



US Army Corps  
of Engineers®  
St. Paul District

## DEPARTMENT OF THE ARMY

### TRANSPORTATION REGIONAL GENERAL PERMIT

PERMIT: Transportation Regional General Permit

ISSUING OFFICE: U.S. Army Corps of Engineers, St. Paul District

EFFECTIVE DATE: December 12, 2023

EXPIRATION DATE: February 19, 2028

#### A. AUTHORIZATION AND APPLICABILITY

Regulated activities conducted in accordance with the terms and conditions of the Transportation Regional General Permit (RGP or permit) are authorized in the States of Wisconsin and Minnesota and on Indian Reservations in Wisconsin and Minnesota. Certain regulated activities require an applicant to submit pre-construction notification (PCN) and receive written St. Paul District Corps of Engineers Regulatory Branch (Corps) verification prior to commencing work. Refer to the appropriate sections of this permit for a description of RGP procedures, eligible activities, conditions, exclusions, and application instructions.

1. Regulatory Authorities: Section 404 of the Clean Water Act (33 U.S.C. 1344, Section 404) for discharges of dredged and fill material into waters of the US, and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403, Section 10) for work and structures that are located in, under, or over any navigable water of the US. Activities subject to Section 404 and Section 10 regulatory requirements are hereafter referred to as regulated activities.
2. Exclusions: The following activities are INELIGIBLE for Transportation RGP authorization:
  - a. Regulated activities that would divert more than 10,000 gallons per day of surface or ground water into or out of the Great Lakes Basin.
  - b. Regulated activities that may cause more than minimal adverse effects on tribal rights (including treaty rights), protected tribal resources, or tribal lands.
  - c. Regulated activities eligible for authorization under a valid Corps Special Area Management Plan (SAMP) general permit, see <http://www.mvp.usace.army.mil/Missions/Regulatory/Permitting-Process-Procedures/> for more information on SAMPs.
  - d. Regulated activities which would adversely affect public water supplies.
3. Expiration: Unless otherwise specified in the Corps letter verifying a project complies with the terms and conditions of this RGP, the time limit for completing work authorized by the permit ends upon the expiration date of the RGP. Activities authorized under this RGP that have commenced construction or are under contract to commence construction in reliance upon this RGP, will remain authorized provided the activity is completed within 12 months of the date of the RGP expiration, suspension, or revocation; whichever is sooner.
4. Section 401 Water Quality Certification: Where Section 404 activities are proposed, no RGP authorization is valid until a project proponent obtains a Clean Water Act Section 401 water quality certification (401 certification) or waiver from the appropriate water quality certifying agency; see general condition 25 in Section F below. In addition, some RGP authorizations may be subject to project-specific special conditions that will be specified in the Corps verification letter. This RGP does not obviate the need for other necessary federal, state, tribal, or local authorizations or permits.

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5. Bad River Band of Lake Superior Chippewa (Bad River Band) coordination areas: Corps coordination with the Bad River Band is required for certain regulated activities proposed within the Wisconsin hydrologic unit codes (HUCs) shown in Map 1. Additional information on PCN, reporting requirements and the coordination process can be found in Section D.

**CATEGORY 1: MINOR MAINTENANCE - LINEAR TRANSPORTATION**

Eligible Activities: Regulated activities required for crossings of waters of the US associated with minor repairs, rehabilitation, or replacement of a previously authorized<sup>1</sup> currently serviceable linear transportation project provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated in the original permit or the most recently authorized modification.

Regulated activities associated with new stormwater ponds; tributary channelization; slope widening; road widening; and new lanes, trails, railways, and runways are NOT authorized by this category. Activities authorized by this category are limited to:

- a. *Minor* deviations in a culvert or bridge configuration or filled area due to changes in materials, construction techniques, requirements of other regulatory agencies, or current construction codes, site conditions, or safety standards, including and limited to: the repair of a culvert aprons or bridge piles; lining or cleaning of pipes, culverts or bridges; extension of culverts without slope or shoulder widening; upsizing of culverts or flumes; maintenance of existing stream bank protection (not to expand original footprint); resetting or re-tying of aprons and culverts; and apron placements<sup>2</sup>; including the use of temporary discharges necessary to conduct those activities;
- b. Removal of previously authorized structures or fills, including temporary discharges necessary to conduct those activities;
- c. Repair, rehabilitation, or replacement of 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, including temporary discharges necessary to conduct those activities; and
- d. Removal of accumulated sediment and debris within the vicinity of bridges and culverted crossings, including temporary discharges necessary to conduct those activities<sup>2</sup>.

Activity restrictions:

- a. Removal of accumulated sediment and debris is limited to the minimum necessary to reestablish the approximate dimensions of a waterway in the vicinity of a structure to what existed when the structure was built and does not extend farther than 200 feet in any direction from the structure.
- b. All tributary channel modifications are limited to the minimum necessary for the repair, rehabilitation, or replacement of a structure or fill. Modifications to a tributary, including the removal of material from the tributary necessary to complete eligible activities, must be immediately adjacent to the structure or fill being maintained.
- c. All dredged or excavated material must be deposited and retained in an area that is not a water of the US.

No PCN or reporting is required unless triggered by the terms and condition of this permit (See Section D. Pre-Construction Notification).

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<sup>1</sup> Previously authorized under 33 CFR 330.3 or by a Corps permit.

<sup>2</sup> The undertaking of these activities does not always result in a discharge or require a Corps permit. This RGP category authorizes the repair, rehabilitation, or replacement of previously authorized structures or fills that do not qualify for the Clean Water Act (CWA) Section 404(f) exemptions such as the maintenance exemption or the maintenance (but not construction) of drainage ditch exemption.

## CATEGORY 2: MODIFICATION - LINEAR TRANSPORTATION

Eligible Activities: Regulated activities required for crossings of waters of the US associated with the reconstruction, expansion, modification, or improvement of existing linear transportation project (e.g., roads, highways, attached frontage roads, railways, trails, airport runways, and taxiways), including temporary structures, fills, work, and temporary mats necessary to construct the modification activity. This RGP category also authorizes minor realignments of existing transportation projects where there is a demonstrated need to improve safety, durability, or capacity, such as vertical and horizontal curve corrections or improvements to existing roadway intersections and interchanges. This RGP category also authorizes the construction of new non-motorized pedestrian, bicycle, or multi-use sidewalks and trails that are directly associated with and whose purpose is to enhance the safety and mobility of an existing public road system.<sup>3</sup>

### Activity Restrictions:

- a. Regulated activities cannot cause the loss of greater than 1.0 acre of waters of the US for each single and complete project (see definition of single and complete linear project), including the area of tributary loss. This limitation does not apply if the overall project would result in the loss of 3.0 acres or less of waters of the US.
- b. All tributary channel losses, including bank stabilization, are limited to the minimum necessary to construct or protect the linear transportation project and cannot exceed 500 linear feet<sup>4</sup> for each single and complete project, unless the Corps waives the 500 linear foot loss limit by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects. An applicant may request, in writing, a waiver from the Corps.

### An applicant must submit a PCN:

- a. If a single and complete linear project exceeds 0.1 acre of loss of waters of the US;
- b. If a single and complete linear project exceeds 300 linear feet of tributary loss, including bank stabilization;
- c. If a single and complete linear project exceeds 0.5 acre of temporary impact to waters of the US;
- d. If a waiver from General Condition 15 for the duration of temporary impacts in waters of the US is requested by the applicant (allowing temporary fill to remain in place longer than 90 days between May 15 and November 15);
- e. If triggered by the project's location or potential impacts as described in Section D. Pre-Construction Notification.

## CATEGORY 3: NEW CONSTRUCTION - LINEAR TRANSPORTATION

Eligible Activities: Regulated activities required for crossings of waters of the US associated with the construction of new linear transportation projects (e.g., roads, highways, railways, trails, airport runways, and taxiways). Examples of eligible regulated activities include those necessary for the construction of: (1) new roads or major realignments of existing roadways; (2) new railroad spurs or tracks; (3) new or detached frontage roads; (4) new airport runways; (5) new or detached trails; (6) associated linear infrastructure for those new construction projects; and (7) temporary structures, fills, and work, including the use of temporary mats, necessary to construct the linear transportation project.

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<sup>3</sup> This RGP category does not authorize new construction of detached or "stand-alone" trails that are not directly associated with the reconstruction, expansion, modification, or improvement of an existing public road system, such as snowmobile, ATV, and other recreational trails, regardless of their proximity to a roadway. These activities may be considered new construction under Category 3.

<sup>4</sup> When calculating loss of a tributary for a culvert replacement, the linear foot length and area in square feet or acres of the existing structure does not count toward the linear foot limits or acres of loss of waters of the US. Rip-rap and other tributary impacts count towards the tributary loss limit. See Section C. Calculating Impacts to Waters of the United States for more information.

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Activity Restrictions:

- a. Regulated activities cannot cause the loss of greater than 0.5 acre of waters of the US for each single and complete project, including the area of tributary loss (see definition of single and complete linear project).
- b. All tributary channel losses, including bank stabilization, are limited to the minimum necessary to construct or protect the linear transportation project and cannot exceed 500 linear feet for each single and complete project, unless the Corps waives the 500 linear foot loss limit by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects. An applicant may request, in writing, a waiver from the Corps.

An applicant must submit a PCN:

- a. If a single and complete linear project exceeds 400 square feet of loss of waters of the US;
- b. If a single and complete linear project exceeds 300 linear feet of tributary loss, including bank stabilization;
- c. If a single and complete linear project exceeds 0.5 acre of temporary impact to waters of the US;
- d. If a waiver from General Condition 15 for the duration of temporary impacts in waters of the US is requested by an applicant (allowing temporary fill to remain in place longer than 90 days between May 15 and November 15);
- e. If triggered by the project's location or potential impacts as described in Section D. Pre-Construction Notification.

#### **CATEGORY 4: NON-LINEAR TRANSPORTATION PROJECTS**

Eligible Activities: Regulated activities required for the construction, expansion, or maintenance of non-linear features associated with transportation projects, including the use of temporary discharges necessary to conduct those activities. Such projects may include: stormwater management facilities, vehicle maintenance or storage buildings, weigh stations, rest-stops, parking lots, train stations, aircraft hangars, and associated infrastructure.

Activity Restrictions:

- a. Regulated activities cannot cause the loss of greater than 0.5 acre of waters of the US, including the area of tributary loss (see definition of single and complete non-linear project).
- b. The discharge must not cause the loss of greater than 300 linear feet of a tributary, unless the Corps waives the 300 linear foot limit by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects (see definition of single and complete non-linear project). An applicant may request, in writing, a waiver from the Corps.

An applicant must submit a PCN:

- a. If the single and complete project exceeds 0.1 acre of loss of waters of the US;
- b. If the single and complete project exceeds 0.5 acre of temporary impact to waters of the US;
- c. If a waiver from General Condition 15 for the duration of temporary impacts in waters of the US is requested by an applicant (allowing temporary fill to remain in place longer than 90 days between May 15 and November 15);
- d. If a waiver from the 300 linear foot tributary limit is requested by an applicant; or
- e. If triggered by the project's location or potential impacts as described in Section D. Pre-Construction Notification.

#### **CATEGORY 5: TRANSPORTATION SURVEYING**

Eligible Activities: Regulated temporary activities required for surveying activities necessary for transportation projects, such as core sampling, exploratory type bore holes, exploratory trenching, soil surveys, sediment sampling, sample plots or transects for wetland delineations, historic resources surveys, and temporary access roads necessary to perform those activities.

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Activity Restrictions:

- a. Regulated activities for the recovery of historic resources are not authorized.
- b. Losses of waters of the US are not authorized.
- c. Bore holes must be properly sealed following completion of survey activities.

An applicant must submit a PCN:

- a. If the single and complete project exceeds 0.5 acre of temporary impact to waters of the US; or
- b. If triggered by the project's location or potential impacts as described in Section D. Pre-Construction Notification.

## B. USE OF MULTIPLE RGP CATEGORIES

Single and complete non-linear projects may not be "piecemealed" to avoid the limits in a general permit (nationwide, programmatic, or regional general permit). For example, multiple category 4 non-linear activities may be authorized by the Transportation RGP for an overall project, provided the cumulative loss of waters of the US does not exceed 0.5 acre. To illustrate this, consider two category 4 activities proposed as part of a new overall light-rail project, a proposed 0.25 acre loss for a stormwater pond and a 0.25 acre loss for a train station. Both are eligible for category 4 authorization, because the cumulative loss of waters of the US does not exceed 0.5 acre.

Categories 4 and 5 (non-linear single and complete projects) can be used in conjunction with other categories of this general permit.

Multiple linear categories (categories 1, 2, and 3) of this RGP may be utilized for the same single and complete linear project, provided the cumulative loss of waters of the US does not exceed the loss limit of the general permit category with the *highest* specified limit.

When general permit limits are exceeded, projects may be eligible for review and authorization by an individual permit.

## C. CALCULATING IMPACTS TO WATERS OF THE UNITED STATES

1. Waters of the US may include waterbodies such as streams, rivers, lakes, ponds, and wetlands (see Definitions, Section G).
2. Loss of waters of the US is the sum of all permanently adversely affected jurisdictional waterbodies for a single and complete project. Temporary impacts to waters of the US, discussed below, are calculated separately from losses of waters of the US and do not contribute to loss thresholds. Permanent adverse effects include filling, flooding, excavation, or drainage in waters of the US as a result of the regulated activity. Permanent adverse effects to waters of the US include regulated activities that change a waterbody to dry land, increase the bottom elevation of a waterbody (e.g. placement of riprap), decrease the bottom elevation of a waterbody (e.g. excavation of a sedge meadow wetland to shallow marsh), or change the use of a waterbody.
  - a. Losses of wetlands must be reported in either acres or square feet, as appropriate.
  - b. Losses of tributaries, ponds, and lakes must be reported in acres or square feet and linear feet below the plane of the ordinary high water mark. If regulated activities are proposed at multiple locations, they are added together to determine the overall amount of linear loss to waters of the US.
3. Temporary impacts to waters of the US include the sum of all regulated impacts to waters of the US for a single and complete project which are restored to pre-construction contours and elevations after construction. Examples of temporary impacts to waters of the US may include the placement of timber matting, installation of coffer dams, trenching and backfilling, and in many cases, mechanized land-clearing.
  - a. Temporary impacts to wetlands must be reported in either acres or square feet, as appropriate.
  - b. Temporary impacts to tributaries, ponds, and lakes must be reported in acres or square feet and linear feet

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below the plane of the ordinary high water mark. If regulated activities are proposed at multiple locations, temporary impacts must be added together to determine the overall amount of temporary linear impact.

4. Losses and temporary impacts to waters of the US do not include:
  - a. 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.
  - b. Impacts to linear ditches, as defined in Section G, provided the ditch does not abut a wetland. Sections of linear ditches in or abutting wetlands do contribute to loss and temporary impact thresholds.
5. The measurements of loss and temporary impact to waters of the US are for determining whether a project may qualify for the RGP and are not reduced by compensatory mitigation.

#### D. PRE-CONSTRUCTION NOTIFICATION (PCN) INFORMATION

Projects that meet the terms and conditions of this RGP and do not require pre-construction notification, as outlined below, may commence work after project proponents have carefully confirmed that the activity will be conducted in compliance with all applicable terms and conditions of the RGP. See list below for additional PCN requirements.

**For all activities which require PCN**, project proponents must obtain written Corps verification of RGP coverage before starting regulated work. The PCN must include all other nationwide permits, programmatic general permits, RGPs, or individual permits used or intended to be used to authorize any part of the overall linear and non-linear project (including all single and complete projects), including regulated activities that require Corps authorization but do not require PCN. If an individual permit is required for any one single and complete project, the overall project is ineligible for authorization under this permit.

If an activity does not specifically require a PCN (as described in each RGP category), reference the information below to determine if a PCN must be submitted and a written verification letter received prior to starting work.

**Reporting requirement** (applicable in areas shown on Map 1): Regardless of category, overall projects (defined in Section G) that do not require PCN, but would result in cumulative losses or temporary impacts of 0.5 acre or greater of waters of the US, are required to be reported to the Corps. The project proponent must minimally provide items 1 through 6, 9-10, and 12 below (Form and Content of PCN) to the Corps at least 30 days prior to starting work. This information will be used by the Corps to initiate coordination with the Bad River Band. Project proponents do not have to wait for written verification of coverage unless notified by the Corps.

Except for all Category 1 activities, PCN is required for regulated activities proposed in these Aquatic Resources:

1. Designated wild rice waters<sup>5, 6</sup>;
2. Bogs and fens<sup>5, 7</sup>;
3. Apostle Islands National Lakeshore and Madeline Island (WI only);
4. Coastal plain marshes, interdunal wetlands, and Great Lakes ridge and swale complexes (WI only)<sup>5</sup>;
5. Wetland sites designated by the Ramsar Convention (as of the date of publication, these include: the Horicon Marsh, Upper Mississippi River Floodplain wetlands, Kakagon and Bad River Sloughs, Door County Peninsula Coastal wetlands, Chiwaukee Illinois Beach Lake Plain, and Lower Wisconsin Riverway), see <https://rsis.ramsar.org/> (WI only).
6. State and Tribal waters identified as 1) Areas of Special Natural Resources Interest Outstanding and Exceptional Streams (WI), 2) Outstanding Resource Value Waters Prohibited and Restricted Streams (MN), 3) Exceptional Aquatic Life Use waters (MN), 4) Bad River Outstanding Tribal Resource Waters, Outstanding Resource Waters, and Exceptional Resource Waters<sup>8</sup>, and 5) all tributaries outside the Bad River Band Reservation illustrated in dark or light blue on Map 2.

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PCN is required for the following activities to comply with other federal laws:

1. Regulated activities which might affect any federally-listed threatened, endangered, or proposed threatened and endangered species, designated critical habitat, or proposed critical habitat unless ESA Section 7 consultation addressing the effects of the proposed activity has been completed by a federal applicant or lead federal agency.
2. Regulated activities which 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 unless the requirements of Section 106 of the NHPA have been satisfied by a federal applicant or lead federal agency.
3. Regulated activities which may result in disturbance or removal of human remains.
4. Regulated activities which require permission from the Corps pursuant to Section 408 because it will alter or temporarily or permanently occupy or use a Corps federally authorized civil works project.
5. Regulated activities in or which may affect the National Wild and Scenic River System, including designated portions of the St. Croix River in Minnesota and Wisconsin and the Wolf River in Wisconsin, 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.

Other activities which require PCN include:

1. Regulated activities in areas of suspected sediment or soil contamination, including but not limited to Superfund sites. Superfund sites in Minnesota or Wisconsin can be located by searching the EPA's website: <https://www.epa.gov/superfund/search-superfund-sites-where-you-live>.
2. Bridges, structures, and sunken vessels more than 50 years old, unless already determined ineligible for listing on National Register of Historic Places. Culverts that are constructed using pre-cast concrete, cast-in-place concrete, or corrugated metal are not subject to this PCN requirement.
3. All regulated activities which require a waiver to be eligible for authorization by the RGP.

Timing of PCN: Where required by the terms of this RGP, the prospective permittee must notify the Corps by submitting a PCN as early as possible. The Corps will 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. Generally, the Corps 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 Corps 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 Corps.

The prospective permittee shall not begin the activity until they are notified in writing by the Corps that the activity may proceed under the RGP with any special conditions imposed by the Corps.

Form and Content of PCN: The PCN must be in writing and should utilize the Minnesota Joint Waters Wetlands

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<sup>5</sup> Information about Wisconsin plant community types may be obtained from <http://dnr.wi.gov/topic/EndangeredResources/Communities.asp?mode=group&Type=Wetland>.

<sup>6</sup> Information regarding wild rice waters and their extent may be obtained from <https://www.dnr.state.mn.us/wildlife/shallowlakes/wildrice.html> and <https://gisdata.mn.gov/dataset/biota-wild-rice-lakes-dnr-wld> in Minnesota, <https://dnr.wisconsin.gov/topic/wildlifehabitat/rice.html> in Wisconsin, and an interactive map is provided at: <http://maps.glifwc.org/> (under Treaty Resources – Gathering).

<sup>7</sup> Additional information on bog and fen communities can be found at <http://www.mvp.usace.army.mil/missions/regulatory.aspx> and in Minnesota at <http://www.dnr.state.mn.us/npc/classification.html>.

<sup>8</sup> Information about WI ASNRI waters can be found at <https://dnr.wisconsin.gov/topic/SurfaceWater/swdv>. Information about MN ORVW and Exceptional AQL waters can be found at <https://www.pca.state.mn.us/business-with-us/water-quality-standards> and <https://mpca.maps.arcgis.com/apps/webappviewer/index.html?id=4642533a988b40adb63a0138b5f1d439>. Information about Bad River waters can be found at <https://www.arcgis.com/apps/View/index.html?appid=6f44c371217e4ee8b5f1c2c705c7c7c5>.

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Application, WI DNR application, or the Corps Application for Department of the Army Permit Form ENG 4345. A letter containing the required information may also be used. A complete PCN must include:

1. Contact information including the name, mailing address, email address, and telephone numbers of the prospective permittee and any third party agents.
2. Location of the proposed activity (i.e. section-township-range and latitude and longitude in decimal degrees).
3. A description of the proposed activity and its purpose; a description of any avoidance and minimization mitigation measures intended to reduce the adverse environmental effects caused by the proposed activity; and any and all other general or individual permits used or intended to be used to authorize any part of the overall proposed project including activities that require Corps authorization but do not require PCN.
4. A tabulation of all impacts to waters of the US, including the anticipated amount of loss of waters and temporary impacts expected to result from the proposed activity. Impacts to all waters of the US must be reported in acres or square feet. In addition, tributary, pond, and lake impacts must also be reported in linear feet. A table may be used to clearly and succinctly disclose this information (see Calculating Impacts to Waters of the United States, Section C).
5. Sketches, maps, drawings, and plans must be provided to show that the activity complies with the terms of the RGP. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity. Large and small-scale maps must be provided to show the project site location. Drawings and plans should be to scale, with scale included, and depict all identified aquatic resources and aquatic resource impact areas, including plan-view drawings on a recent aerial photograph, and cross-section and profile drawings where appropriate.
6. Identification of all aquatic resources on the project site and the acreage of each aquatic resource present. Aquatic resources must be identified by type (e.g. wetland, tributary, lake, man-made ditch, pond, etc.) and impacts must be identified by type (e.g. fill, excavation, etc.) and permanence (permanent or temporary). A wetland delineation may be required.
7. A statement describing how compensatory mitigation requirements will be satisfied, or an explanation why compensatory mitigation should not be required. See Mitigation, Section E for more information.
8. If the proposed project would impact a calcareous fen, the PCN must include a copy of the WI DNR authorization for the proposed regulated activity, or a copy of the approved MN DNR calcareous fen management plan specific to the project.
9. If any federally-listed threatened or endangered species (or species proposed for listing) or proposed or designated critical habitat might be affected or is in the vicinity of the regulated activity, 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 that utilize the designated critical habitat (or critical habitat proposed for such designation) that might be affected by the proposed activity. Federal applicants or applicants that have federal funding (or whose project otherwise involves a lead federal agency) must provide documentation demonstrating compliance with ESA Section 7.
10. If the activity might have the potential to cause effects to a historic property listed on, 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 and include a vicinity map indicating the location of the historic property. Federal applicants or applicants that have federal funding (or whose project otherwise involves a lead federal agency) must provide documentation demonstrating compliance with Section 106 of the NHPA.
11. If an activity is proposed in a component of the National Wild and Scenic River System (including the St. Croix River in Minnesota and Wisconsin and the Wolf River in Wisconsin) 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.”
12. The PCN must specify how long temporary impacts and structures will remain in place and include a restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-project



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conditions (see general conditions 14 and 15).

13. If a waiver for a specific category or condition of the permit is proposed (e.g. from a linear tributary impact limit or duration of temporary impact), the PCN must include an explanation of the need for a waiver and why the applicant believes the impacts would result in minimal individual and cumulative adverse environmental effects.
14. For an activity that requires permission from, or review by, the Corps pursuant to Section 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 PCN 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 the Corps civil works project.

**Agency Coordination:** Agency coordination is required for activities which require a waiver to be eligible for authorization by this RGP, except for a waiver of General Condition 15 for the duration of temporary impacts in waters of the US.

When agency coordination is required, the district engineer will immediately provide a copy of the complete PCN to the appropriate Federal, state, or tribal offices (EPA, FWS, state and tribal natural resource or water quality agency). Agencies will have 10 calendar days from the date the material is transmitted to notify the district engineer 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 contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the PCN. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity, 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. The district engineer will indicate in the administrative record associated with each PCN that the resource agencies' concerns were considered.

**Tribal Coordination:** Tribal coordination is required for all activities which require PCN and are located within the exterior boundaries of federally-recognized Indian reservations. When tribal coordination is required, the district engineer will immediately provide a copy of the complete PCN to the affected tribe. The tribe will have 10 calendar days from the date the material is transmitted to notify the district engineer that they intend to provide substantive, site-specific comments. If contacted by the affected tribe, the district engineer will wait an additional 15 calendar days before making a decision on the PCN. The district engineer will fully consider the tribe's comments received within the specified time frame concerning the proposed activity. The district engineer will indicate in the administrative record associated with each PCN that the tribe's concerns were considered.

**Bad River Band Coordination** (required for all reporting and PCN activities proposed within areas shown on Map 1): Within 7 calendar days the Corps will transmit the reporting information or PCN directly to the Bad River Band's Mashkiziibii Natural Resources Department (via email [wqs@badriver-nsn.gov](mailto:wqs@badriver-nsn.gov), [wetlands@badriver-nsn.gov](mailto:wetlands@badriver-nsn.gov), and [waterreg@badriver-nsn.gov](mailto:waterreg@badriver-nsn.gov)). The Bad River Band will have 15 calendar days from the date transmitted to notify the district engineer and project proponent that they intend to provide substantive, project-specific comments related to the water quality effects of the proposed regulated activity. When this notification occurs, the project proponent shall not begin the regulated activity unless and until they are authorized in writing by the Corps. The Bad River Band will have 20 calendar days from the notification date to describe to the Corps any anticipated effects of the regulated activity to Bad River Band's water quality, including any recommended conditions which may address those concerns. The district engineer will fully consider the Bad River Band's comments received within the specified time frame before making a decision. The district engineer will indicate in the administrative record how the Bad River Band's concerns were considered. The Corps will separately share with Bad River Band the Corps response to comments received before, or concurrent with, any final Corps decision.

## E. MITIGATION

In accordance with the Federal Mitigation Rule (33 CFR part 332), the Section 404(b)(1) guidelines (40 CFR part 230), and

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current Corps policies, guidelines, and procedures for compensatory mitigation, regulated activities must be designed and constructed to avoid and minimize (mitigate) 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). Mitigation includes actions which may avoid, minimize, rectify, reduce, or compensate for adverse environmental effects or activities which may otherwise be contrary to the public interest. Regulated activities which the Corps believes do not mitigate adverse environmental effects or are contrary to the public interest are ineligible for authorization by this RGP and will be evaluated by the Corps using individual permit procedures.

After all practicable steps to avoid and minimize adverse effects to waters of the US have been considered, the Corps may require compensatory mitigation to ensure that the regulated activity results in no more than minimal adverse environmental effects or will not be contrary to the public interest. In reviewing the complete PCN for the proposed activity, the Corps will determine whether the activity authorized by the RGP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. The Corps will issue the RGP verification for that activity if it meets the terms and conditions of the RGP, unless the Corps determines, after considering compensatory 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. When this occurs, the Corps will exercise discretionary authority to require an individual permit evaluation for the proposed regulated activity.

Regulated activities eligible for this RGP must include a statement describing how compensatory mitigation requirements will be satisfied, or an explanation why compensatory mitigation should not be required for proposed impacts to waters of the US. Project proponents may propose the use of mitigation banks, in-lieu fee programs, or permittee-responsible mitigation. When developing a compensatory mitigation proposal, the project proponent must consider appropriate and practicable options consistent with the framework at 33 CFR 332.3(b). Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of the current Corps policies, guidelines, procedures, and 33 CFR 332 (the Mitigation Rule).

Information regarding current Corps policies and guidelines about compensatory mitigation in Minnesota and Wisconsin may be viewed online at [www.mvp.usace.army.mil/Missions/Regulatory/Mitigation](http://www.mvp.usace.army.mil/Missions/Regulatory/Mitigation). Information regarding existing banks and in-lieu fee programs is available online at [www.ribits.usace.army.mil](http://www.ribits.usace.army.mil). Nationally applicable information, including the Mitigation Rule, may be read online at [http://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/mitig\\_info/](http://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/mitig_info/).

## F. GENERAL CONDITIONS

To qualify for this RGP authorization, the prospective permittee must comply with the following conditions, as applicable, in addition to any category-specific requirements and project-specific special conditions imposed by the Corps.

1. Compliance:
  - a. The permittee is responsible for ensuring that whoever performs, supervises, or oversees any portion of the physical work associated with the construction of the project has a copy of and is familiar with all the terms and conditions of the RGP and any special (permit-specific) conditions included in any written verification letter from the Corps.
  - b. The activity must also comply with any special conditions added by the state, tribe, or U.S. EPA in its Section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination. The permittee is ultimately responsible for ensuring compliance with all the terms and conditions of the RGP.
  - c. Any authorized structure or fill must be properly maintained, including maintenance to ensure public safety and compliance with applicable RGP general conditions, as well as any activity-specific conditions added by the Corps to an RGP authorization.

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2. Compliance Certification: Each permittee who receives an RGP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and implementation of any required compensatory mitigation. The Corps will provide the permittee the certification document with the RGP verification letter. The completed certification document must be submitted to the Corps within 30 days of completion of the authorized activity or the implementation of any required compensatory mitigation, whichever occurs later.
3. Site Inspection: The permittee shall allow representatives from the Corps to inspect the proposed project site and the authorized activity to ensure that it is being, or has been, constructed and maintained in accordance with the RGP authorization.
4. Migratory Birds and Bald and Golden Eagles: The permittee is responsible for ensuring their action complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting appropriate local office of the U.S. Fish and Wildlife Service (FWS) to determine applicable measures to reduce impacts 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.
5. Endangered Species:
  - a. No activity is authorized under this RGP which is likely to directly or indirectly jeopardize the continued existence of a federally threatened or endangered species or a species proposed for such designation, as identified under the Endangered Species Act (ESA), 50 CFR 402, or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under the RGP which “may affect” a listed species or critical habitat, unless ESA Section 7 consultation addressing the effects of the proposed activity has been completed. Direct effects are the immediate effects on listed species and critical habitat caused by the RGP activity. Indirect effects are those effects on listed species and critical habitat that are caused by the RGP activity and are later in time, but still are reasonably certain to occur.
  - b. As a result of formal or informal consultation with the FWS, the Corps may add species-specific permit conditions to the RGP verification.
  - c. Information on the location of federally threatened and endangered species and their critical habitat can be obtained directly from the offices of the FWS on their web page at [www.fws.gov/ipac](http://www.fws.gov/ipac).
6. Calcareous Fens: The permittee may not complete regulated activities in a calcareous fen, unless the Wisconsin Department of Natural Resources has authorized the proposed regulated activity, or the Minnesota Department of Natural Resources has approved a calcareous fen management plan specific to the project. A list of known Minnesota calcareous fens can be found at: [http://files.dnr.state.mn.us/eco/wetlands/calcareous\\_fen\\_list.pdf](http://files.dnr.state.mn.us/eco/wetlands/calcareous_fen_list.pdf). Information about calcareous fens in Wisconsin can be found at <http://dnr.wi.gov/topic/EndangeredResources/Communities.asp?mode=group&Type=Wetland>.
7. Wild and Scenic Rivers: The permittee may not complete regulated activities which may affect or are located in a designated portions of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status.
8. Historic Properties, Cultural Resources:
  - a. No activity which may affect historic properties listed or potentially eligible for listing on the National Register of Historic Places is authorized until the requirements of Section 106 of the National Historic Preservation Act (Section 106) have been satisfied. If PCN is required for the proposed activity, the federal project proponent should follow their own procedures for complying with the requirements of Section 106 and provide documentation of compliance with those requirements..
  - b. Information on the location and existence of historic and cultural resources can be obtained from the State Historic Preservation Office, Tribal Historic Preservation Offices, and the National Register of Historic Places.
  - c. Rock or fill material used for activities authorized by this permit must either be obtained from existing quarries or, if a new borrow site is excavated to obtain fill material, the Corps must be notified prior to the use of the new site to determine whether a cultural resources survey of the site is necessary.

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9. Discovery of Previously Unknown Remains and Artifacts: If any previously unknown historic, cultural, or archeological remains and artifacts are discovered while accomplishing the activity authorized by this permit, the permittee must immediately notify the Corps 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 Corps 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.
10. Burial Sites: Burial sites, marked or unmarked, are subject to state law (Wisconsin Statute 157.70 and Minnesota Statutes 306 and 307.08). Native American burial sites on federal or tribal land are subject to the provisions of Native American Graves Protection and Repatriation Act (NAGPRA). Regulated activities may not result in disturbance or removal of human remains until disposition of the remains has been determined by the appropriate authority under these laws, and the work is authorized by the Corps. Regulated activities which result in an inadvertent discovery of human remains must stop immediately, and the Corps, as well as the appropriate state and tribal authority, must be notified. Regulated work at inadvertent discovery sites requires compliance with state law and NAGPRA, as appropriate, prior to re-starting work.
11. Federally Authorized Corps Civil Works projects: A permittee is not authorized to begin any regulated activities described in this RGP if activities will alter or temporarily or permanently occupy or use a Corps federally authorized civil works project, unless the appropriate Corps office issues a Section 408 permission to alter, occupy, or use the Corps civil works project (pursuant to 33 U.S.C. 408) and the Corps issues written RGP verification. Examples of federal projects include, but are not limited to, works that were built by the Corps and are locally maintained (such as local flood control projects) or operated and maintained by the Corps (such as locks and dams).
12. 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.
13. 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).
14. Restoration of Temporary Impacts: All temporary impacts in waters of the US, including discharges resulting from side casting material excavated from trenching, that occur as a result of the regulated activity must be fully contained with appropriate erosion control or containment methods, be restored to pre-construction contours and elevations, and, as appropriate, revegetated with native, non-invasive vegetation, unless otherwise conditioned in a Corps RGP verification. All temporary access roads constructed in waters of the US must be properly bridged or culverted to maintain surface flows. In temporarily excavated wetlands, the top 6 to 12 inches of the excavation should normally be backfilled with topsoil originating from the wetland. No temporary excavation area, including, but not limited to trenches, may be constructed or backfilled in such a manner as to drain waters of the United States (e.g., backfilling with extensive gravel layers, creating a French drain effect).
15. Duration of Temporary Impacts: Temporary impacts in waters of the U.S., including wetlands, must be avoided and limited to the smallest area and the shortest duration required to accomplish the project purpose.
  - a. Unless otherwise conditioned in a Corps RGP verification, temporary impacts may not remain in place longer than 90 days between May 15 and November 15. Before those 90 days have elapsed, all temporary discharges must be removed in their entirety.
  - b. If the temporary impacts would remain in place for longer than 90 days between May 15 and November 15, the PCN must include a request for a waiver from this condition and specify how long temporary impacts will remain and include a restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-project conditions. The permittee must remove the temporary impacts in their entirety in accordance with the activity authorized in their permit verification.

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16. Best Management Practices (BMPs): To minimize adverse effects from soil loss and sediment transport that may occur as a result of the authorized work, appropriate BMPs must be implemented and maintained. For authorized work above an OHWM the BMPs must remain in place until the affected area is stabilized with vegetation or ground cover. For all authorized work below an OHWM, BMPs are required and must prevent or minimize adverse effects (e.g., total suspended solids or sedimentation) to the water column outside of the authorized work area. Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance. All BMPs must be inspected and properly maintained following storm events to ensure they are operational. All exposed slopes and stream banks must be stabilized within 24 hours after completion of all tributary crossings.
17. Culverts and Crossings: Unless an RGP verification authorizes otherwise, replacement and installation of culverts or crossings authorized by an RGP are to follow (or be restored to) the natural alignment and profile of the tributary. The culverts or bridges must adequately pass low flow and bankfull events, bedload, sediment load, and provide site-appropriate fish and wildlife passage. Example design elements include recessing single culverts to accommodate natural bankfull width and adjusting additional culvert inverts at an elevation higher than the bankfull elevation.
18. Aquatic Life Movements: No regulated 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 resources. If a bottomless culvert cannot be used, then the crossing should be designed and constructed to minimize adverse effects to aquatic life movements.
19. 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 sedimentation) of a designated or known spawning area are not authorized.
20. Hard Armoring: For RGP categories that allow for the use of hard armoring for bank stabilization, only suitable material must be used and be of a size and configuration sufficient to prevent its movement from the authorized alignment by natural forces under normal or high flows.
21. Pollutant or Hazardous Waste Spills: The permittee is responsible for removing pollutants and hazardous materials and for minimizing any contamination resulting from a spill in accordance with state and federal laws. In accordance with applicable state, tribal and federal laws and regulations, if a spill of any potential pollutant or hazardous waste occurs, it is the responsibility of the permittee to immediately notify the National Response Center at 1-800-424-8802 or [NRC@uscg.mil](mailto:NRC@uscg.mil) AND  
IN WISCONSIN: the WI DNR Spills Team at 1-800-943-0003, or  
IN MINNESOTA: the Minnesota State Duty Officer at 1-800-422-0798.  
IN WISCONSIN HUC10s identified on Map 1: the Bad River Band of Lake Superior Chippewa at [brownfields@badriver-nsn.gov](mailto:brownfields@badriver-nsn.gov), [nrdirector@badriver-nsn.gov](mailto:nrdirector@badriver-nsn.gov), and [wqs@badriver-nsn.gov](mailto:wqs@badriver-nsn.gov).
22. Clean Construction Equipment: To prevent the spread of invasive species, all construction equipment must be clean prior to entering and before leaving the work site.
23. 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 US.
  - c. For activities subject to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403), the permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the

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United States. No claim shall be made against the United States on account of any such removal or alteration.

24. Fills Within 100-Year Floodplains: The regulated activity must comply with applicable FEMA-approved state or local floodplain management requirements.
25. Tributary Modifications: When stream channelization is performed with the construction of a road crossing, both activities should be considered as a single and complete project, which may be authorized by another form of authorization. The Corps does not consider installation of a culvert in a stream bed as stream channelization as long as those activities are conducted in accordance with the terms of the categories described in this permit. Unless the general permit verification authorizes otherwise, replacement and installation of culverts or crossings authorized are to follow (or be restored to) the natural alignment and profile of the tributary, see General Condition 17. Culverts and Crossings.
26. Section 401 Clean Water Act, Water Quality Certification: All regulated activities authorized by this RGP pursuant to Section 404 of the Clean Water Act require Section 401 Clean Water Act certification or waiver to be considered valid.
27. Transfer of Regional General Permit Verifications: If the permittee sells the property associated with a regional general permit verification, the permittee may transfer the regional general permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the regional general 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 regional general permit are still in existence at the time the property is transferred, the terms and conditions of this regional general permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this regional general permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below."

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

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

## 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.

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

Discharge: The term discharge of dredged material is defined at 33 CFR 323.2(d) and the term discharge of fill material is defined at 33 CFR 323.2(f).

Exploratory trenching: temporary excavation of the upper soil profile to expose bedrock or substrate for the purpose of mapping or sampling the exposed material.

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 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

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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 regulated activity and are later in time or farther removed in distance but are still reasonably foreseeable.

Linear ditch: A defined channel constructed adjacent to a linear transportation facility (e.g., roads, highways, railways, trails, airport runways, and taxiways, etc.) to convey runoff from the linear facilities and from areas which drain toward the linear facilities. The term linear ditch does not include natural tributaries, relocated natural tributaries, or modified natural tributaries.

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

Ordinary high water mark (OHWM): An ordinary high water mark is a line on the shore established by the fluctuations of water and indicated by physical characteristics, or by other appropriate means that consider the characteristics of the surrounding areas.

Overall project: The aggregate of all single and complete projects related to the same purpose, including both linear and non-linear activities with regulated losses and temporary impacts to waters of the US.

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 (PCN): A request submitted by the project proponent to the Corps for confirmation that a particular activity is verified by a general permit. The request may be a permit application, letter, or similar document that includes information about the proposed work and its anticipated environmental effects. PCN may be required by the terms and conditions of this regional general permit.

Protected tribal resources: Those natural resources and properties of traditional or customary religious or cultural importance, either on or off Indian lands, retained by, or reserved by or for, Indian tribes through treaties, statutes, judicial decisions, or executive orders, including tribal trust resources.

Single and complete linear project (categories 1-3 and temporary access roads fills): 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 overall 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 US (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 this general permit 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. The definition of "single and complete linear project" does not include the term "independent utility" because each crossing of waters of the US is needed for the single and complete linear project to fulfill its purpose of transporting people, goods, and services from the point of origin to the terminal point.

Single and complete non-linear project (categories 4 and 5): For non-linear projects, the term "single and complete project" is defined at 33 CFR 330.2(i) as the overall 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. Single and complete non-linear projects may not be "piecemealed" to avoid the limits in an RGP authorization. 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.

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 or improve the quality (i.e., by reducing the concentration of nutrients, sediments, hazardous substances

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and other pollutants) of stormwater runoff.

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.

Tribal lands: Any lands which are 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.

Tributary: For the purposes of this permit, a water that contributes flow, either directly or through another water to a traditionally navigable water or interstate water (including wetlands) and that is characterized by the presence of the physical indicators of bed and banks and ordinary high water mark. A tributary can be a natural, man-altered, or man-made water and includes waters such as rivers, streams, canals, and ditches.

Waiver: An approval from the Corps which allows an applicant to exceed the activity restrictions or conditions described in an RGP. Waivers may only be considered when expressly indicated as available in an RGP and will only be granted once the Corps has made a written determination that the RGP activity will result in only minimal individual and cumulative adverse environmental effects. When a waiver is required, an applicant cannot start work until they have received an RGP verification letter with waiver approval.

Waterbody: For purposes of this RGP, a waterbody is a jurisdictional water of the US. Examples of “waterbodies” include streams, rivers, lakes, ponds, and wetlands.

## H. FURTHER INFORMATION

1. Congressional authorities: The permittee has been authorized to undertake the activity described above pursuant to Section 404 of the Clean Water Act (33 U.S.C 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).
2. The Corps retains discretionary authority to require an individual permit for any activity eligible for authorization by an RGP based on concern for the aquatic environment or for any other factor of the public interest.
3. Limits of this authorization:
  - a. This RGP does not obviate the need to obtain other federal, state, or local authorizations required by law;
  - b. This RGP does not grant any property rights or exclusive privileges;
  - c. This RGP does not authorize any injury to the property or rights of others; and
  - d. This RGP does not authorize interference with any existing or proposed federal project.
4. Limits of federal liability: In issuing this permit, the Federal Government does not assume any liability for the following:
  - a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes;
  - b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest;
  - c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit;
  - d. Design or construction deficiencies associated with the permitted work; or
  - e. Damage claims associated with any future modification, suspension, or revocation of this permit.
5. Reliance on permittee’s data: The determination of this office that an activity is not contrary to the public interest will be made in reliance on the information provided by the project proponent.
6. Re-evaluation of decision: This office may reevaluate its decision for an individual verification under this general permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:



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- a. The permittee fails to comply with the terms and conditions of this permit;
  - b. The information provided by the permittee in support of the pre-construction notification proves to have been false, incomplete, or inaccurate (See 5 above); or
  - c. Significant new information surfaces which this office did not consider in reaching the original decision. Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring the permittee to comply with the terms and conditions of their permit and for the initiation of legal action where appropriate. The permittee will be required to pay for any corrective measures ordered by this office, and if the permittee fails to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill the permittee for the cost.
7. This office may also reevaluate its decision to issue this RGP at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, significant new information surfaces which this office did not consider in reaching the original public interest decision. Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.

## I. CORPS DECISION

In reviewing the PCN for the proposed activity, the Corps will determine whether the activity authorized by the RGP 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 RGP, the Corps should issue the RGP verification for that activity if it meets the terms and conditions of that RGP, unless the Corps 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 individual crossings of waters of the US to determine whether they individually satisfy the terms and conditions of the RGPs, as well as the cumulative effects caused by all of the crossings authorized by RGP. If an applicant requests a waiver for any limit where waivers are indicated as available, the Corps will only grant the waiver upon a written determination that the RGP activity will result in only minimal individual and cumulative adverse environmental effects.

When making minimal adverse environmental effects determinations the Corps will consider the direct and indirect effects caused by the RGP activity. The Corps will also consider the cumulative adverse environmental effects caused by activities authorized by the RGP and whether those cumulative adverse environmental effects are no more than minimal. The Corps will consider site specific factors, such as the environmental setting in the vicinity of the RGP activity, the type of resource that will be affected by the RGP activity, the functions provided by the aquatic resources that will be affected by the RGP 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 RGP 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 Corps. The Corps may add case-specific special conditions to the RGP authorization to address site-specific environmental concerns.

The Corps will consider any proposed compensatory mitigation or other mitigation measures the applicant has included in the proposal to inform decisions regarding 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 Corps determines that the activity complies with the terms and conditions of the RGP and that the adverse environmental effects are no more than minimal, after considering mitigation, the Corps will notify the permittee and include any activity specific

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conditions in the RGP verification the Corps deems necessary. Conditions for compensatory mitigation requirements must comply with the appropriate provisions at 33 CFR 332.3(k). When compensatory mitigation is required, the Corps must approve the final mitigation plan before the permittee commences work in waters of the US, unless the Corps 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 Corps determines that the adverse environmental effects of the proposed activity are more than minimal, then the Corps will notify the applicant of next steps as described in 33 CFR 325.2.