but certain structures will be exempted by Section 154 of Pub. L. 94-587, 90 Stat. 2917 (33 U.S.C. 591) (see 33 CFR 322.3(a)(2)).

Water Quality Certification
Water Quality Certification, pursuant to Section 401 of the Clean Water Act, is not required because this Nationwide Permit only authorizes activities that are regulated under Section 10 of the Rivers and Harbors Act.

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

Section 401 Water Quality Certification
Pursuant to Section 401 of the Clean Water Act and 6 NYCRR Part 608, Section 608.9, the New York State Department of Environmental Conservation hereby certifies that the activities listed below, undertaken in accordance with all the listed Special and General Conditions, will comply with the applicable provisions of
the Clean Water Act and applicable New York State water quality standards. Those NWPs with no Special Conditions remain subject to General Conditions unless otherwise indicated.

**Water Quality Certification -- Special Conditions for NWP #25:**

1. This certification does not authorize any structural discharge occurring in a designated Significant Coastal Fish and Wildlife Habitat area pursuant to 19 NYCRR Part 602; Title 19 Chapter 13, Waterfront Revitalization and Coastal Resources.

2. This certification does not authorize any pile-supported structure with a surface area greater than 4,000 square feet.

3. This certification does not authorize any structural support member with a surface area greater than 64 square feet.

4. This certification does not authorize piles or structural support members with spacing between such members causing accretion of bottom sediments.

26. [Reserved]

27. **Aquatic Habitat Restoration, Establishment, and Enhancement Activities.**

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

To the extent that a Corps permit is required, activities authorized by this NWP include, but are not limited to: the removal of accumulated sediments; the installation, removal, and maintenance of small water control structures, dikes, and berms; the installation of current deflectors; the enhancement, restoration, or establishment of riffle and pool stream structure; the placement of in-stream habitat structures; modifications of the stream bed and/or banks to restore or establish stream meanders; the backfilling of artificial channels and drainage ditches; the removal of existing drainage structures; the construction of small nesting islands; the construction of open water areas; the construction of oyster habitat over unvegetated bottom in tidal waters; shellfish seeding; activities needed to reestablish vegetation, including plowing or discing for seed bed preparation and the planting of appropriate wetland species; 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., stream to wetland or vice versa) or uplands. 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.

**Reversion.** For enhancement, restoration, and establishment activities conducted: (1) In accordance with the terms and conditions of a binding wetland enhancement, restoration, or 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), 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 OSM or the applicable state agency, this NWP also authorizes any future discharge of dredged or fill material associated
with the reversion of the area to its documented prior condition and use (i.e., prior to the restoration, enhancement, or establishment activities). The reversion must occur within five years after expiration of a limited term wetland restoration or establishment agreement or permit, and is authorized in these circumstances even if the discharge occurs after this NWP expires. The five-year reversion limit does not apply to agreements without time limits reached between the landowner and the FWS, NRCS, FSA, NMFS, NOS, 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 that has not been abandoned 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 result 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 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 wetland restoration, enhancement, or establishment action; or (3) the SMCRA permit issued by OSM or the applicable state agency. 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 the activity (see general condition 27), 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 wetland enhancement, restoration, or establishment agreement between the landowner and the U.S. FWS, NRCS, FSA, NMFS, NOS, or their designated state cooperating agencies;

(2) 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) The reclamation of surface coal mine lands, in accordance with an SMCRA permit issued by the OSM or the applicable state agency.

However, the permittee must submit a copy of the appropriate documentation. (Sections 10 and 404)

Note: This NWP can be used to authorize compensatory mitigation projects, including mitigation banks and in-lieu fee programs. 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.

Section 401 Water Quality Certification
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Water Quality Certification — Special Conditions for NWP #27:
1. This certification does not authorize the conversion of one wetland type to another or the conversion of lotic communities to wetland or lentic communities.
2. This certification does not authorize filling done for shellfish restoration which results in an alteration of existing substrate and benthic habitat.

3. This certification does not authorize demonstration projects larger than one acre.

4. This certification authorizes only restoration projects conducted with oversight by a federal or state natural resources agency, or a County Soil and Water Conservation District.

5. This certification does not authorize excavation or the placement of fill in tidal waters.

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. (Section 10)

Water Quality Certification
Water Quality Certification, pursuant to Section 401 of the Clean Water Act, is not required because this Nationwide Permit only authorizes activities that are regulated under Section 10 of the Rivers and Harbors Act.

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

The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States, including the loss of no more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds this 300 linear foot limit is waived in writing by the district engineer. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters.

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

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

Buffalo District Specific Regional Condition for NWP #29:

1. The proposed impacts to waters of the United States shall include those direct impacts associated with construction of the proposed project, as well as any indirect, or reasonably anticipated future impacts which may occur as a result of the project (e.g., filling waters of the United States to increase size of usable yard space, impacts to existing hydrologic regimes, etc.).

Water Quality Certification
General Water Quality Certification, pursuant to Section 401 of the Clean Water Act, has been denied for this Nationwide Permit. Individual Water Quality Certification must be obtained from the New York State Department of Environmental Conservation prior to undertaking activities described by this permit. This permit will then be subject to all terms and conditions placed upon the individual Water Quality Certification issued by the New York State Department of Environmental Conservation.
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. (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).

Section 401 Water Quality Certification
Pursuant to Section 401 of the Clean Water Act and 6 NYCRR Part 608, Section 608.9, the New York State Department of Environmental Conservation hereby certifies that the activities listed below, undertaken in accordance with all the listed Special and General Conditions, will comply with the applicable provisions of the Clean Water Act and applicable New York State water quality standards. Those NWPs with no Special Conditions remain subject to General Conditions unless otherwise indicated.

Water Quality Certification – Special Conditions: None

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, by 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. 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 material must be placed in an upland site or an authorized disposal site in waters of the United States, and proper siltation 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 impacts to the aquatic environment are 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.

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 impacts 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. 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 compensatory 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 27). 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 dredged material disposal site. (Sections 10 and 404)

Water Quality Certification
General Water Quality Certification, pursuant to Section 401 of the Clean Water Act, has been denied for this Nationwide Permit. Individual Water Quality Certification must be obtained from the New York State Department of Environmental Conservation prior to undertaking activities described by this permit. This permit will then be subject to all terms and conditions placed upon the individual Water Quality Certification issued by the New York State Department of Environmental Conservation.

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 unauthorized activity affected no 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
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(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. 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). (Sections 10 and 404)

Section 401 Water Quality Certification
Pursuant to Section 401 of the Clean Water Act and 6 NYCRR Part 608, Section 608.9, the New York State Department of Environmental Conservation hereby certifies that the activities listed below, undertaken in accordance with all the listed Special and General Conditions, will comply with the applicable provisions of the Clean Water Act and applicable New York State water quality standards. Those NWPs with no Special Conditions remain subject to General Conditions unless otherwise indicated.

Water Quality Certification -- Special Condition for NWP 32:
1. This certification does not authorize enforcement actions resulting in discharges greater than 1/10 acre in size or more than 200 linear feet of stream disturbance.

33. Temporary Construction, Access, and Dewatering. Temporary structures, work, and discharges, including cofferdams, necessary for construction activities or access fills or dewatering of construction sites, provided that the associated primary activity is authorized by the Corps of Engineers or the U.S. Coast Guard. This NWP also authorizes temporary structures, work, and discharges, including cofferdams, necessary for construction activities not otherwise subject to the Corps or U.S. Coast Guard permit requirements. Appropriate measures must be taken to maintain near normal downstream flows and to minimize flooding. Fill must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. The use of dredged material may be allowed if the district engineer determines that it will not cause more than minimal adverse effects on aquatic resources. Following completion of construction, temporary fill must be entirely removed to upland areas, 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 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 (see general condition 27). 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. (Sections 10 and 404)

Section 401 Water Quality Certification
Pursuant to Section 401 of the Clean Water Act and 6 NYCRR Part 608, Section 608.9, the New York State Department of Environmental Conservation hereby certifies that the activities listed below, undertaken in accordance with all the listed Special and General Conditions, will comply with the applicable provisions of
the Clean Water Act and applicable New York State water quality standards. Those NWPs with no Special Conditions remain subject to General Conditions unless otherwise indicated.

**Water Quality Certification — Special Conditions for NWP #33:**

1. This certification does not apply to hydro power projects.

2. Dewatering must be limited to immediate work areas that are coffer-dammed or otherwise isolated from the larger water body or waters of the United States. Dewatering must be localized and not drain extensive areas of a water body or reduce the water level such that vegetation, fish and other aquatic vertebrates are killed or their eggs and nests are exposed to dessication, freezing or depredation in areas outside of the immediate work site.

3. Impoundment drawdowns shall occur prior to October 15th (before November 1st for Long Island waters) or after March 1st. If a drawdown is necessary during this period, then both the air and water temperature must be 50° F or higher and the cloud cover must be less than 50 percent during the drawing down of water.

4. Cofferdams or diversions shall not be constructed in a manner that causes or exacerbates erosion of the bed or banks of a watercourse.

**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 27.) (Section 404)

**Water Quality Certification**

General Water Quality Certification, pursuant to Section 401 of the Clean Water Act, has been denied for this Nationwide Permit. Individual Water Quality Certification must be obtained from the New York State Department of Environmental Conservation prior to undertaking activities described by this permit. This permit will then be subject to all terms and conditions placed upon the individual Water Quality Certification issued by the New York State Department of Environmental Conservation.

**35. Maintenance Dredging of Existing Basins.** Excavation and 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, provided the dredged material is deposited at an upland site and proper siltation controls are used. (Section 10)

**Water Quality Certification**

Water Quality Certification, pursuant to Section 401 of the Clean Water Act, is not required because this Nationwide Permit only authorizes activities that are regulated under Section 10 of the Rivers and Harbors Act.
36. **Boat Ramps.** Activities required for the construction of boat ramps, provided the activity meets all of the following criteria:
   (a) The discharge into waters of the United States does not exceed 50 cubic yards of concrete, rock, crushed stone or gravel into forms, or in the form of pre-cast concrete planks or slabs, unless the 50 cubic yard limit is waived in writing by the district engineer;
   (b) The boat ramp does not exceed 20 feet in width, unless this criterion is waived in writing by the district engineer;
   (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 the upland; 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 may be authorized by another NWP, a regional general permit, or an individual permit.

   **Notification:** The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) The discharge into waters of the United States exceeds 50 cubic yards, or (2) the boat ramp exceeds 20 feet in width. (See general condition 27.) (Sections 10 and 404)

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**Section 401 Water Quality Certification**

Pursuant to Section 401 of the Clean Water Act and 6 NYCRR Part 608, Section 608.9, the New York State Department of Environmental Conservation hereby certifies that the activities listed below, undertaken in accordance with all the listed Special and General Conditions, will comply with the applicable provisions of the Clean Water Act and applicable New York State water quality standards. Those NWPs with no Special Conditions remain subject to General Conditions unless otherwise indicated.

**Water Quality Certification -- Special Conditions: None**

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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 509.13);
   (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 prospective permittee should wait until the district engineer issues an NWP verification 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 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:** The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 27). (Sections 10 and 404)

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**Section 401 Water Quality Certification**

Pursuant to Section 401 of the Clean Water Act and 6 NYCRR Part 608, Section 608.9, the New York State Department of Environmental Conservation hereby certifies that the activities listed below, undertaken in
accordance with all the listed Special and General Conditions, will comply with the applicable provisions of the Clean Water Act and applicable New York State water quality standards. Those NWPs with no Special Conditions remain subject to General Conditions unless otherwise indicated.

Water Quality Certification -- Special Conditions: None

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 27.) (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.

Water Quality Certification
General Water Quality Certification, pursuant to Section 401 of the Clean Water Act, has been denied for this Nationwide Permit. Individual Water Quality Certification must be obtained from the New York State Department of Environmental Conservation prior to undertaking activities described by this permit. This permit will then be subject to all terms and conditions placed upon the individual Water Quality Certification issued by the New York State Department of Environmental Conservation.

39. Commercial and Institutional Developments. Discharges of dredged or fill material into non-tidal waters of the United States for the construction or expansion of commercial and institutional building foundations and building pads and attendant features that are necessary for the use and maintenance of the structures. Attendant features may include, but are not limited to, roads, parking lots, garages, yards, utility lines, storm water management facilities, and recreation facilities such as playgrounds and playing fields. Examples of commercial developments include retail stores, industrial facilities, restaurants, business parks, and shopping centers. Examples of institutional developments include schools, fire stations, government office buildings, judicial buildings, public works buildings, libraries, hospitals, and places of worship. The construction of new golf courses, new ski areas, or oil and gas wells is not authorized by this NWP.

The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States, including the loss of no more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds this 300 linear foot limit is waived in writing by the district engineer. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters.

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

Water Quality Certification
General Water Quality Certification, pursuant to Section 401 of the Clean Water Act, has been denied for this Nationwide Permit. Individual Water Quality Certification must be obtained from the New York State Department of Environmental Conservation prior to undertaking activities described by this permit. This permit will then be subject to all terms and conditions placed upon the individual Water Quality Certification issued by the New York State Department of Environmental Conservation.
40. **Agricultural Activities.** Discharges of dredged or fill material into non-tidal waters of the United States for agricultural activities, including the construction of building pads for farm buildings. Authorized activities include the installation, placement, or construction of drainage tiles, ditches, or levees; mechanized land clearing; land leveling; the relocation of existing serviceable drainage ditches constructed in waters of the United States; and similar activities.

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

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

The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters. This NWP does not authorize the relocation of greater than 300 linear feet of existing serviceable drainage ditches constructed in non-tidal streams, unless for drainage ditches constructed in intermittent and ephemeral streams, this 300 linear foot limit is waived in writing by the district engineer.

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

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

**Buffalo District Specific Regional Condition for NWP #40:**

1. The PCN must include documentation demonstrating the building is necessary for the agricultural production of the land.

**Water Quality Certification**

General Water Quality Certification, pursuant to Section 401 of the Clean Water Act, has been denied for this Nationwide Permit. Individual Water Quality Certification must be obtained from the New York State Department of Environmental Conservation prior to undertaking activities described by this permit. This permit will then be subject to all terms and conditions placed upon the individual Water Quality Certification issued by the New York State Department of Environmental Conservation.

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

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

**Notification:** The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity, if more than 500 linear feet of drainage ditch will be reshaped. (See general condition 27.) (Section 404)
Section 401 Water Quality Certification
Pursuant to Section 401 of the Clean Water Act and 6 NYCRR Part 608, Section 608.9, the New York State Department of Environmental Conservation hereby certifies that the activities listed below, undertaken in accordance with all the listed Special and General Conditions, will comply with the applicable provisions of the Clean Water Act and applicable New York State water quality standards. Those NWPs with no Special Conditions remain subject to General Conditions unless otherwise indicated.

Buffalo District Specific Regional Condition for NWP #41:

1. The PCN must include documentation on the serviceability of the ditch system and a history of maintenance activity.

Water Quality Certification — Special Conditions for NWP #41:

1. Sidecast hydric soils may not be stacked deeper than 18 inches nor in such a way as to interfere with surface water flow.

2. This certification does not authorize side-casting of non-hydric soils into wetlands.

3. This certification does not authorize in-stream channel re-shaping.

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

The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States, including the loss of no more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds this 300 linear foot limit is waived in writing by the district engineer. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters.

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

Water Quality Certification
General Water Quality Certification, pursuant to Section 401 of the Clean Water Act, has been denied for this Nationwide Permit. Individual Water Quality Certification must be obtained from the New York State Department of Environmental Conservation prior to undertaking activities described by this permit. This permit will then be subject to all terms and conditions placed upon the individual Water Quality Certification issued by the New York State Department of Environmental Conservation.

43. Stormwater Management Facilities. Discharges of dredged or fill material into non-tidal waters of the United States for the construction and maintenance of stormwater management facilities, including the excavation of stormwater ponds/facilities, detention basins, and retention basins; the installation and maintenance of water control structures, outfall structures and emergency spillways; and the maintenance dredging of existing stormwater management ponds/facilities and detention and retention basins.

The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States, including the loss of no more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds this 300 linear foot limit is waived in writing by the district engineer. This NWP
does not authorize discharges into non-tidal wetlands adjacent to tidal waters. This NWP does not authorize discharges of dredged or fill material for the construction of new stormwater management facilities in perennial streams.

Notification: For the construction of new stormwater management facilities, or the expansion of existing stormwater management facilities, the permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 27.) Maintenance activities do not require pre-construction notification if they are limited to restoring the original design capacities of the stormwater management facility. (Section 404)

Section 401 Water Quality Certification
Pursuant to Section 401 of the Clean Water Act and 6 NYCRR Part 608, Section 608.9, the New York State Department of Environmental Conservation hereby certifies that the activities listed below, undertaken in accordance with all the listed Special and General Conditions, will comply with the applicable provisions of the Clean Water Act and applicable New York State water quality standards. Those NWPs with no Special Conditions remain subject to General Conditions unless otherwise indicated.

Water Quality Certification -- Special Conditions for NWP #43:
1. This authorization applies only to the maintenance of existing storm water management facilities up to 200 feet in length.

2. This authorization does not authorize the construction a new storm water facility or the expansion of an existing storm water facility in the waters of the United States.

44. Mining Activities. Discharges of dredged or fill material into non-tidal waters of the United States for mining activities, except for coal mining activities. The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 27.) If reclamation is required by other statutes, then a copy of the reclamation plan must be submitted with the pre-construction notification. (Sections 10 and 404)

Buffalo District Specific Regional Condition for NWP #44:
1. This NWP does not authorize the discharge of dredged or fill material associated with sand/gravel mining within stream channels or peat mining.

Water Quality Certification
General Water Quality Certification, pursuant to Section 401 of the Clean Water Act, has been denied for this Nationwide Permit. Individual Water Quality Certification must be obtained from the New York State Department of Environmental Conservation prior to undertaking activities described by this permit. This permit will then be subject to all terms and conditions placed upon the individual Water Quality Certification issued by the New York State Department of Environmental Conservation.

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.

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 27) within 12-months of the date of the damage. The pre-construction notification should include documentation, such as a recent topographic survey or photographs, to justify the extent of the proposed restoration. (Sections 10 and 404)

Note: Uplands lost as a result of a storm, flood, or other discrete event can be replaced without a section 404 permit, if the uplands are restored to the ordinary high water mark (in non-tidal waters) or high tide line (in tidal waters). (See also 33 CFR 328.5.)

Water Quality Certification
General Water Quality Certification, pursuant to Section 401 of the Clean Water Act, has been denied for this Nationwide Permit. Individual Water Quality Certification must be obtained from the New York State Department of Environmental Conservation prior to undertaking activities described by this permit. This permit will then be subject to all terms and conditions placed upon the individual Water Quality Certification issued by the New York State Department of Environmental Conservation.

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) are determined to be waters of the United States. The discharge must not cause the loss of greater than one acre of waters of the United States.

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

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

Buffalo District Specific Regional Condition for NWP #46:

1. The PCN shall include documentation regarding the history of the construction and maintenance of the ditch.

Water Quality Certification
General Water Quality Certification, pursuant to Section 401 of the Clean Water Act, has been denied for this Nationwide Permit. Individual Water Quality Certification must be obtained from the New York State Department of Environmental Conservation prior to undertaking activities described by this permit. This permit will then be subject to all terms and conditions placed upon the individual Water Quality Certification issued by the New York State Department of Environmental Conservation.

47. Pipeline Safety Program Designated Time Sensitive Inspections and Repairs.
Activities required for the inspection, repair, rehabilitation, or replacement of any currently serviceable structure or fill for pipelines that have been identified by the Pipeline and Hazardous Materials Safety Administration's Pipeline Safety Program (PHP) within the U.S. Department of Transportation as time-sensitive (see 49 CFR parts 192 and 195) and additional maintenance activities done in conjunction with the time-sensitive inspection and repair activities. All activities must meet the following criteria:
(a) Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable when temporary structures, work and discharges, including cofferdams, are necessary for construction activities or access fills or dewatering of construction sites; (b) Material resulting from trench excavation may be temporarily sidecast into waters of the United States for no more than three months, provided that the material is not placed in such a manner that it is dispersed by currents or other forces. The district engineer may extend the period of temporary side casting for no more than a total of 180 days, where appropriate. The trench cannot be constructed or backfilled in such a manner as to drain waters of the United States (e.g., backfilling with extensive gravel layers, creating a french drain effect); (c) Temporary fill 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 affected areas must be revegetated, as appropriate; (d) In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench so that there is no change in preconstruction contours; (e) To the maximum extent practicable, the restoration of open waters must be to the pre-construction course, condition, capacity, and location of the waterbody; (f) Any exposed slopes and stream banks must be stabilized immediately upon completion of the project; (g) Additional maintenance activities done in conjunction with the time-sensitive inspection or repair must not result in additional losses of waters of the United States; and; (h) The permittee is a participant in the Pipeline Repair and Environmental Guidance System (PREGS). Reporting: The permittee must submit a post construction report to the PHP within seven days after completing the work. The report must be submitted electronically to PHP via PREGS. The report must contain the following information: project sites located in waters of the United States, temporary access routes, stream dewatering sites, temporary fills and temporary structures identified on a map of the pipeline corridor; photographs of the pre- and post-construction work areas located in waters of the United States; and a list of best management practices employed for each pipeline segment shown on the map. (Section 10 and 404) Note: Division engineers may modify this NWP by adding regional conditions to protect the aquatic environment, as long as those regional conditions do not require pre-construction notification or other actions that would delay time sensitive inspections and repairs. Examples of appropriate regional conditions include best management practices.

Section 401 Water Quality Certification
Pursuant to Section 401 of the Clean Water Act and 6 NYCRR Part 608, Section 608.9, the New York State Department of Environmental Conservation hereby certifies that the activities listed below, undertaken in accordance with all the listed Special and General Conditions, will comply with the applicable provisions of the Clean Water Act and applicable New York State water quality standards. Those NWP's with no Special Conditions remain subject to General Conditions unless otherwise indicated.

Water Quality Certification - Special Conditions for NWP #47:
1. Materials resulting from trench excavation that are temporarily sidecast into waters of the United States must be backfilled or removed within 30 days of deposition.

2. This certification does not apply to discharges greater than 1/10 acre in size or to more than 200 feet of stream disturbance.

3. Dewatering shall be limited to immediate work areas that are coffer-dammed or otherwise isolated from the larger water body or waters of the United States. Dewatering shall be localized and not drain extensive areas of a water body or reduce the water level such that fish and other aquatic vertebrates are killed or their eggs and nests are exposed to dessication, freezing or depredation in areas outside of the immediate work site.
4. Coffer dams or diversions shall not be constructed in a manner that constricts channel widths or redirects flowing waters so as to cause or exacerbate erosion of the bed or banks of a watercourse.

5. Impoundment drawdowns shall occur prior to October 15th (before November 1st for Long Island waters) or after March 1st. If a drawdown is necessary during this period, then both the air and water temperature must be 50°F or higher and the cloud cover must be less than 50 percent during the drawing down of water.

48. **Existing Commercial Shellfish Aquaculture Activities.** This NWP authorizes the installation of buoys, floats, racks, trays, nets, lines, tubes, containers, and other structures necessary for the continued operation of the existing commercial aquaculture activity. This NWP also authorizes discharges of dredged or fill material necessary for shellfish seeding, rearing, cultivating, transplanting, and harvesting activities. Rafts and other floating structures must be securely anchored and clearly marked.

This NWP does not authorize new operations or the expansion of the project area for an existing commercial shellfish aquaculture activity. This NWP does not authorize the cultivation of new species (i.e., species not previously cultivated in the waterbody). This NWP does not authorize attendant features such as docks, piers, boat ramps, stockpiles, staging areas, or the deposition of shell material back into waters of the United States as waste.

**Reporting:** For those activities that do not require pre-construction notification, the permittee must submit a report to the district engineer that includes the following information: (1) the size of the project area for the commercial shellfish aquaculture activity (in acres); (2) the location of the activity; (3) a brief description of the culture method and harvesting method(s); (4) the name(s) of the cultivated species; and (5) whether canopy predator nets are being used. This is a subset of the information that would be required for pre-construction notification. This report may be provided by letter or using an optional reporting form provided by the Corps. Only one report needs to be submitted during the period this NWP is valid, as long as there are no changes to the operation that require pre-construction notification. The report must be submitted to the district engineer within 90 days of the effective date of this NWP.

**Notification:** The permittee must submit a pre-construction notification to the district engineer if: (1) the project area is greater than 100 acres; or (2) there is any reconfiguration of the aquaculture activity, such as relocating existing operations into portions of the project area not previously used for aquaculture activities; or (3) there is a change in species being cultivated; or (4) there is a change in culture methods (e.g., from bottom culture to off-bottom culture); or (5) dredge harvesting, tilling, or harrowing is conducted in areas inhabited by submerged aquatic vegetation. (See general condition 27.) (Sections 10 and 404)

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

**Section 401 Water Quality Certification**

Pursuant to Section 401 of the Clean Water Act and 6 NYCRR Part 608, Section 608.9, the New York State Department of Environmental Conservation hereby certifies that the activities listed below, undertaken in accordance with all the listed Special and General Conditions, will comply with the applicable provisions of the Clean Water Act and applicable New York State water quality standards. Those NWPs with no Special Conditions remain subject to General Conditions unless otherwise indicated.

**Water Quality Certification -- Special Conditions for NWP #48:**

1. This certification does not authorize the expansion of aquaculture activities into new areas of a project.

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, provided the activities are already authorized, or are currently being processed as part of an integrated permit processing procedure, by the Department of Interior (DOI) Office of Surface Mining (OSM), or by states with approved programs under Title IV or Title V of the Surface Mining Control and Reclamation
Act of 1977. Areas previously mined include reclaimed mine sites, abandoned mine land areas, or lands under bond forfeiture contracts. The permittee must clearly demonstrate to the district engineer that the reclamation plan will result in a net increase in aquatic resource functions. As part of the project, the permittee may conduct coal mining activities in an adjacent area, provided the newly mined area is less than 40 percent of the area being mined plus any unmined area necessary for the reclamation of the remined area.

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

Water Quality Certification
General Water Quality Certification, pursuant to Section 401 of the Clean Water Act, has been denied for this Nationwide Permit. Individual Water Quality Certification must be obtained from the New York State Department of Environmental Conservation prior to undertaking activities described by this permit. This permit will then be subject to all terms and conditions placed upon the individual Water Quality Certification issued by the New York State Department of Environmental Conservation.

50. Underground Coal Mining Activities. Discharges of dredged or fill material into non-tidal waters of the United States associated with underground coal mining and reclamation operations provided the activities are authorized, or are currently being processed as part of an integrated permit processing procedure, by the Department of Interior (DOI), Office of Surface Mining (OSM), or by states with approved programs under Title V of the Surface Mining Control and Reclamation Act of 1977. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters. This NWP does not authorize coal preparation and processing activities outside of the mine site.

Notification: The permittee must submit a pre-construction notification to the district engineer and receive written authorization prior to commencing the activity. (See general condition 27.) If reclamation is required by other statutes, then a copy of the reclamation plan must be submitted with the pre-construction notification. (Sections 10 and 404)

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

Water Quality Certification
General Water Quality Certification, pursuant to Section 401 of the Clean Water Act, has been denied for this Nationwide Permit. Individual Water Quality Certification must be obtained from the New York State Department of Environmental Conservation prior to undertaking activities described by this permit. This permit will then be subject to all terms and conditions placed upon the individual Water Quality Certification issued by the New York State Department of Environmental Conservation.

C. Nationwide Permit General Conditions:

Note: To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as appropriate, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer. Prospective permittees should contact the appropriate Corps district office to determine if regional conditions have been imposed on an NWP. Prospective permittees should also contact the appropriate Corps district office to determine the status of Clean Water Act Section 401 water quality certification and/or Coastal Zone Management Act consistency for an NWP.

1. Navigation. (a) No activity may cause more than a minimal adverse effect on navigation.
   (b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.
(c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

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

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

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

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

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

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

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

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

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

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

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

13. **Removal of Temporary Fills.** Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

14. **Proper Maintenance.** Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety.

15. **Wild and Scenic Rivers.** No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study
status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).

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

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

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

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

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

(e) Authorization of an activity by a NWP does not authorize the “take” of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with “incidental take” provisions, etc.) from the U.S. FWS or the NMFS, both lethal and non-lethal “takes” of protected species are in violation of the ESA. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. FWS and NMFS or their worldwide Web pages at http://www.fws.gov/ and http://www.noaa.gov/fisheries.html respectively.

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

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

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the authorized activity may have the potential to cause effects to any historic properties listed, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of or potential for the presence of historic resources can be sought from the State Historic Preservation Officer or Tribal Historic Preservation Officer, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted and these efforts, the district engineer shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where the non-Federal applicant has identified historic properties which the activity may have the potential to cause effects and so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed.
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(d) The district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA Section 106 consultation is required. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR §800.3(a)). If NHPA section 106 consultation is required and will occur, the district engineer will notify the non-Federal applicant that he or she cannot begin work until Section 106 consultation is completed.

(e) Prospective permittees should be aware that section 110(k) of the NHPA (16 U.S.C. 470h-2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, explaining the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

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

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

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

20. Mitigation. The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are minimal:

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

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10 acre and require pre-construction notification, unless the district engineer determines in writing that some other form of mitigation would be more environmentally appropriate and provides a project-specific waiver of this requirement. For wetland losses of 1/10 acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment. Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, wetland restoration should be the first compensatory mitigation option considered.

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

(e) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2 acre, it cannot be used to authorize any project resulting in the loss of greater than 1/2 acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that a project already meeting the established acreage limits also satisfies the minimal impact requirement associated with the NWPs.

(f) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the establishment, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, riparian areas may be the only compensatory mitigation required. Riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. Where both wetlands and open waters exist on the project site, the district
engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

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

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

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

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

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

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

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

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

(Transferee)

(Date)

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

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

(b) A statement that any required mitigation was completed in accordance with the permit conditions; and

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

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

(2) Forty-five calendar days have passed from the district engineer’s receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 17 that listed species or critical habitat might affected or in the vicinity of the project, or to notify the Corps pursuant to general condition 18 that the activity may have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that is “no effect” on listed species or “no potential to cause effects” on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or Section 106 of the National Historic Preservation (see 33 CFR 330.4(g)) is completed. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee cannot begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee’s right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.4(d)(2).

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

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

(2) Location of the proposed project;

(3) A description of the proposed project; the project’s purpose; direct and indirect adverse environmental effects the project would cause; any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity. The description should be sufficiently detailed to allow the district engineer to determine that the adverse effects of the project will be minimal and to determine the need for compensatory mitigation. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the project and when provided, result in a quicker decision);

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

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

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

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

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

(d) **Agency Coordination.** (1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity’s compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the project’s adverse environmental effects to a minimal level.

(2) For all NWP 48 activities requiring pre-construction notification and for other NWP activities requiring pre-construction notification to the district engineer that result in the loss of greater than 1/2-acre of waters of the United States, the
district engineer will immediately provide (e.g., via facsimile transmission, overnight mail, or other expeditious manner) a copy of the PCN to the appropriate Federal or state offices (U.S. FWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Office (THPO), and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will then have 10 calendar days from the date the material is transmitted to telephone or fax the district engineer notice that they intend to provide substantive, site-specific comments. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame, but will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies’ concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

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

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

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

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

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

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

D. Further Information

1. District Engineers have authority to determine if an activity complies with the terms and conditions of an NWP.
2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.
3. NWPs do not grant any property rights or exclusive privileges.
4. NWPs do not authorize any injury to the property or rights of others.
5. NWPs do not authorize interference with any existing or proposed Federal project.
E. 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, establishment (creation), enhancement, or preservation of aquatic resources for the purpose of compensating for unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

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

**Discharge:** The term “discharge” means any discharge of dredged or fill material.

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

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

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

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

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

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

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

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

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

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

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

**Practicable:** Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.
Pre-construction notification: A request submitted by the project proponent to the Corps for confirmation that a particular activity is authorized by nationwide permit. The request may be a permit application, letter, or similar document that includes information about the proposed work and its anticipated environmental effects. Pre-construction notification may be required by the terms and conditions of a nationwide permit, or by regional conditions. A pre-construction notification may be voluntarily submitted in cases where pre-construction notification is not required and the project proponent wants confirmation that the activity is authorized by nationwide permit.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

F. Buffalo District General Regional Conditions:

These Conditions apply to all Nationwide Permits, unless otherwise indicated.

I. Construction Best Management Practices (BMP’s): Unless specifically approved otherwise, the following BMP’s must be implemented to the maximum degree practicable, to minimize erosion, migration of sediments, and adverse environmental impacts. Note that at a minimum, all erosion and sediment control practices must be designed, installed and maintained in accordance with the latest version of the “New York Standards and Specifications for Erosion and Sediment Control” The document is available at: http://www.dec.ny.gov/chemical/290666.htm:

1. All synthetic erosion control features (e.g., silt fencing, netting, mats), which are intended for temporary use during construction, shall be completely removed and properly disposed of after their initial purpose has been served. Only natural fiber materials, which will degrade after time may be abandoned in place.

2. Materials resulting from the trench excavation for utility line installation or ditch reshaping activities which are temporarily sidecast or stockpiled in waters of the U.S. must be back filled or removed to an upland area within 30 days of the date of deposition. Note: upland options shall be utilized prior to temporary placement within waters of the US, unless if it can be demonstrated that it would not be practicable or where the impacts of complying with these specifications would result in more adverse impacts to the aquatic environment.

3. Construction access shall be by means that avoid or minimize impacts to aquatic sites (e.g. upland access, floating barges, mats, etc.).

4. All return flow from dredge material disposal areas shall not result in an increase in turbidity in the receiving water body that will cause a substantial visible contrast to natural conditions. (See NWP #16)

5. No in-stream work shall occur during periods of high flow.

6. For activities involving placing of concrete into waters of the United States, the permittee must employ watertight forms. The forms shall be dewatered prior to the placing of concrete.

7. Discharges of fill material associated with the construction of temporary access roads & work pads in wetlands shall be placed on filter fabric. All temporary fills shall be removed upon completion of the work and the disturbed area restored to preconstruction contours, elevations and wetland conditions.

8. New stormwater management facilities shall be located outside of waters of the United States. A waiver of this requirement may be requested with the submission of a PCN. The PCN must include justification which demonstrates that avoidance and minimization efforts have been met.

9. To the maximum extent practicable, the placement of fill in wetlands must be designed to maintain preconstruction surface water flows/conditions. This may require the use of culverts and/or other measures. Furthermore, the activity must not restrict or impede the passage of normal or expected high flows (unless the
primary purpose of the fill is to impound waters). The activity may alter the pre-construction flows/conditions if it benefits the aquatic environment (i.e. wetland restoration and/or enhancement).

10. All NWP Culverts shall be constructed/installated in accordance with the following: For projects that involve the installation of new or replacement culverts for the crossing of fish-bearing streams, then either a bottomless culvert or bridge that completely spans the stream’s bankfull elevation, or a closed culvert with provisions for embedment as specified below, is required. Fish-bearing streams can include streams with permanent or semi-permanent flow (i.e., perennial or intermittent streams), and streams that have the following New York State Department of Environmental Conservation classifications: AA(t), A(t), B(t) or C(t). These requirements would also apply for sections of a stream where fish were historically present but may have been lost as a result of migratory barriers when there is a reasonable expectation that fish could be restored to that stream section.

Note: Use of these requirements alone will not satisfy the need for proper engineering and design. In particular, appropriate engineering is required to ensure are sized and designed to provide adequate capacity (to pass various flood flows)and stability (bed, bed forms, footings and abutments).

a. Measures will be included in all culvert designs that will promote the safe passage of fish and other aquatic organisms. The dimension, pattern, and profile of the stream above and below the stream crossing should not be permanently modified by widening the stream channel or by reducing the depth of the stream.

Note: before replacing a culvert or other crossing structure with a larger structure it is essential that the replacement be evaluated for its impacts on: downstream flooding, upstream and downstream habitat (in-stream habitat, wetlands), potential for erosion and headcutting, and stream stability.

b. To allow natural substrate to colonize the structure’s bottom, encourage fish movement and maintain the existing channel slope, smooth box or non-corrugated round, squash, or elliptical culverts shall be embedded to a minimum depth of 2 foot or 20% of the vertical rise of the culvert. Corrugated or sufficiently roughened culverts shall be buried/embedded to a minimum depth of 1 foot. All required depths shall be measured from an average of the lowest points in elevation within stream channel cross sections taken at a minimum of three proximal locations.
c. Bank-full flows shall be accommodated through maintenance of the existing bank-full channel cross sectional dimensions (i.e., a minimum of 1.25 times width of the stream channel at the ordinary high water; or a 2 year design storm) within the culvert. An average of three measurements (project location and straight sections of the stream upstream and downstream) should be used to determine appropriate opening width.

d. If the above measures cannot be implemented as described, then a Pre-Construction Notification (PCN) for the stream crossing (new or replacement) to the Corps is required. The PCN must include: information as to why the use of such structures or measures would not be practicable; an evaluation of the effects the crossing would have on aquatic species movement; and alternate measures that will be employed to minimize these effects.

e. If adverse impacts (i.e., increased erosion, changes in normal water depths, etc.) to any waters of the United States due to poor construction practices are discovered, the permittee shall take necessary measures to correct this deficiency.

II. No regulated activity authorized by a Nationwide Permit can cause the loss of areas classified as a bog or fen in the State of New York, as determined by the Buffalo or New York District Corps of Engineers, due to the scarcity of this habitat in New York State and the difficulty with in-kind mitigation. The Districts will utilize the following document in the determination:


The document is available at the following location: http://www.dec.ny.gov/animals/29389.html

III. National Wild and Scenic Rivers (NWSR): The portion of the Genesee River located within Letchworth Gorge State Park, beginning at the southern boundary of the park and extending downstream to the Mt. Morris Dam, was designated by Congress as a permanent Study River in the Genesee River Protection Act of 1989. In accordance with General Condition #15, no activity may occur within a NWSR, including Study Rivers, unless the National Park Service (NPS) has determined in writing that the proposed work will not adversely affect the NWSR designation or study status. Therefore, a PCN is required for any NWP which would impact the designated portion of the Genesee River. (Note: that the applicant may not commence work under any NWP until the NPS determines in writing the project will not adversely affect the NWSR even if 45-days have passed since receipt of the PCN package.)
IV. For all proposals requiring a PCN, the applicant shall include the following in addition to the information outlined in NWP General Condition #27: (NOTE: 45-day review process will not begin until all the required information is submitted.)

1. **New York State/USACE Joint Application Form:** The application form shall be completed and signed and shall clearly indicate whether the submission is a PCN.

2. **Drawings:** The PCN must include legible project drawings on 8.5" x 11" paper. Full size drawings may be submitted in addition to the reduced plans to aid in application review although they are not required. Three types of illustrations are needed to properly depict the work to be undertaken. These illustrations or drawings are identified as a Vicinity Map (i.e. a location map such as a USGS topographical map), a Plan View and a Typical Cross-Section Map. Each illustration should identify the project, the applicant, and the type of illustration (vicinity map, plan view and cross-section). In addition, each illustration should be identified with a figure or attachment number. The location map shall include the Latitude & Longitude or UTM coordinates of the project.

3. **Color photographs:** The photos should be sufficient to accurately portray the project site, keyed to a location map and not taken when snow cover is present.

4. **Avoidance & Minimization:** The PCN must include a written narrative explaining how avoidance and minimization of temporary impacts and permanent losses of waters of the US were achieved on the project site (i.e. site redesign, reduction in scope, alternate methods, etc.). It should include a description of the proposed construction practices that would be implemented to perform the proposed work and a description of the reasonably foreseeable direct and indirect effects to waters of the US from the proposed construction practices.

5. **Mitigation:** The PCN must include a compensatory mitigation & monitoring plan for all projects resulting in the loss of greater than 1/10 acre of wetlands and/or projects requesting a waiver of the 300 foot limit on impacts to intermittent and ephemeral streams. The plan shall be prepared in accordance with the most recent version of the Buffalo District Mitigation & Monitoring Guidelines [available at http://frb.usace.army.mil/regulatory/mitigation.htm] and the new Federal Regulations on compensatory mitigation entitled, “Compensatory Mitigation for Losses of Aquatic Resources; Final Rule”, dated April 10, 2008 (33 CFR 325 & 332). [Available at http://www.usace.army.mil/cw/ccwmo/reg/news/final_mitig_rule.pdf].

6. **Nationwide Rivers Inventory:** The PCN shall indicate if a river segment listed within the National Park Service Nationwide Rivers Inventory (NRI) is located within the proposed project area. For project areas containing a listed NRI segment, the PCN shall also include a statement as to how adverse effects to the river have been avoided or mitigated. The list is available at: http://www.nps.gov/nrcr/programs/rtca/nri/states/ny.html

7. **Cultural Resources:** In accordance with General Condition 18, a PCN is required for any activity which may have the potential to cause effects to cultural resources. Please refer to the General Condition for submission requirements. In order for the Buffalo District to determine if National Historic Preservation Act Section 106 consultation is required, all PCNs must include a written statement indicating if any properties listed or eligible for listing, in the National Register of Historic Places may be affected by the proposed project. A copy of any completed survey reports shall be provided with the PCN. If a survey has not been performed then the statement shall include a list of resources checked in the determination. Copies of any available correspondence from NYS Office of Parks, Recreation, and Historic Preservation (SHPO) regarding historic properties shall be provided with the PCN. Information regarding cultural resources may be found at: http://nysparks.state.ny.us/shpo/index.htm. In addition, assistance regarding the determination of the presence of cultural resources at or near the project site should be directed to SHPO.

8. **Endangered Species (See General Condition 17):** The PCN must include a written statement indicating if any federally listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat. Please note that there are no known threatened or endangered (T&E) species under the jurisdiction of the National Marine Fisheries Service within the Buffalo District. Therefore, all requests for information regarding the presence of T&E species should be directed to the US Fish
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& Wildlife Service (USFWS). The PCN must include a copy of any correspondence from the USFWS regarding the presence of T&E species or evidence that the applicant has utilized the USFWS T&E website: http://www.fws.gov/northeast/nyfo/es/esdesc.htm (Click on “Consultation” for a step-by-step process.) Website evidence shall include a County list of T&E species. For projects located in counties containing T&E species, the PCN shall also include a discussion of potential T&E habitat within the project site. If there is potential habitat for any federally listed species within the project site:

a) send the results of any habitat surveys
b) A detailed description of the proposed project, including approximate proposed project construction schedule and project activities (e.g., land clearing, utilities, stormwater management).
c) A description of the natural characteristics of the property and surrounding area (e.g., forested areas, freshwater wetlands, open waters, and soils). Additionally, please include a description of surrounding land use (residential, agricultural, or commercial).
d) A description of the area to be impacted by the proposed project, including trees to be removed.
e) The location of the above referenced property and extent of any project related activities or discharges clearly indicated on a copy of a USGS 7.5 Minute Topographic Quadrangle (Quad) with the name of the Quad(s) and latitude/longitude clearly labeled.
f) A description of conservation measures to avoid or minimize impacts to listed species.

Note: Nationwide Permit General Condition 27 Pre-construction Notification requires the permittee to include a delineation of special aquatic sites and all other waters of the United States on the project site. Special aquatic sites include sanctuaries and refuges, wetlands, mudflats, vegetated shallows, coral reefs, and riffle and pool complexes.

V. Critical Resource Waters: In accordance with NWP General Condition #19, certain activities in Critical Resource Waters cannot be authorized under the NWP program or will have to meet additional conditions. 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, and 44 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters. For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38, notification is required in accordance with general condition 27, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal. The following is the only currently designated critical resource water within the New York State portion of the Buffalo District:

Critical Habitat for Federally Listed Threatened and Endangered Species: Designated critical habitat for the Great Lakes breeding population of the piping plover (Charadrius melodus) is defined as lands 0.62 mile inland from normal high water line from the mouth of the Salmon River, Oswego County, northward to Eldorado Road, Jefferson County, encompassing approximately 17 miles.

G. NYSDEC General Water Quality Certification (WQC) Conditions applicable to all NWPs for which WQC has been provided are as follows:

1. Monitoring Requirement. The Corps of Engineers shall prepare and submit an annual report that evaluates the use and effectiveness of the Nationwide Permit program in New York State. Such report must contain, as a minimum, the number of times each Nationwide Permit has been used in the reporting period; the number of acres of disturbance or linear feet of disturbance on a by-permit basis; and the number of acres of mitigation required on a by-permit basis. The first report will be submitted by January 31, 2008 and by January 31 of each year following. At its discretion, and not as a substitute for the required annual report, the Corps may provide copies of any monthly reports that are submitted to headquarters.

2. Endangered or Threatened Species. This certification does not authorize any activity likely to jeopardize the existence of an endangered species or threatened species listed in 6 NYCRR Part 182, or likely to destroy or adversely modify the habitat of such species. Information on New York State endangered or threatened species may be obtained from the NYS Department of Environmental Natural Heritage Program at 625 Broadway, Albany, NY 12233-4757.
3. **Natural Heritage Sites.** This certification does not authorize any activity in any location that supports a rare species or significant natural community as identified and tracked by the New York Natural Heritage Program. Information about where such locations are known to exist may be found at DEC regional offices, the New York Natural Heritage Program in Albany, New York or, after September 1, 2007, on the DEC website at www.dec.state.ny.us.

4. **State-owned Lands.** Prior to undertaking any Nationwide Permit activity that will involve or occupy state-owned lands now or formerly under the waters of New York State, the party proposing the activity must first obtain all necessary approvals from:

   NYS Office of General Services  
   Division of Real Estate Development  
   Corning Tower Building, 26th Floor  
   Empire State Plaza  
   Albany, NY 12242  
   Tel. (518) 474-4944

5. **Tidal Wetlands.** This authorization does not authorize any activities in tidal wetlands as defined in Article 25 of NYS ECL, with the exception of NWP numbers 4, 20 and 48.

6. **Wild, Scenic and Recreational Rivers.** This certification does not authorize activities in any Wild, Scenic or Recreational River segments.

7. **Combined use of permits.** This authorization does not allow the stacking of NWPs so that in combination they exceed 1/10 of an acre of fill or 200 linear feet of stream disturbance. When used in combination, the most restrictive conditions apply.

8. **Public Service Commission.** This certification does not authorize activities regulated pursuant to Article VII of the New York State Public Service Law. For such projects, Section 401 Water Quality Certification is obtained from the New York State Public Service Commission.

9. **Floodplains.** This certification does not authorize permanent discharge of dredge materials or fill into the waters of the United States within the 100-year floodplain with the exception of up to 25 cubic yards, or the loss of less than 1/10 acre, for NWPs 3, 4, 5, 6, 18, 27, 30, 32, 36, 37, and 47.

**H. New York State Department of State (DOS) Coastal Zone Management Consistency Determination applicable to all NWPs located in the NYS Coastal Zone:**

I. Pursuant to 15 CFR Part 930.41, the DOS concurs with the Corps consistency determination for the following NWPs:

2. Structures in Artificial Canals  
4. Fish and Wildlife Harvesting, Enhancement and Attraction Devices and Activities  
5. Scientific Measuring Devices  
10. Mooring Buoys  
15. U.S. Coast Guard Approved Bridges  
20. Oil Spill Cleanup  
21. Surface Coal Mining Operations  
24. Indian Tribe or State Administered Section 404 Program  
34. Cranberry Production Activities  
37. Emergency Watershed Protection and Rehabilitation  
47. Pipeline Safety Program Designated Time Sensitive Inspections and Repairs  
49. Coal Remining Activities  
50. Underground Coal Mining Activities
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II. The DOS concurs with the Corps consistency determination for the following NWPs where the activities to be authorized would be conducted within canals that are more than fifty percent (50%) bulkheaded (see III below regarding NWP #3 and NWP A, and IV below regarding NWP #13):

3. Maintenance
13. Bank Stabilization
45. Repair of Uplands Damaged by Discrete Events

III. The DOS concurs with the Corps consistency determination for the following NWPs where the activities to be authorized would occur outside of areas covered by the following CMP special management areas:
1) The Long Island Sound Regional Coastal Management Program; 2) Local Waterfront Revitalization Programs; 3) Significant Coastal Fish and Wildlife Habitats; 4) Scenic Areas of Statewide Significance; and 5) Harbor Management Plans.

However, pursuant to 15 CFR Parts 930.41 and 930.43, the DOS objects to the Corps consistency determination for the following NWPs where the activities would occur within the above listed special management areas:

1. Aids to Navigation
3. Maintenance (except in canals that are more than 50% bulkheaded - see II above)
6. Survey Activities
7. Outfall Structures and Associated Intake Structures
9. Structures in Fleeting and Anchorage Areas
11. Temporary Recreational Structures
12. Utility Line Activities
14. Liner Transportation Projects
16. Return Water From Upland Contained Disposal Areas
18. Minor Discharges
19. Minor Dredging
22. Removal of Vessels
23. Approved Categorical Exclusions
25. Structural Discharges
26. [reserved]
27. Aquatic Habitat Restoration, Establishment, and Enhancement Activities
28. Modifications of Existing Marinas
29. Residential Developments
30. Moist Soil Management for Wildlife
31. Maintenance of Existing Flood Control Activities
32. Completed Enforcement Activities
33. Temporary Construction, Access and Dewatering
35. Maintenance Dredging of Existing Basins
36. Boat Ramps
38. Cleanup of Hazardous and Toxic Waste
39. Commercial and Institutional Developments
40. Agricultural Activities
41. Reshaping Existing Drainage Ditches
42. Recreational Facilities
43. Stormwater Management Facilities
44. Mining Activities
45. Repair of Uplands Damaged by Discrete Events (except in canals that are more than 50% bulkheaded - see II above)
46. Discharges into Ditches
48. Existing Commercial Shellfish Aquaculture Activities
IV. The DOS also objects to the Corps consistency determination for the following NWPs anywhere in the New York coastal area:

8. Oil and Gas Structures

13. Bank Stabilization (except in canals that are more than 50% bulkheaded - see II above)

17. Hydropower Projects

To ensure that the Corps’ NWPs and activities authorized by them would be consistent with the CMP and approved LWRPs, the following conditions should apply to: 1) the NWPs listed in III above that would occur in the listed CMP special management areas; and 2) the NWPs listed in IV above, except for NWPs #3 and #13 when the activities authorized by them would occur in canals that are more than fifty percent (50%) bulkheaded (see item II above):

Within thirty (30) days of receipt by DOS of an applicant’s submission, which should include a complete joint New York State Department of Environmental Conservation and U.S. Army Corps of Engineers Permit Application, completed Federal Consistency Assessment Form, and all information and data necessary to assess the effects of the proposed activity on and its consistency with the CMP, including location maps and photographs of the site where the activity is proposed, DOS will inform the applicant and the Corps whether:

1) Necessary data and information is missing from the applicant’s submission. If so, the DOS will notify the applicant and the Corps of the missing necessary data and information, and state that the DOS review will not commence until the date the necessary data and information is provided;

2) The activity meets the General Concurrence criteria set forth in the CMP and therefore, further review of the proposed activity by the DOS, and the DOS concurrence with an individual consistency certification for the proposed activity, are not required; or

3) DOS review of the proposed activity and DOS concurrence with the applicant’s consistency certification is necessary. If DOS indicates review of the activity and a consistency certification for it is necessary, the activity shall not be authorized by NWP or other form of Corps authorization unless DOS concurs with an applicant’s consistency certification, in accordance with 15 CFR Part 930, Subpart D, or unless DOS indicates the activity meets CMP General Concurrence criteria (see item 2 above).

DOS concurrence with an applicant’s consistency certification shall not be presumed unless DOS fails to concur with or object to an applicant’s consistency certification within six (6) months of commencement of DOS review of an applicant’s consistency certification and all necessary data and information in accordance with 15 CFR Parts 930.62 or 930.63.

I. INFORMATION ON NATIONWIDE PERMIT VERIFICATION

Verification of the applicability of this Nationwide Permit is valid for two years from the date of this correspondence unless the Nationwide Permit is modified, suspended or revoked, or your activity complies with any subsequent permit modification. Absent any changes to the current Nationwide Permits, reverification of the applicability of your project under the Nationwide Permit is not required if work is completed prior to March 19, 2012.

It is your responsibility to remain informed of changes to the Nationwide Permit program. A public notice announcing any changes will be issued when they occur. Please note that if you commence or are under contract to commence this activity in reliance of your permit prior to the date this Nationwide permit is suspended or revoked, or is modified such that your activity no longer complies with the terms and conditions, you have twelve months from the date of
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permit modification, expiration, or revocation to complete the activity under the present terms and conditions of this permit, unless this permit has been subject to the provisions of discretionary authority.

Possession of this permit does not obviate you of the need to contact all appropriate state and/or local governmental officials to insure that the project complies with their requirements.

J. AGENCY CONTACT INFORMATION

NYS Department of Environmental Conservation
www.dec.ny.gov

NYS DEC REGION 1
Regional Permit Administrator
SUNY @ Stony Brook
50 Circle Road
Stony Brook, NY 11790-3409
(516) 444-0565

NYS DEC REGION 2
Regional Permit Administrator
1 Hunter’s Point Plaza
47-49 23rd Street
Long Island City, NY 11101-5407
(718) 482-4997

NYS DEC REGION 3
Regional Permit Administrator
21 South Putt Corners Road
New Paltz, NY 12561-1620
(845) 256-3054

NYS DEC REGION 4
Regional Permit Administrator
1130 North Westcott Road
Schenectady, NY 12306-2014
(518) 357-2069

NYS DEC REGION 4 Sub-Office
Regional Permit Administrator
65561 State Hwy 10
Stamford, NY 12167-3503
(807) 652-7741

NYS DEC REGION 5
Regional Permit Administrator
PO Box 296
1115 Route 86
Ray Brook, NY 12977-0296
(518) 897-1234

NYS DEC REGION 5 Sub-Office
Regional Permit Administrator
PO Box 220
222 Golf Course Rd
Warrensburg, NY 12885-0220
(518) 623-1281

NYS DEC REGION 6
Regional Permit Administrator
317 Washington Street
Watertown, NY 13601-3787
(315) 785-2245

NYS DEC REGION 6 Sub-Office
Regional Permit Administrator
207 Genesee Street
Utica, NY 13501-2885
(315) 793-2555

NYS DEC REGION 7
Regional Permit Administrator
615 Erie Blvd West
Syracuse, NY 13204-2400
(315) 426-7438

NYS DEC REGION 7 Sub-Office
Regional Permit Administrator
1285 Fisher Avenue
Cortland, NY 13045-1090
(607) 753-3695

NYS DEC REGION 8
Regional Permit Administrator
6274 E. Avon - Lima Road
Avon, NY 14414-9519
(585) 226-2466

NYS DEC REGION 9
Regional Permit Administrator
270 Michigan Avenue
Buffalo, NY 14203-2915
(716) 851-7165

NYS DEC REGION 9 Sub-Office
Regional Permit Administrator
182 East Union Street
Allegany, NY 14706-1328
(716) 372-0645

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Expiration March 18, 2012

US Army Corps of Engineers
www.usace.army.mil

For DEC Regions 1, 2 and 3
US Army Corps of Engineers NY District
ATTN: Regulatory Branch
26 Federal Plaza, Room 1937
New York, NY 10278-0090
e-mail: CENAN.PublicNotice@usace.army.mil
For DEC Regions 1, 2, For the other counties
Westchester County and of DEC Region 3 -
Rockland County - (917) 790-8411
(917) 790-8511

For DEC Regions 4, 5
Department of the Army
ATTN: CENAN-OP-R
NY District, Corps of Engineers
1 Buffalo Street
Building 10, 3rd Floor
Watervliet, NY 12189-4100
(518) 266-6150 - Permits team
(518) 766-6160 - Compliance Team
e-mail: cenan.rfo@usace.army.mil

For DEC Regions 6, 7, 8, 9
US Army Corps of Engineers
Buffalo District
ATTN: Regulatory Branch
1776 Niagara Street
Buffalo, NY 14207-3199
(716) 879-4320
e-mail: LRP.Regulatory@usace.army.mil
www.lrb.usace.army.mil

NYS Department of State
Division of Coastal Resources
Consistency Review Unit
Albany, NY 12231-00061
(518) 474-6000
www.nycoastalconsents.com
U.S. Army Corps of Engineers
Regulatory Districts in New York State

Legend

Buffalo District
New York District
NYSDEC Region Boundaries
Buffalo District Civil Works Project Planning Boundary

Buffalo District
Regulatory Branch, District Office
1778 Niagara Street
Buffalo, New York 14207
(716) 879-4330

Regulatory Branch, Auburn Field Office
7413 County House Road
Auburn, New York 13021
(315) 255-8090

New York District
Regulatory Branch, District Office
26 Federal Plaza
New York, New York 10278-0090
(917) 790-8411

Regulatory Branch, Upstate Field Office
1 Buffington Street
Watervliet, New York 12189-4000
(518) 266-6350

U.S. Army Corps of Engineers