



DEPARTMENT OF THE ARMY
NEW YORK DISTRICT, CORPS OF ENGINEERS
JACOB K. JAVITS FEDERAL BUILDING
26 FEDERAL PLAZA
NEW YORK, NEW YORK 10278-0090

JAN - 9 2018

Regulatory Branch

SUBJECT: Permit Application Number NAN-2017-01649 by the New Jersey Department of Transportation, Route 3 Bridge Over Northern Secondary and Ramp A, North Bergen, Hudson County, New Jersey

New Jersey Dept. of Transportation
c/o Ms. Amber Cheney
1035 Parkway Avenue
Trenton, New Jersey 08625

Dear Ms. Cheney:

On July 31, 2017, the New York District of the U.S. Army Corps of Engineers (USACE) received a request for Department of the Army authorization for the discharge of fill material into waters of the United States to facilitate the replacement of the existing Route 3 Bridge over the Northern Secondary (Conrail and New York Susquehanna and Western Railroad tracks) and Ramp A located in the Township of North Bergen, Hudson County, New Jersey.

The subsequent submittal drawings entitled "State of New Jersey Department of Transportation, Plans of Route 3 Over Northern Secondary and Ramp A From Tonnelle Avenue (Route 1 & 9) to Route I-495, Contract No. 010083460, Reconstruction and Structure, North Bergen Township, Hudson County", Sheets 1 through 3, prepared by Michael Baker International, Inc., and dated July 2017, indicate that approximately 14 cubic yards of fill material would be discharged into approximately 0.0028 acres of waters of the United States to facilitate the replacement of a new single span four-lane bridge structure over the existing Route 3 Northern Secondary and Ramp A. An additional 0.0807 acres of waters of the United States would be temporarily disturbed to facilitate the bridge replacement activities. Upon completion of the Route 3 bridge replacement activities, all temporarily disturbed waters of the United States and wetlands would be restored to preconstruction conditions and planted with native hydrophytic vegetation where appropriate.

Based on the information submitted to this office, our review of the project indicates that an individual permit is not required. It appears that the activities within the jurisdiction of this office could be accomplished under Department of the Army Nationwide General Permit Number 23. The nationwide permits are prescribed as a Reissuance of Nationwide Permits in the Federal Register dated January 6, 2017 (82 FR 1860). The work may be performed without further authorization from this office provided the activity complies with the permit conditions listed in Section B, No. 23, Section C, any applicable regional conditions, the following special conditions.

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Special Conditions

(A) 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.

(B) The permittee shall, upon completion of the authorized activities, restore all temporarily disturbed waters of the United States, including wetlands, to preconstruction conditions and plant the areas with native hydrophytic vegetation where appropriate.

(C) The permittee shall comply with all conditions and stipulations contained in the attached document entitled "Memorandum of Agreement Between the New Jersey Division, Federal Highway Administration and the New Jersey State Historic Preservation Officer Regarding Route 3 Over Northern Secondary and Ramp A North Bergen, Hudson County, New Jersey", and dated January 2015.

This determination covers only the work described in the submitted material. Any major changes in the project may require additional authorizations from the New York District.

Care should be taken so that construction materials, including debris, do not enter any waterway to become drift or pollution hazards. You are to contact the appropriate state and local government officials to ensure that the subject work is performed in compliance with their requirements.

Please note that this nationwide permit (NWP) verification is based on a preliminary jurisdictional determination (JD). A preliminary JD is not appealable. If you wish, prior to commencement of the authorized work you may request an approved JD, which may be appealed, by contacting the New York District, U.S. Army Corps of Engineers for further instruction. To assist you in this decision and address any questions you may have on the differences between preliminary and approved jurisdictional determinations, please review U.S. Army Corps of Engineers Regulatory Guidance Letter No. 16-01, which can be found at:

http://www.usace.army.mil/Portals/2/docs/civilworks/RGLS/rgl_6-01_app1-2.pdf

This verification is valid until March 18, 2022, unless the nationwide permit is modified, reissued, or revoked. This verification will remain valid until March 18, 2022, if the activity complies with the terms of any subsequent modifications of the nationwide permit authorization. If the nationwide permits are suspended, revoked, or modified in such a way that the activity would no longer comply with the terms and conditions of a

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nationwide permit, and the proposed activity has commenced, or is under contract to commence, the permittee shall have 12 months from the date of such action to complete the activity.

This authorization is conditional on the applicant's receipt of the required water quality certificate or coastal zone management concurrence or waiver from New Jersey Department of Environmental Protection (NJDEP). No work may be accomplished until the required approval from NJDEP has been obtained.

Within 30 days of the completion of the activity authorized by this permit and any mitigation required by this permit, you are to sign and submit the attached compliance certification form to this office.

In order for us to better serve you, please complete our Customer Service Survey located at <http://www.nan.usace.army.mil/Missions/Regulatory/CustomerSurvey.aspx>.

If any questions should arise concerning this matter, please contact Jim Cannon, of my staff, at (917) 790-8412.

Sincerely,


Rosita Miranda
Chief, Western Section

Enclosures

cc: NJDEP
NJSEA

**MEMORANDUM OF AGREEMENT
BETWEEN THE
NEW JERSEY DIVISION, FEDERAL HIGHWAY ADMINISTRATION
AND THE
NEW JERSEY STATE HISTORIC PRESERVATION OFFICER
REGARDING
ROUTE 3 over NORTHERN SECONDARY and RAMP A
NORTH BERGEN, HUDSON COUNTY, NEW JERSEY**

WHEREAS, the New Jersey Department of Transportation (NJDOT) proposes to replace the Route 3 Bridge over Northern Secondary and Ramp A in North Bergen, Hudson County, New Jersey using funds provided by the Federal Highway Administration (FHWA); and

WHEREAS, the FHWA, the New Jersey State Historic Preservation Officer (SHPO), the Advisory Council on Historic Preservation (Council) and the New Jersey Department of Transportation (NJDOT) executed a Programmatic Agreement in November of 1996 which stipulates how FHWA's Section 106 responsibilities for NJDOT-administered federal aid projects will be satisfied; and

WHEREAS, in accordance with that agreement, the NJDOT has consulted with the SHPO in order to determine the area of potential effect (APE), to identify significant National Register eligible and listed properties, and to assess the effects of the project on both eligible and listed properties within the APE pursuant to the requirements of 36 CFR Part 800, the regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470[f]) and

WHEREAS, the consultation has resulted in an agreement that the following properties are eligible for or listed in the National Register of Historic Places:

New York, Susquehanna, and Western Railroad Historic District (NYSWHD)
(SHPO opinion, April 26, 2006)

The Route 3 Bridge is considered a contributing resource to this eligible historic district.
(SHPO Opinion June 11, 2014), and

WHEREAS, the FHWA has determined that construction of this project will adversely affect the New York, Susquehanna and Western Railroad Historic District and

WHEREAS, the NJDOT and FHWA have considered alternatives to avoid or minimize the adverse effects and found that they are not feasible; and

WHEREAS, the FHWA has consulted with the NJDOT, NJ Transit and the SHPO to develop a plan to mitigate the adverse effects; and

WHEREAS, the NJDOT participated in the consultation and has been invited to concur in the MOA and

WHEREAS, a public information center was held on 17 June 2014 and no cultural resources issues were raised by the attending public and

WHEREAS, the Advisory Council was notified of the adverse effect; and responded in a letter dated 16 October 2014, declining to participate unless circumstances change.

NOW, THEREFORE, the FHWA and the SHPO agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on the historic properties.

Stipulations

The FHWA will ensure that the following measures are carried out:

1. Design Considerations

NJDOT, in consultation with the SHPO, shall ensure that the design, character, materials, quality, and workmanship of project construction and project components shall be compatible with the historic and architectural character, significance, and setting of the New York, Susquehanna, and Western Railroad Historic District and also responsive to the guidance, and recommended practices found in the *Secretary of the Interior's Standards for the Treatment of Historic Properties*. Final plans and specifications incorporating the agreed upon design elements shall be submitted to the SHPO for review and comment prior to the construction bidding process.

2. Recordation

Prior to initiation of construction, NJDOT shall complete Historic American Engineering Record (HAER) quality recordation of the Route 3 Bridge that documents its relation to the NYSWHD. The format, quality, and specific content of the written and photographic documentation shall be determined through consultation among NJDOT and the SHPO. Completion of the recordation will occur within 2 months of letting the construction contract and prior to any demolition or construction activities commencing.

Archival copies of this recordation will be provided to SHPO, NJ Transit, North Bergen Public Library, Rutgers University Special Collections Library and the Erie-Lackawanna Railroad Historic Society.

3. Signage

NJDOT shall install a sign at each end of the replacement structure, following the completion of construction, informing motorists that they are crossing the New York, Susquehanna, and Western Railroad Historic District. The sign will follow the established historic marker format previously established and the SHPO will be consulted on both the wording and the design.

ADMINISTRATIVE CONDITIONS

1. Professional Qualifications

NJDOT, on behalf of FHWA will ensure that all work is carried out by/under the direct supervision of a person or persons meeting at a minimum the appropriate Secretary of the Interior's Professional Qualifications standards (48 FR 44739).

2. Dispute Resolutions

A. At any time during the implementation of the measures stipulated in this MOA, should an objection to any such measure or its manner on implementation be raised, FHWA will notify all signatories to the agreement, take the objections into account, and consult as needed to resolve the objection.

B. Disputes regarding the completion of the terms of this agreement as necessary shall be resolved by the signatories. If the signatories cannot agree regarding a dispute, the FHWA shall then initiate appropriate actions in accordance with the provisions of 36CFR§800.6(b) and §800.7 as appropriate. Any modifications, amendment, or terminations of this agreement as necessary shall be accomplished by the signatories in the same manner as the original agreement.

3. Design Changes

If any major changes to the proposed Route 3 bridge project design occur, the FHWA shall consult with the New Jersey Historic Preservation Office in accordance with the provisions of 36 CFR Part 800.

4. Project Completion

A. All construction items which result from the work in Stipulation 1 will be completed prior to final acceptance of the project from the contractor. Work required by Stipulation 2 will be completed within 90 days of the receipt of the Notice to Proceed from NJDOT

B. Documentations of Satisfaction of Stipulations – NJDOT shall submit a short narrative report with appropriate illustrations demonstrating satisfaction of all the requirements of this agreement to all signatories within 60 days of completion of construction.


5. **Review of Implementation**

This agreement shall become null and void if construction is not initiated within ten years from the date of execution unless the signatories agree in writing to an extension. If after ten years without action, the FHWA chooses to continue with the undertaking, it shall re-initiate its review in accordance with the provisions of 36 CFR Part 800.

Execution of this Memorandum of Agreement by the FHWA, the NJSHPO, and the NJDOT, and the implementation of its terms, is evidence that the FHWA has afforded the Council an opportunity to comment on the Route 3 bridge project and that the FHWA has taken into account the effects of the undertaking on historic properties.

FEDERAL HIGHWAY ADMINISTRATION

BY:



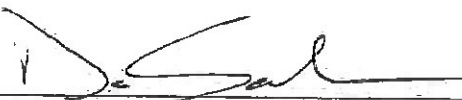
for Robert Clark, Division Administrator
New Jersey Division Office

DATE:

1/15/15

NEW JERSEY STATE HISTORIC PRESERVATION OFFICE

BY:



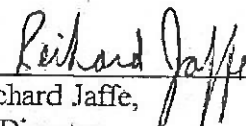
Daniel D. Saunders
Deputy State Historic Preservation Officer

DATE:

1/14/15

CONCUR:
NEW JERSEY DEPARTMENT OF TRANSPORTATION

BY:



Richard Jaffe,
Director

DATE:

1/13/15

PRELIMINARY JURISDICTIONAL DETERMINATION (PJD) FORM

BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR PJD: December 21, 2017

B. NAME AND ADDRESS OF PERSON REQUESTING PJD: New Jersey Dept. of Transportation, 1035 parkway Avenue, New Jersey 08625

C. DISTRICT OFFICE, FILE NAME, AND NUMBER: New York District, U.S. Army Corps of Engineers, New Jersey Dept. of Transportation, NAN-2017-01649

D. PROJECT LOCATION(S) AND BACKGROUND INFORMATION: The subsequent submittal drawings entitled "State of New Jersey Department of Transportation, Plans of Route 3 Over Northern Secondary and Ramp A From Tonnelle Avenue (Route 1 & 9) to Route I-495, Contract No. 010083460, Reconstruction and Structure, North Bergen Township, Hudson County", Sheets 1 through 3, prepared by Michael Baker International, Inc., and dated July 2017, indicate that fill material would be discharged into approximately 0.0028 acres of waters of the United States to facilitate the replacement of a new single span four-lane structure over the existing Northern Secondary and Ramp A. An additionally 0.0807 acres of waters of the United States would be temporarily disturbed to facilitate the bridge replacement activities. Penhorn Creek is situated behind a tide gate, and below the tide gate Penhorn Creek is tidal. Penhorn Creek is a tidal tributary of the Hackensack River, a navigable water way.

(USE THE TABLE BELOW TO DOCUMENT MULTIPLE AQUATIC RESOURCES AND/OR AQUATIC RESOURCES AT DIFFERENT SITES)

State: New Jersey County/parish/borough: Hudson City: North Bergen

Center coordinates of site (lat/long in degree decimal format):

Lat.: 40.7745 Long.: -74.0436

Universal Transverse Mercator:

Name of nearest waterbody: Penhorn Creek, a tidal tributary of the Hackensack River, a navigable water way.

E. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

X Office (Desk) Determination. Date: December 21, 2017

Field Determination. Date(s):

Site number	Latitude (decimal degrees)	Longitude (decimal degrees)	Estimated amount of aquatic resource in review area (acreage and linear feet, if applicable)	Type of aquatic resource (i.e., wetland vs. non-wetland waters)	Geographic authority to which the aquatic resource "may be" subject (i.e., Section 404 or Section 10/404)
1	40.7745	-74.0438	0.08 acres	wetland	Section 10 and 404

- 1) The Corps of Engineers believes that there may be jurisdictional aquatic resources in the review area, and the requestor of this PJD is hereby advised of his or her option to request and obtain an approved JD (AJD) for that review area based on an informed decision after having discussed the various types of JDs and their characteristics and circumstances when they may be appropriate.

- 2) In any circumstance where a permit applicant obtains an individual permit, or a Nationwide General Permit (NWP) or other general permit verification requiring "pre-construction notification" (PCN), or requests verification for a non-reporting NWP or other general permit, and the permit applicant has not requested an AJD for the activity, the permit applicant is hereby made aware that: (1) the permit applicant has elected to seek a permit authorization based on a PJD, which does not make an official determination of jurisdictional aquatic resources; (2) the applicant has the option to request an AJD before accepting the terms and conditions of the permit authorization, and that basing a permit authorization on an AJD could possibly result in less compensatory mitigation being required or different special conditions; (3) the applicant has the right to request an individual permit rather than accepting the terms and conditions of the NWP or other general permit authorization; (4) the applicant can accept a permit authorization and thereby agree to comply with all the terms and conditions of that permit, including whatever mitigation requirements the Corps has determined to be necessary; (5) undertaking any activity in reliance upon the subject permit authorization without requesting an AJD constitutes the applicant's acceptance of the use of the PJD; (6) accepting a permit authorization (e.g., signing a proffered individual permit) or undertaking any activity in reliance on any form of Corps permit authorization based on a PJD constitutes agreement that all aquatic resources in the review area affected in any way by that activity will be treated as jurisdictional, and waives any challenge to such jurisdiction in any administrative or judicial compliance or enforcement action, or in any administrative appeal or in any Federal court; and (7) whether the applicant elects to use either an AJD or a PJD, the JD will be processed as soon as practicable. Further, an AJD, a proffered individual permit (and all terms and conditions contained therein), or individual permit denial can be administratively appealed pursuant to 33 C.F.R. Part 331. If, during an administrative appeal, it becomes appropriate to make an official determination whether geographic jurisdiction exists over aquatic resources in the review area, or to provide an official delineation of jurisdictional aquatic resources in the review area, the Corps will provide an AJD to accomplish that result, as soon as is practicable. This PJD finds that there "*may be*" waters of the U.S. and/or that there "*may be*" navigable waters of the U.S. on the subject review area, and identifies all aquatic features in the review area that could be affected by the proposed activity, based on the following information:

SUPPORTING DATA. Data reviewed for PJD (check all that apply)

Checked items should be included in subject file. Appropriately reference sources below where indicated for all checked items:

- Maps, plans, plots or plat submitted by or on behalf of the PJD requestor:
Map: NJ Dept. of Transportation permit application submittal dated July 28 and October 3, 2017
- Data sheets prepared/submitted by or on behalf of the PJD requestor.
 - Office concurs with data sheets/delineation report.
 - Office does not concur with data sheets/delineation report. Rationale: _____
- Data sheets prepared by the Corps: _____
- Corps navigable waters' study: _____
- U.S. Geological Survey Hydrologic Atlas: _____
 - USGS NHD data.
 - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: Weehawken, NJ
- Natural Resources Conservation Service Soil Survey. Citation: _____
- National wetlands inventory map(s). Cite name: _____
- State/local wetland inventory map(s): _____
- FEMA/FIRM maps: _____
- 100-year Floodplain Elevation is: _____ (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): _____
or Other (Name & Date): NJ Dept. of Transportation permit application submittal dated July 28 and October 3, 2017
- Previous determination(s). File no. and date of response letter: _____
- Other information (please specify): _____

IMPORTANT NOTE: The information recorded on this form has not necessarily been verified by the Corps and should not be relied upon for later jurisdictional determinations.

CANNON.JAMES.H.12289 Digitally signed by CANNON.JAMES.H.122890042
40042 DN: cn=US, o=U.S. Government, ou=DOE, ou=EPG,
ou=ISA, ou=CANNON.JAMES.H.122890042
Date: 2017.03.31 11:59:23 -0400

Signature and date of
Regulatory staff member
completing PJD

Signature and date of
person requesting PJD
(REQUIRED, unless obtaining
the signature is impracticable)¹

¹ Districts may establish timeframes for requestor to return signed PJD forms. If the requestor does not respond within the established time frame, the district may presume concurrence and no additional follow up is necessary prior to finalizing an action.



DEPARTMENT OF THE ARMY
 U.S. ARMY CORPS OF ENGINEERS, NEW YORK DISTRICT
 JACOB K. JAVITS FEDERAL BUILDING
 26 FEDERAL PLAZA
 NEW YORK NY 10278-0090

CENAN-OP-RW

NATIONWIDE PERMIT COMPLIANCE CERTIFICATION AND REPORT FORM

Permittee: New Jersey Department of Transportation

Permit No.: NAN-2017001649

Date Permit Issued: JAN - 9 2018

Location: North Bergen, Hudson County, New Jersey

Within 30 days of the **COMPLETION** of the activity authorized by this permit and any mitigation required by the permit, sign this certification and return it to the address at the bottom of this form.

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

I hereby certify that the work authorized by the above referenced permit has been completed in accordance with the terms and conditions of said permit, and required mitigation was completed in accordance with the permit conditions.

 Signature of Permittee

 Date

Fold this form into thirds, with the bottom third facing outward. Tape it together and mail to the address below or FAX to (212) 264-4260.

Place Stamp
 Here

Department of the Army
 New York District Corps of Engineers
 Jacob K. Javits Federal Building
 26 Federal Plaza, Room 1937
 ATTN: CENAN-OP-R_
 New York, New York 10278-0090

wetlands and waters caused by the NWP activity cannot exceed 1/2-acre. This NWP does not authorize discharges into tidal waters or non-tidal wetlands adjacent to tidal waters; and

(c) The discharge is not associated with the construction of valley fills. A “valley fill” is a fill structure that is typically constructed within valleys associated with steep, mountainous terrain, associated with surface coal mining activities.

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 32.) (Authorities: Sections 10 and 404)

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

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) the vessel is listed or eligible for listing in the National Register of Historic Places; or (2) the activity is conducted in a special aquatic site, including coral reefs and wetlands. (See general condition 32.) If 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. (Authorities: 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 18, Endangered Species, and general condition 20, Historic Properties, is required for all NWPs. The concern with historic properties is emphasized in the notification requirements for this NWP because of the possibility that shipwrecks may be historic properties.

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

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

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

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

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

Note: The agency or department may submit an application for an activity believed to be categorically excluded to the Office of the Chief of Engineers (Attn: CECW-CO). Prior to approval for authorization under this NWP of any agency's activity, the Office of the Chief of Engineers will solicit public comment. As of the date of issuance of this NWP, agencies with approved categorical exclusions are: the Bureau of Reclamation, Federal Highway Administration, and U.S. Coast Guard. Activities approved for authorization under this NWP as of the date of this notice are found in Corps Regulatory Guidance Letter 05-07, which is available at: <http://www.usace.army.mil/Portals/2/docs/civilworks/RGLS/rgl05-07.pdf> . Any future approved categorical exclusions will be announced in Regulatory Guidance Letters and posted on this same web site.

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)-(1) is permitted pursuant to section 10 of the Rivers and Harbors Act of 1899. (Authority: Section 10)

Note 1: As of the date of the promulgation of this NWP, only 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 322.4(b)).

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

Nationwide Permit General Conditions

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

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

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

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

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

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

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

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

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

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

9. Management of Water Flows. To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization 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 and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.

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

16. Wild and Scenic Rivers. 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 responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).

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

18. Endangered Species. (a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify 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. The district engineer will review the documentation and determine whether it is sufficient to address ESA compliance for the NWP activity, or whether additional ESA consultation is necessary.

(c) Non-federal permittees must submit a pre-construction notification to 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 might be affected by the proposed work or that utilize the designated critical habitat that might 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. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(d) As a result of formal or informal consultation 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, The Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word "harm" in the definition of "take" means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

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

19. Migratory Birds and Bald and Golden Eagles. The permittee is responsible for obtaining any "take" permits required under

the U.S. Fish and Wildlife Service's regulations governing compliance with the Migratory Bird Treaty Act or the Bald and Golden Eagle Protection Act. The permittee should contact the appropriate local office of the U.S. Fish and Wildlife Service to determine if such "take" permits are required for a particular activity.

20. 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. The district engineer will review the documentation and determine whether it is sufficient to address section 106 compliance for the NWP activity, or whether additional section 106 consultation is necessary.

(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 on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties 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)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of Section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, 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 on which the activity may have the potential to cause effects and so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed.

(d) The district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA Section 106 consultation is required. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR §800.3(a)). If NHPA section 106 consultation is required and will occur, the district engineer will notify the non-Federal applicant that he or she cannot begin work until Section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(e) Prospective permittees should be aware that section 110k of the NHPA (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, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

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

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

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, and 52 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 31, 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.

23. 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 for resource losses) 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 either some other form of mitigation would be more environmentally appropriate or the adverse effects of the proposed activity are minimal, 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. Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.

(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in minimal adverse effects on the aquatic environment.

(2) 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.

(3) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) – (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)).

(4) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan only needs to address the baseline conditions at the impact site and the number of credits to be provided.

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

(d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation, such as stream rehabilitation, enhancement, or preservation, 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 restoration or 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. If it is not possible to establish a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or establishing a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of 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 programs, or separate permittee-responsible mitigation. For activities resulting in the loss of marine or estuarine resources, permittee-responsible compensatory mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.

(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.

24. Safety of Impoundment Structures. To ensure that all impoundment structures are safely designed, the district engineer may

require non-Federal applicants to demonstrate that the structures comply with established state dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

25. Water Quality. 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.

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

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

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

29. Transfer of Nationwide Permit Verifications. If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature: "When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below."

(Transferee)

(Date)

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

- (a) A statement that the authorized work was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions;
- (b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(1)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and
- (c) The signature of the permittee certifying the completion of the work and mitigation.

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

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

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

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

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

(2) Location of the proposed project;

(3) A description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause, including the anticipated amount of loss of water of the United States expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; 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 results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);

(4) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial, intermittent, and ephemeral streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many 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, as 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, or explaining why the adverse effects are minimal and why compensatory mitigation should not be required. 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 activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States, for NWP 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 activities that require pre-construction notification and will result in the loss of greater than 300 linear feet of intermittent and ephemeral stream bed, and for all NWP 48 activities that require pre-construction notification, the district engineer will immediately provide (e.g., via e-mail, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (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 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. The comments must explain why the agency believes the adverse effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure the net adverse environmental

effects to the aquatic environment of the proposed activity are minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5. (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 with either electronic files or multiple copies of pre-construction notifications to expedite agency coordination.

D. District Engineer's Decision

1. In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. For a linear project, this determination will include an evaluation of the individual crossings to determine whether they individually satisfy the terms and conditions of the NWP(s), as well as the cumulative effects caused by all of the crossings authorized by NWP. If an applicant requests a waiver of the 300 linear foot limit on impacts to intermittent or ephemeral streams or of an otherwise applicable limit, as provided for in NWPs 13, 21, 29, 36, 39, 40, 42, 43, 44, 50, 51 or 52, the district engineer will only grant the waiver upon a written determination that the NWP activity will result in minimal adverse effects. When making minimal effects determinations the district engineer will consider the direct and indirect effects caused by the NWP activity. The district engineer will also consider site specific factors, such as the environmental setting in the vicinity of the NWP activity, the type of resource that will be affected by the NWP activity, the functions provided by the aquatic resources that will be affected by the NWP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the NWP activity (e.g., partial or complete loss), the duration of the adverse effects (temporary or permanent), the importance of the aquatic resource functions to the region (e.g., watershed or ecoregion), and mitigation required by the district engineer. If an appropriate functional assessment method is available and practicable to use, that assessment method may be used by the district engineer to assist in the minimal adverse effects determination. The district engineer may add case-specific special conditions to the NWP authorization to address site-specific environmental concerns.

2. If the proposed activity requires a PCN and will result in a loss of greater than 1/10acre 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 activity 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 activity-specific conditions in the NWP verification the district engineer deems necessary. Conditions for compensatory mitigation requirements must comply with the appropriate provisions at 33 CFR 332.3(k). The district engineer must approve the final mitigation plan before the permittee commences work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the proposed compensatory mitigation plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure 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, including any activity-specific conditions added to the NWP authorization by the district engineer.

3. 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: (a) 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; (b) 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 (c) 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, with activity-specific conditions that state the mitigation requirements. The authorization will include the necessary conceptual or detailed 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 or has determined that prior approval of a final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation.



**US Army Corps
of Engineers**
Philadelphia District

**NEW JERSEY
2017 NATIONWIDE PERMIT REGIONAL CONDITIONS**

MAR 19, 2017



**US Army Corps
of Engineers**
New York District

**New York District and Philadelphia District
2017 NATIONWIDE (NWP) REGIONAL PERMIT CONDITIONS FOR NEW JERSEY**

Effective March 2, 1994, the State of New Jersey assumed the Federal Section 404 permit program from the United States (U.S.) Army Corps of Engineers. As such, these nationwide permits including all regional conditions developed for waters of the United States within the State of New Jersey are only effective for those waters which have NOT been assumed by the State of New Jersey. All Nationwide permit (NWP) verifications shall be made in accordance with the below listed regional conditions and all subparts, unless otherwise authorized by the district engineer through the preconstruction notification process.

REGIONAL GENERAL CONDITION – 1 (G-1)

This regional condition is applicable to all nationwide permits (NWPs) where a preconstruction notification (PCN) is required to be submitted to the U.S. Army Corps of Engineers, District Engineer (DE) and provides specific information to request verification by the Corps District in order to process your PCN. NWP activities require notification under certain circumstances. Review the terms of the individual NWP authorization, general conditions 22 and 32, or the regional conditions to identify these circumstances. In addition, the PCN shall include:

Condition G-1:

1. The permittee shall notify the Corps of Engineers in accordance with General Condition 32 by using a signed application form (ENG Form 4345).
2. The PCN shall also include the following information:
 - A. All preconstruction notifications (PCNs) to the Corps of Engineers shall describe all activities that the applicant plans to undertake that are reasonably related to the same project.
 - B. A written statement that clearly describes the following: (1) what measures have been taken to avoid impacts on aquatic resources, (2) what measures have been taken to avoid and/or minimize any discharges into wetlands or waters of the United States, and (3) what measures have been developed to compensate for any impacts to wetlands or waters of the United States.
 - C. All PCNs to the Corps of Engineers shall include the following information, where applicable: (1) all information specified in the nationwide permit itself or general conditions; (2) plan(s) showing all work in areas of potential Federal jurisdiction on 8-1/2 by 11 inch paper and full-sized scaled engineering drawings, if available; (3) formal property identification such as lot and block or tax parcel number; (4) a delineation of areas within Federal jurisdiction, including wetlands, for the entire project area; (5) existing water depths; (6) depth of any cables or pipelines below mean low water; height of any cables, pipelines or other structures above mean high water; (7) the maximum distance that any structure(s) would extend channelward of the mean high water line or ordinary high water in non-tidal areas; (8) the maximum distance that any fill would extend channelward of the high tide line or ordinary high water in non-tidal areas; (9) the width of the waterway at the project site; (10) the location of any mapped floodplain areas; (11) the location of any dredged material disposal area; (12) the distance from the edge of any navigation channel; (13) the location of any temporary work, structures, vessels, or fills required for the construction; (14) a copy of any previous Federal or State approvals; (15) and, the location and nature of any submerged aquatic vegetation (e.g., eel grass Zostera, marina) or shellfish beds.
 - D. Where the State has denied 401 WQC and/or not concurred with the Corps' CZM consistency determination for a NWP authorization, the prospective permittee should contact the State to obtain an activity specific review and approval by the State prior to submitting any required preconstruction notification to the Corps of Engineers.

REGIONAL GENERAL CONDITION – 2 (G-2)

This regional condition is applicable to all nationwide permit activities that require coordination by the Corps of Engineers with the Federal and State resource agencies.

Condition G-2: As a part of the PCN to the Corps of Engineers, the applicant shall provide evidence that a duplicate copy of the PCN has been submitted to and received by the other concerned Federal and State resource agencies (e.g., copy of certified/registered mail receipt or email). The addresses for these agencies are provided below (**See Addresses in Special Note 1 below**).

REGIONAL GENERAL CONDITION – 3 (G-3)

This regional condition is applicable to ALL nationwide permit activities located in waters of the United States that are a component of the National Wild and Scenic River System, or have been officially designated as a “study river” for possible inclusion in the system (See NWP General Condition 16).

Condition G-3: The applicant shall provide written notification, include the information identified in regional condition G-1 above, to the National Park Service prior to performing the activity, and shall not begin work until notified by the National Park Service in writing that the proposed activity will not adversely affect the Wild and Scenic River designation, or study status. A copy of this approval from the National Park Service shall be forwarded to the Corps of Engineers. The appropriate addresses for the National Park Service are provided below.

- (1) For ALL projects, the applicant shall notify: National Park Service, 15 State Street, Boston Massachusetts, 02109.
- (2) If the proposed project is located in the Upper Delaware River, notification shall also be sent to Upper Delaware National Scenic and Recreational River, R.R. 2, Box 2428, Beach Lake, Pennsylvania, 18405-9737.

The following list includes the waterway locations that are currently subject to this regional condition:

- (1) Upper Delaware River; from the confluence of the East and West Branches (below Hancock, New York) downstream to Cherry Island near Millrift in Westfall Township, Pike County (Sparrow Bush, New York), approximately five miles above Port Jervis).
- (2) Delaware Water Gap National Recreation Area; Pennsylvania and New Jersey; within the boundaries of the National Recreation Area, beginning approximately four miles below Port Jervis, extending downstream approximately to the boundary between Monroe and Northampton Counties in Pennsylvania (just below the Interstate 80 bridge).
- (3) Lower Delaware River; Pennsylvania and New Jersey; from the town of Washington Crossing in Bucks County, Pennsylvania, upstream to Upper Mount Bethel Township in Northampton County, Pennsylvania, plus Tinicum, Paunacussing, and Tohickon Creeks (tributaries). The towns of Belvidere, Phillipsburg, and Easton, as well as existing power plants, water supply intakes and wastewater outfalls are not included in the designated area.
- (4) Great Egg Harbor River; New Jersey; from the mouth of Patcong Creek upstream approximately 40 miles plus several tributaries, in Atlantic, Cape May, Gloucester and Camden Counties. This includes Patcong Creek extending upstream from its confluence with Great Egg Harbor River to the Garden State parkway bridge, approximately 2.8 miles.
- (5) Maurice River; New Jersey; the Maurice River, from Shell Pile approximately 17 miles upstream to the Millville sewage treatment plant, and portions of Menantico Creek, Manumuskin River and Muskee Creek, in Cumberland and Atlantic Counties.

REGIONAL GENERAL CONDITION – 4 (G-4) ENDANGERED SPECIES (USFWS)

This regional condition is intended to satisfy the requirements of Section 7 of the Endangered Species Act (ESA) for those species under the jurisdiction of the United States Fish and Wildlife Service (USFWS). This regional condition is applicable to ALL nationwide permit (NWP) activities in New Jersey where a preconstruction notification is not required or when a PCN is required and submitted to the Corps of Engineers.

Condition G-4: Prior to any work the applicant shall Document that they have followed the consultation guidance published on the USFWS New Jersey Field Office website <http://www.fws.gov/northeast/njfieldoffice/Endangered/consultation.html> to determine if a proposed NWP activity may affect a listed species. A list of federally listed species for your action area shall be generated using the U.S. Fish and Wildlife Service, Information for Project Planning and Conservation (IPaC) at the following website <https://ecos.fws.gov/ipac/>. Upon your review of IPaC, the proposed activity is within a municipality that supports a federally listed species and the project site supports habitat for a federally listed species, the applicant shall follow the guidance provided on the website U.S. Fish and Wildlife Service New Jersey Field Office website. If necessary, contact the U.S. Fish and Wildlife Service New Jersey Field Office for further coordination prior to applying to the Corps for an NWP verification.

REGIONAL GENERAL CONDITION – 5 (G-5) ENDANGERED SPECIES (NMFS)

This regional condition is intended to satisfy the requirements of the Section 7 of ESA for those species under the jurisdiction of the National Marine Fisheries Service (NMFS). This regional condition is applicable to ALL nationwide permit activities in New Jersey where a PCN is not required or when a PCN is required and submitted to the Corps of Engineers.

Condition G-5: In coordination with the NMFS, the Corps has determined that the following NWP activities will have NO EFFECT on NMFS protected resources and no further consultation is required under the ESA: *2, 21, 29, 30, 34, 39, 41, 44, 45, 46, 49, 50 and 51*. A PCN shall be submitted to the Corps of Engineers for ALL OTHER nationwide permit activities for the following:

- (1) All NWP activities in ALL tributaries and waterways within the geographic area of the Philadelphia and New York Districts, except the following:
 - (a) Delaware River mainstem above the U.S. Route 202 Bridge in Lambertville, New Jersey;
 - (b) And ALL tributaries above the U.S. Route 202 Bridge in Lambertville, New Jersey located off of the Delaware River mainstem.

Additional information on the location of threatened and endangered species, their critical habitats, and spawning areas, under the jurisdiction of the NMFS that may occur within the geographic area of the Philadelphia and New York District can be obtained directly from the NMFS worldwide websites at the following:

<http://www.greateratlantic.fisheries.noaa.gov/protected/section7/guidance/maps/index.html>

<http://www.greateratlantic.fisheries.noaa.gov/protected/section7/index.html>

REGIONAL GENERAL CONDITION – 6 (G-6) ESSENTIAL FISH HABITAT

This regional condition is intended to satisfy the requirements of the Magnuson Stevens Fishery Conservation and Management Act (MSA). This regional condition is applicable to ALL nationwide permit activities where a PCN is not required or when a PCN is required and submitted to the Corps of Engineers. The NOAA National Marine Fisheries Service (NMFS) and the MSA requires federal agencies such as the Corps to consult with NMFS on projects that may adversely affect Essential Fish Habitat (EFH).

Condition G-6(a): For ALL NWP activities proposing the construction and/or replacement of structures in areas mapped as shellfish habitat as defined in the New Jersey Department of Environmental Protection, *N.J.A.C. 7:7-9.2, Coastal Zone Management Rules, as amended on June 20, 2016* and/or last amended, the following conditions shall be met:

- (1) All structures, including piers and docks (piles, stringers, whalers and decking), utility poles, boat lifts, mooring piles, breakwaters, and replacement bulkheads must be constructed with non-polluting material, such as plastic, natural cedar or other untreated wood, polymer coated pressure-treated wood, concrete or other inert products. Examples of commonly used treated materials are; creosote, pressure-treated lumber, (i.e. preservative treatment such as CCA-C, ACZA, CC, ACQ, etc.) (wolmanized) which is susceptible to leaching are considered polluting materials and are not acceptable for the purpose of this permit unless a polymer coating is applied to the material prior to installation;
- (2) Those shellfish areas mapped by the NJDEP as “condemned” and/or “prohibited” for the purpose of harvesting shellfish, shall continue to be considered shellfish habitat for the purposes of Nationwide Permit Verification.

Condition G-6(b): A PCN must be submitted to the Corps of Engineers and the NMFS for the following NWP's: *27, 38, 52, 53 and 54*. For those NWP's *not* listed, a PCN *must* be submitted to the Corps of Engineers and NMFS for any NWP activity that *is* proposed within 50 feet of submerged aquatic vegetation (SAV) beds, mapped SAV habitat and/or within sandbar shark (*Carcharhinidae plumbeus*) Habitat Areas of Particular Concern (HAPC) as depicted by the Essential Fish Habitat Mapper (<http://www.habitat.noaa.gov/protection/efh/efhmapper/>);

Condition G-6(c): In order to protect diadromous fish migrations, spawning activities, and EFH, in-water work shall be avoided in accordance to the following time of year restrictions:

- (a) To protect diadromous fish migrations and spawning, in-water work shall be avoided from the mouth of the Delaware Bay to the U.S. Route 1 Bridge, and ALL tributaries within this reach, from ***March 1 to June 30***.
- (b) To protect diadromous fish migrations and spawning in the Delaware River mainstem above the U.S. Route 1 Bridge, and All tributaries north of this point, in-water work shall be avoided from ***March 1 to July 31***.
- (c) In all other tributaries in New Jersey within the geographic area of the Philadelphia and New York Districts, in-water work shall be avoided from ***March 1 to June 30*** to protect diadromous fish migration, spawning activities and EFH.
- (d) In areas identified as EFH for winter flounder eggs and larvae, in-water work shall be avoided from ***January 01 to May 31***. This does not apply south of the Atlantic City Expressway within Atlantic and Cape May Counties.
- (e) Work within cofferdams that fully enclose and dewater the project area can proceed any time during the year provided that the cofferdams are installed or removed outside of the seasonal work restriction and do not preclude the free movement of migrating and spawning aquatic species to ensure compliance with NWP General Condition 2 and 3.

REGIONAL GENERAL CONDITION 7 (G-7) FISH & WILDLIFE COORDINATION ACT

This regional condition is intended to satisfy conservation recommendations made under the Fish and Wildlife Coordination Act. This regional condition is applicable to ALL nationwide permit activities where a PCN is not required or when a PCN is required and submitted to the Corps of Engineers unless waived by the district engineer.

Condition G-7: In order to protect NOAA Trust Resources, in-water work shall be avoided from River Mile Zero (RM 0) at the mouth of the Delaware Bay and extending to the Salem/Cumberland County line along the Delaware Bay shoreline, and to include ALL tributary mouths within this reach, from ***April 15 to August 30***.

Specific Nationwide Permit Regional Conditions

REGIONAL CONDITION FOR NWP (3) MAINTENANCE

Condition (a): For Project involving the replacement or maintenance of existing tide gates, the applicant shall demonstrate why it is not practicable to replace the tide gate with self-regulating tide gates. Self-regulating tide gates allow tidal flow and fish passage but can be set to close at a specified water level. A PCN shall be provided to the Corps and a copy to the NMFS for all tide gate replacements and maintenance in which a one-way gate is proposed.

REGIONAL CONDITIONS FOR NWP (5) SCIENTIFIC MEASUREMENT DEVICES

Condition (a): Weirs and flumes cannot be constructed in a manner that would preclude the passage of anadromous fishes.

Condition (b): The construction or installation of subaqueous turbines or similar facilities is not authorized by this NWP.

REGIONAL CONDITIONS FOR NWP (6) SURVEY ACTIVITIES

Condition (a): Work cannot preclude the passage of anadromous fishes.

Condition (b): The use of in-water explosives is prohibited.

REGIONAL CONDITIONS FOR NWP (7) OUTFALL STRUCTURES AND ASSOCIATED INTAKE STRUCTURES

Condition (a): Any proposed intake structures must include “wedge wire” screening with mesh opening sizes of 2 millimeters (mm) or less and intake velocities equal to or less than 0.5 feet per second. This condition may be waived by the Corps of Engineers if an applicant proposes to utilize new or improved technologies that meets or exceeds the “wedge wire” design technology.

Condition (b): The applicant shall also demonstrate that the intake structure will be located and constructed to maximize its design effectiveness to minimize impingement and entrainment of aquatic species. This would include efforts that result in stream velocities over, around or past the intake structure that exceed the velocities through the intake structure.

REGIONAL CONDITIONS FOR NWP (10) MOORING BUOYS

Condition (a): Water depths in the mooring area must be sufficient that any moored vessels float at all stages of the tide.

Condition (b): Mooring buoys are prohibited in areas mapped as submerged aquatic vegetation (SAV) habitat.

REGIONAL CONDITIONS FOR NWP (11) TEMPORARY RECREATIONAL STRUCTURES

Condition (a): This nationwide permit is applicable only to structures associated with discrete or specific recreational events.

Condition (b): All temporary structures must be located with sufficient water depths so that the structures float at all stages of the tide.

Condition (c): This NWP does not authorize the placement of any temporary structures in any areas mapped with submerged aquatic vegetation (SAV).

REGIONAL CONDITIONS FOR NWP (12) UTILITY LINES

Condition (a): A PCN shall be submitted to the Corps of Engineers for all activities in waters of the United States under the terms of this NWP.

Condition (b): Any PCN to the Corps of Engineers, which proposes a permanent access or maintenance road, must justify, to the satisfaction of the Corps of Engineers, that any such permanent fills are necessary, and that temporary access roads are not practicable.

Condition (c): This NWP does not authorize the discharge of any drilling muds that may be generated through such methods as directional boring or drilling. Further, any directional drilling or boring activities must include a plan that addresses prevention, containment and cleanup of any accidental discharges known as “frac-out”. If a frac-out occurs, the plan addressing containment and clean up shall be immediately implemented and the Corps of Engineers shall be notified of the frac-out within 24 hours.

Condition (d): This NWP does not authorize stockpiling excavated material in wetlands for longer than 30 days. Any excavated or stockpiled materials shall be stabilized with straw bales, silt fence, or other acceptable methods to prevent reentry into any waterway or wetland.

Condition (e): Utility lines installed below the plane of ordinary high water of any stream or waterway shall be constructed under dry conditions, using stream diversions other than earthen cofferdams, unless it is demonstrated to the satisfaction of the Corps of Engineers to be impracticable.

Condition (f): Where a utility line is constructed parallel to a stream corridor, a buffer shall be maintained between the utility and the waterway to avoid or minimize potential future impacts to waters of the United States. These disturbances would include such issues as sewer line leaks or failures, future stream channel meandering, stream bank instability and failure, and right-of-way maintenance. Measures designed to satisfy this condition must be described in any PCN to the Corps of Engineers.

Condition (g): The proposed activity shall not result in the draining of any water of the U.S., including wetlands. This may be accomplished through the use of clay blocks, bentonite, or other suitable material, as approved by the Corps, to seal the trench at wetland boundaries and every 100 feet within any water of the U.S. including wetlands.

Condition (h): If a proposed activity would involve impacts to submerged aquatic vegetation (SAV), the applicant shall clearly document all efforts to achieve restoration of these areas. At a minimum, this shall include pre-construction surveys along the entire right-of-way, in jurisdictional waters, to map existing SAV, construction schedules, and long term monitoring to assess restoration of SAV areas. This information shall also be furnished to NMFS in consort with the PCN to the Corps of Engineers.

For Aerial Transmission Lines Across Navigable Waters:

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

Nominal System Voltage, (kv)	Minimum additional clearance (feet) above clearance required for bridges
115 and below	20 feet
136	22 feet
161	24 feet
230	26 feet
350	30 feet
500	35 feet
700	42 feet
750 – 765	45 feet

Condition (j): Clearances for communication lines, stream gauging cables, ferry cables, and other aerial crossings must be a minimum of ten (10) feet above clearances required for bridges.

Condition (k): Within 60 days of completion of the work, the permittee shall furnish the Corps and the National Oceanic and Atmospheric Administration, Nautical Data Branch, N/CS26, Station 7230, 1315 East-West Highway, Silver Spring, Maryland 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 wires 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 wires, at maximum sag conditions, shall never be less than the clearance shown on the approved plans.

For Buried Cables and Pipelines Across Navigable Waters:

Condition (l): The top of the cable or pipeline shall be located a minimum of 4 feet below the existing bottom elevation and shall be backfilled with suitable heavy material to the preconstruction bottom elevation.

Condition (m): Within 60 days after completion of the work, the permittee shall furnish the Corps and National Oceanic and Atmospheric Administration, Nautical Data Branch, N/CS26, Station 7230, 1315 East-West Highway, Silver Spring, Maryland 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, or a “drawing of record” if installation is conducted by directional drilling, which clearly shows the elevations and alignment of the cable or pipeline across the waterway. Any discrepancies shall be clearly noted.

Condition (n): There shall be no stockpiling or double handling of any excavated/dredged materials within any waterway, unless specifically reviewed and approved by the Corps of Engineers as a part of any PCN. Further, all excess or unsuitable dredged or excavated material not used as backfill over any cable or pipeline shall be disposed at a disposal site approved by the Corps of Engineers.

For Buried Cables or Pipelines Across the Delaware River Federal Navigation Channel:

Condition (o): The top of the cable or pipeline crossing the Federal project channel shall be located a minimum of 25 feet below the authorized project channel depth and shall be backfilled with suitable heavy materials to the adjacent river bottom elevation. In areas outside the Federal project channel, the top of cable or pipeline shall be located a minimum of 15 feet below existing river bottom elevation and shall be backfilled with suitable material to the adjacent river bottom elevation.

For Buried Cables or Pipelines Across “ALL OTHER” Federal Navigation Channels:

Condition (p): The top of the cable or pipeline crossing the Federal project channel shall be located a minimum of 6 feet below the authorized project channel depth and shall be backfilled with suitable heavy materials to the adjacent river bottom elevation. In areas outside the Federal project channel, the top of cable or pipeline shall be located a minimum of 4 feet below existing river bottom elevation and shall be backfilled with suitable material to the adjacent river bottom elevation.

REGIONAL CONDITIONS FOR NWP (13) BANK STABILIZATION

Condition (a): Any PCN to the Corps of Engineers that does not utilize a non-structural bank stabilization method (e.g. vegetation or combinations of vegetation and rock) must include an analysis demonstrating that such measures were not practicable and/or appropriate.

Condition (b): This NWP may not be used to authorize any stabilization activity where no demonstrable erosion is evident.

REGIONAL CONDITIONS FOR NWP (14) LINEAR TRANSPORTATION CROSSINGS

Condition (a): A PCN shall be submitted to the Corps of Engineers for all activities in waters of the United States under the terms of this NWP.

Condition (b): Any discharge of poured concrete must be contained within cells or watertight forms until the concrete has set.

Condition (c): Any activity proposing a crossing of a stream or open water shall be designed to maintain continuity of existing benthic habitats and to maintain existing stream flow patterns. This can be achieved through the use of elevated structures, bottomless culverts, or by depressing culverts below the stream bottom. This design requirement must include a site-specific evaluation of the particular stream or water body to determine if it is experiencing erosion or sedimentation rates that would alter the bottom elevation. Where a series of culverts are used, only those cells or culverts, which carry the base stream flow, shall be depressed. The bottom of any other culverts or cells shall be raised to pass and maintain existing and expected high flows. The dimension, pattern, and profile of the stream above and below the stream crossing shall not be permanently modified by changing the width or depth of the stream channel.

REGIONAL CONDITION FOR NWP (18) MINOR DISCHARGES

Condition (a): This NWP may not be used to authorize stream elimination, relocation, or impoundment.

REGIONAL CONDITION FOR NWP (23) CATEGORICAL EXCLUSIONS

Condition (a): A PCN must be submitted to the Corps of Engineers for all activities in waters of the United States under the authorization of this NWP.

REGIONAL CONDITION FOR NWP (27) AQUATIC HABITAT RESTORATION AND ENHANCEMENT

Condition (a): Any activity involving shellfish seeding, such as, the placement of shell material or any other habitat development or enhancement, is restricted to native shellfish species.

REGIONAL CONDITIONS FOR NWP (28) MODIFICATIONS OF EXISTING MARINAS

Condition (a): This NWP is only applicable to those projects which have been previously reviewed and approved by the Corps of Engineers through the individual permit process.

Condition (b): Any discharge of poured concrete must be contained within cells or watertight forms until the concrete has set.

REGIONAL CONDITIONS FOR NWP (29) RESIDENTIAL DEVELOPMENTS

Condition (a): A PCN must be submitted to the Corps of Engineers for all activities in waters of the United States under the terms of this NWP.

Condition (b): Under the terms of this NWP, any wetlands that are located within the platted lot lines of any residential development will be considered an adverse effect on waters of the United States, unless the wetlands are protected by conservation easement, deed conveyance or covenants, or any other real estate mechanism that can demonstrate to the Corps of Engineers that these areas will be protected and/or preserved in perpetuity.

Condition (c): This NWP does not authorize construction of ponds or storm-water management basins in waters of the United States.

Condition (d): This NWP does not authorize construction of sewage disposal systems in waters of the United States.

Condition (e): Activities associated with this NWP shall not cause the loss of more than 300 linear feet of streambed, except for man-made ditches constructed in uplands which are determined by the Corps of Engineers to be waters of the United States, and which are determined to be intermittent or ephemeral.

Condition (f): This NWP is not applicable for activities located within the geographic boundaries of the Hackensack Meadowlands District.

THE FOLLOWING REGIONAL CONDITION FOR NWP 29 IS APPLICABLE TO THE CONSTRUCTION OR EXPANSION OF A SINGLE FAMILY RESIDENCE

Condition (a): This NWP may only be used for a single-family home for a personal residence by an individual who purchased the lot prior to November 21, 1991.

REGIONAL CONDITIONS FOR NWP (33) TEMPORARY CONSTRUCTION, ACCESS, AND DEWATERING

Condition (a): Activities authorized by this NWP may remain in place for no more than 6 months from the commencement date of the permitted activity.

Condition (b): Activities occurring in wetlands, authorized by this NWP shall require the use of construction pads, timber matting, and/or geotextile fabric, or a BMP to prevent wetland compaction.

REGIONAL CONDITION FOR NWP (35) MAINTENANCE DREDGING OF EXISTING BASINS

Condition (a): This NWP is only applicable to those projects which have been previously reviewed and approved by the Corps of Engineers through the individual permit process.

REGIONAL CONDITION FOR NWP (36) BOAT RAMPS

Condition (a): Any discharge of poured concrete must be contained within cells or watertight forms until the concrete has set.

REGIONAL CONDITIONS FOR NWP (39) COMMERCIAL & INSTITUTIONAL ACTIVITIES

Condition (a): A PCN shall be submitted to the Corps of Engineers for all activities in waters of the United States under the terms of this NWP.

Condition (b): Under the terms of this NWP, any wetlands that are located within the plotted lot lines of any commercial or institutional development will be considered an adverse effect on waters of the United States, unless the wetlands are protected by conservation easement, deed conveyance or covenants, or any other real estate mechanism that can demonstrate to the Corps of Engineers that these areas will be protected and/or preserved in perpetuity.

Condition (c): The discharge of fill for the construction or expansion of a single-family residential structure, including any attendant features or structures, is ***not*** authorized by this NWP. This type of activity may be eligible for authorization under the terms and conditions of other NWP's or individual permit.

Condition (d): This NWP does not authorize construction of ponds or storm-water management basins in waters of the United States.

Condition (e): This NWP does not authorize construction of sewage disposal systems in waters of the United States.

Condition (f): Activities associated with this NWP shall not cause the loss of more than 300 linear feet of streambed except for man-made ditches constructed in uplands which are determined by the Corps of Engineers to be waters of the United States, and which are determined to be intermittent or ephemeral.

Condition (g): This NWP is not applicable for activities located within the geographic boundaries of the Hackensack Meadowlands District.

REGIONAL CONDITION FOR NWP (40) AGRICULTURAL ACTIVITIES

Condition (a): This NWP does not authorize any activities located in any perennial stream.

REGIONAL CONDITIONS FOR NWP (41) RESHAPING EXISTING DRAINAGE DITCHES

Condition (a): A PCN shall be submitted to the Corps of Engineers for any proposed activity in waters of the United States, including wetlands, under the terms of this NWP.

REGIONAL CONDITIONS FOR NWP (42) RECREATIONAL FACILITIES

Condition (a): This NWP does not authorize any support facilities or buildings such as parking facilities, storage or maintenance buildings, rental buildings or office buildings. In addition, the NWP does not authorize fill for the construction or expansion of golf courses or ski areas.

Condition (b): This NWP does not authorize construction of ponds or storm-water management basins in waters of the United States.

Condition (c): This NWP does not authorize construction of sewage disposal systems in waters of the United States.

Condition (d): Activities associated with this NWP shall not cause the loss of more than 300 linear feet of streambed, except for man-made ditches constructed in uplands which are determined by the Corps of Engineers to be waters of the United States, and which are determined to be intermittent or ephemeral.

Condition (e): This NWP is not applicable for activities located within the geographic boundaries of the Hackensack Meadowlands District.

REGIONAL CONDITIONS FOR NWP (43) STORMWATER MANAGEMENT FACILITIES

Condition (a): A PCN shall be submitted to the Corps of Engineers for all activities in waters of the United States under the terms of this NWP.

Condition (b): This NWP does not authorize any activities located in perennial streams and intermittent waters.

REGIONAL CONDITIONS FOR NWP (48) COMMERCIAL SHELLFISH AQUACULTURE ACTIVITIES

Condition (a): A PCN must be submitted to the Corps of Engineers for all activities in waters of the United States under this NWP.

Condition (b): Use of unsuitable materials for shellfish seeding (i.e., asphalt, bituminous concrete slag, tires, wallboard, plastic, wood, metal, crushed glass, and garbage) is prohibited.

Condition (c): Any introduced shellfish must be certified under New Jersey standards as being disease and parasite free.

Condition (d): Predator control devices (i.e., mesh fences, mesh nets, and mesh tents) suspended or erected vertically or obliquely in the water column to surround or enclose shellfish containment gear is prohibited.

Condition (e): All structures associated with the aquaculture activity must be removed from waters of the United States when/if the activity is abandoned.

REGIONAL CONDITION FOR NWP (52) WATER-BASED RENEWABLE ENERGY GENERATION PILOT PROJECTS

Condition (a): Any activity associated with this NWP will require a PCN to the Corps of Engineers. The Corps of Engineers will coordinate review of all PCNs with the Federal and State resource agencies. As a part of the required PCN to the Corps of Engineers, the applicant shall provide evidence that a duplicate copy of the PCN has been submitted to and received by the other concerned Federal and State resource agencies (e.g., copy of certified/registered mail receipt). The addresses for these agencies are provided below.

SPECIAL NOTES:

(1) The following addresses shall be used for notification to those Federal and State agencies, where the review of the PCN must be coordinated by the Corps of Engineers. These addresses are required for **Regional General Conditions G-2**.

National Marine Fisheries Service
Habitat Conservation Division
74 Magruder Road, Sandy Hook
Highlands, New Jersey 077325

Administrator
Land Use Regulation Program
NJ Department of Environmental Protection
Station Plaza
501 East State Street, 2nd. Floor
Trenton, New Jersey 08625

Field Supervisor
U.S. Fish and Wildlife Service
4 E. Jimmie Leeds Road, Suite 4
Galloway, New Jersey 08205

U.S. Environmental Protection Agency, Region II
Water Programs Branch
290 Broadway
New York, New York 10007-1866

Historic Preservation Office
5 Station Plaza
501 East State Street
Trenton, New Jersey 08625