



# Grand Portage Band of Lake Superior Chippewa

## RESERVATION TRIBAL COUNCIL

83 Stevens Road, PO Box 428

Grand Portage, Minnesota 55605

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### **RESOLUTION NO. 31-20**

#### **GRANTING CONDITIONAL 401 CERTIFICATION FOR THE US ARMY CORPS OF ENGINEERS NATIONWIDE GENERAL PERMITS WITH REGIONAL CONDITIONS**

The Grand Portage Reservation Tribal Council, on behalf of the Grand Portage Band of Chippewa, enacts the following resolution:

**WHEREAS**, the governing body of the Grand Portage Band of the Minnesota Chippewa Tribe is the Reservation Business Committee (also known as the Reservation Tribal Council (“RTC”)) pursuant to Article III, Section 2 of the Minnesota Chippewa Tribe Constitution; and

**WHEREAS**, the Grand Portage Band of the Minnesota Chippewa Tribe (“Band”) is a federally recognized Indian tribe possessing the inherent sovereign authority of an independent government; and

**WHEREAS**, the RTC has determined that water pollution endangers the health and welfare of Grand Portage members and residents of the Grand Portage Reservation, and adversely impacts tribal treaty fishing rights as well as cultural, religious, domestic, recreational, agricultural and other uses of the Reservation water resources;

**WHEREAS**, as an exercise of the Band’s inherent authority, the RTC enacted the Grand Portage Band of Chippewa Water Resources Ordinance (“Ordinance”) on July 25, 2001 and amended it on January 15, 2004 to protect the waters of the Grand Portage Reservation; and

**WHEREAS**, under the Ordinance, the RTC is empowered to act as the Water Resources Board (“Board”) created by the Ordinance; and

**WHEREAS**, in its capacity as Board, the RTC has taken all steps required under the Ordinance and federal law to grant conditional 401 certification for the Nationwide General Permits (“NWP”), a copy of which is attached to this Resolution; and

**WHEREAS**, in its capacity as Board, and after consultation with the Band’s Environmental Department, the RTC finds that conditional certification of the NWPs is necessary to protect (a) the public health and welfare of the Band, its members, and others living on its Reservation, and; (b) the present and future use of Reservation waters for public and private



water supplies; propagation of fish and aquatic life and wildlife;  
domestic and recreational purposes and agricultural; cultural, religious,  
commercial, industrial and other legitimate uses; and

**NOW, THEREFORE, BE IT RESOLVED**, that the RTC, in its capacity as Board, adopts the attached conditional certification of the NWP's, and directs the Environmental Department to submit the conditional certification to the U.S. Army Corps of Engineers for inclusion in the final permit in accordance with the Federal Clean Water Act.

### CERTIFICATION

We do hereby certify that the foregoing resolution was duly adopted by a vote of 4 for, 0 against, 0 silent, at a special meeting of the Reservation Tribal Council, a quorum present, held on the 20<sup>th</sup> day of December, 2020.

Handwritten signature of Robert F. Deschampe in black ink.

Robert F. Deschampe, Chairman

Handwritten signature of April M. McCormick in black ink.

April M. McCormick, Secretary-Treasurer

**Grand Portage Conditional Certification of**  
**U.S. Army Corps of Engineers Nationwide Permits with Regional Conditions**

In accordance with the Clean Water Act, 33 U.S.C. § 1344, the U.S. Army Corps of Engineers (“US ACE”) on September 15, 2020, publicly noticed reissuance of existing nationwide permits (“NWP”) with some modifications, and proposed five new NWPs necessary for work in streams, wetlands and other waters of the United States under Section 404 of the Clean Water Act. The St. Paul District of the US ACE has revoked NWPs 8,12,14,15, 21, 23, 24, 34, 49, and 50 A, B, C, and D, and; added 7 conditions.

The Grand Portage Band of Lake Superior Chippewa (the “Band”) is a federally recognized Indian tribe and has Treatment-in-the-same-Manner-As-a-State (“TAS”) for purposes of enforcement of federal water quality standards on the Band’s Reservation. Therefore, in accordance with Section 401 of the Clean Water Act, the Grand Portage Water Quality Standards (“Water Quality Standards”) and the Grand Portage Water Resources Ordinance (as amended in 2004, the “Water Resources Ordinance”), the Grand Portage Environmental Resources Board (“Board”) has examined the proposed NWPs. The Board has determined that there is reasonable assurance that the discharges authorized under the NWPs will not violate the Water Quality Standards. The Water Quality Standards and Water Resources Ordinance can be obtained at the email listed below or at: <https://www.1854treatyauthority.org/news-blog/public-notice.html>

The Board has determined that certain additional conditions are necessary to protect the following: (a) the public health and welfare of the Band, its members, and others living on the Band’s Reservation; and (b) the present and future use of Reservation Waters for public and private water supplies; propagation of fish, aquatic life, and wildlife; domestic and recreational purposes; and for agricultural, cultural, religious, commercial, industrial, and other legitimate uses. Accordingly, the following conditions apply to all NWPs which authorize the discharge of dredge or fill material into the waters of the Grand Portage Reservation. Grand Portage is responsible for interpretation of the requirements of these conditions as defined in the Water Resources Ordinance.<sup>1</sup>

In accordance with Water Quality Standards and the 1996 Cooperative Agreement between the Grand Portage Band of Chippewa and the Minnesota Pollution Control Agency, NWPs are denied within the no discharge zone of Lake Superior designated as Outstanding Resource Value Waters-Prohibited. These waters are located in the Grand Portage Zone of Lake Superior in “that portion of the Shoreline Waters north of latitude 47 degrees, 57 minutes, 13 seconds and east of Hat Point.”<sup>2</sup>

1. This certification applies only to those activities specifically authorized by the NWPs, as limited by Regional Conditions. These include but are not limited to the following:

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<sup>1</sup> Grand Portage Water Resources Ordinance, as amended, 2004, section 1.02 Authority.

<sup>2</sup> Cooperative Agreement between the Grand Portage Band of Lake Superior Chippewa and the Minnesota Pollution Control Agency, 1996. Attachment 1, Grand Portage Water Quality Standards.

- a. In accordance with Regional Conditions E, pre-construction notification (“PCN”) is required for temporary impacts to Waters of the Reservation (as defined in the Water Resources Ordinance) that would remain in place for more than 90 days that must be submitted to both the US ACE and the Board.<sup>3</sup>
  - b. In accordance with Regional Condition G, a pre-construction notification must be submitted to the US ACE and the Board<sup>4</sup>for projects that would impact bogs or fens within the Reservation, or wild rice waters identified in Grand Portage Water Quality Standards.<sup>5</sup>
2. For notification purposes in situations where an applicant is required to submit a pre-construction notification (“PCN”) to the US ACE, the Band requires that a copy of the PCN is submitted to the Board at the same time.<sup>6</sup> Once the applicant receives written confirmation from the US ACE that the project is authorized under this NWP, the applicant must provide a copy of the confirmation to the Board.<sup>7</sup> The PCN and US ACE confirmation should be sent in hard copy and via email to:

Grand Portage Environmental Resources Board  
P.O. Box 428  
Grand Portage, MN 55605  
Email: mwatkins@grandportage.com

3. All discharges of dredged and/or fill material authorized by the NWPs must comply with the Water Quality Standards and Water Resources Ordinance, as well as Applicable Federal Standards.<sup>8</sup>
4. All appropriate steps must be taken to ensure that petroleum products or other chemical pollutants are prevented from entering the Waters of the Reservation. All spills must be reported to the appropriate emergency-management agency, and measures must be taken to prevent the pollution of the Waters of the Reservation, including groundwater.<sup>9</sup>
5. Dewatering activities must not cause nuisance conditions as defined in Grand Portage Water Quality Standards.<sup>10</sup>
6. The burden is on the applicant to demonstrate compliance with the Water Quality Standards, the Water Resources Ordinance, and Applicable Federal Standards whether or not the application is ultimately eligible for an NWP.<sup>11</sup>

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<sup>3</sup> Grand Portage Water Resources Ordinance, section 3.03(3)(a).

<sup>4</sup> *Id.*

<sup>5</sup> Grand Portage Water Quality Standards, section V. Designated Uses.

<sup>6</sup> Grand Portage Water Resources Ordinance, as amended, 2004, Section 3.03.

<sup>7</sup> *Id.*, 3.03(3)(a).

<sup>8</sup> *Id.*, Section 3.03(A).

<sup>9</sup> Grand Portage Water Quality Standards, section XI. General Standards. Grand Portage Water Resources Ordinance as amended, Section 3.04 General Orders, and section 3.05 Special/Emergency Orders.

<sup>10</sup> Grand Portage Water Quality Standards, section XI. General Standards.

7. The Board retains full authority to ensure compliance with and to enforce the provisions of the Water Resource Ordinance and Water Quality Standards, Applicable Federal Standards, and these Certification conditions. Nothing herein affects the scope or applicability of other controlling tribal or federal requirements, including but not limited to impacts to cultural, historical, or archeological features or sites, or properties that may be eligible for listing on the National Register of Historic Places under the National Historic Preservation Act, 54 U.S.C. §§ 300101 *et seq.*<sup>12</sup>
8. Appeals related to Board actions taken in accordance with any of the preceding conditions may be heard by the Grand Portage Tribal Court.<sup>13</sup>

As provided by the Water Resources Ordinance, any interested party may request that a public hearing be scheduled regarding the Board's decision to grant conditional certification to the NWP's.<sup>14</sup> Such a request must be directed to the following address within 30 days of this notice:

Grand Portage Environmental Resources Board  
P.O. Box 428  
Grand Portage, MN 55605

Electronic versions of the proposed NWP's are available at the US ACE's Web site at: [federalregister.gov/documents/2020/09/15/2020-17116/proposal-to-reissue-and-modify-nationwide-permits](https://www.federalregister.gov/documents/2020/09/15/2020-17116/proposal-to-reissue-and-modify-nationwide-permits)

Questions regarding the NWP's and Regional Conditions for the NWP's can be directed to the US ACE District Office at Department of the Army, St. Paul District, Corps of Engineers, 180 5th St. East, Ste. 700, St. Paul, MN 55101-1678. The US ACE St. Paul District contact for the NWP's is Meghan Brown at telephone number (651) 290-5688 or e-mail at [Meghan.J.Brown@usace.army.mil](mailto:Meghan.J.Brown@usace.army.mil).

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<sup>11</sup> Grand Portage Water Quality Standards, section XIV. Enforcement, Grand Portage Water Resources Ordinance, sections 4.01 and 5.01.

<sup>12</sup> Grand Portage Water Resources Ordinance as amended, 2004, section 1.02.

<sup>13</sup> *Id.*, section 5.01.

<sup>14</sup> *Id.*, section 3.03, (3)(d)(iv).