DEPARTMENT OF THE ARMY
BUFFALO DISTRICT, CORPS OF ENGINEERS
1776 NIAGARA STREET
BUFFALO, NEW YORK 14207-3199

October 13, 2023

Regulatory Branch

SUBJECT: Department of the Army Permit No. LRB-2023-00793, Nationwide Permit No. 3 as Published in the Federal Register, Volume 86, No. 8, on Wednesday, January 13, 2021.

Carlos Baez
Sandusky County Engineer
2500 West State Street
Fremont, Ohio 43420

Dear Mr. Baez:

This pertains to the Sandusky County Engineer's application for a Department of the Army permit to place fill material permanently and temporarily into the Sandusky River and adjacent wetlands in association with the SAN-CR201-0.13 Bridge Replacement Project. The Project is located along the Old County 35 (CR201) Road bridge in Bellville Township, Sandusky County, Ohio (Sheets 1-5 of 5). The activity will result in temporary impacts to 0.501 acres of the Sandusky River, and permanent impacts to 0.003 acres of the Sandusky River and 0.016 acres of wetlands.

I have evaluated the impacts associated with your proposal, and have concluded that they are authorized by the enclosed Nationwide Permit (NWP) provided that the attached conditions are satisfied.

Verification of the applicability of this NWP is valid until March 26, 2026 unless the NWP is modified, suspended, revoked, or the activity complies with any subsequent permit modification. Please note in accordance with 33 CFR part 330.6(b), that if you commence or are under contract to commence an activity in reliance of the permit prior to the date this Nationwide permit expires, is suspended or revoked, or is modified such that the activity no longer complies with the terms and conditions, you have twelve months from the date of permit modification, expiration, or revocation to complete the activity under the present terms and conditions of the permit, unless the permit has been subject to the provisions of discretionary authority.

It is your responsibility to remain informed of changes to the NWP program. A public notice announcing any changes will be issued when they occur and will be available for viewing at our website: http://www.lrb.usace.army.mil/Missions/Regulatory.aspx. Finally, note that if your activity is not undertaken within the defined period or the project specifications have changed, you must immediately notify this office to determine the need for further approval or reverification.

Regulatory Branch

SUBJECT: Department of the Army Permit No. LRB-2023-00793, Nationwide Permit No. 3 as Published in the Federal Register, Volume 86, No. 8, on Wednesday, January 13, 2021.

In addition to the general conditions attached to the NWP, your attention is directed to the following Special Conditions which are also appended at the end of the NWP General Conditions:

1. To reduce any potential adverse effects on the Federally threatened Northern long-eared bat (*Myotis septentrionalis*), trees (woody stems greater than 3 inches Diameter at Breast Height) must not be cut between April 1 and September 30, of any year.

2. To reduce any potential adverse effects on the federally-endangered Indiana bat (*Myotis sodalis*), trees (woody stems greater than 5 inches diameter breast height) must not be cut between April 1 and September 30 of any year.

3. For 2024, in-water work can take place within the restriction period between July 1 and November 30.

This affirmation is limited to the attached NWP and associated Water Quality Certification, and does not obviate the need to obtain any other project specific Federal, state, or local authorization.

A copy of this letter has been sent to Mr. Jason Earley (Lawhon & Associates) and the Ohio Environmental Protection Agency.

Questions pertaining to this matter should be directed to me at 716-879-4339, or by e-mail at: keith.c.sendziak@usace.army.mil

Sincerely,

Keith C Sendziak

Keith C. Sendziak
Biologist

Enclosures

COMPLETION FORM / COMPLIANCE CERTIFICATION

Each permittee who receives a Nationwide Permit (NWP) verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and any compensatory mitigation.

APPLICANT:	POINT OF CONTACT:	File No.: 2023-00793
Sandusky County Engineer	Carlos Baez	File Closed: 10/13/2023
2500 West State Street	(same)	NWP No.: 3
Fremont, Ohio 43420		

Upon completion of the activity authorized by this permit and any required compensatory mitigation sign this certification and return it to the address listed below within 30 days of project completion.

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, revocation, and/or assessment of administrative penalties.

The permittee shall certify the completion of the authorized work and mitigation:

a. The authorized work was done in accordance with the NWP authorization, including any general, regional, or activity specific conditions.

b. 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, this 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.

_____ _____

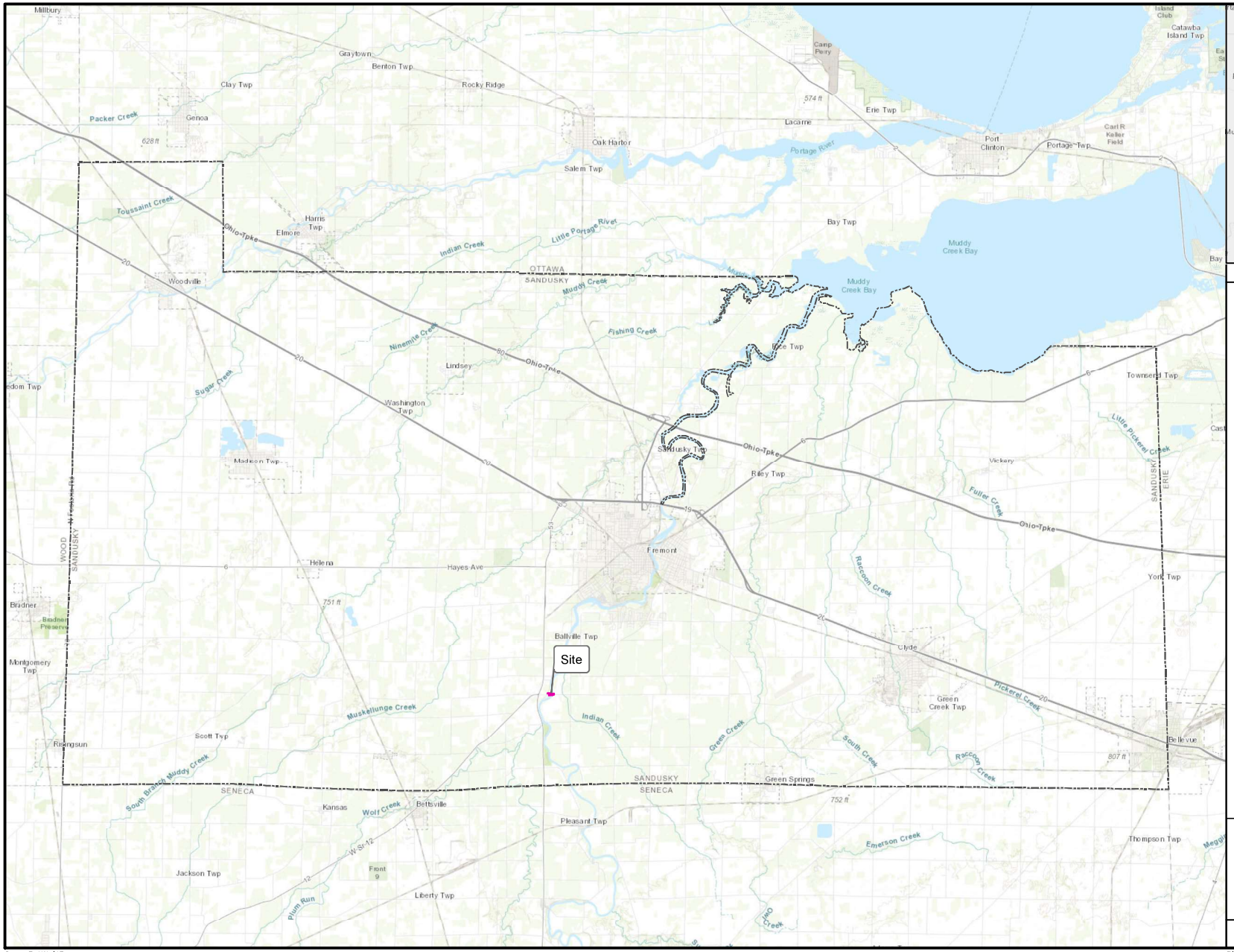
Sandusky County Engineer (Carlos Baez) Date

Permittee Telephone Number: _____

Project location/description: place fill material permanently and temporarily into the Sandusky River and adjacent wetlands in association with the SAN-CR201-0.13 Bridge Replacement Project. The Project is located along the Old County 35 (CR201) Road bridge in Bellville Township, Sandusky County, Ohio. The activity will result in temporary impacts to 0.501 acres of the Sandusky River, and permanent impacts to 0.003 acres of the Sandusky River and 0.016 acres of wetlands.

Return completed form to:
Mr. David Leput
Regulatory Branch
U.S. Army Corps of Engineers
1776 Niagara Street
Buffalo, NY 14207

Received by USACE - M. Lipin 7/20/2023



Overview of Ohio

Legend

N

- Sandusky County
- Study Area

Sheet 1 of 5

0 1 2 4 6 Miles

SAN-CR 201-0.31
Bridge Rehabilitation

Sandusky County Map
with an Overview of Ohio

Lawhon & Associates, Inc.

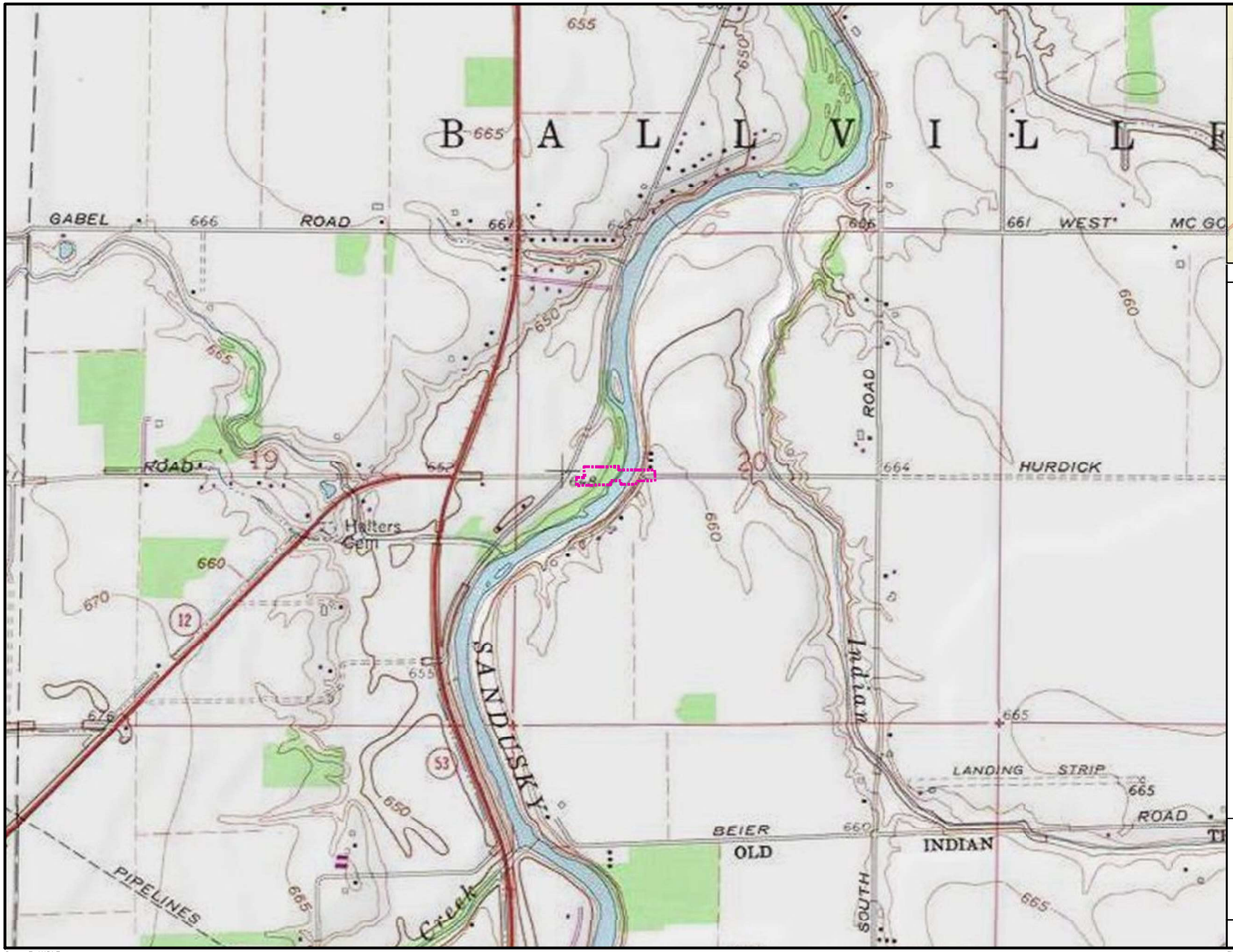
Date:	Approved by:	L&A No.	Figure
June 2023	NV	23-0220	1

Source: Esri World Topo

File Name: 01-County.mxd

Edited: 6/7/2023 By: dwilliams

Received by USACE - M. Lipin 7/20/2023



Site Location Map

Legend

Study Area

N

Sheet 2 of 5

0 500 1,000 2,000 Feet

SAN-CR 201-0.31
Bridge Rehabilitation

USGS Topographic Map
Fremont West Quad

Lawhon & Associates, Inc.

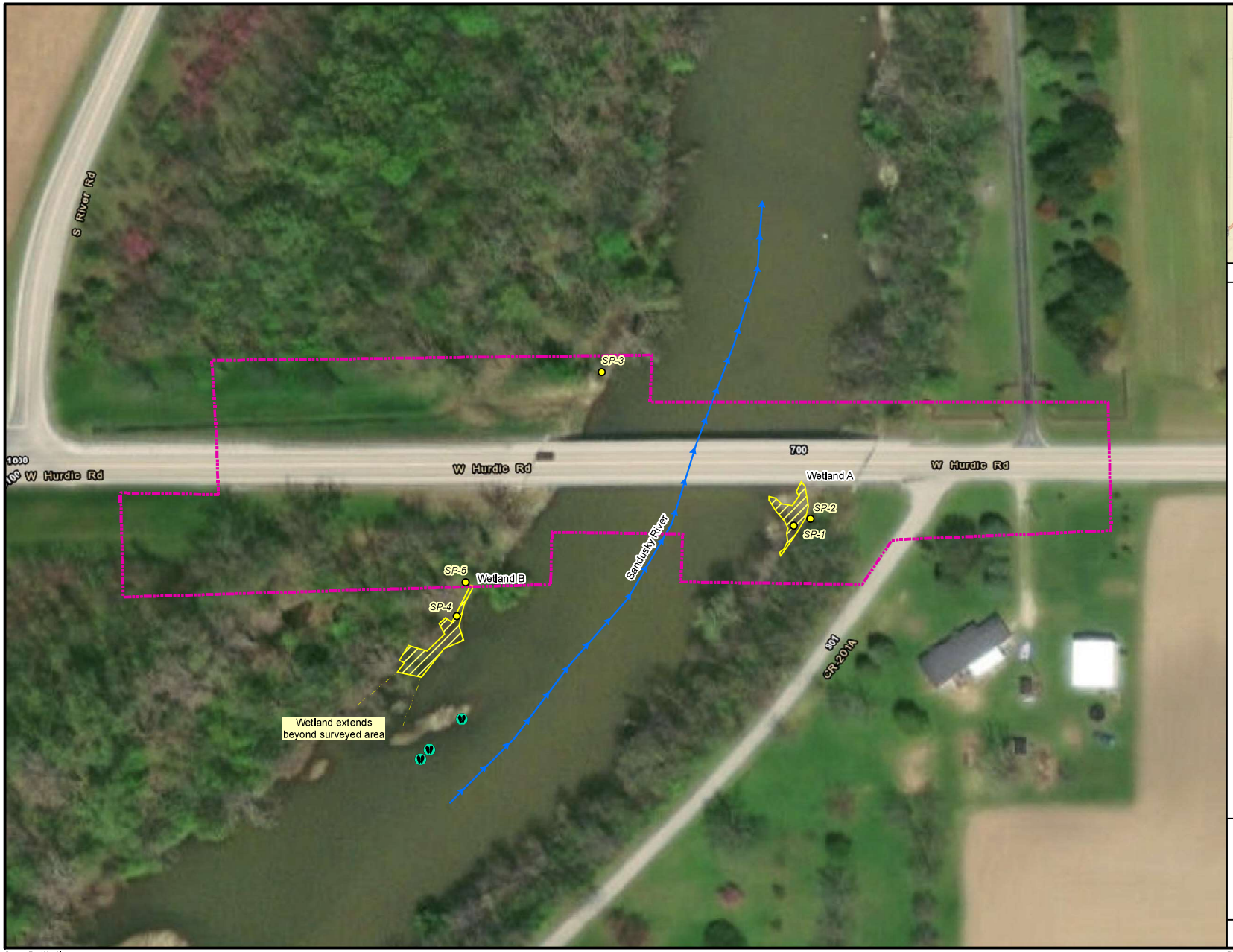
Date:	Approved by:	L&A No.	Figure
June 2023	NV	23-0220	2

Source: Esri USA Topo

File Name: 02-Topo.mxd

Edited: 6/7/2023 By: dwilliams

Received by USACE - M. Lipin 7/20/2023



Site Location Map

Legend

- Study Area
- Stream
- Fresh Dead Mussel
- Wetland
- Sample Point

N

Sheet 3 of 5

0 25 50 100 150 Feet

SAN-CR 201-0.31
Bridge Rehabilitation

Ecological Resources Map

Lawhon & Associates, Inc.

Date:	Approved by:	L&A No.	Figure
June 2023	NV	23-0220	3

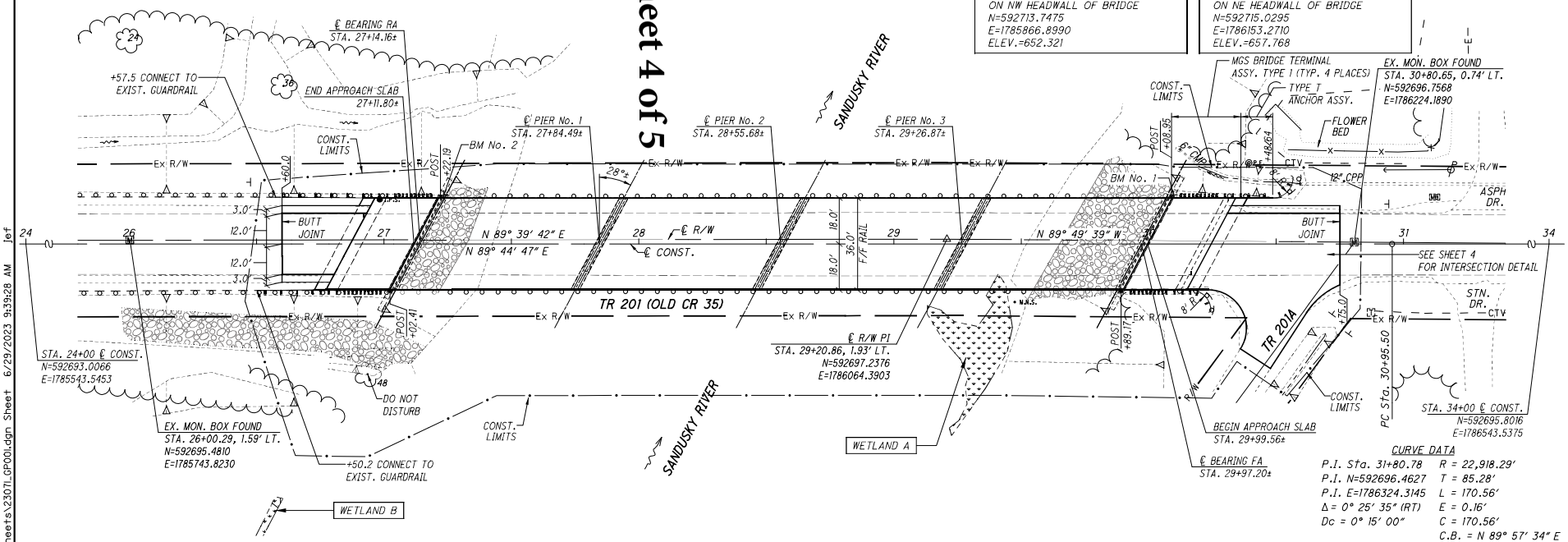
Source: Esri World Imagery

File Name: 04-Eco.mxd Edited: 6/7/2023 By: dwilliams

Received by USACE - M. Lipin 7/20/2023

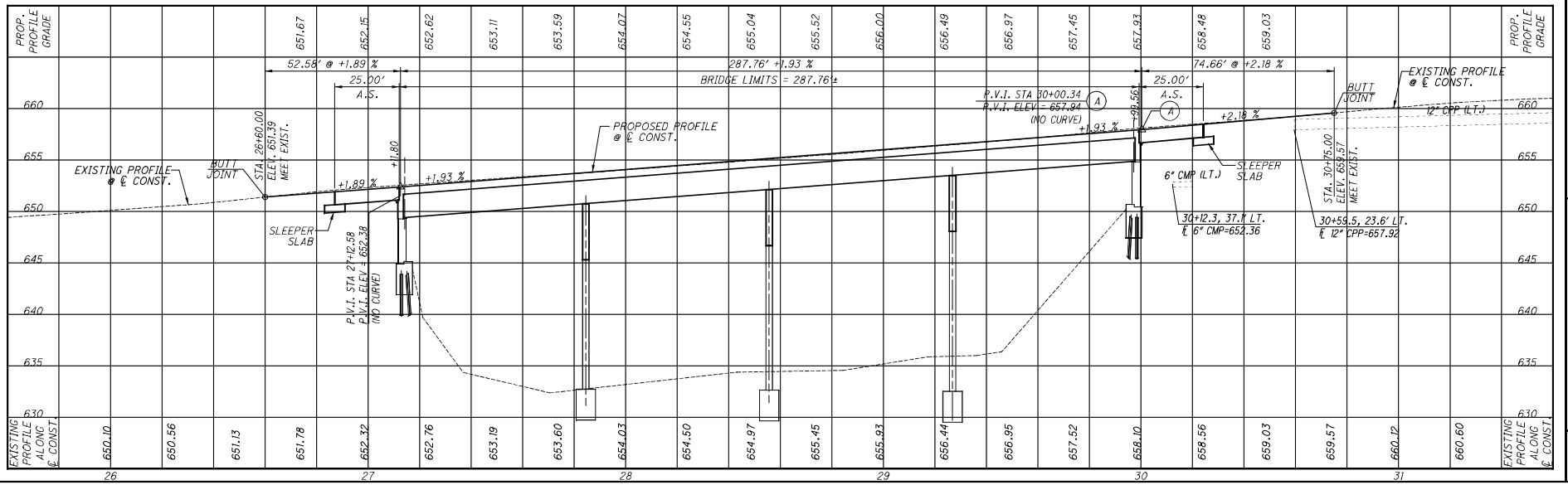
Sheet 4 of 5

BENCH MARK No. 2	BENCH MARK No. 1
STA. 27+23.4, 19.3' LT. 3" BRASS PLATE W/DIMPLE IN CTR. ON NW HEADWALL OF BRIDGE N=592713.7475 E=1785866.8990 ELEV.=652.321	STA. 30+09.8, 19.3' LT. 3" BRASS PLATE W/DIMPLE IN CTR. ON NE HEADWALL OF BRIDGE N=592715.0295 E=1786153.2710 ELEV.=657.768



CURVE DATA

P.I. Sta. 31+80.78 R = 22,918.29'
P.I. N=592696.4627 T = 85.28'
P.I. E=1786324.3145 L = 170.56'
Δ = 0° 25' 35" (RT) E = 0.16'
Dc = 0° 15' 00" C = 170.56'
C.B. = N 89° 57' 34" E



M:\23071\Sandusky County - SAN-CR201Bridge Rehab\23071_SAN_CR201\Design\Roadway\Sheets\23071_GP001.dgn Sheet 6/29/2023 9:39:28 AM jef

N

HORIZONTAL SCALE IN FEET 0 10 20 40

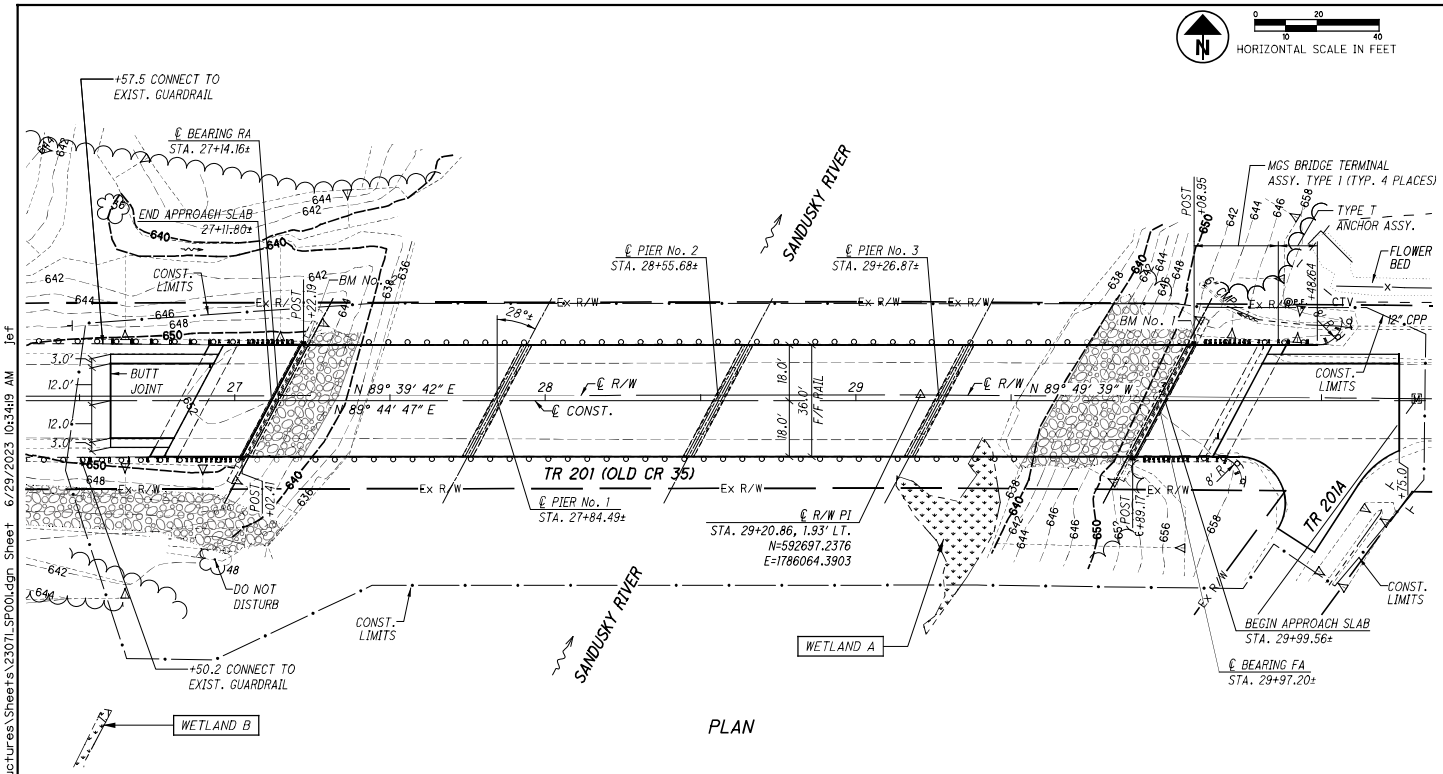
CALCULATED XXX CHECKED XXX

PLAN AND PROFILE TR 201 (OLD CR 35)
SHEET SUB-TITLE

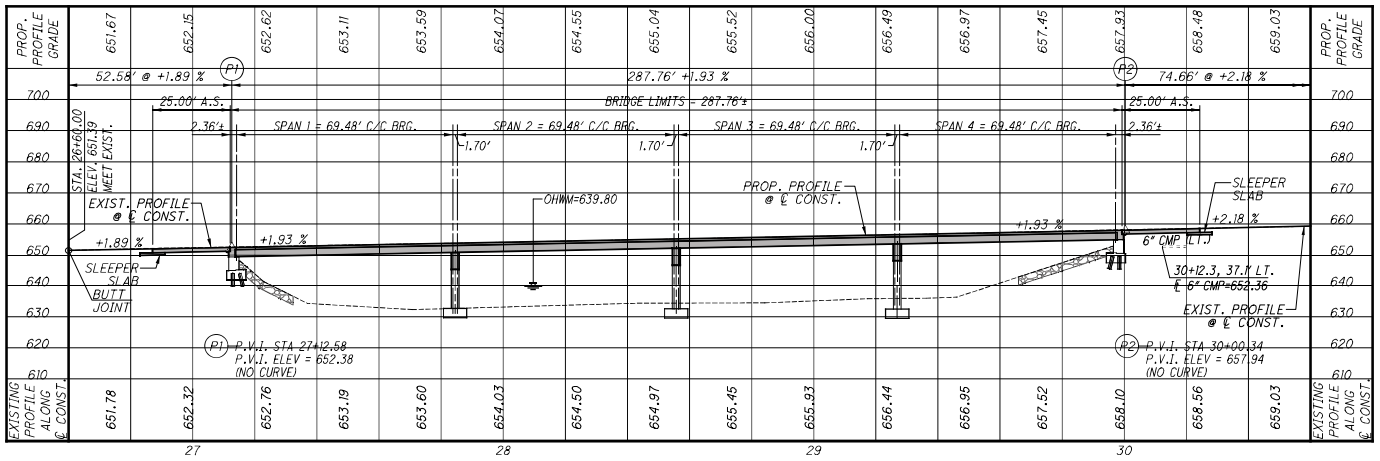
SAN-CR201-0.05

7
21

Received by USACE - M. Lipin 7/20/2023



PLAN



PROFILE ALONG CENTERLINE CONSTRUCTION

BENCHMARK DATA

BM No. 1 STA. 30+09.8, ELEV. 657.768, OFFSET 19.3' LT.
BM No. 2 STA. 27+23.4, ELEV. 652.321, OFFSET 19.3 LT.

FOR ADDITIONAL BENCHMARK INFORMATION. SEE ROADWAY PLAN SHEET 7/21

DESIGN TRAFFIC:
2018 ADT = 1842
2043 ADT = 2360
DIRECTIONAL DISTRIBUTION = 55%

Sheet 5 of 5

EXISTING STRUCTURE

TYPE: FOUR SPAN, PRESTRESSED CONCRETE BOX BEAMS WITH REINFORCED CONCRETE SUBSTRUCTURE.
SPANS: 70.33'±, 71.19'±, 71.19'±, 70.33'± C/C SUBSTRUCTURES
ROADWAY: 36'-0"± F/F RAILING
LOADING: HS20-44 AND THE ALTERNATE MILITARY LOADING
SKEW: 28°-00'-00"± L.F.
APPROACH SLABS: AS-1-81 (25'-0" LONG)
WEARING SURFACE: 5"± ASPHALT CONCRETE
ALIGNMENT: TANGENT
CROWN: 0.016± FT/FT (NORMAL CROWN)
STRUCTURAL FILE NUMBER: 7230567
DATE BUILT/REHAB: 1983
DISPOSITION: SERIOUS CONDITION

PROPOSED STRUCTURE REHABILITATION

1 - EXISTING ASPHALT WEARING SURFACE AND BOX BEAM SUPERSTRUCTURE TO BE REMOVED
2 - PERFORM CONCRETE PATCHING ON ABUTMENTS
3 - ABUTMENT BACKWALLS TO BE REMOVED AND ABUTMENTS TO BE CONVERTED INTO SEMI-INTEGRAL ABUTMENTS
4 - REMOVE AND REPLACE PIER CAPS
5 - PLACE NEW BOX BEAMS AND ELASTOMERIC BEARINGS
6 - CONSTRUCT COMPOSITE CONCRETE DECK
7 - CONCRETE SURFACES TO BE SEALED
TYPE: FOUR SPAN, COMPOSITE BOX BEAM SUPERSTRUCTURE ON SEMI-INTEGRAL ABUTMENTS
SPANS: 70.33', 71.19', 71.19', 70.33' C/C SUBSTRUCTURES
ROADWAY: 36'-0" F/F RAILING
LOADING: HS93, FWS = 60 PSF (NEW SUPERSTRUCTURE)
SKEW: 28°-00'-00" L.F.
APPROACH SLABS: AS-1-81 (25'-0" LONG) & AS-2-15
ALIGNMENT: TANGENT
CROWN: 0.016 FT/FT (NORMAL CROWN)
WEARING SURFACE: 1" MONOLITHIC CONCRETE
DECK AREA: 10359 SF
COORDINATES: LATITUDE 41°17'29.70" N
LONGITUDE 83°09'52.76" W

DESIGN AGENCY
DGL Consulting Engineers, LLC
3455 Briarfield Blvd. Suite E
Maumee, Ohio 43537 (419) 535-1015

DESIGNED	DRAWN	REVIEWED	DATE
JTY	JEF		
CHECKED	REVISED	STRUCTURE FILE NUMBER	
SAM		7230567	

SANDUSKY COUNTY
STA. 27+11.80±
STA. 29+99.56±

SITE PLAN
BRIDGE No. SAN-CR201-0005
OVER SANDUSKY RIVER

SAN-CR201-0.05
PID No. 119051

1/14
8/21

M:\23071\Sandusky County - SAN-CR201 Bridge Rehab\23071_SAN_CR201\Design\Structures\Sheets\23071_SP001.dgn Sheet 6/29/2023 10:34:19 AM Jeff

NATIONWIDE PERMITS FOR THE STATE OF OHIO

**U.S. ARMY CORPS OF ENGINEERS (CORPS) REGULATORY PROGRAM
REISSUANCE AND ISSUANCE OF NATIONWIDE PERMITS
WITH OHIO EPA 401 WATER QUALITY CERTIFICATION
AND OHIO DEPARTMENT OF NATURAL RESOURCES CONSISTENCY
DETERMINATION UNDER THE COASTAL ZONE MANAGEMENT ACT**

Final rule published in the *Federal Register* (86 FR 73522) on December 27, 2021

NWP 3

3. Maintenance.

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

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

States unless otherwise specifically approved by the district engineer under separate authorization.

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

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

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

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

Corps NWP 3 Specific Regional Conditions:

- PCN in accordance with NWP General Condition 32 and Regional General Condition 6 is required for the following activities:
    - Any jurisdictional stream or ditch channel modification (reconfiguration or reconstruction of all or part of a channel, such as by straightening, relocating, lining, or excavating the channel, or by enclosing the channel within a structure such as a pipe or culvert) that exceeds a distance of 50 feet upstream and 50 feet downstream of the structure;
    - The placement of any new rip-rap below the ordinary high water mark when associated with an existing bridge or similar crossing exceeding a total of 200 feet extending in either direction from the crossing;
    - The replacement of any permanent vertical bulkhead greater than one (1) foot waterward of the original alignment. A vertical bulkhead is defined as any structure, or fill, with a vertical face. It

may be constructed of timber, steel, concrete, etc.;
    - Activities in Section 10 navigable waters that involve the discharge of greater than 25 cubic yards of dredged or fill material below the ordinary high water mark; and
    - All activities in Section 10 navigable waters, and federal harbors in Lake Erie.
- For projects located along the shorelines of Lake Erie, Sandusky Bay, and Maumee Bay, all sand and gravel located below the proposed project, both below and above ordinary high water mark (573.4 feet International Great Lakes Datum 1985), will be excavated down to clay or bedrock, and side cast into the nearshore area either immediately waterward or downdrift of the project area. It will be at the discretion of the district engineer to determine whether the material located below the authorized structure needs to be relocated, where it should be relocated to, and the appropriate authorization, if needed, for the relocation. Verification of the placement of the excavated material within the nearshore area shall be documented through the submittal of dated photographs and an accompanying photo location map to the district engineer within 30 days of commencement of the project.

Ohio 401 Certification Special Limitations and Conditions:

1. Ohio state certification general limitations and conditions apply to this nationwide permit.

2. Individual 401 WQC is required for temporary or permanent impacts to category 3 wetlands that exceed 0.1 acres. Impacts to category 3 wetlands are only allowable for activities involving the repair, maintenance, replacement, or safety upgrades to existing infrastructure that meets the definition of public need. Ohio EPA will make the determination if a project meets public need during the ORAM verification process.

3. Individual 401 WQC is required for temporary or permanent impacts to category 1 and category 2 wetlands that exceed 0.50 acres.

4. Individual 401 WQC is required for the replacement of existing structures that are open to the flow of water with structures that are not open to the flow of water.

5. Replacement vertical bulkheads shall not be placed more than an average one foot waterward of the ordinary high water mark of the water body. For vertical bulkheads on Lake Erie, toe stone shall be placed at the base of the vertical bulkhead except in areas where the original shoreline is composed of bedrock and slopes are predominantly greater than 75 percent or where the placement of toe stone will interfere with shipping activity. When required, toe stone shall

be placed at an average rate of one-third the total height of the exposed face of the vertical bulkhead at a 2:1 slope.

6. Removal of accumulated sediment shall occur only once per year and shall be limited to low-flow conditions, except in cases of emergency situations that threaten life or property.

7. For projects which involve temporary impacts to wetlands: upon the cessation of earth moving activities, any hydric topsoil removed from a wetland shall be separated and saved for later placement as the topmost backfill layer when the wetland is restored to grade.

8. For an individual stream, while the repair or replacement of an existing culvert of any length is not limited by this certification, an individual 401 WQC is required for any culvert extension that exceeds 300 linear feet

Ohio Department of Natural Resources CZMA Federal Consistency Determination Condition:

- For all activities located within or along the shore of Ohio's portion of Lake Erie, including Maumee Bay and Sandusky Bay, all applicable authorizations under the Ohio Coastal Management Program must be obtained.

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

B. Nationwide Permits Regional General Conditions (Applies to All Nationwide Permits)

1. NWPs shall not authorize any regulated activity which negatively impacts bogs and/or fens.

2. NWPs shall not authorize any regulated activity in Lake Erie which would result in diversion of water from the Great Lakes.

3. NWPs shall not authorize any regulated activity which has an adverse impact on littoral transport within Lake Erie.

4. **In-Water Work Exclusion Dates:** Any work associated with a regulated activity

under a nationwide permit cannot take place during the restricted period of the following Ohio Department of Natural Resources (ODNR), Division of Wildlife (DOW) In-Water Work Restrictions, unless the applicant receives advanced written approval from the DOW, notifies the District Engineer in accordance with Nationwide Permit General Condition 32 and Regional General Condition 6, and receives written approval from the Corps:

Statewide In-Water Work Restriction Periods and Locations

1. Salmonid Locations Restriction Period: September 15 – June 30

Arcola Creek (entire reach)
Ashtabula Harbor
Ashtabula River (Hadlock Rd. to mouth)
Aurora Branch (Chagrin River (RM 0.38 to mouth))
Big Creek (Grand River (Girdled Road to mouth))
Black River (entire reach)
Chagrin River (Chagrin Falls to mouth)
Cold Creek (entire reach)
Conneaut Creek (entire reach)
Conneaut Harbor
Corporation Creek (Chagrin River (entire reach))
Cowles Creek (entire reach)
Ellison Creek (Grand River (entire reach))
Euclid Creek (entire reach)
Fairport Harbor
Grand River (Dam at Harpersfield Covered Bridge Park to mouth)
Gulley Brook (Chagrin River (entire reach))
Huron River (East Branch-West Branch confluence to mouth)
Indian Creek (entire reach)
Kellogg Creek (Grand River (entire reach))
Mill Creek (Grand River (entire reach))
Paine Creek (Grand River (Paine Falls to mouth))
Rocky River (East Branch-West Branch confluence to mouth)
Smokey Run (Conneaut Creek (entire reach))
Turkey Creek (entire reach)
Vermilion River (dam at Wakeman upstream of the US 20/SR 60 bridge to mouth)
Ward Creek (Chagrin River (entire reach))
Wheeler Creek (entire reach)
Whitman Creek (entire reach)

2. Other Locations Restriction Period: March 15 – June 30

All other perennial streams not listed above as salmonid.
Also includes Lake Erie and bays not listed above as salmonid.

Note: This condition does not apply to Ohio Department of Transportation projects that are covered under the "Memorandum of Agreement Between The Ohio Department of Transportation, The Ohio Department of Natural Resources, and The United States Fish and Wildlife Service For Interagency Coordination For Projects Which Require Consultation Under the Endangered Species Act, Impact State Listed Species, and/or Modify Jurisdictional Waters 2016 Agreement Number: 19394" or subsequent amendments to this Ohio Department of Transportation memorandum of agreement.

5. **Waters of Special Concern**: PCN in accordance with NWP General Condition 32 and Regional General Condition 6 is required for regulated activities in the following resources:

a. **Threatened and Endangered Species**: Due to the potential presence of federally threatened or endangered species or their habitats, PCN in accordance with NWP General Conditions 18 and 32 and Regional General Condition 6 is required for any regulated activity under the NWPs in Ohio that includes:

   i. The removal of trees ≥ three (3) inches diameter at breast height. These trees may provide suitable roosting, foraging, or traveling habitat for the federally listed endangered Indiana bat and the federally-listed threatened northern long-eared bat; and/or
   ii. Regulated activities that impact a sand, gravel, and/or cobble beach (landform between the low and high water marks affected by waves) and/or mud flat (areas affected by natural seiche effect) on the Lake Erie shoreline; and/or
   iii. Regulated activities in the waterway or township of the corresponding counties listed in Appendix 1.

   Note 1: Applicants must ensure they are referencing the latest version of Appendix 1 by contacting their nearest U.S. Army Corps of Engineers district office and visiting the online resources identified in General Condition 18(f) of these NWPs, since federally listed species are continuously listed, proposed for listing, and/or de-listed.

   Note 2: As mentioned in General Condition 18, federal applicants should follow their own procedures for complying with the requirements of the Endangered Species Act (ESA). Federal applicants, including applicants that have received federal funding, must provide the District Engineer with the appropriate documentation to demonstrate compliance with ESA requirements.

b. **Critical Resource Waters:**

   i. In Ohio, two (2) areas have been designated critical habitat for the piping plover (*Charadrius melodus*) and are defined as lands 0.62 mile inland from normal high water line. Unit OH-1 extends from the mouth of Sawmill Creek to the western property boundary of Sheldon Marsh State Natural Area, Erie County, encompassing approximately two (2) miles. Unit OH-2

extends from the eastern boundary line of Headland Dunes Nature Preserve to the western boundary of the Nature Preserve and Headland Dunes State Park, Lake County, encompassing approximately 0.5 mile.

ii. In Ohio three (3) areas have been designated critical habitat for the rabbitsfoot mussel (*Quadrula cylindrica cylindrica*). Unit RF26 includes 17.5 river kilometers (rkm) (10.9 river miles [rimi]) of the Walhonding River from the convergence of the Kokosing and Mohican Rivers downstream to Ohio Highway 60 near Warsaw, Coshocton County, Ohio. Unit RF27 includes 33.3 rkm (20.7 rmi) of Little Darby Creek from Ohio Highway 161 near Chuckery, Union County, Ohio, downstream to U.S. Highway 40 near West Jefferson, Madison County, Ohio. Unit RF29 includes 7.7 rkm (4.8 rmi) of Fish Creek from the Indiana and Ohio State line northwest of Edgerton, Ohio, downstream to its confluence with the St. Joseph's River north of Edgerton, Williams County, Ohio.

iii. Old Woman Creek National Estuarine Research Preserve.

c. **Oak Openings:** Wetland activities conducted in the Oak Openings Region of Northwest Ohio located in Lucas, Henry and Fulton Counties. For a map of the Oak Openings Region, visit https://www.google.com/maps/d/viewer?mid=1JADupaZXJzO6AUDvnUaV18GVjG7yfBim&usp=sharing

d. **Category 3 Wetlands:** As determined through use of the latest approved version of the Ohio Environmental Protection Agency's Ohio Rapid Assessment Method wetland evaluation form.

e. **Ohio Stream Designations:** Exceptional Warmwater Habitat, Cold Water Habitat, Seasonal Salmonid, or any equivalent designation; or water bodies with an antidegradation category of Superior High Quality Water, Outstanding National Resource Water, or Outstanding State Waters as determined by the Ohio Environmental Protection Agency except for NWP 1, 2, 3, 9, 10, 11, 27, 28, 32, and 35 or maintenance activities covered under NWPs 7 and 12. The current list of these rivers and tributaries can be found on the Ohio Environmental Protection Agency web-site at: http://www.epa.ohio.gov/dsw/rules/3745_1.aspx. These designations can be found under the aquatic life use of the rivers and tributaries within its basin and under the "Anti-deg Rule #05."

6. **PCN Submittals**: In addition to the information required under NWP General Condition 32, the following information must be provided with the PCN:

a. **Threatened and Endangered Species:** Section 7(a)(2) of the Endangered Species Act (ESA) states that each federal agency shall, in consultation with the Secretary, insure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. Section 7 of the ESA, called "Interagency Cooperation," is the mechanism by which

federal agencies ensure the actions they take, including those they fund or authorize, do not jeopardize the continued existence of any federally or proposed federally listed species. Consistent with NWP General Condition 18, information for federally threatened and endangered species must be provided in the PCN to determine the proposed activity's compliance with NWP General Condition 18 and to facilitate project-specific coordination with the USFWS. All relevant information obtained from the USFWS must be submitted with the PCN.

b. **Cultural Resources**: Under the National Historic Preservation Act (NHPA), the Corps must ensure no federal undertaking, including a Corps permit action, which may affect historic resources, is commenced before the impacts of such action are considered and the Advisory Council on Historic Preservation and the State Historic Preservation Office (SHPO) are provided an opportunity to comment as required by the NHPA, 36 CFR 800, and 33 CFR 325, Appendix C. Consistent with NWP General Condition 20, historic properties information must be provided in the PCN if the proposed undertaking might have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. All relevant information obtained from the SHPO must be submitted with the PCN.
c. **National Wild and Scenic Rivers**: The following waterways are components of the National Wild and Scenic River System and require PCN to the Corps:

Big and Little Darby Creeks

- Big Darby Creek from Champaign-Union County line downstream to the Conrail railroad trestle and from the confluence with the Little Darby Creek downstream to the Scioto River;
- Little Darby Creek from the Lafayette-Plain City Road bridge downstream to within 0.8 mile from the confluence with Big Darby Creek; and
- Total designation is approximately 82 miles.

Little Beaver Creek

- Little Beaver Creek main stem, from the confluence of West Fork with Middle Fork near Williamsport to mouth;
- North Fork from confluence of Brush Run and North Fork to confluence of North Fork with main stem at Fredericktown;
- Middle Fork from vicinity of Co. Rd. 901 (Elkton Road) bridge crossing to confluence of Middle Fork with West Fork near Williamsport;
- West Fork from vicinity of Co. Rd. 914 (Y-Camp Road) bridge crossing east to confluence of West Fork with Middle Fork near Williamsport; and
- Total designation is 33 miles.

Little Miami River

- Little Miami River - St. Rt. 72 at Clifton to the Ohio River;
- Caesar Creek - lower two (2) miles of Caesars Creek; and
- Total designation is 94 miles.

d. **Temporary Fills or Structures:** When a PCN is required for temporary fills or structures, the PCN must specify how long the temporary fills or structures will remain and include a restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-construction contours and elevations. Native, non-invasive vegetation must be used unless otherwise authorized by a Corps NWP verification.

7. **Invasive Species:** No area for which grading has been completed will be unseeded or unmulched for longer than 14 days. All disturbed areas will be seeded and/or revegetated with native species and approved seed mixes (where practicable) after completion of construction activities for stabilization and to help preclude the establishment of non-native invasive species.

APPENDIX 1 TO REGIONAL GENERAL CONDITION 5 (a)		
County	**Waterway**	**Township**
Adams	Ohio River, Scioto Brush Creek, South Fork Scioto Brush Creek	
Ashtabula	Grand River, Pymatuning Creek	Andover, Austinburg, Cherry Valley, Colebrook, Dorset, Hartsgrove, Harpersfield, Morgan, New Lyme, Orwell, Richmond, Rome, Trumbull, Wayne, Williamsfield, Windsor
Athens	Ohio River	
Brown	East Fork Little Miami River, Ohio River	
Butler	Great Miami River	Lemon, Liberty
Champaign		Mad River, Union, Urbana
Clark	Little Miami River	Bethel, Moorfield, Pleasant, Springfield
Clermont	East Fork Little Miami River, Little Miami River, Ohio River	
Clinton		Chester, Richland, Wayne
Columbiana		Butler, Fairfield, Hanover, Knox, Unity
Coshocton	Killbuck Creek, Muskingum River, Walhonding River	
Crawford		Auburn, Bucyrus, Cranberry, Dallas,

APPENDIX 1 TO REGIONAL GENERAL CONDITION 5 (a)		
County	**Waterway**	**Township**
		Holmes, Whetstone
Darke	Stillwater River	
Defiance	St. Joseph River	Milford
Delaware	Mill Creek, Olentangy River	
Erie		Margaretta
Fairfield		Walnut
Fayette		Concord, Green, Jasper, Union
Franklin	Big Darby Creek, Little Darby Creek, Scioto River	
Fulton	Swan Creek	
Gallia	Ohio River	
Greene	Little Miami River	Bath, Beaver Creek, Spring Valley, Sugar Creek
Hamilton	Great Miami River, Little Miami River, Ohio River	
Hancock	Blanchard River	
Hardin	Blanchard River	Blanchard, Dudley, Hale, Jackson, McDonald, Roundhead
Hocking		Benton, Laurel
Holmes		All townships
Huron		New Haven, Richmond
Lake	Grand River	Madison
Lawrence	Ohio River	
Licking		Licking, Union
Logan	Great Miami River	Perry, Richland, Stokes, Washington, Zane
Lucas	Swan Creek	All townships
Madison	Big Darby Creek, Little Darby Creek	
Mahoning		Beaver, Boardman, Canfield, Green, Poland, Springfield
Marion	Tymochtee Creek	Big Island, Bowling Green, Grand, Green Camp, Montgomery, Salt Rock
Meigs	Ohio River	
Miami	Great Miami River, Stillwater River	
Montgomery	Great Miami River, Stillwater River	Mad River, Wayne
Morgan	Muskingum River	

APPENDIX 1 TO REGIONAL GENERAL CONDITION 5 (a)		
County	**Waterway**	**Township**
Muskingum	Muskingum River	
Ottawa		All townships
Perry		Thorn
Pickaway	Big Darby Creek, Scioto River	
Pike	Scioto River	
Portage		Aurora, Atwater, Charlestown, Deerfield, Edinburg, Franklin, Freedom, Mantua, Nelson, Palmyra, Paris, Randolph, Ravenna, Rootstown, Streetsboro
Preble		Dixon, Gasper, Israel, Jackson, Lanier, Monroe, Somers, Twin, Washington
Richland		Plymouth
Ross	Salt Creek, Scioto River	
Sandusky		All townships
Scioto	Ohio River, Scioto Brush Creek, Scioto River, South Fork Scioto Brush Creek	Nile, Rush, Union
Shelby	Great Miami River	
Stark		Lexington, Marlboro
Summit		Hudson, Tallmadge, Twinsburg
Trumbull	Pymatuning Creek	All townships
Union	Big Darby Creek, Little Darby Creek, Mill Creek, Treacle Creek	Allen, Darby, Washington
Warren	Great Miami River, Little Miami River	Clear Creek, Deerfield, Massie, Turtle Creek, Union, Washington, Wayne
Washington	Muskingum River, Ohio River	
Wayne		All townships
Williams	Fish Creek, St. Joseph River	Bridgewater, Center, Florence, Jefferson, Madison, Northwest, St. Joseph, Superior
Wyandot	Tymochtee Creek	Antrim, Marseilles, Mifflin, Pitt

HELPFUL INFORMATION FOR COMPLIANCE WITH THE NWP GENERAL CONDITIONS

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

Conditions.

General Condition 1 (Navigation)

List of Section 10 Navigable Waters of the U.S.:

Buffalo District – https://www.lrb.usace.army.mil/Portals/45/docs/regulatory/DistrictInfo/waterway_oh.pdf

Huntington District – https://www.lrh.usace.army.mil/Missions/Regulatory/Section-10-Streams/

Louisville District – https://www.lrl.usace.army.mil/Portals/64/docs/Regulatory/Public%20Notices/Limits%20of%20Jurisdiction%20Public%20Notice-revised.pdf?ver=2013-02-13-120705-203

Pittsburgh District – https://www.lrp.usace.army.mil/Portals/72/docs/regulatory/RegulatoryBoundaries/PN12-2.pdf

Navigation Charts:

Buffalo District – https://www.lrb.usace.army.mil/Library/Maps-and-Charts/

Huntington District – https://www.lrh.usace.army.mil/Missions/Regulatory/Section-10-Streams/

Louisville District – https://www.lrl.usace.army.mil/Portals/64/docs/Ops/Navigation/Charts/Ohio/OhioRiverCharts102-122.pdf

Pittsburgh District – https://www.lrp.usace.army.mil/Missions/Navigation/Navigation-Charts/

Locks and Dams:

Buffalo District – https://www.lrb.usace.army.mil/Library/Maps-and-Charts/

Huntington District – https://www.lrh.usace.army.mil/Missions/Civil-Works/Locks-and-Dams/

Louisville District – https://www.lrl.usae.army.mil/Missions/Civil-Works/Navigation/Locks-and-Dams/

Pittsburgh District –

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

Notice to Navigation Interests Request Sheets:

Huntington District –
https://www.lrh.usace.army.mil/Portals/38/docs/navigation/Notice%20Info%20sheet.pdf

Louisville –
https://www.lrl.usace.army.mil/Portals/64/docs/Regulatory/Forms/Notice%20to%20Navigation%20Interests%20Data%20Form%202019.pdf?ver=2019-07-22-101251-297

Pittsburgh District –
https://www.lrp.usace.army.mil/Portals/72/docs/regulatory/NavNoticeRequestForm.pdf

General Condition 5 (Shellfish Beds)

Shellfish beds in Ohio include concentrations of freshwater mussels. All native mussels are protected in the State of Ohio (Section 1533.324 of the Ohio Revised Code). In addition, 10 federally listed species occur in the state and are protected by the ESA (87 Stat. 884, as amended; 16 U.S.C. 1531 et seq.). All rivers and tributaries that contain mussels or potential mussel habitat must be surveyed prior to any proposed streambed disturbance. Currently accepted protocol and supporting materials can be found on the Ohio Department of Natural Resources' website:
https://ohiodnr.gov/wps/portal/gov/odnr/buy-and-apply/special-use-permits/collecting-research/ohio-mussel-surveyor

General Condition 7 (Water Supply Intakes)

Locations of drinking water source protection areas associated with public water supply intakes, including the name of the public water supply, can be found at the following link:
https://oepa.maps.arcgis.com/apps/webappviewer/index.html?id=3b39e11ba7fc43c3b41801e3580e6d21

Contact information for public water suppliers can be obtained from Ohio EPA by contacting the Division of Drinking and Ground Waters at whp@epa.ohio.gov or 614-644-2752.

General Condition 10 (Fills Within 100-year Floodplains)

The following website provides a statewide listing of Floodplain Managers in Ohio:
https://ohiodnr.gov/wps/portal/gov/odnr/discover-and-learn/safety-conservation/about-ODNR/water-resources/floodplains/

General Condition 16 (Wild and Scenic Rivers)

Prior to submitting a PCN for work in a National Wild and Scenic River System, it is recommended that the applicant contact the National Park Service Regional Wild and Scenic Rivers Specialist, at the Midwest Regional Office, 601 Riverfront Drive, Omaha, Nebraska 68102, for assistance in complying with NWP General Condition 16. Any determination provided by the National Park Service should be submitted with the PCN. The following website provides information on National Wild and Scenic Rivers within Ohio:

https://www.rivers.gov/ohio.php

General Condition 18 (Endangered Species)

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

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

Address: 4625 Morse Road, Suite 104
Columbus, Ohio 43230

Email: ohio@fws.gov

Phone: (614) 416-8993

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

https://ohiodnr.gov/wps/portal/gov/odnr/buy-and-apply/special-use-permits/collecting-research/ohio-mussel-surveyor

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

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

Address: 4625 Morse Road, Suite 104
Columbus, Ohio 43230

Email: ohio@fws.gov

Phone: (614) 416-8993

The Ohio Division of Natural Resources Division of Wildlife may be contacted at (800) 945-3543.

General Condition 20 (Historic Properties)

The Ohio National Register of Historic Places can be found at the following link: https://www.ohiohistory.org/preserve/state-historic-preservation-office/nationalregister

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

- Requesting comments directly from the Ohio History Connection SHPO on the effect the proposed regulated activity may have on historic properties. The Ohio History Connection SHPO may be contacted at:

  Address: Ohio History Center
  800 E. 17th Ave., Columbus, Ohio 43211
  Phone: (614) 297-2300
  Email: info@ohiohistory.org

- To identify potential historic properties that may be affected by a proposed project, the following information may be reviewed and/or provided with the PCN when applicable:
  - A detailed description of the project site in its current condition (i.e. prior to construction activities) including information on the terrain and topography of the site, the acreage of the site, the proximity of the site to major waterways, and any known disturbances within the site.
  - A detailed description of past land uses in the project site.
  - Photographs and mapping showing the site conditions and all buildings or structures within the project site and on adjacent parcels are useful. Photographs and maps supporting past land uses should be provided as available.
  - Information regarding any past cultural resource studies or coordination pertinent to the project area, if available.
  - U.S. Geological Survey (USGS) 7.5' series topographic maps;
  - Ohio History Connection SHPO files including:
    - Ohio Archaeological Inventory (OAI) files;
    - Ohio Historic Inventory files (OHI);
    - Ohio SHPO Cultural Resources Management (CRM)/contract archaeology files;
    - NRHP files including Historic Districts; and
    - County atlases, histories and historic USGS 15' series topographic map(s).

- When needed to evaluate effects to historic properties, the applicant is encouraged to consult with professionals meeting the Professional Qualification Standards as set forth in the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (48 FR 44716) during this data gathering process. These professionals can assist with compiling the project information discussed above and should provide recommendations as to whether the proposal has the potential to affect historic properties and if further effort is needed to identify or assess potential effects to historic properties. These professionals can also compile preliminary review information to submit to the District Engineer as part of the PCN.

General Condition 23 (Mitigation)

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

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

General Condition 25 (Water Quality)

The Ohio Environmental Protection Agency may be contacted at:

Address: Lazarus Government Center
50 W Town St. Suite 700
Columbus, Ohio 43215

Phone: (614) 644-2001

Information pertaining to the Ohio Environmental Protection Agency water quality certification (WQC) program, including the Section 401 Clean Water Act WQC application form, can be obtained at the following link:
https://www.epa.state.oh.us/dsw/#113292723-programs

General Condition 32 (Pre-Construction Notification)

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

https://www.publications.usace.army.mil/Portals/76/Eng_Form_6082_2019Oct.pdf?ver=2019-10-22-081550-710/

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

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

Electronic Submittal:

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

  Buffalo District – LRB.Ohio.RegActions@usace.army.mil
  Huntington District – LRH.permits@usace.army.mil
  Louisville District – CELRL.Door.To.The.Corps@usace.army.mil
  Pittsburgh District – Regulatory.Permits@usace.army.mil

- Electronic documents must have sufficient resolution to show project details. The PCN and supporting documents submitted electronically must not exceed 10 megabytes (10MB) per email. Multiple emails may be required to transmit documents to ensure the 10MB limit is not exceeded. Alternatively, use of the Department of Defense Secure Access File Exchange (DoD SAFE) service to transfer large files may be requested in your email.

- For tracking and processing purposes, the email should include the following:

  - **Email Subject Line:** include the name of the applicant, type of PCN request, and location (County and State). Example: RE: Doe, John, PCN and Section 401 WQC Request, Summit County, Ohio;
  - **Email Body:** 1) Brief description of the proposed project, 2) contact information (phone number, mailing address, and email address) for the applicant and/or their agent, and 3) the project location: Address and Latitude/Longitude in decimal degrees (e.g. 42.92788° N, 88.36257° W).

- If you do not have internet access, information may be submitted through the U.S. Postal Service to the appropriate Regulatory Office:

  U.S. Army Corps of Engineers, Buffalo District
  ATTN: Regulatory Branch
  1776 Niagara Street
  Buffalo, New York 14207
  Phone: (716) 879-4330
  Fax: (716) 879-4310

  U.S. Army Corps of Engineers, Huntington District
  ATTN: Regulatory Division
  502 Eighth Street
  Huntington, West Virginia 25701-2070
  Phone: (304) 399-5210

Fax: (304) 399-5805

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

U.S. Army Corps of Engineers, Louisville District
ATTN: CELRL-RD, Room 752
600 Dr. Martin Luther King Jr. Place
Louisville, Kentucky 40202-0059
Phone: (502) 315-6733
Fax: (502) 315-6677

C. Nationwide Permit General Conditions:

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

1. **Navigation.**

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

United States on account of any such removal or alteration.

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

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

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

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

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

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

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

9. **Management of Water Flows.** To the maximum extent practicable, the preconstruction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization, storm water management activities, and temporary and permanent road crossings, except as provided below.

The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the preconstruction course, condition, capacity, and location of open waters if it benefits the

aquatic environment (e.g., stream restoration or relocation activities).

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

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

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

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

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

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

16. **Wild and Scenic Rivers.**

a. No NWP activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a ‘‘study
b. 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.
c. If a proposed NWP activity will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a ‘‘study river’’ for possible inclusion in the system while the river is in an official study status, the permittee must submit a pre-construction notification (see general condition 32). The district engineer will coordinate the PCN with the Federal agency with direct management responsibility for that river. Permittees shall not begin the NWP activity until notified by

the district engineer that the Federal agency with direct management responsibility for that river has determined in writing that the proposed NWP activity will not adversely affect the Wild and Scenic River designation or study status.

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

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

18. **Endangered Species.**

a. No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a

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

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

d. Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat or critical habitat proposed for such designation, and shall not begin work on the activity until notified by the

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

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

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

g. If the non-federal permittee has a valid ESA section 10(a)(1)(B) incidental take permit with an approved Habitat Conservation Plan for a project or a group of projects that includes the proposed NWP activity, the non-federal applicant should provide a copy of that ESA section 10(a)(1)(B) permit with the PCN required by paragraph (c) of this general condition. The district engineer will coordinate with the agency that issued the ESA section 10(a)(1)(B) permit to determine whether the proposed NWP

activity and the associated incidental take were considered in the internal ESA section 7 consultation conducted for the ESA section 10(a)(1)(B) permit. If that coordination results in concurrence from the agency that the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation for the ESA section 10(a)(1)(B) permit, the district engineer does not need to conduct a separate ESA section 7 consultation for the proposed NWP activity. The district engineer will notify the non-federal applicant within 45 days of receipt of a complete pre-construction notification whether the ESA section 10(a)(1)(B) permit covers the proposed NWP

h. activity or whether additional ESA section 7 consultation is required.
i. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the FWS and NMFS or their world wide web pages at http://www.fws.gov/ or http://www.fws.gov/ipac and http://www.nmfs.noaa.gov/pr/species/esa/ respectively.

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

20. **Historic Properties.**

a. No activity is authorized under any NWP which may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.
b. Federal permittees should follow their own procedures for complying with the requirements of section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)(1)). If preconstruction notification is required for the proposed NWP activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation is not submitted, then additional consultation under section 106 may be necessary. The respective federal agency is responsible for fulfilling its obligation to comply with section 106.
c. Non-federal permittees must submit a pre-construction notification to the district engineer if the NWP activity might have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places,

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

d. Where the non-Federal applicant has identified historic properties on which the proposed NWP activity might have the potential to cause effects and has so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects to historic properties or that NHPA section 106 consultation has been completed. For non-federal permittees, the district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA section 106 consultation is required. If NHPA section 106 consultation is required, the district engineer will notify the non-Federal applicant that he or she cannot begin the activity until section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.
e. Prospective permittees should be aware that section 110k of the NHPA (54 U.S.C. 306113) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that

circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

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

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

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, 52, 57 and 58 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.
(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, 38, and 54, notification is required in accordance with general condition 32, for any activity proposed by permittees in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after she or he determines that the impacts to the critical resource waters will be no more than minimal.

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

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

b. Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal.
c. Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require preconstruction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require preconstruction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects.
d. Compensatory mitigation at a minimum one-for-one ratio will be required for all losses of stream bed that exceed 3/100-acre and require preconstruction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. This compensatory mitigation requirement may be satisfied through the restoration or enhancement of riparian areas next to streams in accordance with paragraph (e) of this general condition. For losses of stream bed of 3/100-acre or less that require preconstruction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects. Compensatory mitigation for losses of streams should be provided, if practicable, through stream rehabilitation, enhancement, or preservation, since streams are difficult to-replace resources (see 33 CFR 332.3(e)(3)).
e. Compensatory mitigation plans for NWP activities in or near streams or other open waters will normally include a requirement for the restoration or enhancement, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, the restoration or maintenance/protection of riparian areas may be the only compensatory mitigation required. If restoring riparian areas involves planting vegetation, only native species should be planted. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to restore or maintain/protect a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or maintaining/protecting a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the

aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of minimization or compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

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

1. The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in no more than minimal adverse environmental effects. For the NWPs, the preferred mechanism for providing compensatory mitigation is mitigation bank credits or in-lieu fee program credits (see 33 CFR 332.3(b)(2) and (3)). However, if an appropriate number and type of mitigation bank or in-lieu credits are not available at the time the PCN is submitted to the district engineer, the
2. district engineer may approve the use of permittee-responsible mitigation.
3. The amount of compensatory mitigation required by the district engineer must be sufficient to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see 33 CFR 330.1(e)(3)). (See also 33 CFR 332.3(f).)
4. Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, aquatic resource restoration should be the first compensatory mitigation option
5. considered for permittee-responsible mitigation.
6. If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) through (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)). If permittee responsible mitigation is the proposed option, and the proposed compensatory mitigation site is located on land in which another federal agency holds an easement, the district engineer will coordinate with that federal agency to determine if proposed compensatory mitigation project is compatible with the terms of the easement.
7. If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan needs to address only the baseline conditions at the impact site and the number of credits to be provided

(see 33 CFR 332.4(c)(1)(ii)).

8. Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan (see 33 CFR 332.4(c)(1)(ii)).

g. Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any NWP activity resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that an NWP activity already meeting the established acreage limits also satisfies the no more than minimal impact requirement for the NWPs.

h. (h) Permittees may propose the use of mitigation banks, in-lieu fee programs, or permittee-responsible mitigation. When developing a compensatory mitigation proposal, the permittee must consider appropriate and practicable options consistent with the framework at 33 CFR 332.3(b). For activities resulting in the loss of marine or estuarine resources, permittee responsible mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.

i. Where certain functions and services of waters of the United States are permanently adversely affected by a regulated activity, such as discharges of dredged or fill material into waters of the United States that will convert a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse environmental effects of the activity to the no more than minimal level.

24. **Safety of Impoundment Structures.** To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with established state or federal, dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

25. **Water Quality.**

a. Where the certifying authority (state, authorized tribe, or EPA, as appropriate)

has not previously certified compliance of an NWP with CWA section 401, a CWA section 401 water quality certification for the proposed discharge must be obtained or waived (see 33 CFR 330.4(c)). If the permittee cannot comply with all of the conditions of a water quality certification previously issued by certifying authority for the issuance of the NWP, then the permittee must obtain a water quality certification or waiver for the proposed discharge in order for the activity to be authorized by an NWP.

b. If the NWP activity requires preconstruction notification and the certifying authority has not previously certified compliance of an NWP with CWA section 401, the proposed discharge is not authorized by an NWP until water quality certification is obtained or waived. If the certifying authority issues a water quality certification for the proposed discharge, the permittee must submit a copy of the certification to the district engineer. The discharge is not authorized by an NWP until the district engineer has notified the permittee that the water quality certification requirement has been satisfied by the issuance of a water quality certification or a waiver.
c. The district engineer or certifying authority may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

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

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

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

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

the total project cannot exceed 1⁄3-acre.

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

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

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

_____
(Transferee)

_____
(Date)

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

a. A statement that the authorized activity was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions;

b. A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(l)(3) to confirm that the permittee secured the

appropriate number and resource type of credits; and

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

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

32. **Pre-Construction Notification.**

a. **Timing.** Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:
    1. He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or
    2. 45 calendar days have passed from the district engineer’s receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or are in the vicinity of the activity, or to notify the Corps pursuant to general condition 20 that the activity might have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is ‘‘no

effect'' on listed species or ''no potential to cause effects'' on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)) has been completed. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

b. **Contents of Pre-Construction Notification:** The PCN must be in writing and include the following information:
    1. Name, address and telephone numbers of the prospective permittee;
    2. Location of the proposed activity;
    3. Identify the specific NWP or NWP(s) the prospective permittee wants to use to authorize the proposed activity;
    4.
        i. A description of the proposed activity; the activity's purpose; direct and indirect adverse environmental effects the activity would cause, including the anticipated amount of loss of wetlands, other special aquatic sites, and other waters expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; a description of any proposed mitigation measures intended to reduce the adverse environmental effects caused by the proposed activity; and any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings for linear projects that require Department of the Army authorization but do not require pre-construction notification. The description of the proposed activity and any proposed mitigation measures should be sufficiently detailed to allow the district engineer to determine that the adverse environmental effects of the activity will be no more than minimal and to determine the need for compensatory mitigation or other mitigation measures.
        ii. For linear projects where one or more single and complete crossings require pre-construction notification, the PCN must include the quantity of anticipated losses of wetlands, other special aquatic sites, and other waters for each single and complete crossing of those wetlands, other special aquatic sites, and other waters (including those single and complete crossings

authorized by an NWP but do not require PCNs). This information will be used by the district engineer to evaluate the cumulative adverse environmental effects of the proposed linear project, and does not change those non-PCN NWP activities into NWP PCNs.

iii. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the activity and when provided results in a quicker

iv. decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);

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

might have the potential to be affected by the proposed activity or include a vicinity map indicating the location of the historic property. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with section 106 of the National Historic Preservation Act;

9. For an activity that will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a ‘‘study river’’ for possible inclusion in the system while the river is in an official study status, the PCN must identify the Wild and Scenic River or the ‘‘study river’’ (see general condition 16); and
10. For an NWP activity that requires permission from, or review by, the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers federally authorized civil works project, the pre-construction notification must include a statement confirming that the project proponent has submitted a written request for section 408 permission from, or review by, the Corps office having jurisdiction over that USACE project.

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

d. **Agency Coordination:**
   1. The district engineer will consider any comments from Federal and state agencies concerning the proposed activity’s compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the activity’s adverse environmental effects so that they are no more than minimal.
   2. Agency coordination is required for:
      i. All NWP activities that require pre-construction notification and result in the loss of greater than 1⁄2-acre of waters of the United States;
      ii. NWP 13 activities in excess of 500 linear feet, fills greater than one cubic yard per running foot, or involve discharges of dredged or fill material into special aquatic sites; and
      iii. NWP 54 activities in excess of 500 linear feet, or that extend into the waterbody more than 30 feet from the mean low water line in tidal waters or the ordinary high water mark in the Great Lakes.

   3. When agency coordination is required, the district engineer will immediately provide (e.g., via email, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (FWS, state natural resource or water

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

4. In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.
5. Applicants are encouraged to provide the Corps with either electronic files or multiple copies of preconstruction 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. If a project proponent requests authorization by a specific NWP, the district engineer should issue the NWP verification for that activity if it meets the terms and conditions of that NWP, unless he or she determines, after considering mitigation, that the proposed activity will result in more than minimal individual and cumulative adverse effects on the aquatic environment and other aspects of the public interest and exercises discretionary authority to require an individual permit for the proposed activity. For a linear project, this determination will include an evaluation of the single and complete crossings of waters of the United States that require PCNs to determine whether they individually satisfy

the terms and conditions of the NWP(s), as well as the cumulative effects caused by all of the crossings of waters of the United States authorized by an NWP. If an applicant requests a waiver of an applicable limit, as provided for in NWPs 13, 36, or 54, the district engineer will only grant the waiver upon a written determination that the NWP activity will result in only minimal individual and cumulative adverse environmental effects.

2. When making minimal adverse environmental effects determinations the district engineer will consider the direct and indirect effects caused by the NWP activity. He or she will also consider the cumulative adverse environmental effects caused by activities authorized by an NWP and whether those cumulative adverse environmental effects are no more than minimal. The district engineer will also consider site specific factors, such as the environmental setting in the vicinity of the NWP activity, the type of resource that will be affected by the NWP activity, the functions provided by the aquatic resources that will be affected by the NWP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the NWP activity (e.g., partial or complete loss), the duration of the adverse effects (temporary or permanent), the importance of the aquatic resource functions to the region (e.g., watershed or ecoregion), and mitigation required by the district engineer. If an appropriate functional or condition assessment method is available and practicable to use, that assessment method may be used by the district engineer to assist in the minimal adverse environmental effects determination. The district engineer may add case-specific special conditions to the NWP authorization to address site-specific environmental concerns.

3. If the proposed activity requires a PCN and will result in a loss of greater than 1/10-acre of wetlands or 3/100-acre of stream bed, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for NWP activities with smaller impacts, or for impacts to other types of waters. The district engineer will consider any proposed compensatory mitigation or other mitigation measures the applicant has included in the proposal in determining whether the net adverse environmental effects of the proposed activity are no more than minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse environmental effects are no more than minimal, after considering mitigation, the district engineer will notify the permittee and include any activity-specific conditions in the NWP verification the district engineer deems necessary. Conditions for compensatory mitigation requirements must comply with the appropriate provisions at 33 CFR 332.3(k). The district engineer must approve the final mitigation plan before the permittee commences work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation. If the prospective permittee

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

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

E. **Further Information**

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

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

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

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

5. NWPs do not authorize interference with any existing or proposed Federal project (see general condition 31).

F. **General Limitations and Conditions for all Ohio Environmental Protection Agency Clean Water Act Section 401 Certified Nationwide Permits**

A. CULVERTS

For intermittent and perennial streams:

1. When practicable, bottomless or buried culverts are required when culvert size is greater than 36" in diameter. This condition does not apply if the culverts havea gradient of greater than 1% grade or installed on bedrock. A buried culvert means that the bottom 10% by dimension shall be buried below the existing stream bed elevation.

2. The culvert shall be designed and sized to accommodate bankfull discharge andmatch the existing depth of flow to facilitate the passage of aquatic organisms.

3. When practicable, culverts shall be installed at the existing streambed slope, to allow for the natural movement of bedload and aquatic organisms.

B. BEST MANAGEMENT PRACTICES

1. Unless subject to a more specific storm water National Pollutant DischargeElimination System (NPDES) permit, all best management practices for storm water management shall be designed and implemented in accordance with the most current edition of the NPDES construction general permit available at: http://www.epa.ohio.gov/dsw/storm/index.aspx, or any watershed specific construction general permit.

2. Sediment and erosion control measures and best management practices must bedesigned, installed, and maintained in effective operating condition at all times during construction activities as required by applicable NPDES permits. Proper maintenance ensures corrective measures will be implemented for failed controls within 48 hours of discovery.

3. For perennial and intermittent streams, in-stream sediment control measures shallnot be utilized, with the exception of turbidity curtains parallel to the stream bank, for the purpose of sediment collection. All sediment and erosion control measuresshall be entirely removed and the natural grade of the site restored once construction is completed.

4. All avoided water resources and associated buffers/riparian areas shall be demarcated in the field and protected with suitable materials (e.g., silt fencing, snow fencing, signage, etc.) prior to site disturbance. These materials shall remainin place and be maintained throughout the construction process and shall be entirely removed once construction is completed.

5. Disturbance and removal of vegetation from the project construction area is to beavoided where possible and minimized to the maximum extent practicable. Entryto surface waters shall be through a single point of access to the maximum extentpracticable to minimize disturbance to riparian habitat. Unavoidable temporary impacts to forested riparian habitat shall be restored as soon as practicable after in-water work is complete using tree and shrub species native to the specific ecoregion where the project is located.

6. All dredged material placed at an upland site shall be controlled so that sediment runoff to adjacent surface waters is minimized to the maximum extent practicable.

7. Straw bales shall not be used as a form of sediment control unless used in conjunction with another structural control such as silt fencing. Straw bales may be utilized for purposes of erosion control such as ditch checks.

8. Heavy equipment shall not be placed below the ordinary high water mark of any surface water, except when no other alternative is practicable.

9. Temporary fill for purposes of access or staging shall consist of suitable non- erodible material and shall be maintained to minimize erosion.

10. Chromated copper arsenate (CCA) and creosote treated lumber shall not be usedin structures that come into contact with waters of the state.

11. All dewatering activities must be conducted in such a manner that does NOT resultin a violation of water quality standards.

12. All areas of final grade must be protected from erosion within seven days.

13. All disturbed areas which remain dormant in excess of fourteen days must be protected from erosion within seven days from the last earth disturbing activity.

14. In the event of authorized in-stream activities, provisions must be established to redirect the stream flow around or through active

areas of construction in a stabilized, non-erosive manner to the maximum extent possible.

C. MITIGATION

1. Compensatory mitigation is required for the discharge of dredged or fill material into wetlands for permanent impacts exceeding 0.10 acres.

2. Compensatory mitigation is required for the discharge of dredged or fill material into streams for permanent impacts exceeding 0.03 acres.

3. When required, compensatory mitigation ratios for wetlands shall be provided in accordance with chapters 3745-1-54 of the Ohio Administrative Code.

4. When compensatory mitigation will be provided wholly or in part at a mitigation bank or through an in-lieu fee program, credit purchase shall only be authorized atthose banks or in-lieu fee programs approved by the Interagency Review Team (IRT).

D. DIRECTOR'S AUTHORIZATION

1. In accordance with the procedures outlined in Appendix A, Ohio EPA can grant coverage under this certification for any project that does not meet one or more ofthe terms and conditions for eligibility of this certification or where the district engineer has been granted authority to waive certain requirements. Coverage canbe granted when Ohio EPA determines, consistent with the special limitations andconditions for each certification, and after considering comments received on the requested director's authorization, that a project will have such a minimal impact on water quality that an individual 401 WQC is not necessary provided all other terms and conditions of this certification have been met. If a director's authorization is not granted, an individual 401 WQC must be obtained. In no casemay a director's authorization issued under this certification exceed an impact threshold authorized by the Corps' Nationwide Permit.

E. NOTIFICATION TO OHIO EPA

1. For any activity proposed to be authorized under NWPs 3, 4, 5, 6, 7, 13, 14, 15, 16, 18, 22, 23, 25, 27, 30, 32, 33, 34, 35, 36, 37, 38, 41, 45, 49, 53, and 54, **whena PCN is not required by the Corps**, notification to Ohio EPA is required for impacts to the following resources:

    a. category 3 wetlands;

b. ≥0.10 acres of wetland.

2. Notifications required by E.1 should be submitted using the Ohio EPA 401 Pre- application Request Form and contain all information required by Appendix B, aswell as a description of the proposed impacts including project design details.

3. For any activity proposed to be authorized under NWPs 4, 6, 7, 13, 14, 15, 16, 18, 22, 23, 25, 30, 33, 34, 36, 37, 38, 41, 45, 53, and 54, **when a PCN is not required by the Corps**, notification to Ohio EPA is required for impacts to streams located in possibly eligible areas as depicted in the GIS NWPs Stream Eligibility Map.

4. Notifications required by E.3 should be submitted using the Ohio EPA 401 Pre- application Request Form and contain all information required by Appendix C, aswell as a description of the proposed impacts including project design details.

5. When notification to Ohio EPA is required by conditions E.1 and E.3 above, the applicant shall not begin the activity until either:

    a. They are notified in writing by Ohio EPA that the activity may proceed underthe 401 WQC for the NWP; or

    b. 45 calendar days have passed from Ohio EPA's receipt of the notification and the applicant has not received written notice from Ohio EPA that additional information is necessary or that an individual 401 WQC is required.

F. MISCELLANEOUS

1. Authorization under this certification does not relieve the certification holder from the responsibility of obtaining any other federal, state or local permits, approvals or authorizations.

2. For purposes of this certification the Corps' definition of single and complete linearand non-linear projects shall be applied to all conditions regarding impacts,mitigation, and director's authorizations. If a project includes impacts that are ineligible under this certification, an applicant must apply for an individual 401 WQC or a director's authorization for those impacts to resources that do not meetone or more of the terms and conditions within this certification.

3. For purposes of this certification temporary impact means temporary activities which facilitate the nature of the activity or aid in the access, staging, or development of construction that are short term in nature and which are expected,upon removal of the temporary

impact, to result in the surface water returning to conditions which support pre-impact biological function with minimal or no human intervention within 12 months following the completion of the temporary impact. Examples of temporary impacts include, but are not limited to access roads, work
pads, staging areas, and stream crossings, including utility corridors. Activities that result in a wetland conversion (e.g. forested to non-forested) are not considered temporary impacts.

4. In the event that the issuance of a nationwide permit by the Corps requires individual 401 WQC for an activity that constitutes an emergency as defined in 33CFR 325.2(e)(4), the limitation and/or condition requiring the individual 401 WQCis not applicable and the project may proceed upon approval by the Corps providedall other terms of this certification, including mitigation, are met.

5. Representatives from Ohio EPA, Division of Surface Water will be allowed to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of this certification. This includes, but is not limited to, access to and copies of any records that must be kept under the conditions of this certification; and, authorization to sample and/or monitor any discharge activity or mitigation site. Ohio EPA will make a reasonable attempt to notify the applicant of its intention to inspect the site in advance of that inspection.

6. Impacts as referenced in this certification consist of waters of the United States, that are also waters of the state, directly impacted by the placement of fill or dredged material.

7. In accordance with the procedures outlined in Appendix B, and where specificallyrequired in the special limitations and conditions of this certification, an applicant proposing to impact a wetland shall perform a wetland characterization analysis consistent with the Ohio Rapid Assessment Method (ORAM) to demonstrate wetland category for all projects requiring a PCN to the Corps or notification to Ohio EPA.

8. In accordance with the procedures outlined in Appendix C, and where specificallyrequired in the special limitations and conditions of this certification, an applicant proposing to impact a stream shall determine the eligibility of the stream proposedfor impact for all projects requiring a PCN to the Corps or notification to Ohio EPA.

Appendix A
Director's Authorization Process

1. To apply for a director's authorization for coverage under this certification, theapplicant must provide to Ohio EPA the following:

   a. A completed Director's Authorization Request Form available on the "Director'sAuthorization" tab located at: http://www.epa.ohio.gov/dsw/401/permitting.aspx;

   b. A copy of the pre-construction notification submitted to the Corps or a copy of thenotification to Ohio EPA, if no PCN is required, including all attachments;

   c. A copy of the provisional nationwide permit notification issued by the Corps including all attachments and special conditions, if any;

   d. A copy of the mitigation plan as approved by the Corps, if applicable;

   e. A detailed description of the conditions within this certification that are not being met;

   f. A detailed description of any NWP terms and conditions, including impact limits that the Corps district engineer has waived for the project, if applicable;

   g. A rationale of how the applicant believes the project will minimally impact water quality for those impacts to resources that do not meet one or more of the terms and conditions within this certification, including reason(s) why the resources are unable to be avoided;

   h. Comments received from the Ohio Department of Natural Resources and United States Fish and Wildlife Service regarding threatened and endangered species orcomments from an applicant that has been authorized by these entities to make threatened and endangered species determinations;

   i. A one-time review fee of $2000 for the project;

j. A detailed description of how the project meets public need, as defined in OAC 3745-1-50, for impacts to category 3 wetlands;

k. Documentation as required under Appendix B and C;

l. Any other documentation as may be required under this certification.

2. Upon receipt of the director's authorization request containing items a. through o.outlined above, excluding item c., the director will post the materials on the Ohio EPA, DSW webpage and invite public comment on the request for 15 days. The director will review and consider the comments received during the public commentperiod before making a decision on the director's authorization.

Appendix B
ORAM Verification Process

The ORAM results shall be included with the pre-construction notification (PCN) or notification to Ohio EPA if a PCN is not required by the Corps.

For each wetland proposed for impact the applicant must provide the following information for review in accordance with the ORAM verification procedure:

a. Complete ORAM forms prepared in accordance with the current ORAM manual;

b. Wetland delineation prepared in accordance with the current method required by the Corps;

c. A minimum of four high resolution color photographs taken while facing each of the four cardinal directions of each wetland proposed for impact. Photographs must accurately depict the quality of the wetland and may not include a majority of dying or dead vegetation or excessive cover due to seasonal conditions that vegetation and substrates cannot be observed, such as leaf litter, snow, or ice. Photographs deemed to be insufficient of representing the wetland will be required to be retaken once seasonal conditions are appropriate. Photographs shall be clearly labeled with the wetland name, direction, and date;

d. USGS topographical map, National Wetlands Inventory map, Soil Survey map and aerial images (both historical and current) which clearly outline the entire wetland boundary; and

e. Coordination letter from the Ohio Department of Natural Resources (ODNR), Natural Heritage Database indicating the presence or absence of state listed threatened or endangered species or comments from an applicant that has been authorized by ODNR to make threatened and endangered species determinations.

f. A detailed description of how the project meets public need, as defined in OAC 3745-1-50, for impacts to category 3 wetlands;

Appendix C
Stream Eligibility Determination Process

1. The stream eligibility results shall be included with the PCN or notification to Ohio EPA if a PCN is not required by the Corps. For each single and complete project with potential impacts to streams, where it is specifically required in the special limitations and conditions of this certification, the applicant shall determine if the streams proposed for impact are eligible for coverage under the 401 WQC for the Nationwide Permits using the following procedure:

   a. Navigate to the Ohio EPA 401 website at: http://www.epa.ohio.gov/dsw/401/permitting.aspx

   b. Click on the "Nationwide Permits" tab and then click on the "Stream Eligibility Web Map" link. To download the shapefile from the web map, click on the in the upper right-hand corner of the webpage and select download. To draw project boundaries directly on the web map, click on the in the upper left hand corner of the webpage.

      i. If any stream proposed for impact within the project area falls within an ineligible area, impacts to that stream are not eligible for coverage under the 401 WQC for the Nationwide Permits, and the applicant shall apply for an individual 401 WQC or a director's authorization.

      ii. If any stream proposed for impact within the project area falls within a possibly eligible area, the applicant shall take pH values, when applicable, and perform a Qualitative Assessment Habitat Evaluation Index (QHEI) or Headwater Habitat Evaluation Index (HHEI) assessment for the stream. Using the flow charts provided below, the applicant shall determine if impacts to that stream are eligible for coverage under the 401 WQC for the Nationwide Permits or if an individual 401 WQC is required.

      iii. If all streams proposed for impact within the project area are located within the eligible area, impacts to that stream are eligible for coverage under the 401 WQC for the Nationwide Permits and no further assessment is necessary.

   d. The applicant shall submit the following information with the PCN or notification to Ohio EPA:

i. Color map(s), no smaller than 8”x10”, which clearly shows the project boundary, streams proposed for impact, current aerial imagery, and the stream eligibility GIS layer.

ii. For each stream located in possibly eligible areas:

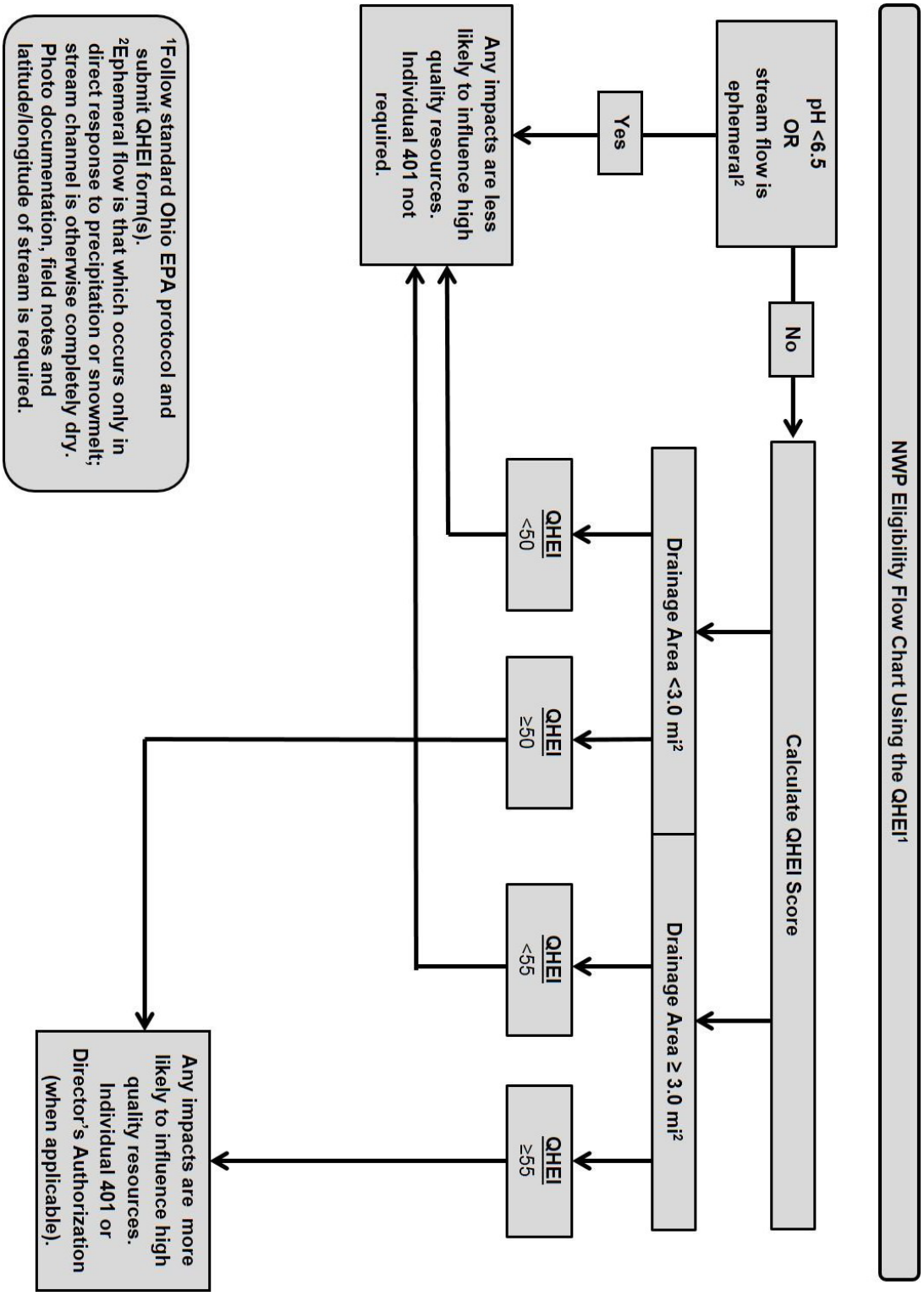
(1) A minimum of three high resolution color photographs taken of the proposed impact area, including one facing upstream, one facing downstream, and a close up which clearly depicts the substrate composition and size for each stream proposed for impact. Photographs must accurately depict the quality of the stream and may not include excessive cover due to seasonal conditions that substrates cannot be observed such as snow or ice. Photographs deemed to be insufficient of representing the stream will be required to be retaken once seasonal conditions are appropriate. Photographs shall be clearly labeled with the stream name, direction, and date;

(2) pH values for each stream proposed for impact taken within the proposed project area, where applicable;

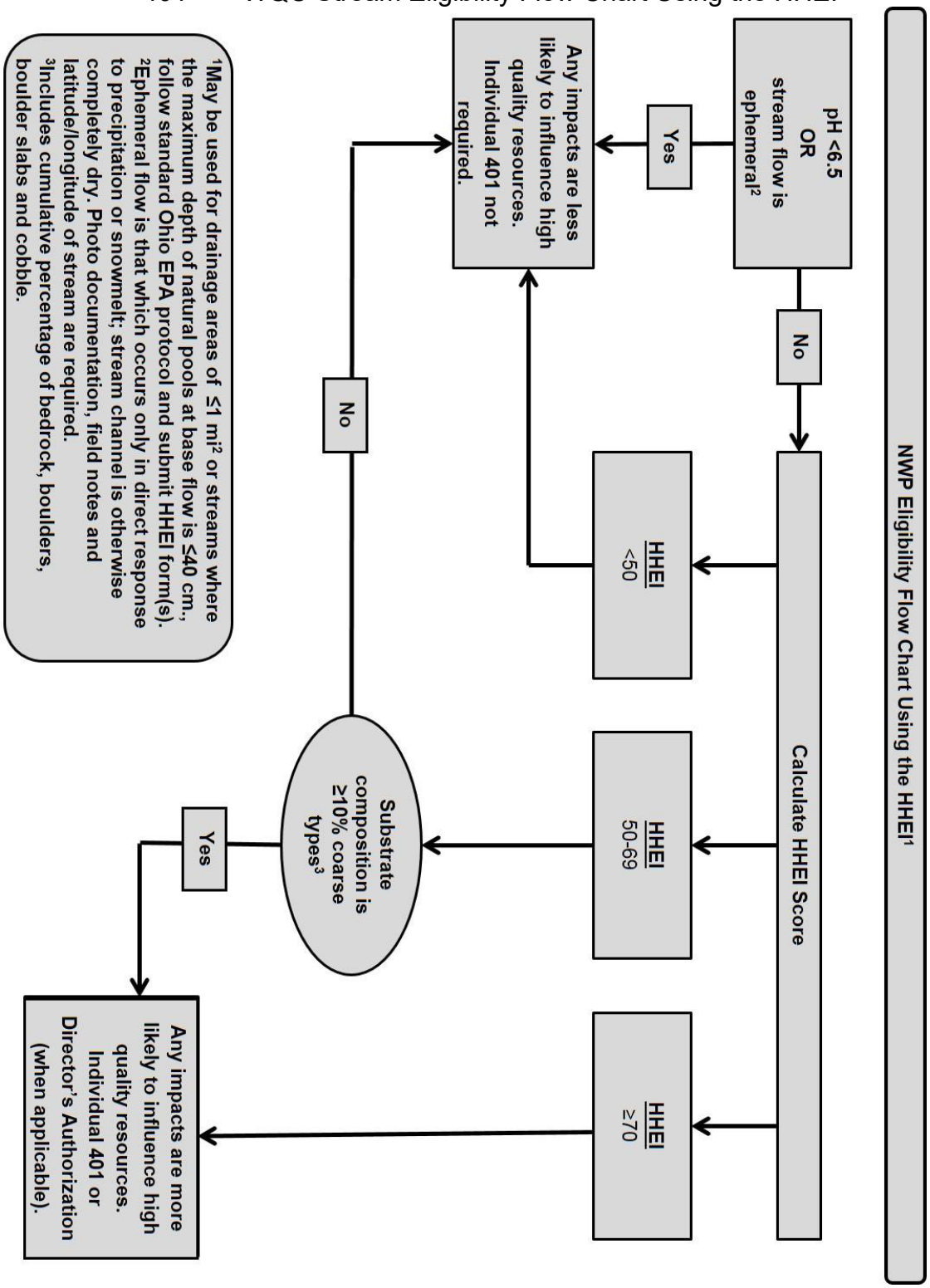
(3) Complete QHEI or HHEI sheets prepared in accordance with the current manuals; and

(4) Statement of whether the streams proposed for impact within the project area are eligible for coverage under the 401 WQC for the Nationwide Permits or if an individual 401 WQC or a director’s authorization is required.

401 WQC Stream Eligibility Flow Chart Using the QHEI



401 WQC Stream Eligibility Flow Chart Using the HHEI



G. Definitions

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

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

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

Discharge: The term ‘‘discharge’’ means any discharge of dredged or fill material into waters of the United States.

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

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

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

High Tide Line: The line of intersection of the land with the water’s surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high

tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

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

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

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

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

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

Non-tidal wetland: A non-tidal wetland is a wetland that is not subject to the ebb and flow of tidal waters. Nontidal wetlands contiguous to tidal waters are located landward of the high tide line (i.e., spring high tide line).

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

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

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

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

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

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

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

Rehabilitation: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic

resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.

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

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

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

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

Single and complete linear project: A linear project is a project constructed for the purpose of getting people, goods, or services from a point of origin to a terminal point, which often involves multiple crossings of one or more waterbodies at separate and distant locations. The term ‘‘single and complete project’’ is defined as that portion of the total linear project proposed or accomplished by one owner/developer or partnership or other association of owners/developers that includes all crossings of a single water of the United States (i.e., a single waterbody) at a specific location. For linear projects crossing a single or multiple waterbodies several times at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately.

Single and complete non-linear project: For non-linear projects, the term ‘‘single and complete project’’ is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete non-linear project must have independent

utility (see definition of ‘‘independent utility’’). Single and complete non-linear projects may not be ‘‘piecemealed’’ to avoid the limits in an NWP authorization.

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

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

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

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

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

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

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

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

Vegetated shallows: Vegetated shallows are special aquatic sites under the 404(b)(1) Guidelines. They are areas that are permanently inundated and under normal

circumstances have rooted aquatic vegetation, such as seagrasses in marine and estuarine systems and a variety of vascular rooted plants in freshwater systems.

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