



US Army Corps  
of Engineers  
St Paul District

APPLICANT: General Public

# Public Notice

ISSUED: 25 April 2024

EXPIRES: 27 May 2024

REFER TO: 96-06788-GP  
96-06789/06790-GP  
96-06791-GP  
96-06792-GP-

SECTION: 404 - Clean Water Act

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## PROPOSED REAUTHORIZATION of the GENERAL PERMITS for the CITY OF SUPERIOR SPECIAL AREA MANAGEMENT PLAN

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### 1. PURPOSE and BACKGROUND

The St. Paul District of the U.S. Army Corps of Engineers (Corps) is proposing to reauthorize General Permits (GPs) for the City of Superior, Wisconsin, Special Area Management Plan (SAMP). These GPs are proposed to provide streamlined Section 404 Clean Water Act authorization for discharges of fill material in eligible wetlands associated with residential, public, institutional, and commercial/industrial developments within the City of Superior, Wisconsin.

The City of Superior’s SAMP is a resource management tool for community planning that informs the wetland regulatory process for the City of Superior and the Corps. The SAMP identifies high to low quality functioning wetlands with the purpose of preserving high functioning wetlands. Only wetlands identified as having degraded functions are eligible for permitting under the Superior SAMP GPs. Less than 15% of wetlands within the City of Superior SAMP are eligible for the SAMP GPs. Wetlands rated high for plant integrity or wildlife habitat; located within shoreland or floodplain zoning designations; with known occurrences of state or federally listed threatened, endangered, or special concern plant species; within designated environmentally sensitive areas; and wetlands identified by the Wisconsin Department of Natural Resources as important wildlife corridors would remain ineligible for SAMP GP authorization.

The Corps originally issued the Superior SAMP GPs in 1996 to assist in better balancing the community's needs for economic growth and development with its equally important responsibility to manage and preserve wetlands. Since then, the SAMP has been refined several times and the Corps has reissued the SAMP GPs every five years. This reissuance of the GPs would be based on the updated SAMP IV. The SAMP IV assessed a total of 4,240.1 acres of wetlands, of which 609.7 acres would remain eligible and 3,618.5 acres would remain ineligible for the GPs.

Over the last five years, the SAMP GPs authorized discharges of fill material over a total of approximately 12.9 acres of eligible wetlands, which required 15.1 credits of wetland compensatory mitigation (see table below). It is anticipated that a similar amount of wetland loss and compensatory mitigation offset would occur over the next 5 year GP cycle.

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DA Number	PNN	Worktype	Project Name	End Date	Wetland Fill Acres	Mitigation Credits
MVP-2017-02037	Superior SAMP - Commercial/Industrial	\DEVELOPMENT\COMMERCIAL	Superior, City of / Friendsuh Airplane Hanger	7/10/2020	0.06	0.07
MVP-2019-00923	Superior SAMP - Commercial/Industrial	\DEVELOPMENT\INDUSTRIAL	Superior Refining Company (Husky Energy) / Triangle Laydown Yard	7/22/2019	3.65	5.29
MVP-2019-00923	Superior SAMP - Commercial/Industrial	\DEVELOPMENT\INDUSTRIAL	Superior Refining Company (Husky Energy) / Triangle Laydown Yard	8/8/2019	3.17	4.6
MVP-2019-02784	Superior SAMP - Commercial/Industrial	\TRANSPORTATION\RAIL\TRACI	C. Reiss Superior Stormwater Pond	6/22/2022	0.8	0.95
MVP-2020-01228	Superior SAMP - Commercial/Industrial	\DEVELOPMENT\COMMERCIAL	Saratoga Liquor / Access Drive	7/9/2020	0.21	0.25
MVP-2020-01228	Superior SAMP - Commercial/Industrial	\DEVELOPMENT\INDUSTRIAL	Saratoga Liquor / Access Drive	9/24/2020	0.24	0.29
MVP-2020-01593	Superior SAMP - Residential	\DEVELOPMENT\RESIDENTIAL	Bardon Avenue Apartments SAMP	8/20/2021	1.69	
MVP-2022-01132	Superior SAMP - Commercial/Industrial	\DEVELOPMENT\COMMERCIAL	Dave Evans Transports Inc SAMP Parking Lot Development.	11/9/2022	0.25	0.3
MVP-2021-02018	Superior SAMP - Commercial/Industrial	\DEVELOPMENT\COMMERCIAL	SAMP 21-02 Nordic Group Expansion	10/14/2021	0.23	
MVP-2022-01961	Superior SAMP - Commercial/Industrial	\DEVELOPMENT\COMMERCIAL	SAMP Downs Funeral Home	12/12/2022	2.48	3.31
MVP-2022-02209	Superior SAMP - Commercial/Industrial	\DEVELOPMENT\COMMERCIAL	SAMP 22-01 MAC Sport Boat Storage	12/23/2022	0.08	0.01
					<b>12.86</b>	<b>15.07</b>

The SAMP IV GPs would adopt the same limit of 10.0 acres of adverse impacts to wetlands for a single and complete project as that implemented for SAMP III. Adverse impacts include placement of dredged/fill materials as well as other activities including excavation and drainage of wetlands. A “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. The project must have independent utility and may not be “piecemealed” to avoid the limits of a SAMP GP 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 on 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.

Projects exceeding 10.0 acres of adverse impacts to wetlands are not eligible for SAMP IV GP authorizations. Instead, those projects would be evaluated as individual Section 404 permit applications. Eligible projects for SAMP IV GP authorizations include any residential, public, commercial/industrial, or institutional project within the corporate limits of the City of Superior meeting all current state, county, and local building requirements, and zoning ordinances/laws. SAMP IV GPs would not be issued for projects involving speculative fill. A site plan must be provided for all projects including all proposed buildings and improvements to the property.

A pre-construction notification to the Corps is required for each proposed project. All SAMP IV GP applications would require applicants to provide a wetland delineation (in accordance with the *Corps of Engineers Wetlands Delineation Manual* and the *Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Northcentral/Northeast Region*) by a qualified wetland delineator; a survey for state- and/or federally-listed threatened, endangered, or special concern plants by a qualified plant ecologist/botanist; a detailed site plan showing wetland impacts and measures to avoid or minimize wetland impacts on-site; and intent to purchase wetland mitigation credits from the City’s mitigation bank or propose some other form of wetland compensation acceptable to the Corps.

Process to Determine Wetlands Potentially Eligible for SAMP GP Authorizations. The City conducted wetland functional assessments based on the Routine Assessment Method (RAM) developed for the State of Minnesota and modified for the City by the Corps, DNR, FWS and EPA. Assessments determined the general quality of wetlands in the City in each of six functional categories including plant habitat integrity; water quality integrity; wildlife habitat integrity; flood and stormwater attenuation; hydrologic integrity; and public values (recreation, aesthetics, cultural, scientific, etc.) as well as several special features related to zoning restrictions (shoreland wetland areas and floodplains); known occurrences of state- or federally-listed threatened, endangered, or special concern plants and animals; and areas designated as environmentally sensitive.

Wetlands with high-rated plant habitat integrity or high-rated wildlife habitat integrity, and many with medium ratings for plant or wildlife habitat integrity, are not eligible for SAMP GPs. Additionally, wetlands within shoreland wetlands or floodplain zoning designations; sites with known occurrences of federally-listed threatened (T), endangered (E), or special concern (SC) plant species; sites within designated environmentally sensitive areas; and sites identified by the DNR as important wildlife corridors; are not eligible for SAMP GPs. Those wetlands with low to medium functional ratings for plant and wildlife habitat

integrity, and no special features, were considered potentially eligible for the SAMP GPs.

Sites not rated high for plant habitat integrity but supporting state-listed T/E/SC plant species<sup>1</sup> would not be automatically ineligible for SAMP GPs. If a particular project is modified to avoid or adequately minimize adverse impacts to state-listed T/E/SC plant species, a SAMP IV GP could authorize the project. If this is not the case, the applicant would be directed to apply for an individual Section 404 permit.

Special Conditions. During the review process for each SAMP IV GP application, the Corps has the option of applying one or more special conditions. Special conditions will be reviewed by the City to determine the City's capacity to enforce the special condition. If the City determines that it is not able to effectively enforce the condition based on staff experience, availability, and other resources, the SAMP IV GP would be denied, and the applicant directed to the Corps individual permit process. The City does not retain the authority to apply special conditions to a SAMP IV GP authorization, only to enforce the implementation of the special condition by the permittee.

Compensatory Mitigation. Compensatory mitigation for wetland impacts due to SAMP IV GPs would mainly be accomplished by the City through its Wetland Mitigation Bank. Compensatory wetland mitigation may also be provided on-site or off-site, independent of the City's wetland mitigation bank, if the applicant provides a suitable compensation site plan, or if the applicant wishes to purchase compensatory wetland mitigation credits from another approved wetland mitigation bank within the Lake Superior Watershed.

## 2. REPLIES/COMMENTS

Interested parties are invited to submit to this office written facts, arguments, or objections within 30 days of the date of this notice. These statements should address the suitability and adequacy of the proposal and should, if appropriate, suggest any changes believed to be desirable. Replies may be sent to Ryan H. Winn at [ryan.h.winn@usace.army.mil](mailto:ryan.h.winn@usace.army.mil).

If you have any questions concerning this Public Notice, please contact Ryan H. Winn by email at: [ryan.h.winn@usace.army.mil](mailto:ryan.h.winn@usace.army.mil), or you may call (907) 450-9798.

To receive Public Notice notifications, go to: <https://www.mvp.usace.army.mil/Contact/RSS/> and subscribe to the RSS Feed for which you would like to receive Public Notices.

## 3. FEDERALLY LISTED THREATENED OR ENDANGERED WILDLIFE OR PLANTS OR THEIR CRITICAL HABITAT

Douglas County is within the known or historic range of the following Federally listed threatened (T) and endangered (E) species:

<u>Species</u>	<u>Status</u>	<u>Habitat</u>
Gray Wolf ( <i>Canis lupus</i> )	E	Northern forested areas
Canada Lynx ( <i>Lynx canadensis</i> )	T	While no resident populations are known from Wisconsin, the species occasionally occurs in northern forested areas, and counties listed are those with the highest likelihood of occurrence.
Kirtland's Warbler ( <i>Setophaga kirtlandii</i> )	E	Potential breeding in young jack pine stands (5 to 25 years old).

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Piping Plover ( <i>Charadrius melodus</i> )	E	Sandy beaches; bare alluvial and dredge spoil islands
Northern Long-eared Bat ( <i>Myotis septentrionalis</i> )	T	Hibernates in caves and mines—swarming surrounding wooded areas in autumn. Roosts and forages in upland forests during spring and summer.
Tricolored Bat ( <i>Perimyotis subflavus</i> )		
Rufra Red Knot ( <i>Calidris canutus rufa</i> )	T	Along Lake Superior
Fassett's Locoweed ( <i>Oxytropis campestris</i> var. <i>chartacea</i> )	T	Open, sandy lakeshores

This proposal is being coordinated with the U.S. Fish and Wildlife Service. Any comments they may have concerning Federally listed threatened or endangered wildlife or plants or their critical habitat will be considered in our final assessment of the proposed SAMP IV GPs. Issuance of any SAMP IV GPs will not affect the Corps responsibility to comply with Section 7 of the Endangered Species Act.

State-Listed Species. Rare plant surveys are required by the SAMP GP approval process to avoid, minimize, and compensate for adverse impacts to rare plant populations. This includes a standard operating procedure for mitigation of impacts to state-listed T/E/SC species developed in cooperation between the SAMP Technical and Advisory Committee and the DNR-Bureau of Endangered Resources. State-listed rare plants found within the City include:

Arrowhead sweet coltsfoot (*Petasites sagittatus*)—Threatened  
Seaside crowfoot (*Ranunculus cymbalaria*)—Threatened  
Smooth black sedge (*Carex nigra*)—Special Concern  
Neat spikerush (*Eleocharis nitida*)—Endangered  
Vasey's rush (*Juncus vaseyi*)—Special Concern  
Clustered bur-reed (*Sparganium glomeratum*)—Threatened

#### 4. JURISDICTION

Applications submitted for authorization under SAMP IV GPs would be reviewed in accordance with the practices for documenting Corps jurisdiction under Section 404 of the Clean Water Act.

#### 5. STATE SECTION 401 WATER QUALITY CERTIFICATION

The state Section 401 authority in Wisconsin is the Wisconsin Department of Natural Resources (DNR). A copy of this notice has been provided to DNR. If a Section 401 water quality certification for a GP is not granted, project-specific confirmations and verifications issued by the Corps using the subject GP are provisional, and each applicant would need to obtain either an individual Section 401 water quality certification from the DNR, or a state general permit authorized by the DNR. Any conditions required for Section 401 certification would become conditions of the SAMP IV GP.

#### 6. HISTORICAL/ARCHAEOLOGICAL

The City would conduct an initial review of applications for SAMP IV GPs using the Wisconsin Historic Preservation Database, which is maintained by the State Historic Preservation Office (SHPO). Applications for SAMP IV GPs sent to the Corps and the DNR would also be screened to determine the proposed activity's potential affect on historic properties. Depending on the outcome of that review, cultural resource surveys and

consultation with the SHPO and other consulting parties may be required.

Implementation for the SAMP IV GPs would not affect the Corp's responsibility to ensure that all Section 404 authorizations comply with Section 106 of the National Historic Preservation Act. The GPs would not authorize any work that would affect a known historic property prior to the Corps' completion of responsibilities under Section 106.

## **7. PUBLIC HEARING REQUESTS**

Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this application. Requests for public hearings shall state, in detail, the reasons for holding a public hearing. A request may be denied if substantive reasons for holding a hearing are not provided or if there is otherwise no valid interest to be served. A public hearing regarding the proposed SAMP I GPs was held in Superior, Wisconsin on May 14, 1996.

## **8. PUBLIC INTEREST REVIEW**

The decision whether to reauthorize these GPs will be based on an evaluation of the probable impact, including cumulative impacts, of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered, including the cumulative effects. Among those are conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production and, in general, the needs and welfare of the people.

## **9. COASTAL MANAGEMENT PROGRAM CONSISTENCY CERTIFICATION**

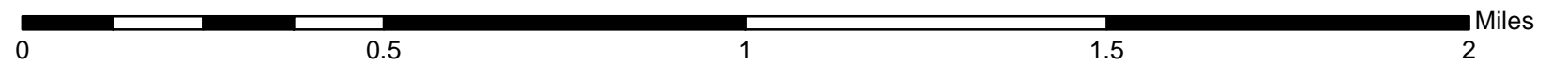
The Wisconsin Coastal Management Program (WCMP) is conducting a federal consistency review to verify the activities considered under this permit will comply with state coastal policies. Comments should be received by WCMP within 21 days. Further information may be obtained from: [coastal@wisconsin.gov](mailto:coastal@wisconsin.gov); <http://coastal.wisconsin.gov>.



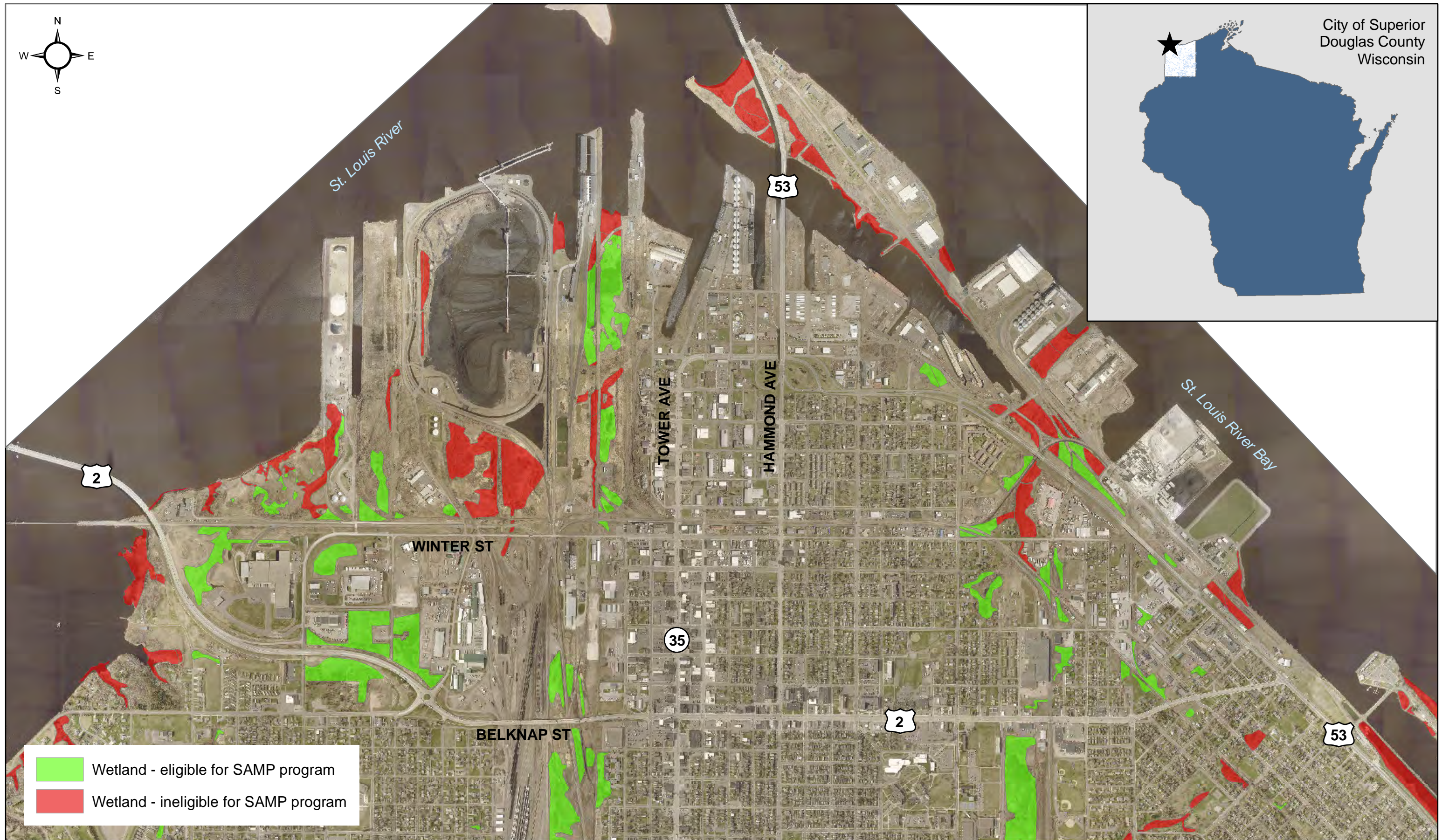


**Figure 1C. SAMP Wetlands - City of Superior East Central**

2023 Aerial Image. May by D. McNamara, March 2024.

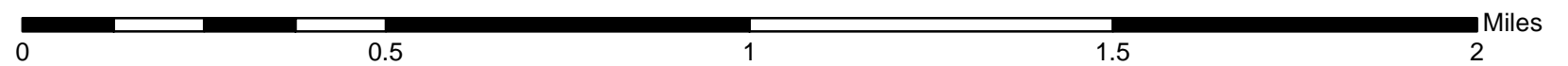




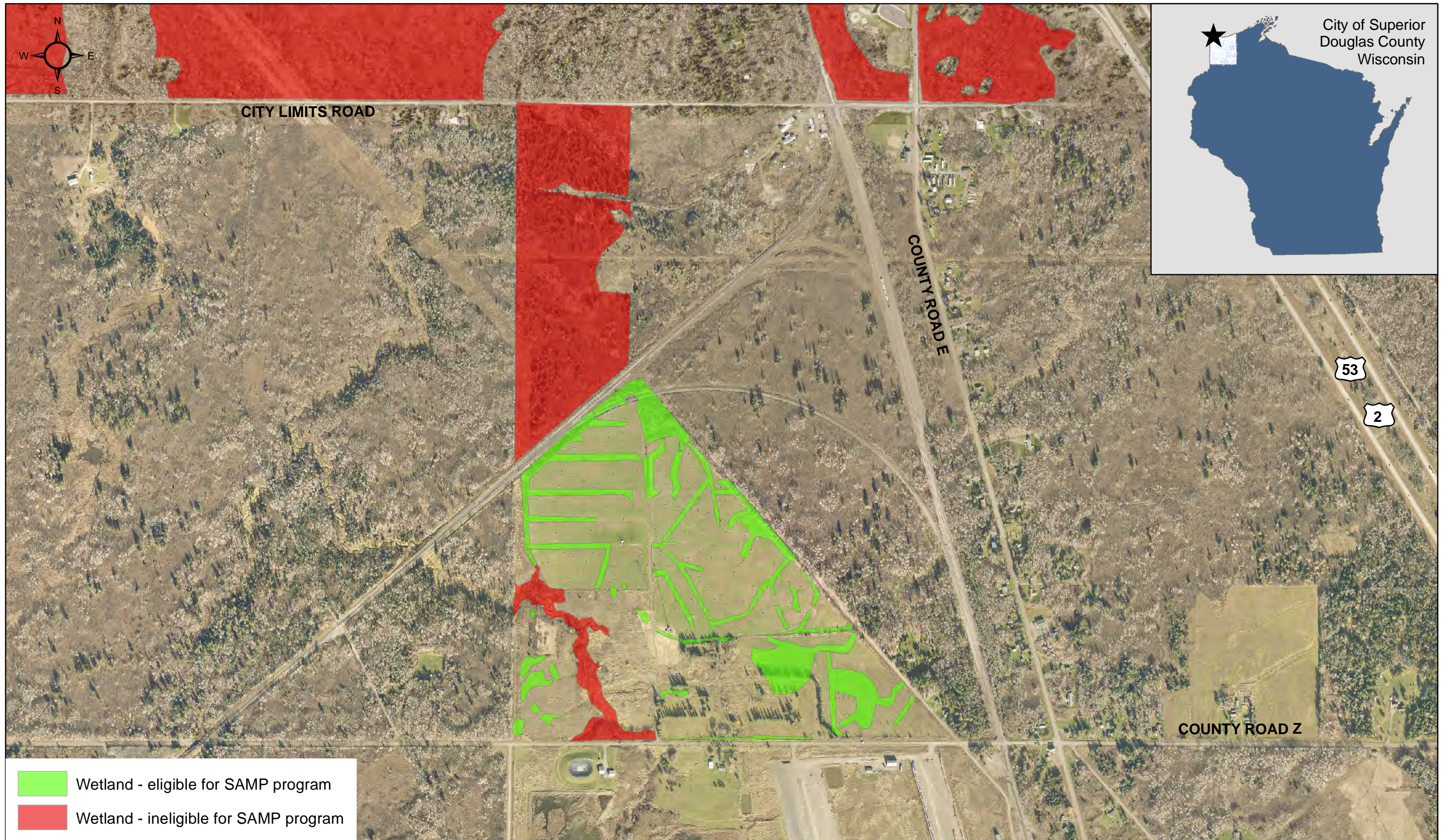


**Figure 1A. SAMP Wetlands - City of Superior North End**

2023 Aerial Image. May by D. McNamara, March 2024.

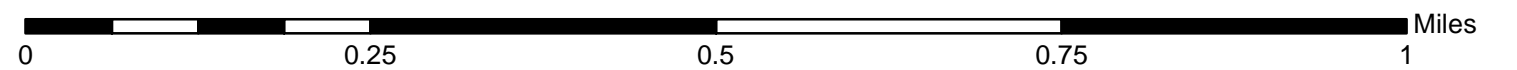




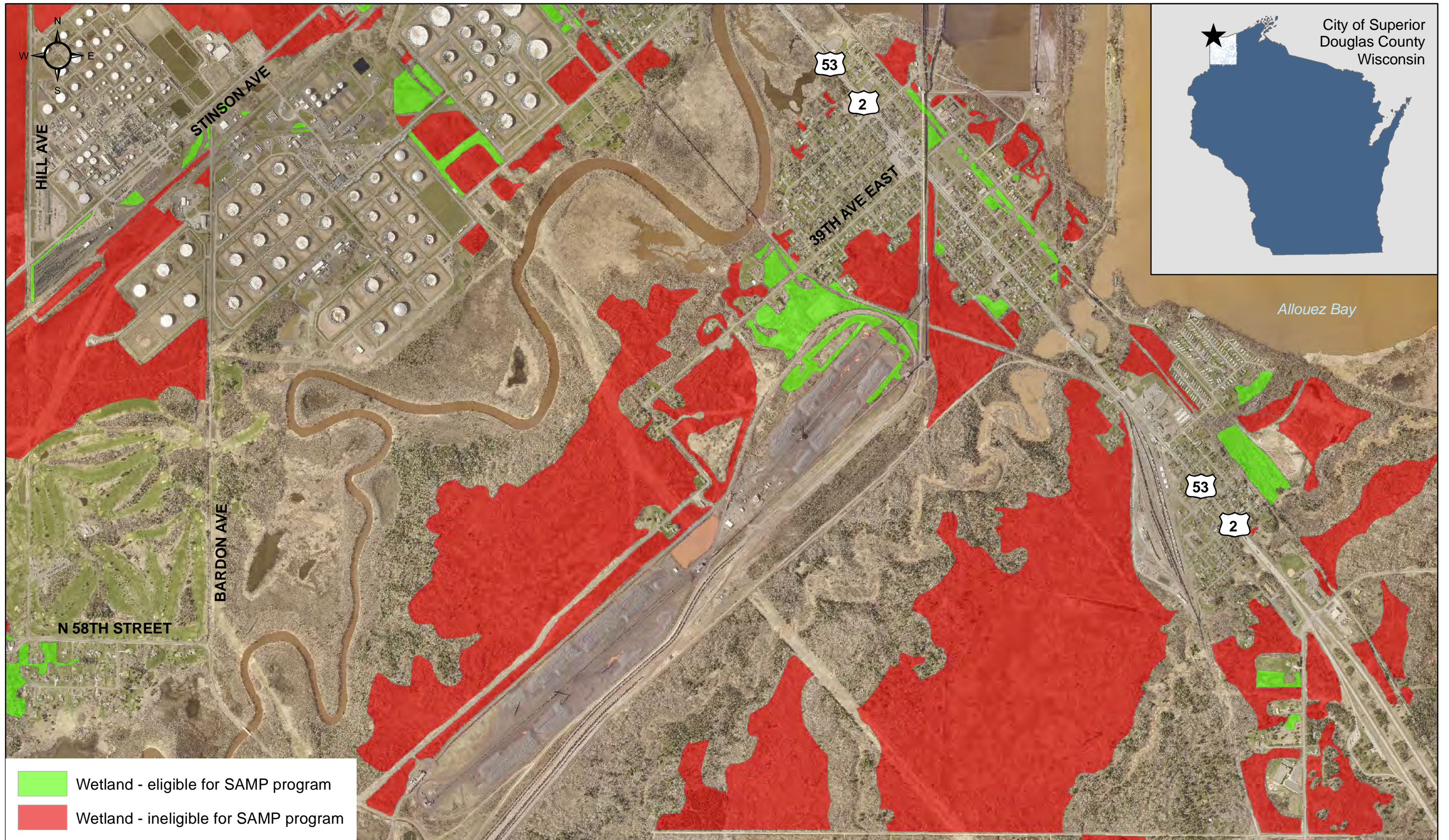


**Figure 1F. SAMP Wetlands - City of Superior Parkland Annex**

2023 Aerial Image. Map by D. McNamara, March 2024.



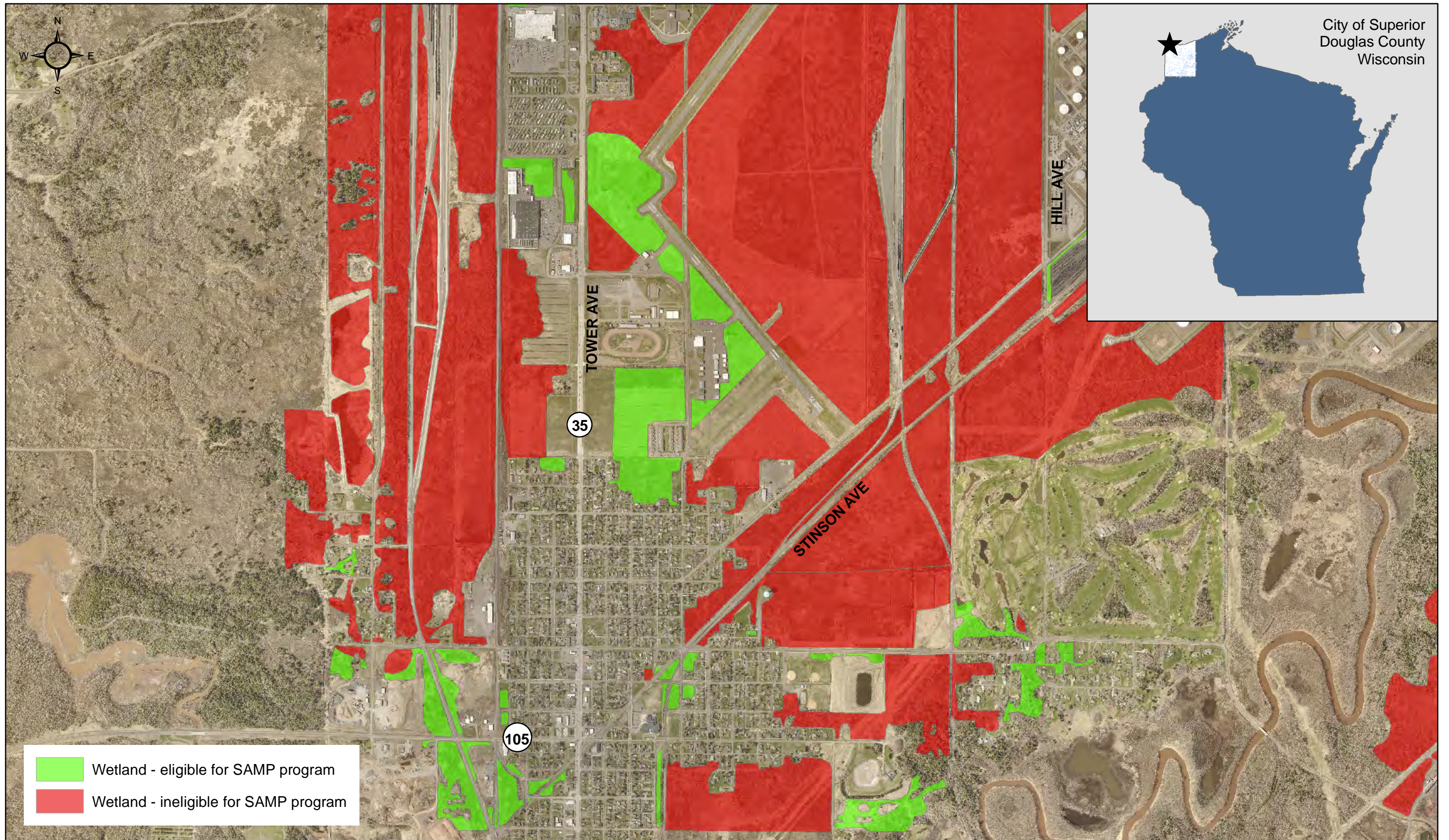




**Figure 1E. SAMP Wetlands - City of Superior South East**

2023 Aerial Image. May by D. McNamara, March 2024.

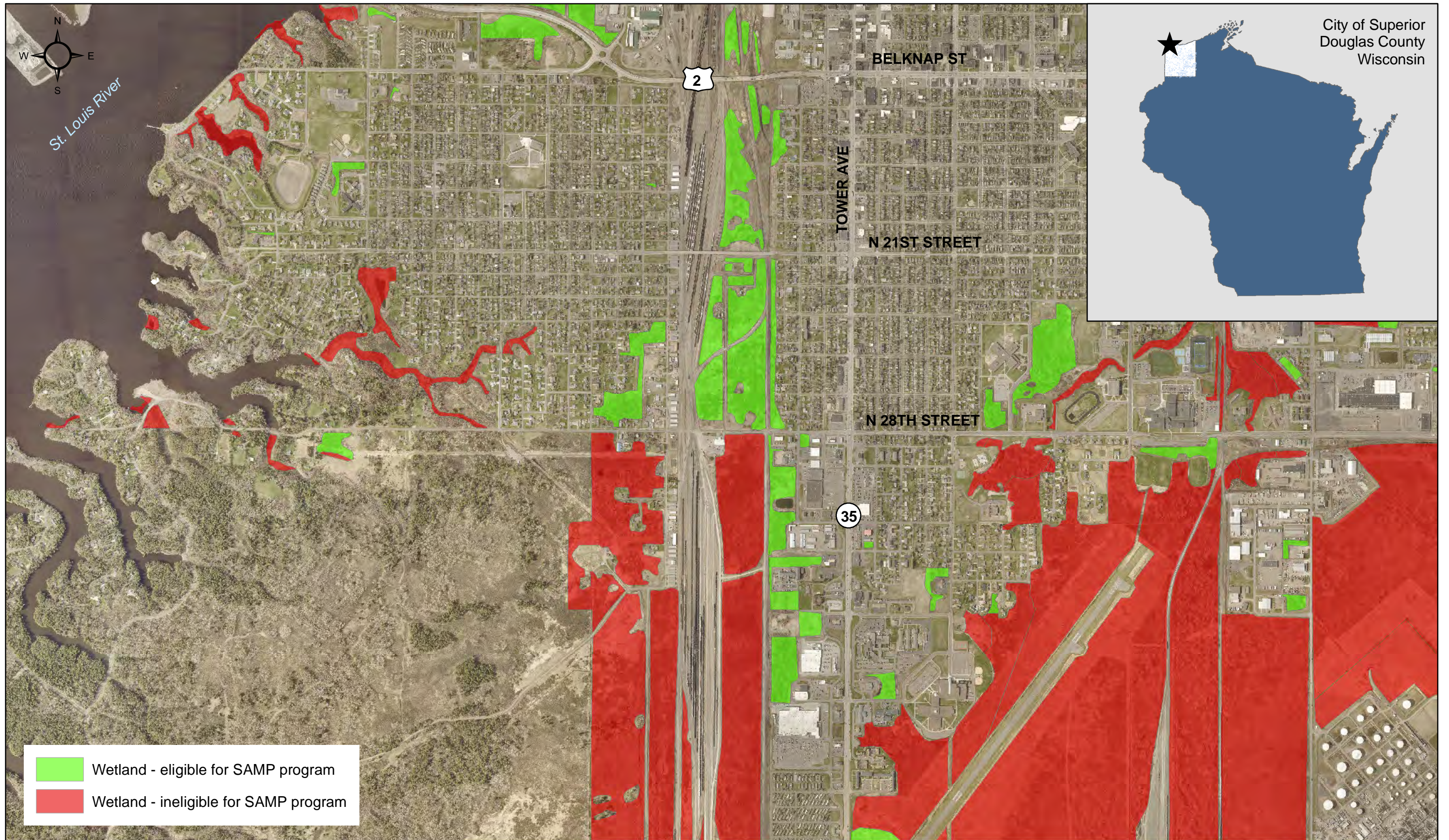




**Figure 1D. SAMP Wetlands - City of Superior South End**

2023 Aerial Image. May by D. McNamara, March 2024.





**Figure 1B. SAMP Wetlands - City of Superior West Central**

2023 Aerial Image. May by D. McNamara, March 2024.

0 0.5 1 1.5 2 Miles





## Institutional Development General Permit for City of Superior SAMP

PERMIT: Institutional Development, City of Superior Special Area Management Plan  
General Permit

PERMIT NUMBER: MV P-1996-06788

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

PERMITTEE: General Public within the City of Superior

EFFECTIVE DATE: 2024

EXPIRATION DATE: 2029

### A. Authorization

Authorization pursuant to Section 404 of the Clean Water Act is granted for the placement of dredged and/or fill materials impacting a maximum of 10.0 acres of wetlands identified for institutional development in accordance with the City of Superior Special Area Management Plan (SAMP) and City of Superior zoning code or ordinances. This SAMP IV—General Permit (GP) includes wetland fill for institutional development including public and private schools, universities and nursing homes. Projects involving speculative fills are not authorized by this GP.

Unless otherwise specified in the St. Paul District Corps of Engineers Regulatory Branch (Corps) verification letter confirming a project complies with the terms and conditions of this GP, the time limit for completing work authorized by the permit ends upon the expiration date of the GP. Activities authorized under this GP that have commenced construction or are under contract to commence construction in reliance upon this GP, will remain authorized provided the activity is completed within 12 months of the date of the GP expiration, suspension, or revocation; whichever is sooner.

**No GP authorizations are valid until a project proponent obtains a Clean Water Act Section 401 water quality certification or waiver from the Wisconsin Department of Natural Resources.** In addition, some GP authorizations may be subject to project-specific special conditions that will be specified in the Corps verification letter. This GP does not obviate the need for other necessary federal, state, tribal, or local authorizations or permits.

### B. Applicability

The Institutional Development, City of Superior SAMP General Permit applies to certain activities in certain wetlands, as described below, within the municipal boundaries of the City of Superior, Douglas County, Wisconsin. Wetlands eligible for SAMP IV—GP verifications are identified in Attachment A.



1. Authority: The Institutional Development City of Superior SAMP general permit may be used to authorize activities pursuant to 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. Activities subject to Section 404 regulatory requirements are hereafter referred to as regulated activities.

2. Eligible Activities: Regulated activities associated with minor discharges of dredged or fill material into waters of the United States for a single and complete institutional development project.

3. Activity Restrictions: This GP authorization shall be limited to 10.0 acres of adverse impacts to wetlands for each "single and complete project," meaning those proposed or accomplished under a specific development plan by one owner/developer, or association of owners/developers (33 CFR 330.2(i)). For phased development, each phase may constitute a single and complete project if it has independent utility and would accomplish its intended purpose whether or not other phases were constructed. Adverse impacts include, but are not limited to, mechanized landclearing (bulldozing or grading), filling, excavating, flooding or draining of wetlands. Adverse impacts also include activities that damage or destroy threatened, endangered or special concern species. The accounting of adverse impacts includes impacts to all waters and wetlands regardless of their jurisdictional status.

4. Pre-Construction Notification (PCN): A PCN to the Corps is required prior to the start of work. Applicants must meet all the terms and conditions of this permit.

### **C. Requirements for SAMP IV-GP Authorizations**

1. The City of Superior shall facilitate the SAMP IV—GPs via the Superior SAMP IV Technical, Implementation, and Administration Document (SAMP IV—TIA). This shall include adoption of the terms and conditions of this GP. Since issuance of this GP is predicated on the terms of the SAMP IV Ordinance, any proposed substantive changes to the ordinance shall be reviewed and approved by the District Engineer or such changes shall invalidate the continued use of this GP.

2. Prospective permittees shall submit to the City of Superior the information required by the SAMP IV—TIA document. The Director of Public Works shall ensure that the application is complete and determine that the proposed activity conforms to the SAMP IV and the terms of this GP. The City shall send this information to the U.S. Army Corps of Engineers (Corps) office in Hayward, Wisconsin (overnight mail delivery) and the Superior, Wisconsin office of the Wisconsin Department of Natural Resources (WDNR) (hand delivered). An email notification summarizing the permit application shall be sent to the Superior SAMP Technical and Advisory Committee members at the U.S. Environmental Protection Agency (USEPA) in Chicago, Illinois and the U.S. Fish and Wildlife Service (USFWS) in Green Bay, Wisconsin.

3. The City shall conduct an initial review of applications for SAMP IV—GP authorizations using the Wisconsin Historic Preservation Database (WHPD), which is maintained by the State Historic Preservation Office (SHPO). Applications for SAMP IV—GPs sent to the Corps and the



WDNR would also be screened to determine the proposed activity's potential effect on historic properties. Depending on the outcome of that review, cultural resource surveys and coordination with the SHPO and other consulting parties may be required.

4. The Corps will consider this a pre-construction notification (PCN) as outlined at 33 CFR 330.1(e), and will promptly initiate an evaluation to:

- a. Ensure that the project conforms to this GP; or
- b. Determine that the project must be evaluated under the Corps individual Section 404 permit process; or
- c. Determine whether site-specific special conditions are required to ensure that the direct, secondary, and cumulative impacts of the proposed project are minimal. If substantive special conditions are necessary, the Corps may determine that the project must be evaluated under the Corps individual Section 404 permit process.

If the Corps determines that the project does not qualify under this GP, the Corps will provide written justification for its determination to the applicant and the City so that the applicant may be advised of deficiencies in the permit application. Upon such determination, the 20-day/30-day default provision, described below, will be suspended.

If within 20 calendar days (for projects with less than or equal to 5 acres of wetland impacts) or 30 calendar days (for projects with greater than 5 acres of wetland impacts) of receipt of the PCN by the Corps, the prospective permittee does not receive confirmation of this GP authorization, or notice from the Corps that the project does not qualify for this GP, or that site-specific conditions must be implemented, then the prospective permittee may proceed pursuant to this GP authorization. The WDNR will utilize the same 20-day/30-day default provision to review the application for purposes of Section 401 Water Quality Certification and/or State GP.

5. Each application for this GP shall include the results of a wetland delineation, conducted by a qualified wetland delineator, according to the most current *Corps of Engineers Wetlands Delineation Manual* and the most current version of the *Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Northcentral/Northeast Region*. The delineation shall be conducted between May 15 and October 1. Exceptions to this time frame shall be at the discretion of the Corps. Delineations are valid for 5 years.

6. An application for this GP shall include the results of a survey for Federal- and state-listed threatened (THR), endangered (END) and special concern (SC) plant species.

- a. The plant survey shall be conducted between 15 June and 15 September by a qualified wetland ecologist, plant ecologist or botanist. Surveys outside of this time frame may be permissible if approved in advance by the Corps after consultation with the WDNR.

- b. Site-specific THR/END/SC plant survey results are valid for 3 years.

- c. If state-listed THR/END/SC plant species are found within a proposed SAMP IV—GP site, the applicant shall report the finding to the City of Superior administrator and the Wisconsin



Department of Natural Resources—Bureau of Endangered Resources (WDNR-BER). A completed WDNR Natural Inventory Rare Plant Report Form (DNR Form 1700-049) shall be submitted as part of the GP application package.

d. The WDNR-BER has the same 20-day/30-day review period as stated above to provide specific recommendations for protecting THR/END/SC plant species. Avoidance, minimization and/or compensation of impacts to THR/END/SC plant species shall be determined by using the flowcharts developed by the WDNR-BER.

e. If an applicant for this GP is unable or unwilling to implement the specified avoidance/minimization/compensation measures for state-listed THR/END/SC plant species, the applicant will be redirected to the Section 404 individual permit process.

f. If a Federally-listed plant species is found within a proposed SAMP IV—GP site, the applicant shall report the finding to the City, WDNR-BER, Corps and USFWS. No activity that adversely impacts the Federally-listed species shall be taken.

7. On-site and off-site upland alternatives shall be considered as potential means to avoid/minimize impacts to aquatic resources and this consideration shall be documented in a statement included in the application.

8. Compensatory mitigation requirements for wetland impacts authorized under this GP shall be determined by the Corps. Compensatory mitigation shall be implemented as follows:

a. Compensatory mitigation shall be accomplished by the City of Superior through the City of Superior Wetland Mitigation Bank as approved by the Interagency Review Team (IRT), except as noted by g. below.

b. The City of Superior shall be responsible for any corrective or remedial measures the Corps deems necessary to achieve successful compensatory mitigation under the City of Superior Wetland Mitigation Bank.

c. The minimum ratio for debiting Corps-approved banking credits shall be 1.2:1 (1.2 credits for every acre of wetland impact). The City of Superior shall track credits and debits used for SAMP IV—GPs.

d. This GP authorization shall be temporarily suspended if the City of Superior Wetland Mitigation Bank reaches a zero or negative balance of credits. Suspension of this GP shall be maintained until a positive balance of credits is restored.

f. The City of Superior shall assist the IRT in monitoring and evaluating the long-term and cumulative impacts of wetland losses within its municipal boundaries.

g. Independent of the City of Superior Wetland Mitigation Bank, a permittee may also purchase credits from any bank with Corps-approved credits within the Lake Superior Watershed.

h. Project-specific compensation, if determined by the Corps to be environmentally



preferable in a specific case, may also be approved. Compensation may be on-site and/or off-site. If permittee responsible compensation is proposed, the site shall be protected in perpetuity by adoption of a conservation easement, or other legally binding mechanism. The legal mechanism for protecting a particular site in perpetuity shall be submitted to the Corps for review and approval.

#### **D. General Conditions**

1. Compliance: The permittee is responsible for ensuring that whomever 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 GP and any special (permit-specific) conditions included in any written verification letter from the Corps. The activity must also comply with any special conditions added by the state in its Section 401 Water Quality Certification. The permittee is ultimately responsible for ensuring compliance with all the terms and conditions of the GP. Any authorized fill must be properly maintained, including maintenance to ensure public safety and compliance with applicable GP general conditions, as well as any activity-specific conditions added by the Corps to a GP authorization.

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. 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 Corps must immediately be notified of the findings. To the maximum extent practicable, construction activities must be avoided 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.

4. Historic properties: No activity is authorized under this GP which has 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 have been satisfied.

#### 5. Federally-listed Threatened and Endangered Species

- a. No activity is authorized under this GP 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 this GP 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 GP activity. Indirect effects are those effects on listed species and critical habitat that are caused by the GP activity and are later in time, but still are reasonably certain to occur.

- b. As a result of formal or informal consultation with the USFWS, the Corps may add species-specific permit conditions to the GP 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 USFWS or their web page at [www.fws.gov/ipac](http://www.fws.gov/ipac).

6. 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 US Fish and Wildlife Service 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.

7. Burial Sites: Burial sites, marked or unmarked, are subject to state law (Wisconsin Statute 157.70). 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 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 the work.

8. The project shall implement erosion and sediment control measures in accordance with the WDNR technical standards of NR 151.11 and 151.12, Wis. Admin. Code. The technical standards are found at: <http://dnr.wi.gov/topic/stormwater>. Any areas of exposed soils due to the project shall be immediately seeded and mulched to stabilize the site and prevent soils from being eroded and washed into waters or wetlands.

9. Prospective permittees shall obtain plat approval, building permit approval, and complete the pre-construction notification process prior to commencement of wetland fill activities.

10. Only clean fill material shall be used. Discharges of unsuitable material including trash, construction debris, asphalt, and any contaminated materials (e.g., soils contaminated by petroleum products), are not authorized by this GP.

11. All equipment used for the project shall be decontaminated to remove invasive species and viruses prior to and after each use on the project site by using best management practices as outlined in NR 40, Wis. Admin. Code. For more information, refer to: <http://dnr.wi.gov/topic/Invasives/bmp.html>.

12. General permittees shall maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit.



13. General permittees shall allow representatives from the Corps, WDNR, and City of Superior, 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 GP.

## **E. Further Information**

1. Congressional Authorities. General permittees have been authorized to undertake the activity described above pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344).
2. The Corps retains discretionary authority to require an individual permit for any activity eligible for authorization by this GP based on concern for the aquatic environment or for any other factor of the public interest.
3. Limits of this Authorization.
  - a. This permit does not obviate the need to obtain other Federal, state or local authorizations required by law.
  - b. This permit does not grant any property rights or exclusive privileges.
  - c. This permit does not authorize any injury to the property or rights of others.
  - d. This permit 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 the Corps that issuance of this permit is not contrary to the public interest was made in reliance on the information provided by the general permittee.



6. Re-evaluation of Decision. This office may reevaluate its decision for an individual verification under this GP at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

- a. General permittee(s) fail to comply with the terms and conditions of this permit;
- b. The information provided by general permittee(s) proves to have been false, incomplete, or inaccurate (see 5 above);
- 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 general permittee(s) to comply with the terms and conditions of the general permit and for the initiation of legal action where appropriate. General permittee(s) will be required to pay for any corrective measures ordered by this office, and if general permittee(s) fail to comply with such directive, this office may in certain situations (such as this specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill general permittees for the cost.

7. This office may also reevaluate its decision to issue this SAMP IV—GP at any time the circumstances warrant. Circumstances that could require 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 suspension, modification, and revocation procedures contained in 33 CFR 325.

## **F. Corps Decision**

In reviewing the PCN for the proposed activity, the Corps will determine whether the activity authorized by the GP would 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 this GP, the Corps should issue the GP verification for that activity if it meets the terms and conditions of the GP, unless the Corps determines, after considering mitigation, that the proposed activity would result in more than minimal individual and cumulative adverse impacts on the aquatic environment and other aspects of the public interest and exercises discretionary authority to require an individual permit for the proposed activity.

When making minimal adverse environmental effects determinations the Corps will consider the direct and indirect effects caused by the GP activity. The Corps will also consider the cumulative adverse effects caused by activities authorized by the GP 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 GP activity, the type of resource that would be affected by the GP activity, the functions provided by the aquatic



resources that would be affected by the GP activity, the degree or magnitude to which the aquatic resource would be lost as a result of the GP activity (e.g., partial or complete loss), the duration of the adverse impacts (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 GP authorization to address site-specific environmental concerns.

If the Corps determines that the adverse environmental effects of the proposed activity are more than minimal, then the Corps will notify the applicant and direct the applicant to the individual permit process.



## **ATTACHMENT A**

### **Wetlands Potentially Eligible for SAMP IV GP Authorizations**

(On-line map available at: <http://douglascowi.wgxtreme.com/>. Select "Dept Maps" and then "Land Use/Zoning." Select the layer, "SAMP Wetlands.")





## Residential Development General Permit for City of Superior SAMP

PERMIT: Residential Development, City of Superior Special Area Management Plan  
General Permit

PERMIT NUMBER: MVP-1996-06788

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

PERMITTEE: General Public within the City of Superior

EFFECTIVE DATE: 2024

EXPIRATION DATE: 2029

### A. Authorization

Authorization pursuant to Section 404 of the Clean Water Act is granted for the placement of dredged and/or fill materials impacting a maximum of 40.0 acres of wetlands identified for residential development in accordance with the City of Superior Special Area Management Plan (SAMP) and City of Superior zoning code or ordinances. This SAMP IV—General Permit (GP) includes wetland fill for building pads for dwellings, garages, storage sheds, and appurtenant features such as fences, driveways and lawns. Projects involving speculative fills are not authorized by this GP.

Unless otherwise specified in the St. Paul District Corps of Engineers Regulatory Branch (Corps) verification letter confirming a project complies with the terms and conditions of this GP, the time limit for completing work authorized by the permit ends upon the expiration date of the GP. Activities authorized under this GP that have commenced construction or are under contract to commence construction in reliance upon this GP, will remain authorized provided the activity is completed within 12 months of the date of the GP expiration, suspension, or revocation; whichever is sooner.

**No GP authorizations are valid until a project proponent obtains a Clean Water Act Section 401 water quality certification or waiver from the Wisconsin Department of Natural Resources.** In addition, some GP authorizations may be subject to project-specific special conditions that will be specified in the Corps verification letter. This GP does not obviate the need for other necessary federal, state, tribal, or local authorizations or permits.

### B. Applicability

The Residential Development, City of Superior SAMP General Permit applies to certain activities in certain wetlands, as described below, within the municipal boundaries of the City of Superior, Douglas County, Wisconsin. Wetlands eligible for SAMP IV—GP verifications are identified in Attachment A.



1. Authority: The Residential Development City of Superior SAMP general permit may be used to authorize activities pursuant to 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. Activities subject to Section 404 regulatory requirements are hereafter referred to as regulated activities.

2. Eligible Activities: Regulated activities associated with minor discharges of dredged or fill material into waters of the United States for a single and complete residential development project.

3. Activity Restrictions: This GP authorization shall be limited to 10.0 acres of adverse impacts to wetlands for each "single and complete project," meaning those proposed or accomplished under a specific development plan by one owner/developer, or association of owners/developers (33 CFR 330.2(i)). For phased development, each phase may constitute a single and complete project if it has independent utility and would accomplish its intended purpose whether or not other phases were constructed. Adverse impacts include, but are not limited to, mechanized landclearing (bulldozing or grading), filling, excavating, flooding or draining of wetlands. Adverse impacts also include activities that damage or destroy threatened, endangered or special concern species. The accounting of adverse impacts includes impacts to all waters and wetlands regardless of their jurisdictional status.

4. Pre-Construction Notification (PCN): A PCN to the Corps is required prior to the start of work. Applicants must meet all the terms and conditions of this permit.

### **C. Requirements for SAMP IV-GP Authorizations**

1. The City of Superior shall facilitate the SAMP IV—GPs via the Superior SAMP IV Technical, Implementation, and Administration Document (SAMP IV—TIA). This shall include adoption of the terms and conditions of this GP. Since issuance of this GP is predicated on the terms of the SAMP IV Ordinance, any proposed substantive changes to the ordinance shall be reviewed and approved by the District Engineer or such changes shall invalidate the continued use of this GP.

2. Prospective permittees shall submit to the City of Superior the information required by the SAMP IV—TIA document. The Director of Public Works shall ensure that the application is complete and determine that the proposed activity conforms to the SAMP IV and the terms of this GP. The City shall send this information to the U.S. Army Corps of Engineers (Corps) office in Hayward, Wisconsin (overnight mail delivery) and the Superior, Wisconsin office of the Wisconsin Department of Natural Resources (WDNR) (hand delivered). An email notification summarizing the permit application shall be sent to the Superior SAMP Technical and Advisory Committee members at the U.S. Environmental Protection Agency (USEPA) in Chicago, Illinois and the U.S. Fish and Wildlife Service (USFWS) in Green Bay, Wisconsin.

3. The City shall conduct an initial review of applications for SAMP IV—GP authorizations using the Wisconsin Historic Preservation Database (WHPD), which is maintained by the State Historic Preservation Office (SHPO). Applications for SAMP IV—GPs sent to the Corps and the



WDNR would also be screened to determine the proposed activity's potential effect on historic properties. Depending on the outcome of that review, cultural resource surveys and coordination with the SHPO and other consulting parties may be required.

4. The Corps will consider this a pre-construction notification (PCN) as outlined at 33 CFR 330.1(e), and will promptly initiate an evaluation to:

- a. Ensure that the project conforms to this GP; or
- b. Determine that the project must be evaluated under the Corps individual Section 404 permit process; or
- c. Determine whether site-specific special conditions are required to ensure that the direct, secondary, and cumulative impacts of the proposed project are minimal. If substantive special conditions are necessary, the Corps may determine that the project must be evaluated under the Corps individual Section 404 permit process.

If the Corps determines that the project does not qualify under this GP, the Corps will provide written justification for its determination to the applicant and the City so that the applicant may be advised of deficiencies in the permit application. Upon such determination, the 20-day/30-day default provision, described below, will be suspended.

If within 20 calendar days (for projects with less than or equal to 5 acres of wetland impacts) or 30 calendar days (for projects with greater than 5 acres of wetland impacts) of receipt of the PCN by the Corps, the prospective permittee does not receive confirmation of this GP authorization, or notice from the Corps that the project does not qualify for this GP, or that site-specific conditions must be implemented, then the prospective permittee may proceed pursuant to this GP authorization. The WDNR will utilize the same 20-day/30-day default provision to review the application for purposes of Section 401 Water Quality Certification and/or State GP.

5. Each application for this GP shall include the results of a wetland delineation, conducted by a qualified wetland delineator, according to the most current *Corps of Engineers Wetlands Delineation Manual* and the most current version of the *Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Northcentral/Northeast Region*. The delineation shall be conducted between May 15 and October 1. Exceptions to this time frame shall be at the discretion of the Corps. Delineations are valid for 5 years.

6. An application for this GP shall include the results of a survey for Federal- and state-listed threatened (THR), endangered (END) and special concern (SC) plant species.

- a. The plant survey shall be conducted between 15 June and 15 September by a qualified wetland ecologist, plant ecologist or botanist. Surveys outside of this time frame may be permissible if approved in advance by the Corps after consultation with the WDNR.

- b. Site-specific THR/END/SC plant survey results are valid for 3 years.

- c. If state-listed THR/END/SC plant species are found within a proposed SAMP IV—GP site, the applicant shall report the finding to the City of Superior administrator and the Wisconsin



Department of Natural Resources—Bureau of Endangered Resources (WDNR-BER). A completed WDNR Natural Inventory Rare Plant Report Form (DNR Form 1700-049) shall be submitted as part of the GP application package.

d. The WDNR-BER has the same 20-day/30-day review period as stated above to provide specific recommendations for protecting THR/END/SC plant species. Avoidance, minimization and/or compensation of impacts to THR/END/SC plant species shall be determined by using the flowcharts developed by the WDNR-BER.

e. If an applicant for this GP is unable or unwilling to implement the specified avoidance/minimization/compensation measures for state-listed THR/END/SC plant species, the applicant will be redirected to the Section 404 individual permit process.

f. If a Federally-listed plant species is found within a proposed SAMP IV—GP site, the applicant shall report the finding to the City, WDNR-BER, Corps and USFWS. No activity that adversely impacts the Federally-listed species shall be taken.

7. On-site and off-site upland alternatives shall be considered as potential means to avoid/minimize impacts to aquatic resources and this consideration shall be documented in a statement included in the application.

8. Compensatory mitigation requirements for wetland impacts authorized under this GP shall be determined by the Corps. Compensatory mitigation shall be implemented as follows:

a. Compensatory mitigation shall be accomplished by the City of Superior through the City of Superior Wetland Mitigation Bank as approved by the Interagency Review Team (IRT), except as noted by g. below.

b. The City of Superior shall be responsible for any corrective or remedial measures the Corps deems necessary to achieve successful compensatory mitigation under the City of Superior Wetland Mitigation Bank.

c. The minimum ratio for debiting Corps-approved banking credits shall be 1.2:1 (1.2 credits for every acre of wetland impact). The City of Superior shall track credits and debits used for SAMP IV—GPs.

d. This GP authorization shall be temporarily suspended if the City of Superior Wetland Mitigation Bank reaches a zero or negative balance of credits. Suspension of this GP shall be maintained until a positive balance of credits is restored.

f. The City of Superior shall assist the IRT in monitoring and evaluating the long-term and cumulative impacts of wetland losses within its municipal boundaries.

g. Independent of the City of Superior Wetland Mitigation Bank, a permittee may also purchase credits from any bank with Corps-approved credits within the Lake Superior Watershed.

h. Project-specific compensation, if determined by the Corps to be environmentally



preferable in a specific case, may also be approved. Compensation may be on-site and/or off-site. If permittee responsible compensation is proposed, the site shall be protected in perpetuity by adoption of a conservation easement, or other legally binding mechanism. The legal mechanism for protecting a particular site in perpetuity shall be submitted to the Corps for review and approval.

#### **D. General Conditions**

1. Compliance: The permittee is responsible for ensuring that whomever 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 GP and any special (permit-specific) conditions included in any written verification letter from the Corps. The activity must also comply with any special conditions added by the state in its Section 401 Water Quality Certification. The permittee is ultimately responsible for ensuring compliance with all the terms and conditions of the GP. Any authorized fill must be properly maintained, including maintenance to ensure public safety and compliance with applicable GP general conditions, as well as any activity-specific conditions added by the Corps to a GP authorization.

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. 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 Corps must immediately be notified of the findings. To the maximum extent practicable, construction activities must be avoided 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.

4. Historic properties: No activity is authorized under this GP which has 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 have been satisfied.

#### 5. Federally-listed Threatened and Endangered Species

- a. No activity is authorized under this GP 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 this GP 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 GP activity. Indirect effects are those effects on listed species and critical habitat that are caused by the GP activity and are later in time, but still are reasonably certain to occur.

- b. As a result of formal or informal consultation with the USFWS, the Corps may add species-specific permit conditions to the GP 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 USFWS or their web page at [www.fws.gov/ipac](http://www.fws.gov/ipac).

6. 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 US Fish and Wildlife Service 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.

7. Burial Sites: Burial sites, marked or unmarked, are subject to state law (Wisconsin Statute 157.70). 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 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 the work.

8. The project shall implement erosion and sediment control measures in accordance with the WDNR technical standards of NR 151.11 and 151.12, Wis. Admin. Code. The technical standards are found at: <http://dnr.wi.gov/topic/stormwater>. Any areas of exposed soils due to the project shall be immediately seeded and mulched to stabilize the site and prevent soils from being eroded and washed into waters or wetlands.

9. Prospective permittees shall obtain plat approval, building permit approval, and complete the pre-construction notification process prior to commencement of wetland fill activities.

10. Only clean fill material shall be used. Discharges of unsuitable material including trash, construction debris, asphalt, and any contaminated materials (e.g., soils contaminated by petroleum products), are not authorized by this GP.

11. All equipment used for the project shall be decontaminated to remove invasive species and viruses prior to and after each use on the project site by using best management practices as outlined in NR 40, Wis. Admin. Code. For more information, refer to: <http://dnr.wi.gov/topic/Invasives/bmp.html>.

12. General permittees shall maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit.



13. General permittees shall allow representatives from the Corps, WDNR, and City of Superior, 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 GP.

## **E. Further Information**

1. Congressional Authorities. General permittees have been authorized to undertake the activity described above pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344).
2. The Corps retains discretionary authority to require an individual permit for any activity eligible for authorization by this GP based on concern for the aquatic environment or for any other factor of the public interest.
3. Limits of this Authorization.
  - a. This permit does not obviate the need to obtain other Federal, state or local authorizations required by law.
  - b. This permit does not grant any property rights or exclusive privileges.
  - c. This permit does not authorize any injury to the property or rights of others.
  - d. This permit 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 the Corps that issuance of this permit is not contrary to the public interest was made in reliance on the information provided by the general permittee.



6. Re-evaluation of Decision. This office may reevaluate its decision for an individual verification under this GP at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

- a. General permittee(s) fail to comply with the terms and conditions of this permit;
- b. The information provided by general permittee(s) proves to have been false, incomplete, or inaccurate (see 5 above);
- 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 general permittee(s) to comply with the terms and conditions of the general permit and for the initiation of legal action where appropriate. General permittee(s) will be required to pay for any corrective measures ordered by this office, and if general permittee(s) fail to comply with such directive, this office may in certain situations (such as this specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill general permittees for the cost.

7. This office may also reevaluate its decision to issue this SAMP IV—GP at any time the circumstances warrant. Circumstances that could require 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 suspension, modification, and revocation procedures contained in 33 CFR 325.

## **F. Corps Decision**

In reviewing the PCN for the proposed activity, the Corps will determine whether the activity authorized by the GP would 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 this GP, the Corps should issue the GP verification for that activity if it meets the terms and conditions of the GP, unless the Corps determines, after considering mitigation, that the proposed activity would result in more than minimal individual and cumulative adverse impacts on the aquatic environment and other aspects of the public interest and exercises discretionary authority to require an individual permit for the proposed activity.

When making minimal adverse environmental effects determinations the Corps will consider the direct and indirect effects caused by the GP activity. The Corps will also consider the cumulative adverse effects caused by activities authorized by the GP 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 GP activity, the type of resource that would be affected by the GP activity, the functions provided by the aquatic

resources that would be affected by the GP activity, the degree or magnitude to which the aquatic resource would be lost as a result of the GP activity (e.g., partial or complete loss), the duration of the adverse impacts (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 GP authorization to address site-specific environmental concerns.

If the Corps determines that the adverse environmental effects of the proposed activity are more than minimal, then the Corps will notify the applicant and direct the applicant to the individual permit process.



## **ATTACHMENT A**

### **Wetlands Potentially Eligible for SAMP IV GP Authorizations**

(On-line map available at: <http://douglascowi.wgxtreme.com/>. Select "Dept Maps" and then "Land Use/Zoning." Select the layer, "SAMP Wetlands.")



## Commercial/Industrial Development General Permit for City of Superior SAMP

PERMIT: Commercial/Industrial Development, City of Superior Special Area Management Plan General Permit

PERMIT NUMBER: MVP-1996-06788

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

PERMITTEE: General Public within the City of Superior

EFFECTIVE DATE: 2024

EXPIRATION DATE: 2029

### A. Authorization

Authorization pursuant to Section 404 of the Clean Water Act is granted for the placement of dredged and/or fill materials impacting a maximum of 75.0 acres of wetlands identified for commercial/industrial development in accordance with the City of Superior Special Area Management Plan (SAMP) and City of Superior zoning code or ordinances. This SAMP IV—General Permit (GP) includes wetland fill for building pads, parking lots, on-site stormwater detention, and warehouse facilities. Projects involving speculative fills are not authorized by this GP.

Unless otherwise specified in the St. Paul District Corps of Engineers Regulatory Branch (Corps) verification letter confirming a project complies with the terms and conditions of this GP, the time limit for completing work authorized by the permit ends upon the expiration date of the GP. Activities authorized under this GP that have commenced construction or are under contract to commence construction in reliance upon this GP, will remain authorized provided the activity is completed within 12 months of the date of the GP expiration, suspension, or revocation; whichever is sooner.

**No GP authorizations are valid until a project proponent obtains a Clean Water Act Section 401 water quality certification or waiver from the Wisconsin Department of Natural Resources.** In addition, some GP authorizations may be subject to project-specific special conditions that will be specified in the Corps verification letter. This GP does not obviate the need for other necessary federal, state, tribal, or local authorizations or permits.

### B. Applicability

The Commercial/Industrial Development, City of Superior SAMP General Permit applies to certain activities in certain wetlands, as described below, within the municipal boundaries of the City of Superior, Douglas County, Wisconsin. Wetlands eligible for SAMP IV—GP verifications are identified in Attachment A.



1. Authority: The Commercial/Industrial Development City of Superior SAMP general permit may be used to authorize activities pursuant to 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. Activities subject to Section 404 regulatory requirements are hereafter referred to as regulated activities.

2. Eligible Activities: Regulated activities associated with minor discharges of dredged or fill material into waters of the United States for a single and complete commercial/industrial development project.

3. Activity Restrictions: This GP authorization shall be limited to 10.0 acres of adverse impacts to wetlands for each "single and complete project," meaning those proposed or accomplished under a specific development plan by one owner/developer, or association of owners/developers (33 CFR 330.2(i)). For phased development, each phase may constitute a single and complete project if it has independent utility and would accomplish its intended purpose whether or not other phases were constructed. Adverse impacts include, but are not limited to, mechanized landclearing (bulldozing or grading), filling, excavating, flooding or draining of wetlands. Adverse impacts also include activities that damage or destroy threatened, endangered or special concern species. The accounting of adverse impacts includes impacts to all waters and wetlands regardless of their jurisdictional status.

4. Pre-Construction Notification (PCN): A PCN to the Corps is required prior to the start of work. Applicants must meet all the terms and conditions of this permit.

### **C. Requirements for SAMP IV-GP Authorizations**

1. The City of Superior shall facilitate the SAMP IV—GPs via the Superior SAMP IV Technical, Implementation, and Administration Document (SAMP IV—TIA). This shall include adoption of the terms and conditions of this GP. Since issuance of this GP is predicated on the terms of the SAMP IV Ordinance, any proposed substantive changes to the ordinance shall be reviewed and approved by the District Engineer or such changes shall invalidate the continued use of this GP.

2. Prospective permittees shall submit to the City of Superior the information required by the SAMP IV—TIA document. The Director of Public Works shall ensure that the application is complete and determine that the proposed activity conforms to the SAMP IV and the terms of this GP. The City shall send this information to the U.S. Army Corps of Engineers (Corps) office in Hayward, Wisconsin (overnight mail delivery) and the Superior, Wisconsin office of the Wisconsin Department of Natural Resources (WDNR) (hand delivered). An email notification summarizing the permit application shall be sent to the Superior SAMP Technical and Advisory Committee members at the U.S. Environmental Protection Agency (USEPA) in Chicago, Illinois and the U.S. Fish and Wildlife Service (USFWS) in Green Bay, Wisconsin.

3. The City shall conduct an initial review of applications for SAMP IV—GP authorizations using the Wisconsin Historic Preservation Database (WHPD), which is maintained by the State Historic Preservation Office (SHPO). Applications for SAMP IV—GPs sent to the Corps and the

WDNR would also be screened to determine the proposed activity's potential effect on historic properties. Depending on the outcome of that review, cultural resource surveys and coordination with the SHPO and other consulting parties may be required.

4. The Corps will consider this a pre-construction notification (PCN) as outlined at 33 CFR 330.1(e), and will promptly initiate an evaluation to:

- a. Ensure that the project conforms to this GP; or
- b. Determine that the project must be evaluated under the Corps individual Section 404 permit process; or
- c. Determine whether site-specific special conditions are required to ensure that the direct, secondary, and cumulative impacts of the proposed project are minimal. If substantive special conditions are necessary, the Corps may determine that the project must be evaluated under the Corps individual Section 404 permit process.

If the Corps determines that the project does not qualify under this GP, the Corps will provide written justification for its determination to the applicant and the City so that the applicant may be advised of deficiencies in the permit application. Upon such determination, the 20-day/30-day default provision, described below, will be suspended.

If within 20 calendar days (for projects with less than or equal to 5 acres of wetland impacts) or 30 calendar days (for projects with greater than 5 acres of wetland impacts) of receipt of the PCN by the Corps, the prospective permittee does not receive confirmation of this GP authorization, or notice from the Corps that the project does not qualify for this GP, or that site-specific conditions must be implemented, then the prospective permittee may proceed pursuant to this GP authorization. The WDNR will utilize the same 20-day/30-day default provision to review the application for purposes of Section 401 Water Quality Certification and/or State GP.

5. Each application for this GP shall include the results of a wetland delineation, conducted by a qualified wetland delineator, according to the most current *Corps of Engineers Wetlands Delineation Manual* and the most current version of the *Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Northcentral/Northeast Region*. The delineation shall be conducted between May 15 and October 1. Exceptions to this time frame shall be at the discretion of the Corps. Delineations are valid for 5 years.

6. An application for this GP shall include the results of a survey for Federal- and state-listed threatened (THR), endangered (END) and special concern (SC) plant species.

- a. The plant survey shall be conducted between 15 June and 15 September by a qualified wetland ecologist, plant ecologist or botanist. Surveys outside of this time frame may be permissible if approved in advance by the Corps after consultation with the WDNR.

- b. Site-specific THR/END/SC plant survey results are valid for 3 years.

- c. If state-listed THR/END/SC plant species are found within a proposed SAMP IV—GP site, the applicant shall report the finding to the City of Superior administrator and the Wisconsin



Department of Natural Resources—Bureau of Endangered Resources (WDNR-BER). A completed WDNR Natural Inventory Rare Plant Report Form (DNR Form 1700-049) shall be submitted as part of the GP application package.

d. The WDNR-BER has the same 20-day/30-day review period as stated above to provide specific recommendations for protecting THR/END/SC plant species. Avoidance, minimization and/or compensation of impacts to THR/END/SC plant species shall be determined by using the flowcharts developed by the WDNR-BER.

e. If an applicant for this GP is unable or unwilling to implement the specified avoidance/minimization/compensation measures for state-listed THR/END/SC plant species, the applicant will be redirected to the Section 404 individual permit process.

f. If a Federally-listed plant species is found within a proposed SAMP IV—GP site, the applicant shall report the finding to the City, WDNR-BER, Corps and USFWS. No activity that adversely impacts the Federally-listed species shall be taken.

7. On-site and off-site upland alternatives shall be considered as potential means to avoid/minimize impacts to aquatic resources and this consideration shall be documented in a statement included in the application.

8. Compensatory mitigation requirements for wetland impacts authorized under this GP shall be determined by the Corps. Compensatory mitigation shall be implemented as follows:

a. Compensatory mitigation shall be accomplished by the City of Superior through the City of Superior Wetland Mitigation Bank as approved by the Interagency Review Team (IRT), except as noted by g. below.

b. The City of Superior shall be responsible for any corrective or remedial measures the Corps deems necessary to achieve successful compensatory mitigation under the City of Superior Wetland Mitigation Bank.

c. The minimum ratio for debiting Corps-approved banking credits shall be 1.2:1 (1.2 credits for every acre of wetland impact). The City of Superior shall track credits and debits used for SAMP IV—GPs.

d. This GP authorization shall be temporarily suspended if the City of Superior Wetland Mitigation Bank reaches a zero or negative balance of credits. Suspension of this GP shall be maintained until a positive balance of credits is restored.

f. The City of Superior shall assist the IRT in monitoring and evaluating the long-term and cumulative impacts of wetland losses within its municipal boundaries.

g. Independent of the City of Superior Wetland Mitigation Bank, a permittee may also purchase credits from any bank with Corps-approved credits within the Lake Superior Watershed.

h. Project-specific compensation, if determined by the Corps to be environmentally

preferable in a specific case, may also be approved. Compensation may be on-site and/or off-site. If permittee responsible compensation is proposed, the site shall be protected in perpetuity by adoption of a conservation easement, or other legally binding mechanism. The legal mechanism for protecting a particular site in perpetuity shall be submitted to the Corps for review and approval.

#### **D. General Conditions**

1. Compliance: The permittee is responsible for ensuring that whomever 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 GP and any special (permit-specific) conditions included in any written verification letter from the Corps. The activity must also comply with any special conditions added by the state in its Section 401 Water Quality Certification. The permittee is ultimately responsible for ensuring compliance with all the terms and conditions of the GP. Any authorized fill must be properly maintained, including maintenance to ensure public safety and compliance with applicable GP general conditions, as well as any activity-specific conditions added by the Corps to a GP authorization.

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. 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 Corps must immediately be notified of the findings. To the maximum extent practicable, construction activities must be avoided 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.

4. Historic properties: No activity is authorized under this GP which has 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 have been satisfied.

#### 5. Federally-listed Threatened and Endangered Species

- a. No activity is authorized under this GP 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 this GP 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 GP activity. Indirect effects are those effects on listed species and critical habitat that are caused by the GP activity and are later in time, but still are reasonably certain to occur.

- b. As a result of formal or informal consultation with the USFWS, the Corps may add species-specific permit conditions to the GP 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 USFWS or their web page at [www.fws.gov/ipac](http://www.fws.gov/ipac).

6. 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 US Fish and Wildlife Service 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.

7. Burial Sites: Burial sites, marked or unmarked, are subject to state law (Wisconsin Statute 157.70). 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 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 the work.

8. The project shall implement erosion and sediment control measures in accordance with the WDNR technical standards of NR 151.11 and 151.12, Wis. Admin. Code. The technical standards are found at: <http://dnr.wi.gov/topic/stormwater>. Any areas of exposed soils due to the project shall be immediately seeded and mulched to stabilize the site and prevent soils from being eroded and washed into waters or wetlands.

9. Prospective permittees shall obtain plat approval, building permit approval, and complete the pre-construction notification process prior to commencement of wetland fill activities.

10. Only clean fill material shall be used. Discharges of unsuitable material including trash, construction debris, asphalt, and any contaminated materials (e.g., soils contaminated by petroleum products), are not authorized by this GP.

11. All equipment used for the project shall be decontaminated to remove invasive species and viruses prior to and after each use on the project site by using best management practices as outlined in NR 40, Wis. Admin. Code. For more information, refer to: <http://dnr.wi.gov/topic/Invasives/bmp.html>.

12. General permittees shall maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit.

13. General permittees shall allow representatives from the Corps, WDNR, and City of Superior, 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 GP.

## **E. Further Information**

1. Congressional Authorities. General permittees have been authorized to undertake the activity described above pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344).
2. The Corps retains discretionary authority to require an individual permit for any activity eligible for authorization by this GP based on concern for the aquatic environment or for any other factor of the public interest.
3. Limits of this Authorization.
  - a. This permit does not obviate the need to obtain other Federal, state or local authorizations required by law.
  - b. This permit does not grant any property rights or exclusive privileges.
  - c. This permit does not authorize any injury to the property or rights of others.
  - d. This permit 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 the Corps that issuance of this permit is not contrary to the public interest was made in reliance on the information provided by the general permittee.



6. Re-evaluation of Decision. This office may reevaluate its decision for an individual verification under this GP at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

- a. General permittee(s) fail to comply with the terms and conditions of this permit;
- b. The information provided by general permittee(s) proves to have been false, incomplete, or inaccurate (see 5 above);
- 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 general permittee(s) to comply with the terms and conditions of the general permit and for the initiation of legal action where appropriate. General permittee(s) will be required to pay for any corrective measures ordered by this office, and if general permittee(s) fail to comply with such directive, this office may in certain situations (such as this specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill general permittees for the cost.

7. This office may also reevaluate its decision to issue this SAMP IV—GP at any time the circumstances warrant. Circumstances that could require 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 suspension, modification, and revocation procedures contained in 33 CFR 325.

## **F. Corps Decision**

In reviewing the PCN for the proposed activity, the Corps will determine whether the activity authorized by the GP would 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 this GP, the Corps should issue the GP verification for that activity if it meets the terms and conditions of the GP, unless the Corps determines, after considering mitigation, that the proposed activity would result in more than minimal individual and cumulative adverse impacts on the aquatic environment and other aspects of the public interest and exercises discretionary authority to require an individual permit for the proposed activity.

When making minimal adverse environmental effects determinations the Corps will consider the direct and indirect effects caused by the GP activity. The Corps will also consider the cumulative adverse effects caused by activities authorized by the GP 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 GP activity, the type of resource that would be affected by the GP activity, the functions provided by the aquatic

resources that would be affected by the GP activity, the degree or magnitude to which the aquatic resource would be lost as a result of the GP activity (e.g., partial or complete loss), the duration of the adverse impacts (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 GP authorization to address site-specific environmental concerns.

If the Corps determines that the adverse environmental effects of the proposed activity are more than minimal, then the Corps will notify the applicant and direct the applicant to the individual permit process.



## **ATTACHMENT A**

### **Wetlands Potentially Eligible for SAMP IV GP Authorizations**

(On-line map available at: <http://douglascowi.wgxtreme.com/>. Select "Dept Maps" and then "Land Use/Zoning." Select the layer, "SAMP Wetlands.")



## Public Development General Permit for City of Superior SAMP

PERMIT: Public Development, City of Superior Special Area Management Plan  
General Permit

PERMIT NUMBER: MVP-1996-06788

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

PERMITTEE: General Public within the City of Superior

EFFECTIVE DATE: 2024

EXPIRATION DATE: 2029

### A. Authorization

Authorization pursuant to Section 404 of the Clean Water Act is granted for the placement of dredged and/or fill materials impacting a maximum of 15.0 acres of wetlands identified for public facilities in accordance with the City of Superior Special Area Management Plan (SAMP) and City of Superior zoning code or ordinances. This SAMP IV—General Permit (GP) includes wetland fill for public facilities including municipal parks and ball fields. Projects involving speculative fills are not authorized by this GP.

Unless otherwise specified in the St. Paul District Corps of Engineers Regulatory Branch (Corps) verification letter confirming a project complies with the terms and conditions of this GP, the time limit for completing work authorized by the permit ends upon the expiration date of the GP. Activities authorized under this GP that have commenced construction or are under contract to commence construction in reliance upon this GP, will remain authorized provided the activity is completed within 12 months of the date of the GP expiration, suspension, or revocation; whichever is sooner.

**No GP authorizations are valid until a project proponent obtains a Clean Water Act Section 401 water quality certification or waiver from the Wisconsin Department of Natural Resources.** In addition, some GP authorizations may be subject to project-specific special conditions that will be specified in the Corps verification letter. This GP does not obviate the need for other necessary federal, state, tribal, or local authorizations or permits.

### B. Applicability

The Public Development, City of Superior SAMP General Permit applies to certain activities in certain wetlands, as described below, within the municipal boundaries of the City of Superior, Douglas County, Wisconsin. Wetlands eligible for SAMP IV—GP verifications are identified in Attachment A.



1. Authority: The Public Development City of Superior SAMP general permit may be used to authorize activities pursuant to 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. Activities subject to Section 404 regulatory requirements are hereafter referred to as regulated activities.

2. Eligible Activities: Regulated activities associated with minor discharges of dredged or fill material into waters of the United States for a single and complete public development project.

3. Activity Restrictions: This GP authorization shall be limited to 10.0 acres of adverse impacts to wetlands for each "single and complete project," meaning those proposed or accomplished under a specific development plan by one owner/developer, or association of owners/developers (33 CFR 330.2(i)). For phased development, each phase may constitute a single and complete project if it has independent utility and would accomplish its intended purpose whether or not other phases were constructed. Adverse impacts include, but are not limited to, mechanized landclearing (bulldozing or grading), filling, excavating, flooding or draining of wetlands. Adverse impacts also include activities that damage or destroy threatened, endangered or special concern species. The accounting of adverse impacts includes impacts to all waters and wetlands regardless of their jurisdictional status.

4. Pre-Construction Notification (PCN): A PCN to the Corps is required prior to the start of work. Applicants must meet all the terms and conditions of this permit.

### **C. Requirements for SAMP IV-GP Authorizations**

1. The City of Superior shall facilitate the SAMP IV—GPs via the Superior SAMP IV Technical, Implementation, and Administration Document (SAMP IV—TIA). This shall include adoption of the terms and conditions of this GP. Since issuance of this GP is predicated on the terms of the SAMP IV Ordinance, any proposed substantive changes to the ordinance shall be reviewed and approved by the District Engineer or such changes shall invalidate the continued use of this GP.

2. Prospective permittees shall submit to the City of Superior the information required by the SAMP IV—TIA document. The Director of Public Works shall ensure that the application is complete and determine that the proposed activity conforms to the SAMP IV and the terms of this GP. The City shall send this information to the U.S. Army Corps of Engineers (Corps) office in Hayward, Wisconsin (overnight mail delivery) and the Superior, Wisconsin office of the Wisconsin Department of Natural Resources (WDNR) (hand delivered). An email notification summarizing the permit application shall be sent to the Superior SAMP Technical and Advisory Committee members at the U.S. Environmental Protection Agency (USEPA) in Chicago, Illinois and the U.S. Fish and Wildlife Service (USFWS) in Green Bay, Wisconsin.

3. The City shall conduct an initial review of applications for SAMP IV—GP authorizations using the Wisconsin Historic Preservation Database (WHPD), which is maintained by the State Historic Preservation Office (SHPO). Applications for SAMP IV—GPs sent to the Corps and the WDNR would also be screened to determine the proposed activity's potential effect on historic properties. Depending on the outcome of that review, cultural resource surveys and

coordination with the SHPO and other consulting parties may be required.

4. The Corps will consider this a pre-construction notification (PCN) as outlined at 33 CFR 330.1(e), and will promptly initiate an evaluation to:

- a. Ensure that the project conforms to this GP; or
- b. Determine that the project must be evaluated under the Corps individual Section 404 permit process; or
- c. Determine whether site-specific special conditions are required to ensure that the direct, secondary, and cumulative impacts of the proposed project are minimal. If substantive special conditions are necessary, the Corps may determine that the project must be evaluated under the Corps individual Section 404 permit process.

If the Corps determines that the project does not qualify under this GP, the Corps will provide written justification for its determination to the applicant and the City so that the applicant may be advised of deficiencies in the permit application. Upon such determination, the 20-day/30-day default provision, described below, will be suspended.

If within 20 calendar days (for projects with less than or equal to 5 acres of wetland impacts) or 30 calendar days (for projects with greater than 5 acres of wetland impacts) of receipt of the PCN by the Corps, the prospective permittee does not receive confirmation of this GP authorization, or notice from the Corps that the project does not qualify for this GP, or that site-specific conditions must be implemented, then the prospective permittee may proceed pursuant to this GP authorization. The WDNR will utilize the same 20-day/30-day default provision to review the application for purposes of Section 401 Water Quality Certification and/or State GP.

5. Each application for this GP shall include the results of a wetland delineation, conducted by a qualified wetland delineator, according to the most current *Corps of Engineers Wetlands Delineation Manual* and the most current version of the *Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Northcentral/Northeast Region*. The delineation shall be conducted between May 15 and October 1. Exceptions to this time frame shall be at the discretion of the Corps. Delineations are valid for 5 years.

6. An application for this GP shall include the results of a survey for Federal- and state-listed threatened (THR), endangered (END) and special concern (SC) plant species.

- a. The plant survey shall be conducted between 15 June and 15 September by a qualified wetland ecologist, plant ecologist or botanist. Surveys outside of this time frame may be permissible if approved in advance by the Corps after consultation with the WDNR.

- b. Site-specific THR/END/SC plant survey results are valid for 3 years.

- c. If state-listed THR/END/SC plant species are found within a proposed SAMP IV—GP site, the applicant shall report the finding to the City of Superior administrator and the Wisconsin Department of Natural Resources—Bureau of Endangered Resources (WDNR-BER). A completed WDNR Natural Inventory Rare Plant Report Form (DNR Form 1700-049) shall be



submitted as part of the GP application package.

d. The WDNR-BER has the same 20-day/30-day review period as stated above to provide specific recommendations for protecting THR/END/SC plant species. Avoidance, minimization and/or compensation of impacts to THR/END/SC plant species shall be determined by using the flowcharts developed by the WDNR-BER.

e. If an applicant for this GP is unable or unwilling to implement the specified avoidance/minimization/compensation measures for state-listed THR/END/SC plant species, the applicant will be redirected to the Section 404 individual permit process.

f. If a Federally-listed plant species is found within a proposed SAMP IV—GP site, the applicant shall report the finding to the City, WDNR-BER, Corps and USFWS. No activity that adversely impacts the Federally-listed species shall be taken.

7. On-site and off-site upland alternatives shall be considered as potential means to avoid/minimize impacts to aquatic resources and this consideration shall be documented in a statement included in the application.

8. Compensatory mitigation requirements for wetland impacts authorized under this GP shall be determined by the Corps. Compensatory mitigation shall be implemented as follows:

a. Compensatory mitigation shall be accomplished by the City of Superior through the City of Superior Wetland Mitigation Bank as approved by the Interagency Review Team (IRT), except as noted by g. below.

b. The City of Superior shall be responsible for any corrective or remedial measures the Corps deems necessary to achieve successful compensatory mitigation under the City of Superior Wetland Mitigation Bank.

c. The minimum ratio for debiting Corps-approved banking credits shall be 1.2:1 (1.2 credits for every acre of wetland impact). The City of Superior shall track credits and debits used for SAMP IV—GPs.

d. This GP authorization shall be temporarily suspended if the City of Superior Wetland Mitigation Bank reaches a zero or negative balance of credits. Suspension of this GP shall be maintained until a positive balance of credits is restored.

f. The City of Superior shall assist the IRT in monitoring and evaluating the long-term and cumulative impacts of wetland losses within its municipal boundaries.

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h. Project-specific compensation, if determined by the Corps to be environmentally preferable in a specific case, may also be approved. Compensation may be on-site and/or off-site. If permittee responsible compensation is proposed, the site shall be protected in

perpetuity by adoption of a conservation easement, or other legally binding mechanism. The legal mechanism for protecting a particular site in perpetuity shall be submitted to the Corps for review and approval.

#### **D. General Conditions**

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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. 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 Corps must immediately be notified of the findings. To the maximum extent practicable, construction activities must be avoided 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.

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- a. No activity is authorized under this GP 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 this GP 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 GP activity. Indirect effects are those effects on listed species and critical habitat that are caused by the GP activity



and are later in time, but still are reasonably certain to occur.

- b. As a result of formal or informal consultation with the USFWS, the Corps may add species-specific permit conditions to the GP 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 USFWS or their web page at [www.fws.gov/ipac](http://www.fws.gov/ipac).

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7. Burial Sites: Burial sites, marked or unmarked, are subject to state law (Wisconsin Statute 157.70). 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 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 the work.

8. The project shall implement erosion and sediment control measures in accordance with the WDNR technical standards of NR 151.11 and 151.12, Wis. Admin. Code. The technical standards are found at: <http://dnr.wi.gov/topic/stormwater>. Any areas of exposed soils due to the project shall be immediately seeded and mulched to stabilize the site and prevent soils from being eroded and washed into waters or wetlands.

9. Prospective permittees shall obtain plat approval, building permit approval, and complete the pre-construction notification process prior to commencement of wetland fill activities.

10. Only clean fill material shall be used. Discharges of unsuitable material including trash, construction debris, asphalt, and any contaminated materials (e.g., soils contaminated by petroleum products), are not authorized by this GP.

11. All equipment used for the project shall be decontaminated to remove invasive species and viruses prior to and after each use on the project site by using best management practices as outlined in NR 40, Wis. Admin. Code. For more information, refer to: <http://dnr.wi.gov/topic/Invasives/bmp.html>.

12. General permittees shall maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit.

13. General permittees shall allow representatives from the Corps, WDNR, and City of

Superior, 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 GP.

## **E. Further Information**

1. Congressional Authorities. General permittees have been authorized to undertake the activity described above pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344).
2. The Corps retains discretionary authority to require an individual permit for any activity eligible for authorization by this GP based on concern for the aquatic environment or for any other factor of the public interest.
3. Limits of this Authorization.
  - a. This permit does not obviate the need to obtain other Federal, state or local authorizations required by law.
  - b. This permit does not grant any property rights or exclusive privileges.
  - c. This permit does not authorize any injury to the property or rights of others.
  - d. This permit 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 the Corps that issuance of this permit is not contrary to the public interest was made in reliance on the information provided by the general permittee.
6. Re-evaluation of Decision. This office may reevaluate its decision for an individual

verification under this GP at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

- a. General permittee(s) fail to comply with the terms and conditions of this permit;
  - b. The information provided by general permittee(s) proves to have been false, incomplete, or inaccurate (see 5 above);
  - 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 general permittee(s) to comply with the terms and conditions of the general permit and for the initiation of legal action where appropriate. General permittee(s) will be required to pay for any corrective measures ordered by this office, and if general permittee(s) fail to comply with such directive, this office may in certain situations (such as this specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill general permittees for the cost.
7. This office may also reevaluate its decision to issue this SAMP IV—GP at any time the circumstances warrant. Circumstances that could require 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 suspension, modification, and revocation procedures contained in 33 CFR 325.

## **F. Corps Decision**

In reviewing the PCN for the proposed activity, the Corps will determine whether the activity authorized by the GP would 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 this GP, the Corps should issue the GP verification for that activity if it meets the terms and conditions of the GP, unless the Corps determines, after considering mitigation, that the proposed activity would result in more than minimal individual and cumulative adverse impacts on the aquatic environment and other aspects of the public interest and exercises discretionary authority to require an individual permit for the proposed activity.

When making minimal adverse environmental effects determinations the Corps will consider the direct and indirect effects caused by the GP activity. The Corps will also consider the cumulative adverse effects caused by activities authorized by the GP 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 GP activity, the type of resource that would be affected by the GP activity, the functions provided by the aquatic resources that would be affected by the GP activity, the degree or magnitude to which the aquatic resource would be lost as a result of the GP activity (e.g., partial or complete loss), the



duration of the adverse impacts (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 GP authorization to address site-specific environmental concerns.

If the Corps determines that the adverse environmental effects of the proposed activity are more than minimal, then the Corps will notify the applicant and direct the applicant to the individual permit process.

## **ATTACHMENT A**

### **Wetlands Potentially Eligible for SAMP IV-GP Authorizations**

(On-line map available at: <http://douglascowi.wgxtreme.com/>. Select "Dept Maps" and then "Land Use/Zoning." Select the layer, "SAMP Wetlands.")