



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, LOUISVILLE DISTRICT
600 DR. MARTIN LUTHER KING JR PL
LOUISVILLE, KY 40202

August 30, 2021

Regulatory Division
South Branch
ID No. LRL-2017-1046-jwr

Louisville Gas & Electric Company
c/o: Mr. Nate Beckman
220 West Main Street
Louisville, Kentucky 40202

Dear Mr. Beckman:

An Approved Jurisdictional Determination (AJD), dated July 02, 2021 has been provided for aquatic resources located within the proposed boundaries of planned activities that would involve the installation of a nominal 12-inch natural gas steel pipeline. The identified aquatic resources are distributed along a corridor initiating 1.0 mile east of the intersection of Grigsby Lane and Rummage Lane running 12-miles west and south crossing Cedar Grove Road and Deatsville Road. The proposed line and associated corridor would terminate east of Interstate 65 and north of Chapeze Lane. The identified aquatic resources are located in Bullitt County, Kentucky. We have reviewed the submitted data and completed a JD relative to Section 404 of the Clean Water Act.

The U.S. Army Corps of Engineers exercises regulatory authority under Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403) and Section 404 of the Clean Water Act (33 USC 1344), for certain activities in "waters of the United States (U.S.)." These waters include all waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce.

Based on a review of the submitted data we have determined that the waters listed in Section C of the attached Approved Jurisdictional Determination (AJD) dated July 02, 2021 are considered to be a jurisdictional "waters of the U.S." Therefore, these waters are subject to regulation under Section 404 of the Clean Water Act.

We have also determined that the waters listed in Section D of the AJD dated July 02, 2021 are excluded from regulation under Section 404 of the Clean Water Act. As such, these features are not considered to be a "water of the U.S." and are not regulated under Section 404 of the Clean Water Act. However, this determination does not relieve you of the responsibility to comply with applicable state law.

If you object to this determination, you may request an administrative appeal under Corps regulations at 33 CFR Part 331. Enclosed you will find a Notification of Appeal Process (NAP)

fact sheet and Request for Appeal (RFA) form. If you request to appeal this determination, you must submit a completed RFA form to the Lakes and Rivers Division Office at the following address.

U.S. Army Corps of Engineers
Appeal Review Officer CELRD-PD-REG
550 Main Street, Room 10-714
Cincinnati, OH 45202-3222

In order for a RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 CFR Part 331.5, and that it has been received by the Division Office within 60 days of the date of the NAP. Should you decide to submit an RFA form, it must be received at the above address by **October 29, 2021**. It is not necessary to submit an RFA form to the Division office if you do not object to the determination in this letter.

This AJD is valid for a 5-year period from the date of this letter unless new information warrants revision of the determination before the expiration date. Our comments on this project are limited to only those effects, which may fall within our area of jurisdiction, and thus does not obviate the need to obtain other permits from State or Local agencies. Lack of comments on other environmental aspects should not be construed as either concurrence or nonconcurrence with stated environmental effects.

The delineation included herein has been conducted to identify the location and extent of the aquatic resource boundaries and/or the jurisdictional status of aquatic resources for purposes of the Clean Water Act for the particular site identified in this request. This delineation and/or jurisdictional determination may not be valid for the Wetland Conservation Provisions of the Food Security Act of 1985, as amended. If you or your tenant are USDA program participants, or anticipate participation in USDA programs, you should discuss the applicability of a certified wetland determination with the local USDA service center prior to starting work.

If you have any questions, please contact us by writing to the District Regulatory Office at the above address, ATTN: CELRL-RDS, or contact me directly at 502-315-2643 or jason.w.rhoades@usace.army.mil. Any correspondence on this matter should refer to our ID Number LRL-2017-1046-jwr.

Sincerely,



Jason Rhoades
Regulatory Biologist, South Branch
Regulatory Division



U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
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I. ADMINISTRATIVE INFORMATION

Completion Date of Approved Jurisdictional Determination (AJD): July 2, 2021

ORM Number: LRL-2017-01046

Associated JDs: N/A

Review Area Location¹:

State/Territory: KY City: County/Parish/Borough: Bullitt County

Center Coordinates of Review Area: Latitude 37.98761 Longitude -85.50836

II. FINDINGS

A. Summary: Check all that apply. At least one box from the following list **MUST** be selected. Complete the corresponding sections/tables and summarize data sources.

- The review area is comprised entirely of dry land (i.e., there are no waters or water features, including wetlands, of any kind in the entire review area). Rationale: N/A or describe rationale.
- There are “navigable waters of the United States” within Rivers and Harbors Act jurisdiction within the review area (complete table in section II.B).
- There are “waters of the United States” within Clean Water Act jurisdiction within the review area (complete appropriate tables in section II.C).
- There are waters or water features excluded from Clean Water Act jurisdiction within the review area (complete table in section II.D).

B. Rivers and Harbors Act of 1899 Section 10 (§ 10)²

§ 10 Name	§ 10 Size	§ 10 Criteria	Rationale for § 10 Determination
N/A	N/A	N/A	N/A

C. Clean Water Act Section 404

Territorial Seas and Traditional Navigable Waters ((a)(1) waters)³

(a)(1) Name	(a)(1) Size	(a)(1) Criteria	Rationale for (a)(1) Determination
N/A	N/A	N/A	N/A

Tributaries ((a)(2) waters):

(a)(2) Name	(a)(2) Size	(a)(2) Criteria	Rationale for (a)(2) Determination
Cedar Creek NWPR	192 feet	(a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	The Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.
Greens Branch NWPR	556 feet	(a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	The Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.
Licksillet Creek NWPR	200 feet	(a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	The Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.

¹ Map(s)/Figure(s) are attached to the AJD provided to the requestor.

² If the navigable water is not subject to the ebb and flow of the tide or included on the District’s list of Rivers and Harbors Act Section 10 navigable waters list, do NOT use this document to make the determination. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Rivers and Harbors Act Section 10 navigability determination.

³ A stand-alone TNW determination is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where independent upstream or downstream limits or lake borders are established. A stand-alone TNW determination should be completed following applicable guidance and should NOT be documented on the AJD form.

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⁵ Because of the broad nature of the (b)(1) exclusion and in an effort to collect data on specific types of waters that would be covered by the (b)(1) exclusion, four sub-categories of (b)(1) exclusions were administratively created for the purposes of the AJD Form. These four sub-categories are not new exclusions, but are simply administrative distinctions and remain (b)(1) exclusions as defined by the NWPR.



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MP00 UNT0 NWPR	443 feet	(a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	The Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.
MP00 UNT1 NWPR	135 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	Aquatic resource was visit during site visit conducted by Corps personnel to establish criteria used in identifying Intermittent tributaries. The intermittent tributary contributes surface water flow continuously during certain times of the year and more than in direct response to precipitation to an (a)(1) water in a typical year.
MP00 UNT2 NWPR	301 feet	(a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	The Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.
MP00 UNT3 NWPR	192 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	The intermittent tributary contributes surface water flow continuously during certain times of the year and more than in direct response to precipitation to an (a)(1) water in a typical year.
MP01 UNT1 NWPR	172 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	The intermittent tributary contributes surface water flow continuously during certain times of the year and more than in direct response to precipitation to an (a)(1) water in a typical year.
MP02 Cox Creek NWPR	192 feet	(a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	The Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.
MP02 Rocky Run NWPR	240 feet	(a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	The Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.
MP05 UNT2 NWPR	274 feet	(a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	The Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.
MP06 UNT1 NWPR	220 feet	(a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	Aquatic resource was visit during site visit conducted by Corps personnel to establish criteria used in identifying Perennial tributaries. The Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.
MP06 UNT2 NWPR	325 feet	(a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	Aquatic resource was visit during site visit conducted by Corps personnel to establish criteria used in identifying Perennial tributaries. The Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.
MP07 UNT1 NWPR	191 feet	(a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	The Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.
MP07 UNT2 NWPR	171 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1)	The intermittent tributary contributes surface water flow continuously during certain times of the year and more than in direct response to precipitation to an (a)(1)

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		water in a typical year	water in a typical year.
MP07 UNT3 NWPR	408 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	The intermittent tributary contributes surface water flow continuously during certain times of the year and more than in direct response to precipitation to an (a)(1) water in a typical year.
MP07 UNT3A NWPR	755 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	The intermittent tributary contributes surface water flow continuously during certain times of the year and more than in direct response to precipitation to an (a)(1) water in a typical year.
MP08 UNT1 NWPR	265 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	The intermittent tributary contributes surface water flow continuously during certain times of the year and more than in direct response to precipitation to an (a)(1) water in a typical year.
MP08 UNT2 NWPR	223 feet	(a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	The Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.
MP09 UNT1 NWPR	811 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	The intermittent tributary contributes surface water flow continuously during certain times of the year and more than in direct response to precipitation to an (a)(1) water in a typical year.
MP09 UNT2 NWPR	64 feet	(a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	The Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.
MP09 UNT3 NWPR	198 feet	(a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	The Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.
MP09 UNT4 NWPR	170 feet	(a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	The Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.
MP09 UNT8 NWPR	147 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	The intermittent tributary contributes surface water flow continuously during certain times of the year and more than in direct response to precipitation to an (a)(1) water in a typical year.
MP10 UNT11 NWPR	410 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	The intermittent tributary contributes surface water flow continuously during certain times of the year and more than in direct response to precipitation to an (a)(1) water in a typical year.
MP10 UNT6 NWPR	267 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	The intermittent tributary contributes surface water flow continuously during certain times of the year and more than in direct response to precipitation to an (a)(1) water in a typical year.
MP10 UNT7 NWPR	149 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	The intermittent tributary contributes surface water flow continuously during certain times of the year and more than in direct response to precipitation to an (a)(1) water in a typical year.
MP10 UNT8 NWPR	148 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	The intermittent tributary contributes surface water flow continuously during certain times of the year and more than in direct response to precipitation to an (a)(1) water in a typical year.

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		water in a typical year	water in a typical year.
MP11 UNT1 NWPR	517 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	The intermittent tributary contributes surface water flow continuously during certain times of the year and more than in direct response to precipitation to an (a)(1) water in a typical year.
MP11 UNT3 NWPR	183 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	Aquatic resource was visit during site visit conducted by Corps personnel to establish criteria used in identifying Intermittent tributaries. The intermittent tributary contributes surface water flow continuously during certain times of the year and more than in direct response to precipitation to an (a)(1) water in a typical year.
MP11 UNT4 NWPR	262 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	Aquatic resource was visit during site visit conducted by Corps personnel to establish criteria used in identifying Intermittent tributaries. The intermittent tributary contributes surface water flow continuously during certain times of the year and more than in direct response to precipitation to an (a)(1) water in a typical year.
MP11 UNT5 NWPR	180 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	Aquatic resource was visit during site visit conducted by Corps personnel to establish criteria used in identifying Intermittent tributaries. The intermittent tributary contributes surface water flow continuously during certain times of the year and more than in direct response to precipitation to an (a)(1) water in a typical year.
MP11.67 UNT4 NWPR	262 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	The intermittent tributary contributes surface water flow continuously during certain times of the year and more than in direct response to precipitation to an (a)(1) water in a typical year.
UNT1 to Greens Branch NWPR	978 feet	(a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	The Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.

Lakes and ponds, and impoundments of jurisdictional waters ((a)(3) waters):

(a)(3) Name	(a)(3) Size	(a)(3) Criteria	Rationale for (a)(3) Determination
N/A	N/A	N/A	N/A

Adjacent wetlands ((a)(4) waters):

(a)(4) Name	(a)(4) Size	(a)(4) Criteria	Rationale for (a)(4) Determination
MP05 W01 PUB NWPR	0.1 acres	(a)(4) Wetland separated from an (a)(1)-(a)(3) water only by an artificial structure allowing a direct hydrologic surface connection between the wetland and the (a)(1)-(a)(3) water in a typical year	The earthen berm on the west side of the feature is man-made and the bottom is excavated to its current depth. This pond feature is not of natural origin. The water source is via spring fed flow entering the feature in the southeast corner, outside of the survey corridor.
MP06 W01 NWPR	0.12 acres	(a)(4) Wetland abuts an (a)(1)-(a)(3) water	Aquatic resource was visit during site visit conducted by Corps personnel to establish criteria used in identifying Wetland characteristics. Hydrology for this wetland emanates from an open

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			water pond outside the survey corridor leaching downslope and showing at the surface in wetland MP06 W01. This wetland drains north to MP06 UNT2 the adjacent perennial stream reach.
MP06 W02 NWPR	0.5 acres	(a)(4) Wetland abuts an (a)(1)-(a)(3) water	Aquatic resource was visit during site visit conducted by Corps personnel to establish criteria used in identifying Wetland characteristics. The wetland receives hydrology from MP06 UNT2A, an intermittent stream reach and MP06 UNT2, a perennial stream reach. The wetland drains to connection with MP06 UNT2, which drains the area to the northwest from the survey corridor.
MP09 W01 NWPR	0.17 acres	(a)(4) Wetland abuts an (a)(1)-(a)(3) water	The wetland drains to connection with MP09 UNT 2 and MP09 UNT3 both perennial stream reaches outside the survey corridor.
MP11 W01 NWPR	0.32 acres	(a)(4) Wetland abuts an (a)(1)-(a)(3) water	Aquatic resource was visit during site visit conducted by Corps personnel to establish criteria used in identifying Wetland characteristics. The wetland drains to connection with MP11 UNT3 an intermittent stream reach outside the survey corridor.

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12))⁴:

Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
BC22 UNT1 NWPR	270 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	The ephemeral channel only contains surface water flowing or pooling in direct response to precipitation. The identified ephemeral channel is a (b)(3) water and is therefore excluded from the rule.
Coyler UNT1 NWPR	86 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	The ephemeral channel only contains surface water flowing or pooling in direct response to precipitation. The identified ephemeral channel is a (b)(3) water and is therefore excluded from the rule.
Coyler UNT2 NWPR	81 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	The ephemeral channel only contains surface water flowing or pooling in direct response to precipitation. The identified ephemeral channel is a (b)(3) water and is therefore excluded from the rule.
Coyler UNT3 NWPR	69 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	The ephemeral channel only contains surface water flowing or pooling in direct response to precipitation. The identified ephemeral channel is a (b)(3) water and is therefore excluded from the rule.
Coyler UNT4 NWPR	55 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	The ephemeral channel only contains surface water flowing or pooling in direct response to precipitation. The identified ephemeral channel is a (b)(3) water and is therefore excluded from the rule.
MP01 UNT2 NWPR	240 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Aquatic resource was visit during site visit conducted by Corps personnel to establish criteria used in identifying Ephemeral tributaries. The ephemeral channel only contains surface water flowing or pooling in direct response to precipitation. The identified ephemeral channel is a (b)(3) water and is

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MP06 UNT2A NWPR	604 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	therefore excluded from the rule. Aquatic resource was visit during site visit conducted by Corps personnel to establish criteria used in identifying Ephemeral tributaries. The ephemeral channel only contains surface water flowing or pooling in direct response to precipitation. The identified ephemeral channel is a (b)(3) water and is therefore excluded from the rule.
MP08 UNT1 to Lickskillet NWPR	378 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	The ephemeral channel only contains surface water flowing or pooling in direct response to precipitation. The identified ephemeral channel is a (b)(3) water and is therefore excluded from the rule.
MP09 UNT5 NWPR	152 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	The ephemeral channel only contains surface water flowing or pooling in direct response to precipitation. The identified ephemeral channel is a (b)(3) water and is therefore excluded from the rule.
MP09 UNT6 NWPR	76 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	The ephemeral channel only contains surface water flowing or pooling in direct response to precipitation. The identified ephemeral channel is a (b)(3) water and is therefore excluded from the rule.
MP09 UNT7 NWPR	209 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	The ephemeral channel only contains surface water flowing or pooling in direct response to precipitation. The identified ephemeral channel is a (b)(3) water and is therefore excluded from the rule.
MP10 UNT1 NWPR	567 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	The ephemeral channel only contains surface water flowing or pooling in direct response to precipitation. The identified ephemeral channel is a (b)(3) water and is therefore excluded from the rule.
MP10 UNT10 NWPR	63 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	The ephemeral channel only contains surface water flowing or pooling in direct response to precipitation. The identified ephemeral channel is a (b)(3) water and is therefore excluded from the rule.
MP10 UNT12 NWPR	36 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Aquatic resource was visit during site visit conducted by Corps personnel to establish criteria used in identifying Ephemeral tributaries. The ephemeral channel only contains surface water flowing or pooling in direct response to precipitation. The identified ephemeral channel is a (b)(3) water and is therefore excluded from the rule.
MP10 UNT2 NWPR	78 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	The ephemeral channel only contains surface water flowing or pooling in direct response to precipitation. The identified ephemeral channel is a (b)(3) water and is therefore excluded from the rule.
MP10 UNT3 NWPR	80 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	The ephemeral channel only contains surface water flowing or pooling in direct response to precipitation. The identified ephemeral channel is a (b)(3) water and is therefore excluded from the rule.
MP10 UNT4 NWPR	66 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	The ephemeral channel only contains surface water flowing or pooling in direct response to precipitation. The identified ephemeral channel is a (b)(3) water and is therefore excluded from the rule.
MP10 UNT5	157 feet	(b)(3) Ephemeral feature, including	The ephemeral channel only contains surface water

¹ Map(s)/Figure(s) are attached to the AJD provided to the requestor.

² If the navigable water is not subject to the ebb and flow of the tide or included on the District's list of Rivers and Harbors Act Section 10 navigable waters list, do NOT use this document to make the determination. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Rivers and Harbors Act Section 10 navigability determination.

³ A stand-alone TNW determination is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where independent upstream or downstream limits or lake borders are established. A stand-alone TNW determination should be completed following applicable guidance and should NOT be documented on the AJD form.

⁴ Some excluded waters, such as (b)(2) and (b)(4), may not be specifically identified on the AJD form unless a requestor specifically asks a Corps district to do so. Corps Districts may, in case-by-case instances, choose to identify some or all of these waters within the review area.

⁵ Because of the broad nature of the (b)(1) exclusion and in an effort to collect data on specific types of waters that would be covered by the (b)(1) exclusion, four sub-categories of (b)(1) exclusions were administratively created for the purposes of the AJD Form. These four sub-categories are not new exclusions, but are simply administrative distinctions and remain (b)(1) exclusions as defined by the NWPR.



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NWPR		an ephemeral stream, swale, gully, rill, or pool	flowing or pooling in direct response to precipitation. The identified ephemeral channel is a (b)(3) water and is therefore excluded from the rule.
MP10 UNT6A NWPR	35 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	The ephemeral channel only contains surface water flowing or pooling in direct response to precipitation. The identified ephemeral channel is a (b)(3) water and is therefore excluded from the rule.
MP10 UNT7A NWPR	144 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	The ephemeral channel only contains surface water flowing or pooling in direct response to precipitation. The identified ephemeral channel is a (b)(3) water and is therefore excluded from the rule.
MP10 UNT7A1 NWPR	312 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	The ephemeral channel only contains surface water flowing or pooling in direct response to precipitation. The identified ephemeral channel is a (b)(3) water and is therefore excluded from the rule.
MP10 UNT9 NWPR	139 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	The ephemeral channel only contains surface water flowing or pooling in direct response to precipitation. The identified ephemeral channel is a (b)(3) water and is therefore excluded from the rule.
MP11 UNT1A NWPR	341 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	The ephemeral channel only contains surface water flowing or pooling in direct response to precipitation. The identified ephemeral channel is a (b)(3) water and is therefore excluded from the rule.
MP11 UNT2 NWPR	50 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Aquatic resource was visit during site visit conducted by Corps personnel to establish criteria used in identifying Ephemeral tributaries. The ephemeral channel only contains surface water flowing or pooling in direct response to precipitation. The identified ephemeral channel is a (b)(3) water and is therefore excluded from the rule.
MP11 UNT4A NWPR	135 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Aquatic resource was visit during site visit conducted by Corps personnel to establish criteria used in identifying Ephemeral tributaries. The ephemeral channel only contains surface water flowing or pooling in direct response to precipitation. The identified ephemeral channel is a (b)(3) water and is therefore excluded from the rule.
MP11.67 UNT1 NWPR	320 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	The ephemeral channel only contains surface water flowing or pooling in direct response to precipitation. The identified ephemeral channel is a (b)(3) water and is therefore excluded from the rule.
MP11.67 UNT1A NWPR	115 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	The ephemeral channel only contains surface water flowing or pooling in direct response to precipitation. The identified ephemeral channel is a (b)(3) water and is therefore excluded from the rule.
MP11.67 UNT1B NWPR	119 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	The ephemeral channel only contains surface water flowing or pooling in direct response to precipitation. The identified ephemeral channel is a (b)(3) water and is therefore excluded from the rule.
MP11.67 UNT1C NWPR	175 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	The ephemeral channel only contains surface water flowing or pooling in direct response to precipitation. The identified ephemeral channel is a (b)(3) water and is therefore excluded from the rule.

¹ Map(s)/Figure(s) are attached to the AJD provided to the requestor.

² If the navigable water is not subject to the ebb and flow of the tide or included on the District's list of Rivers and Harbors Act Section 10 navigable waters list, do NOT use this document to make the determination. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Rivers and Harbors Act Section 10 navigability determination.

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⁵ Because of the broad nature of the (b)(1) exclusion and in an effort to collect data on specific types of waters that would be covered by the (b)(1) exclusion, four sub-categories of (b)(1) exclusions were administratively created for the purposes of the AJD Form. These four sub-categories are not new exclusions, but are simply administrative distinctions and remain (b)(1) exclusions as defined by the NWPR.



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			is therefore excluded from the rule.
MP11.67 UNT2 NWPR	133 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	The ephemeral channel only contains surface water flowing or pooling in direct response to precipitation. The identified ephemeral channel is a (b)(3) water and is therefore excluded from the rule.
MP11.67 UNT3 NWPR	149 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	The ephemeral channel only contains surface water flowing or pooling in direct response to precipitation. The identified ephemeral channel is a (b)(3) water and is therefore excluded from the rule.
MP11.67 UNT4A NWPR	210 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	The ephemeral channel only contains surface water flowing or pooling in direct response to precipitation. The identified ephemeral channel is a (b)(3) water and is therefore excluded from the rule.
MP11.67 UNT4B NWPR	140 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	The ephemeral channel only contains surface water flowing or pooling in direct response to precipitation. The identified ephemeral channel is a (b)(3) water and is therefore excluded from the rule.
MP11.67 UNT5 NWPR	335 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	The ephemeral channel only contains surface water flowing or pooling in direct response to precipitation. The identified ephemeral channel is a (b)(3) water and is therefore excluded from the rule.
MP7.5 W01 PUB NWPR	0.18 acres	(b)(1) Non-adjacent wetland	MP7.5 W01, a palustrine unconsolidated bottom (PUB) pond, is located outside the proposed corridor.
UNT1A to Greens Branch NWPR	96 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	The ephemeral channel only contains surface water flowing or pooling in direct response to precipitation. The identified ephemeral channel is a (b)(3) water and is therefore excluded from the rule.

III. SUPPORTING INFORMATION

A. Select/enter all resources that were used to aid in this determination and attach data/maps to this document and/or references/citations in the administrative record, as appropriate.

Information submitted by, or on behalf of, the applicant/consultant: *ENG Engineering, LLC LG&E Bullitt County Transmission Pipeline Project Streams and Wetlands LRL-2017-1046 (August 1, 2018), Bullitt County Transmission Pipeline: Summary of May 3 Jurisdictional Determination Site Visit LRL-2017-1046 (May 6, 2021), 20210505_LGE_Bullitt_Delineation_Figures (May 11, 2021), Table 1 JD Features Resource USACE Data Updated 05062021 (May 7, 2021).*

This information is sufficient for purposes of this AJD.
 Rationale: *N/A*

Data sheets prepared by the Corps: *N/A*

Photographs: *(aerial and other) Bullitt County Transmission Pipeline: Summary of May 3 Jurisdictional Determination Site Visit LRL-2017-1046 (May 6, 2021), 20210505_LGE_Bullitt_Delineation_Figures (May 11, 2021).*

Corps Site visit(s) conducted on: *May 3, 2021.*

Previous Jurisdictional Determinations (AJDs or PJDs): *N/A*

¹ Map(s)/Figure(s) are attached to the AJD provided to the requestor.

² If the navigable water is not subject to the ebb and flow of the tide or included on the District's list of Rivers and Harbors Act Section 10 navigable waters list, do NOT use this document to make the determination. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Rivers and Harbors Act Section 10 navigability determination.

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- Antecedent Precipitation Tool: N/A.
- USDA NRCS Soil Survey: N/A
- USFWS NWI maps: N/A
- USGS topographic maps: 1:24K Quad Name – Samuels

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS Sources	N/A.
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	Regulatory viewer with 3DEP Elevation contours, DEM, and hill-shade layers.
State/Local/Tribal Sources	N/A.
Other Sources	Google Earth Pro (2020) with NHD and USGS Earth point Topo map layers.

- B. Typical year assessment(s):** Typical year assessment was conducted utilizing desktop tools identified above with supporting documentation. Based on the aforementioned supporting documentation, the conditions as described in Part II: Findings under Section C Clean Water Act Section 404 and Section D Excluded Waters or Features were determined to be typical.
- C. Additional comments to support AJD:** A site visit was conducted on May 3, 2021 by Corps personnel to view aquatic resources that demonstrated criteria utilized by the applicant’s agent to make recommendations as to the flow regime of the identified resources. The site visit consisted of visual confirmation of waters at multiple locations along the survey corridor. A total of three wetlands and eleven stream features were visited and have been noted in the rationale column of this document.

¹ Map(s)/Figure(s) are attached to the AJD provided to the requestor.

² If the navigable water is not subject to the ebb and flow of the tide or included on the District’s list of Rivers and Harbors Act Section 10 navigable waters list, do NOT use this document to make the determination. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Rivers and Harbors Act Section 10 navigability determination.

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NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: LG&E; Bullitt County Natural Gas Pipeline.	File Number: LRL-2017-1046	Date: 8/30/2021
Attached is:		See Section below
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A
	PROFFERED PERMIT (Standard Permit or Letter of permission)	B
	PERMIT DENIAL	C
X	APPROVED JURISDICTIONAL DETERMINATION	D
	PRELIMINARY JURISDICTIONAL DETERMINATION	E

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at http://www.usace.army.mil/CECW/Pages/reg_materials.aspx or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also, you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision and/or the appeal process you may contact:

Mr. Jason Rhoades
U.S. Army Corps of Engineers
P.O. Box 59, Rm 752
Attn: CELRL-RDS
Louisville, Kentucky 40201-0059
(502) 315-2643

If you only have questions regarding the appeal process you may also contact:

U.S. Army Corps of Engineers
Appeal Review Officer CELRD-PD-REG
550 Main Street, Room 10-714
Cincinnati, OH 45202-3222
TEL (513) 684-2699; FAX (513) 684-2460

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

Signature of appellant or agent.

Date: _____

Telephone number: _____



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, LOUISVILLE DISTRICT
600 DR. MARTIN LUTHER KING JR PL
LOUISVILLE, KY 40202

August 26, 2021

Regulatory Division
South Branch
ID No. LRL-2017-1046-jwr

Louisville Gas & Electric Company
c/o: Mr. Nate Beckman
220 West Main Street
Louisville, Kentucky 40202

Dear Mr. Beckman:

This is in response to your request for authorization to discharge dredged or fill material into "Waters of the United States" in association with the installation of a 12-inch natural gas steel pipeline in Bullitt County, KY. Proposed impacts to waters of the U.S. would include 36 stream or wetland crossings resulting in 3,125 linear feet of temporary impacts to perennial and intermittent tributaries, .34 acre(s) of emergent wetlands and open water aquatic resources. Permanent impacts associated with the proposed activities would include permanent placement of an open cell revetment mattress for utility access across 18 linear feet of a perennial tributary, and loss of function associated with conversion of 0.16 acre(s) of forested wetland to emergent wetland due to maintenance of an established utility right-of-way. All temporary impacts would be returned to pre-construction contours upon completion of the installation activities. The preconstruction notification supplied by you was reviewed to determine the type of permit authorization that would be required under the provisions of Section 404 of the Clean Water Act.

Your project includes a discharge dredged or fill material into waters of the United States associated with the construction of a natural gas pipeline and associated facilities. The project is authorized under the provisions of 33 CFR 330 Nationwide Permit (NWP) No. 12, Oil or Natural Gas Pipeline Activities, as published in the Federal Register January 13, 2021. Under the provisions of this authorization, you must comply with the enclosed Terms and General Conditions for NWP No. 12, and the following Special Conditions:

1. The Permittee shall comply with all conditions of the Section 401 Water Quality Certification No. 2021-055-7, dated June 30, 2021, issued by the Kentucky Division of Water, which are incorporated herein by reference.
2. Prior to initiating the authorized work, the Permittee shall provide verification to the U.S. Army Corps of Engineers that 0.2 wetland mitigation bank credits have been purchased from the Rolling Fork Mitigation Bank (LRL-2008-969). The required verification shall reference this project's permit number (LRL-2017-1046).

3. This nationwide permit authorization does not authorize you to take an endangered species, in particular the Indiana bat (*Myotis sodalis*) and Kentucky glade cress (*Leavenworthia exiqua* var. *laciniata*). In order to legally take a listed species, you must either have separate authorization under the Endangered Species Act (ESA) (e.g., an ESA Section 10 permit), or comply with “incidental take” provisions included in a Biological Opinion (BO) issued by the U.S. Fish and Wildlife Service under ESA Section 7. The enclosed U.S. Fish and Wildlife Service BO (*FWS Log #: 04EK1000-2021-F-0296* Final Biological Opinion; LG&E Bullitt County Transmission Pipeline; Bullitt County, Kentucky) contains mandatory monitoring and reporting requirements associated with “incidental take” that is also specified in the BO. Your authorization under this nationwide permit is conditional upon your compliance with all of the mandatory monitoring and reporting requirements associated with incidental take of the attached BO, which requirements are incorporated by reference in this permit. Failure to comply with the requirements associated with incidental take in the BO, where a take of the listed species occurs, would constitute an unauthorized take, and it would also constitute non-compliance with your nationwide permit authorization. The U.S. Fish and Wildlife Service is the appropriate authority to determine compliance with the requirements of its BO, and with the ESA.
4. LG&E is required to submit quarterly ledgers to the United States Fish and Wildlife Service that identify both habitat removal and Imperiled Bat Conservation Fund contributions. Required ledgers shall clearly identify the Corps and LG&E’s monitoring and Reporting requirements as outlined in sections 6.4, 6.4.1, and 6.4.2 of the issued BO.
5. If the proposed corridor alignment changes or you discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by this permit, you must immediately notify the district engineer of what you have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

This verification is valid until March 14, 2026. The enclosed Compliance Certification must be submitted to the District Engineer within 30 days of completion of the authorized activity or the implementation of any required compensatory mitigation, whichever occurs later. Note that we also perform periodic inspections to ensure compliance with our permit conditions and applicable Federal laws. A copy of this letter will be forwarded to your agent and to the KDOW.

If you have any questions, please contact us by writing to the District Regulatory Office at the above address, ATTN: CELRL-RDS, or contact me directly at 502-315-2643 or jason.w.rhoades@usace.army.mil. Any correspondence on this matter should refer to our ID Number LRL-2017-1046-jwr.

Sincerely,

David Baldrige
Chief, South Branch
Regulatory Division

ANDY BESHEAR
GOVERNOR



REBECCA W. GOODMAN
SECRETARY

ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION

ANTHONY R. HATTON
COMMISSIONER

300 SOWER BOULEVARD
FRANKFORT, KENTUCKY 40601

June 30, 2021

Stephen A. Beatty
Louisville Gas & Electric
6900 Enterprise Drive
Louisville, KY 40214

Re: §401 Water Quality Certification
LG&E Pipeline - Bullitt Co
Bullitt County, Kentucky
AI No.: 120218; Activity ID: APE20200003
WQC No: WQC 2021-055-7
USACE ID No.: LRL-2017-1046

Dear Mr. Beatty:

Pursuant to Section 401 of the Clean Water Act (CWA) and 40 CFR 121.7(c), the Commonwealth of Kentucky certifies it has reasonable assurances that applicable water quality standards under Kentucky Administrative Regulations Title 401, Chapter 10, established pursuant to Sections 301, 302, 303, 304, 306, and 307 of the CWA, will not be violated by the above referenced project provided that the U.S. Army Corps of Engineers authorizes the activity under a federal license or permit, and the attached conditions are met.

Other permits from the Division of Water may be required for this activity. Activities within a floodplain may require a Permit to Construct Across or Along a Stream; contact the Floodplain Management Section (502-564-3410). Projects that disturb one acre or more of land or is part of a larger common plan of development or sale that will ultimately disturb one acre or more of land require a Kentucky Pollution Discharge Elimination System (KPDES) Stormwater Permit; contact the Surface Water Permits Branch (502-564-3410 or SWPBSupport@ky.gov). A Groundwater Protection Plan is required if activities listed in Section 2(2) of 401 KAR 5:037 are conducted. A Water Withdrawal Application is required for activities proposing raw water withdrawals of 10,000 gallons per day or more; contact the Watershed Management Branch (502-564-3410).

All future correspondence on this project must reference AI No. **120218**. **The attached document is your official Water Quality Certification; please read it carefully.** Please contact Elizabeth M Harrod by phone at 502-782-6700 or email at Elizabeth.Harrod@ky.gov if you have any questions.

Sincerely,

X

Elizabeth M Harrod, Supervisor
Water Quality Certification Section
Signed by Elizabeth M Harrod
Kentucky Division of Water

Attachment



cc: Jason Rhoades, USACE: Louisville District [Jason.w.Rhoades@usace.army.mil]
Lee Andrews, USFWS: Frankfort [via email: kentuckyes@fws.gov]
Perry Thomas, Salt River Basin Coordinator [perryt@ky.gov]
Todd Giles, KY DOW: Louisville Field Office Branch [Todd.giles@ky.gov]
Nate Beckman [Nate.Beckman@lge-ku.com]

Water Quality Certification

LG&E Pipeline - Bullitt Co

Facility Requirements

Permit Number: WQC 2021-055-7

Activity ID No.:APE20200003

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ACTV0000000004 (Bullitt County Pipeline installation) LG&E Natural Gas Pipeline:

Submittal/Action Requirements:

Condition No.	Condition
S-1	<p>Louisville Gas & Electric (LG&E) shall submit a copy of the receipt for the purchase of 0.2 wetland Adjusted Mitigation Units (AMUs) from the Kentucky Department of Fish & Wildlife ILF program fund to the Water Quality Certification Section Project Manager or Supervisor prior to any construction activity.</p> <p>This condition is necessary to allow the impact to occur. Compensatory mitigation is the method to approve impacts and entire loss of a water resource. The Division can approve necessary impacts and loss based on the confidence that the resource will be replaced and not taken from the watershed entirely. Compensatory mitigation is the method of compliance for the Commonwealth's water quality standards. [401 KAR 10:031 Section 2(1)(a), 401 KAR 10:030 Section 1, KRS 224.10-100, KRS 224.70-110]. [401 KAR 10:030 Section 1, KRS 224.10-100, KRS 224.70-110]</p>
S-2	<p>LG&E shall notify the Water Quality Certification Project Manager or Supervisor of the scheduled start of construction activities at least two weeks before the start of construction.</p> <p>This condition is necessary for the Division of Water to be informed of the ongoing activity for the purposes of site visits to ensure implementation of Kentucky Regulatory Statutes and Administrative Regulations; the Division will monitor the environment to afford more effective and efficient control practices, to identify changes and conditions in ecological systems, and to warn of emergency conditions. [401 KAR 10:031 Section 2(1)(a)]. [401 KAR 10:030 Section 1, KRS 224.10-100, KRS 224.70-110]</p>
S-3	<p>LG&E shall notify the Water Quality Certification Project Manager or Supervisor of substantial completion of construction no later than two weeks post-construction.</p> <p>This condition is necessary for the Division of Water to be informed of the ongoing activity for the purposes of site visits to ensure implementation of Kentucky Regulatory Statutes and Administrative Regulations; the Division will monitor the environment to afford more effective and efficient control practices, to identify changes and conditions in ecological systems, and to warn of emergency conditions. [401 KAR 10:031 Section 2(1)(a), 401 KAR 10:030 Section 1, KRS 224.10-100, KRS 224.70-110]. [401 KAR 10:030 Section 1, KRS 224.10-100, KRS 224.70-110]</p>

Water Quality Certification

LG&E Pipeline - Bullitt Co

Facility Requirements

Permit Number: WQC 2021-055-7

Activity ID No.: APE20200003

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ACTV0000000004 (Bullitt County Pipeline installation) LG&E Natural Gas Pipeline:

Submittal/Action Requirements:

Condition No.	Condition
S-4	<p>LG&E shall submit to the Water Quality Certification Section Project Manager or Supervisor an as-built report and a description of the photos within 90 days after restoration of the temporary impacted wetlands and streams. Restoration of the wetlands is considered to be re-contouring and grading to the original condition and seeding/planting. Restoration of the streams is considered to be re-establishing the stream bed, re-grading the stream banks to align with the existing floodplain and seeding/planting. As-built drawings for the restored wetlands shall include: restored condition contours and seeding/planting areas. As-built drawing for the streams shall include: cross-sections showing the original channel and bank contours and the restored contours, a description of the restored channel bed material, and a description of the seeding/planting. Photos shall include the temporary wetlands and streams prior to impact and after restoration.</p> <p>This condition is necessary for the Division of Water to monitor the environment to afford more effective and efficient control practices, to identify changes and conditions in ecological systems, and to warn of emergency conditions. [401 KAR 10:031 Section 2(1)(a), 401 KAR 10:030 Section 1, KRS 224.10-100, KRS 224.70-110]. [401 KAR 10:030 Section 1, KRS 224.10-100, KRS 224.70-110]</p>
S-5	<p>LG&E shall submit a monitoring report by the 31st of December beginning with the first full growing season of replanted vegetation. The beginning of the growing season is presumed to be March 1st. The report shall be written to include the photos of the area prior to construction and photos of post construction that demonstrate the temporary impacted streams and wetlands have been restored to their original condition. The report shall include description of the necessary reconstruction activities and a list of the native vegetation replaced in the areas. The report shall be submitted to the Water Quality Certification Section.</p> <p>This condition is necessary for the Division of Water to monitor the environment to afford more effective and efficient control practices, to identify changes and conditions in ecological systems, and to warn of emergency conditions. [401 KAR 10:031 Section 2(1)(a), KRS 224.10-100, KRS 224.70-110]. [401 KAR 10:030]</p>

Water Quality Certification

LG&E Pipeline - Bullitt Co

Facility Requirements

Permit Number: WQC 2021-055-7

Activity ID No.: APE20200003

ACTV0000000004 (Bullitt County Pipeline installation) LG&E Natural Gas Pipeline:

Narrative Requirements:

Condition

No.

Condition

T-1 **The work approved by this certification shall be limited to:**

Impact ID, Impact (lf or acre), Perm/Temp, Impact Type, Resource Type, Latitude, Longitude

MP00 UNT0, 0, None, N/A, Intermittent, 37.98789, -85.50707
MP00 UNT2, 102, Temporary , Trenching, Intermittent, 37.98530, -85.51780
MP00 UNT3, 102, Temporary , Trenching, Intermittent, 37.98410, -85.52160
MP01 UNT1, 85, Temporary , Trenching, Intermittent, 37.98130, -85.52830
MP07 UNT2, 84, Temporary , Trenching, Intermittent, 37.96363, -85.62252
MP07 UNT3, 170, Temporary , Trenching, Intermittent, 37.96492, -85.61758
MP07 UNT3A, 119, Temporary , Trenching, Intermittent, 37.96085, -85.63348
MP08 UNT1, 164, Temporary , Trenching, Intermittent, 37.95970, -85.63920
MP09 UNT1, 144, Temporary , Trenching, Intermittent, 37.95370, -85.65810
MP09 UNT8, 80, Temporary , Trenching, Intermittent, 37.95570, -85.64950
MP10 UNT6, 124, Temporary , Trenching, Intermittent, 37.95160, -85.66890
MP10 UNT7, 77, Temporary , Trenching, Intermittent, 37.95160, -85.66960
MP10 UNT8 , 81, Temporary , Trenching, Intermittent, 37.95130, -85.67110
MP10 UNT11, 178, Temporary , Trenching, Intermittent, 37.95130, -85.67260
MP11 UNT1, 104, Temporary , Trenching, Intermittent, 37.95260, -85.68140
MP11 UNT3 , 77, Temporary , Trenching, Intermittent, 37.95250, -85.67860
MP11 UNT4 , 117, Temporary , Trenching, Intermittent, 37.95220, -85.67680
MP11 UNT5 , 79, Temporary , Trenching, Intermittent, 37.95140, -85.67400
MP11.67 UNT4, 124, Temporary , Trenching, Intermittent, 37.95254, -85.68455
MP02 Cox Creek, 0, None, HDD, Perennial, 37.97660, -85.54560
MP07 UNT1, 0, None, HDD, Perennial, 37.96447, -85.62044
MP06 UNT2(a), 18, Permanent , Access Road, Perennial, 37.96817, -85.60934
Cedar Creek, 192, Temporary , Trenching, Perennial, 37.98405, -85.57278
Licksillet Creek, 98, Temporary , Trenching, Perennial, 37.95621, -85.64854
MP09 UNT3 , 119, Temporary , Trenching, Perennial, 37.95380, -85.65620

Water Quality Certification

LG&E Pipeline - Bullitt Co

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ACTV0000000004 (Bullitt County Pipeline installation) LG&E Natural Gas Pipeline:

Narrative Requirements:

Condition

No. Condition

MP09 UNT4, 77, Temporary , Trenching, Perennial, 37.95420, -85.65440
MP02 Rocky Run, 0, None, HDD, Perennial , 37.97700, -85.54760
UNT1 to Greens Branch, 0, None, N/A, Perennial , 37.97810, -85.59830
MP00 UNT1, 101, Temporary , Trenching, Perennial , 37.98660, -85.51200
MP05 UNT2, 122, Temporary , Trenching, Perennial , 37.98230, -85.59764
Greens Branch, 129, Temporary , Trenching, Perennial , 37.98228, -85.59751
MP06 UNT2(b), 95, Temporary , Trenching, Perennial , 37.96817, -85.60934
MP06 UNT1, 77, Temporary , Trenching, Perennial , 37.96638, -85.61204
MP08 UNT2 , 79, Temporary , Trenching, Perennial , 37.96040, -85.63610
MP09 UNT2 , 25, Temporary , Trenching, Perennial , 37.95390, -85.65630
MP06 W02, 0.16 ac, Permanent conversion, Trenching, PFO, 37.96828, -85.60903
MP7.5 W01 PUB, 0 ac, None, N/A, PUB, 37.96116, -85.63284
MP05 W01 PUB, 0.07 ac, Temporary , Trenching, PUB, 37.98236, -85.59708
MP06 W01, 0.05 ac, Temporary , Trenching, PEM, 37.96798, -85.61116
MP09 W01, 0.07 ac, Temporary , Trenching, PEM, 37.95367, -85.65655
MP11 W01, 0.15 ac, Temporary , Trenching, PEM, 37.95247, -85.67929

This condition is necessary to confirm the activity approved under this certification. [401 KAR 9:010(1)(a)(2)]. [401 KAR 10:030 Section 1, KRS 224.10-100, KRS 224.70-110]

Water Quality Certification

LG&E Pipeline - Bullitt Co

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ACTV0000000004 (Bullitt County Pipeline installation) LG&E Natural Gas Pipeline:

Narrative Requirements:

Condition No.	Condition
T-2	<p>All work performed under this certification shall adhere to the design and specifications set forth in the following document(s) titled: WQC Supplement 10.7.2020 received October 16, 2020, Application for Permit to Construct Across or Along a Stream and/or Water Quality Certification (DOW 7116) received on November 6, 2020, Table of Impacts received November 11, 2020, LG&E Biological Assessment received December 21, 2020, Jurisdictional Determination site visit summary and table received May 6, 2021, and U.S Fish and Wildlife biological Opinion received June 10, 2021.</p> <p>This condition is necessary to confirm the activity approved under this certification. [401 KAR 9:010(1)(a)(2)]. [401 KAR 10:030 Section 1, KRS 224.10-100, KRS 224.70-110]</p>
T-3	<p>LG&E is responsible for preventing degradation of waters of the Commonwealth from soil erosion. An erosion and sedimentation control plan must be designed, implemented, and maintained in effective operating condition at all times during construction.</p> <p>This condition is necessary to prevent and minimize objectionable deposits and pollution and protect the use of the stream. [401 KAR 10:031 Section 2(1)(a)]. [401 KAR 10:030 Section 1, KRS 224.10-100, KRS 224.70-110]</p>
T-4	<p>Heavy equipment (e.g. bulldozers, backhoes, draglines, etc.), if required for this project, should not be used or operated within the stream channel. In those instances where such instream work is unavoidable, then it shall be performed in such a manner and duration as to minimize re-suspension of sediments and disturbance to the channel, banks, or riparian vegetation.</p> <p>This condition is necessary to prevent and minimize objectionable deposits and pollution and protect the use of the stream. [401 KAR 10:031 Section 2(1)(a)]. [401 KAR 10:030 Section 1, KRS 224.10-100, KRS 224.70-110]</p>
T-5	<p>Erosion and sedimentation pollution control plans and Best Management Practices must be designed, installed, and maintained in effective operating condition at all times during construction activities so that violations of state water quality standards do not occur.</p> <p>This condition is necessary to prevent and minimize objectionable deposits and pollution and protect the use of the stream. [401 KAR 10:031 Section 2(1)(a)]. [401 KAR 10:030 Section 1, KRS 224.10-100, KRS 224.70-110]</p>

Water Quality Certification

LG&E Pipeline - Bullitt Co

Facility Requirements

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ACTV0000000004 (Bullitt County Pipeline installation) LG&E Natural Gas Pipeline:

Narrative Requirements:

Condition No.	Condition
T-6	<p>Remove all sediment and erosion control measures after re-vegetation has become well-established.</p> <p>This condition is necessary to prevent and minimize objectionable deposits and pollution and protect the use of the stream. [401 KAR 10:031 Section 2(1)(a)]. [401 KAR 10:030 Section 1, KRS 224.10-100, KRS 224.70-110]</p>
T-7	<p>Any fill or riprap shall be of a composition that shall not cause violations of water quality standards by adversely affecting the biological, chemical, or physical properties of waters of the Commonwealth. If riprap is used, it shall be of a weight and size that bank stress or slump conditions shall not occur.</p> <p>This condition is necessary to prevent and minimize objectionable deposits and pollution and protect the use of the stream. [401 KAR 10:031 Section 2(1)(a)]. [401 KAR 10:030 Section 1, KRS 224.10-100, KRS 224.70-110]</p>
T-8	<p>In-stream work shall not be conducted during the fish spawning season, April 15th through June 15th.</p> <p>This condition is necessary to protect aquatic habitat during sensitive seasons for most aquatic species. [401 KAR 10:031 Section 4(1)(c) and Section 4(1)(h)]. [401 KAR 10:030 Section 1, KRS 224.10-100, KRS 224.70-110]</p>
T-9	<p>Sediment and erosion control measures (e.g., check-dams, silt fencing, or hay bales) shall not be placed within surface waters of the Commonwealth, either temporarily or permanently, without prior approval by the Kentucky Division of Water's Water Quality Certification Section. If placement of sediment and erosion control measures in surface waters is unavoidable, placement shall not be conducted in such a manner that may cause instability of streams that are adjacent to, upstream, or downstream of the structures. All sediment and erosion control measures shall be removed and the natural grade restored prior to withdrawal from the site.</p> <p>This condition is necessary to prevent and minimize objectionable deposits and pollution and protect the use of the stream. [401 KAR 10:031 Section 2(1)(a)]. [401 KAR 10:030 Section 1, KRS 224.10-100, KRS 224.70-110]</p>
T-10	<p>Measures shall be taken to prevent or control spills of fuels, lubricants, or other toxic materials used in construction from entering the watercourse.</p> <p>This condition is necessary to prevent water pollution as prohibited by statute. [401 KAR 10:031 Section 2(1)(a)]. [401 KAR 10:030 Section 1, KRS 224.10-100, KRS 224.70-110]</p>

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Facility Requirements

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ACTV0000000004 (Bullitt County Pipeline installation) LG&E Natural Gas Pipeline:

Narrative Requirements:

Condition No.	Condition
T-11	<p>To the maximum extent practicable, all in-stream work under this certification shall be performed during low flow.</p> <p>This condition is necessary to prevent and minimize objectionable deposits and pollution and protect the use of the stream. [401 KAR 10:031 Section 2(1)(a)]. [401 KAR 10:030 Section 1, KRS 224.10-100, KRS 224.70-110]</p>
T-12	<p>Removal of existing riparian vegetation shall be restricted to the minimum necessary for project construction.</p> <p>This condition is necessary to minimize negative effects to the environment. [401 KAR 10:031 Section 2(1)(a)]. [401 KAR 10:030 Section 1, KRS 224.10-100, KRS 224.70-110]</p>
T-13	<p>Should stream pollution, wetland impairment, and/or violations of water quality standards occur as a result of this activity (either from a spill or other forms of water pollution), the Kentucky Division of Water shall be notified immediately by calling 800/564-2380.</p> <p>This condition is necessary for the Division of Water to monitor the environment to afford more effective and efficient control practices, to identify changes and conditions in ecological systems, and to warn of emergency conditions. [401 KAR 10:031 Section 2(1)(a)]. [401 KAR 10:030 Section 1, KRS 224.10-100, KRS 224.70-110]</p>
T-14	<p>The authorization of this certification coincides with the duration of authorization by the issued federal permit.</p> <p>This condition is necessary for the issuance of the certification to align with the issuance of the federal permit. [KRS 224.16-050(2)]. [401 KAR 10:030 Section 1, KRS 224.10-100, KRS 224.70-110]</p>

Water Quality Certification

LG&E Pipeline - Bullitt Co

Facility Requirements

Permit Number: WQC 2021-055-7

Activity ID No.: APE20200003

ACTV0000000004 (Bullitt County Pipeline installation) LG&E Natural Gas Pipeline:

Narrative Requirements:

Condition No.	Condition
T-15	<p>If there is a transfer or conveyance of the project site during the issued WQC term for the approved activity, LG&E shall submit written notice to the Water Quality Certification Section Project Manager or Supervisor of the transfer or conveyance of the project site or any part of the project site at least 60 days prior to the transfer or conveyance of the project site. The notification shall include the WQC number; the Agency Interest (AI) No.; the name, mailing address, email address, and telephone number of the current owner; the name, mailing address, email address, and telephone number of the prospective transferee; the proposed effective date of transfer/conveyance; and a copy of the documentation evidencing the transfer/conveyance. Failure to comply with this condition does not negate the validity or enforceability of this certification.</p> <p>This condition is necessary for the Division of Water to be aware of authorized impacts, the appropriate responsible party and to monitor the environment to afford more effective and efficient control practices, to identify changes and conditions in ecological systems, and to warn of emergency conditions. [401 KAR 9:010(1)(a)(2), 401 KAR 10:030 Section 1, KRS 224.10-100, KRS 224.70-110]. [401 KAR 10:030 Section 1, KRS 224.10-100, KRS 224.70-110]</p>



ANDY BESHEAR
GOVERNOR

TOURISM, ARTS AND HERITAGE CABINET
KENTUCKY HERITAGE COUNCIL
THE STATE HISTORIC PRESERVATION OFFICE

MICHAEL E. BERRY
SECRETARY

JACQUELINE COLEMAN
LT. GOVERNOR

410 HIGH STREET
FRANKFORT, KENTUCKY 40601
(502) 564-7005
www.heritage.ky.gov

CRAIG A. POTTS
EXECUTIVE DIRECTOR &
STATE HISTORIC
PRESERVATION OFFICER

March 16, 2021

United States Army Corps of Engineers
ATTN: Mr. David Baldrige
P.O. Box 59
Louisville, KY 40201-0059

Re: Continuing Consultation: Updated Determination of Effect for the Bullitt County Gas Pipeline Project

LRL-2017-1046-jwr

Dear Mr. Baldrige:

Thank you for your email and attached documentation concerning the effects to historic properties of the above-mentioned project, received February 17, 2021. We previously consulted on this project, issuing concurrence with the United States Army Corps of Engineers' determination that the proposed project would result in No Adverse Effect to Historic Properties.

During initial consultation for this project, several cultural resources were identified within the project's area of potential effect. These included archaeological sites 15Bu84, 15Bu484, 15Bu860, 15Bu861, 15Bu862, 15Bu863, 15Bu879, and 15Bu888, unconfirmed archaeological site 1500000, and the above-ground resource BU-349. In our letter dated July 30, 2019, we commented that we concurred that no evidence of Site 1500000 had been produced in subsequent evaluation, that the portions of sites 15Bu862, 15Bu863, and 15Bu888 that had been identified within the project APE did not produce evidence of significant archaeological deposits, and that resource BU-349 is not eligible for the National Register of Historic Places. We did not concur with the USACE determination that sites 15Bu860, 15Bu861, and 15Bu879 are not eligible for the NRHP as additional evaluation of the historical significance of those interred in the cemetery would be needed to make an adequate eligibility recommendation. We withheld comment on the eligibility of site 15Bu484, but asked that the USACE include a permit condition to avoid further impacts to the site during the project.

We understand that after this initial consultation, that the USACE jurisdictional area for the project has been reduced as a result of newly implemented rules for determining jurisdictional area under the Navigable Waters Protection Rule of June 2020. We understand that, as now defined, the USACE APE for the proposed pipeline project has been reduced. As a result, we understand that only site 15Bu863 and above-ground resource BU-349 fall within the USACE jurisdictional area. We continue to concur that the portion of 15Bu863 within the APE has produced no evidence of significant deposits, and that BU-349 is not eligible for the NRHP. We understand that the USACE will continue to require a condition that 15Bu863 would need additional evaluation if the proposed corridor alignment changes. Given these parameters, we continue to **concur** with the USACE determination that the project will result in **No Adverse Effect to Historic Properties**.

(Continued on next page.)

D. Baldrige
United States Army Corps of Engineers
Updated DOE for LG&E Bullitt County Pipelin
LRL-2017-1046
March 16, 2021
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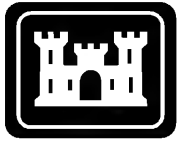
In the event of the unanticipated discovery of an archaeological site or object of antiquity, the discovery should be reported to the Kentucky Heritage Council and to the Kentucky Office of State Archaeology in the Anthropology Department at the University of Kentucky in accordance with KRS 164.730. In the event that human remains are encountered during project activities, all work should be immediately stopped in the area and the area cordoned off, and in accordance with KRS 72.020 the county coroner and local law enforcement must be contacted immediately. Upon confirmation that the human remains are not of forensic interest, the unanticipated discovery must be reported to the Kentucky Heritage Council.

Should you have any questions concerning archaeological resources, feel free to contact Chris Gunn of my staff at chris.gunn@ky.gov. Questions concerning above-ground resources can be directed to Jennifer Ryall at jennifer.ryall@ky.gov.

Sincerely,



Craig A. Potts,
Executive Director and
State Historic Preservation Officer



2021 Nationwide Permit Summary

US Army Corps
of Engineers
Louisville District ®

Issued: March 15, 2021

Expires: March 14, 2026

No. 12. Oil or Natural Gas Pipeline Activities

(NWP Final Rule, 86 FR 2744)

Activities required for the construction, maintenance, repair, and removal of oil and natural gas pipelines and associated facilities in waters of the United States, provided the activity does not result in the loss of greater than 1/2-acre of waters of the United States for each single and complete project.

Oil or natural gas pipelines: This NWP authorizes discharges of dredged or fill material into waters of the United States and structures or work in navigable waters for crossings of those waters associated with the construction, maintenance, or repair of oil and natural gas pipelines. There must be no change in pre-construction contours of waters of the United States. An “oil or natural gas pipeline” is defined as any pipe or pipeline for the transportation of any form of oil or natural gas, including products derived from oil or natural gas, such as gasoline, jet fuel, diesel fuel, heating oil, petrochemical feedstocks, waxes, lubricating oils, and asphalt.

Material resulting from trench excavation may be temporarily sidecast into waters of the United States for no more than three months, provided the material is not placed in such a manner that it is dispersed by currents or other forces. The district engineer may extend the period of temporary side casting for no more than a total of 180 days, where appropriate. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench. The trench cannot be constructed or backfilled in such a manner as to drain waters of the United States (e.g., backfilling with extensive gravel layers, creating a french drain effect). Any exposed slopes and stream banks must be stabilized immediately upon

completion of the utility line crossing of each waterbody.

Oil or natural gas pipeline substations: This NWP authorizes the construction, maintenance, or expansion of substation facilities (e.g., oil or natural gas or gaseous fuel custody transfer stations, boosting stations, compression stations, metering stations, pressure regulating stations) associated with an oil or natural gas pipeline in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not result in the loss of greater than 1/2-acre of waters of the United States. This NWP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters of the United States to construct, maintain, or expand substation facilities.

Foundations for above-ground oil or natural gas pipelines: This NWP authorizes the construction or maintenance of foundations for above-ground oil or natural gas pipelines in all waters of the United States, provided the foundations are the minimum size necessary.

Access roads: This NWP authorizes the construction of access roads for the construction and maintenance of oil or natural gas pipelines, in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. This NWP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters for access roads. Access roads must be the minimum width necessary (see Note 2, below). Access roads must be constructed so that the length of the road minimizes any adverse effects on waters of the United

States and must be as near as possible to pre-construction contours and elevations (e.g., at grade corduroy roads or geotextile/gravel roads). Access roads constructed above pre-construction contours and elevations in waters of the United States must be properly bridged or culverted to maintain surface flows.

This NWP may authorize oil or natural gas pipelines in or affecting navigable waters of the United States even if there is no associated discharge of dredged or fill material (see 33 CFR part 322). Oil or natural gas pipelines routed in, over, or under section 10 waters without a discharge of dredged or fill material may require a section 10 permit.

This NWP authorizes, to the extent that Department of the Army authorization is required, temporary structures, fills, and work necessary for the remediation of inadvertent returns of drilling fluids to waters of the United States through sub-soil fissures or fractures that might occur during horizontal directional drilling activities conducted for the purpose of installing or replacing oil or natural gas pipelines. These remediation activities must be done as soon as practicable, to restore the affected waterbody. District engineers may add special conditions to this NWP to require a remediation plan for addressing inadvertent returns of drilling fluids to waters of the United States during horizontal directional drilling activities conducted for the purpose of installing or replacing oil or natural gas pipelines.

This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to conduct the oil or natural gas pipeline activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures,

work, and discharges of dredged or fill material, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. After construction, temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) a section 10 permit is required; (2) the discharge will result in the loss of greater than 1/10-acre of waters of the United States; or (3) the proposed oil or natural gas pipeline activity is associated with an overall project that is greater than 250 miles in length and the project purpose is to install new pipeline (vs. conduct repair or maintenance activities) along the majority of the distance of the overall project length. If the proposed oil or gas pipeline is greater than 250 miles in length, the pre-construction notification must include the locations and proposed impacts (in acres or other appropriate unit of measure) for all crossings of waters of the United States that require DA authorization, including those crossings authorized by an NWP would not otherwise require pre-construction notification. (See general condition 32.) (Authorities: Sections 10 and 404)

Note 1: Where the oil or natural gas pipeline is constructed, installed, or maintained in navigable waters of the United States (i.e., section 10 waters) within the coastal United States, the Great Lakes, and United States territories, a copy of the NWP verification will be sent by the Corps to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), for charting the oil or natural gas pipeline to protect navigation.

Note 2: For oil or natural gas pipeline activities crossing a single waterbody more than one time at separate and distant locations, or multiple waterbodies at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP

authorization. Oil or natural gas pipeline activities must comply with 33 CFR 330.6(d).

Note 3: Access roads used for both construction and maintenance may be authorized, provided they meet the terms and conditions of this NWP. Access roads used solely for construction of the oil or natural gas pipeline must be removed upon completion of the work, in accordance with the requirements for temporary fills.

Note 4: Pipes or pipelines used to transport gaseous, liquid, liquescent, or slurry substances over navigable waters of the United States are considered to be bridges, and may require a permit from the U.S. Coast Guard pursuant to the General Bridge Act of 1946. However, any discharges of dredged or fill material into waters of the United States associated with such oil or natural gas pipelines will require a section 404 permit (see NWP 15).

Note 5: This NWP authorizes oil or natural gas pipeline maintenance and repair activities that do not qualify for the Clean Water Act section 404(f) exemption for maintenance of currently serviceable fills or fill structures.

Note 6: For NWP 12 activities that require pre-construction notification, the PCN must include any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings that require Department of the Army authorization but do not require pre-construction notification (see paragraph (b)(4) of general condition 32). The district engineer will evaluate the PCN in accordance with Section D, "District Engineer's Decision." The district engineer may require mitigation to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see general condition 23).

Nationwide Permit General Conditions

Note: To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as

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

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

(b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.

(c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his or her authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

2. **Aquatic Life Movements.** No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody,

including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species. If a bottomless culvert cannot be used, then the crossing should be designed and constructed to minimize adverse effects to aquatic life movements.

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

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

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

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

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

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

9. Management of Water Flows. To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization, storm water management activities, and temporary and permanent road crossings, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

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

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

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

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

14. Proper Maintenance. Any authorized structure or fill shall be properly maintained, including maintenance to

ensure public safety and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.

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

16. Wild and Scenic Rivers. (a) No NWP activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status.

(b) If a proposed NWP activity will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, the permittee must submit a pre-construction notification (see general condition 32). The district engineer will coordinate the PCN with the Federal agency with direct management responsibility for that river. Permittees shall not begin the NWP activity until notified by the district engineer that the Federal agency with direct management responsibility for that river has determined in writing that the proposed NWP activity will not adversely affect the Wild and Scenic River designation or study status.

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

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

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

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

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat or critical habitat proposed for such

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

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

(e) Authorization of an activity by an NWP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the FWS or the NMFS, the Endangered Species

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

(f) If the non-federal permittee has a valid ESA section 10(a)(1)(B) incidental take permit with an approved Habitat Conservation Plan for a project or a group of projects that includes the proposed NWP activity, the non-federal applicant should provide a copy of that ESA section 10(a)(1)(B) permit with the PCN required by paragraph (c) of this general condition. The district engineer will coordinate with the agency that issued the ESA section 10(a)(1)(B) permit to determine whether the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation conducted for the ESA section 10(a)(1)(B) permit. If that coordination results in concurrence from the agency that the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation for the ESA section 10(a)(1)(B) permit, the district engineer does not need to conduct a separate ESA section 7 consultation for the proposed NWP activity. The district engineer will notify the non-federal applicant within 45 days of receipt of a complete pre-construction notification whether the ESA section 10(a)(1)(B) permit covers the proposed NWP activity or whether additional ESA section 7 consultation is required.

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

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

20. Historic Properties. (a) No activity is authorized under any NWP which may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)(1)). If pre-construction notification is required for the proposed NWP activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation is not submitted, then additional consultation under section 106 may be necessary. The respective federal agency is responsible for fulfilling its obligation to comply with section 106.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the NWP activity might have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties might have the

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

(d) Where the non-Federal applicant has identified historic properties on which the proposed NWP activity might have the potential to cause effects and has so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects to historic properties or that NHPA section 106 consultation has been completed. For non-federal permittees, the district engineer will

notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA section 106 consultation is required. If NHPA section 106 consultation is required, the district engineer will notify the non-Federal applicant that he or she cannot begin the activity until section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(e) Prospective permittees should be aware that section 110k of the NHPA (54 U.S.C. 306113) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

21. Discovery of Previously Unknown Remains and Artifacts. Permittees that discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by an NWP, they must immediately notify the district engineer of what they have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has

been completed. The district engineer will initiate the Federal, Tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

22. Designated Critical Resource Waters.

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

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, 52, 57 and 58 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, 38, and 54, notification is required in accordance with general condition 32, for any activity proposed by permittees in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after she or he determines that the impacts to the critical resource waters will be no more than minimal.

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

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

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects.

(d) Compensatory mitigation at a minimum one-for-one ratio will be required for all losses of stream bed that exceed 3/100-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. This compensatory mitigation requirement may be satisfied through the restoration or enhancement of riparian areas next to streams in accordance with paragraph (e) of this general condition. For losses of stream bed of 3/100-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects. Compensatory mitigation for losses of streams should be provided, if practicable, through stream rehabilitation, enhancement, or preservation, since streams are difficult-to-replace resources (see 33 CFR 332.3(e)(3)).

(e) Compensatory mitigation plans for NWP activities in or near streams or other open waters will normally include a requirement for the restoration or enhancement, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, the restoration or maintenance/protection of riparian areas may be the only compensatory mitigation required. If restoring riparian areas involves planting vegetation, only native species should be planted. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to restore or maintain/protect a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or maintaining/protecting a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of minimization or compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

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

(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in no more than minimal adverse environmental effects. For the NWPs, the preferred mechanism for providing compensatory mitigation is mitigation bank credits or in-lieu fee program credits (see 33 CFR 332.3(b)(2)).

and (3)). However, if an appropriate number and type of mitigation bank or in-lieu credits are not available at the time the PCN is submitted to the district engineer, the district engineer may approve the use of permittee-responsible mitigation.

(2) The amount of compensatory mitigation required by the district engineer must be sufficient to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see 33 CFR 330.1(e)(3)). (See also 33 CFR 332.3(f).)

(3) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, aquatic resource restoration should be the first compensatory mitigation option considered for permittee-responsible mitigation.

(4) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) through (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)). If permittee-responsible mitigation is the proposed option, and the proposed compensatory mitigation site is located on land in which another federal agency holds an easement, the district engineer will coordinate with that federal agency to determine if proposed compensatory mitigation project is compatible with the terms of the easement.

(5) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan needs to address only the baseline conditions at the impact site and the number of credits to be provided (see 33 CFR 332.4(c)(1)(ii)).

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

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

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

(i) Where certain functions and services of waters of the United States are permanently adversely affected by a regulated activity, such as discharges of dredged or fill material into waters of the United States that will convert a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to

reduce the adverse environmental effects of the activity to the no more than minimal level.

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

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

(b) If the NWP activity requires pre-construction notification and the certifying authority has not previously certified compliance of an NWP with CWA section 401, the proposed discharge is not authorized by an NWP until water quality certification is obtained or waived. If the certifying authority issues a water quality certification for the proposed discharge, the permittee must submit a copy of the certification to the district engineer. The discharge is not authorized by an NWP until the district engineer has notified the permittee that the water quality certification requirement has been satisfied by the issuance of a water quality certification or a waiver.

(c) The district engineer or certifying authority may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

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

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

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

- (a) If only one of the NWPs used to authorize the single and complete project has a specified acreage limit, the acreage loss of waters of the United States cannot exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.
- (b) If one or more of the NWPs used to authorize the single and complete project has specified acreage limits, the acreage loss of waters of the United States authorized by those NWPs cannot exceed

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

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

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

(Transferee)

(Date)

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

addressed separately by the district engineer. The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include:

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

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

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

32. Pre-Construction Notification. (a) Timing. Where required by the terms of the NWP, the prospective permittee must

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

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

(2) 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or are in the vicinity of the activity, or to notify the Corps pursuant to general condition 20 that the activity might have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)) has been completed. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the

district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

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

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

(2) Location of the proposed activity;

(3) Identify the specific NWP or NWP(s) the prospective permittee wants to use to authorize the proposed activity;

(4) (i) A description of the proposed activity; the activity's purpose; direct and indirect adverse environmental effects the activity would cause, including the anticipated amount of loss of wetlands, other special aquatic sites, and other waters expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; a description of any proposed mitigation measures intended to reduce the adverse environmental effects caused by the proposed activity; and any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings for linear projects that require Department of the Army authorization but do not require pre-construction notification. The description of the proposed activity and any proposed mitigation measures should be sufficiently detailed to allow the district engineer to determine that the adverse environmental effects of the activity will be no more than minimal and to determine the need for compensatory mitigation or other mitigation measures.

(ii) For linear projects where one or more single and complete crossings require pre-construction notification, the PCN must include the quantity of anticipated losses of

wetlands, other special aquatic sites, and other waters for each single and complete crossing of those wetlands, other special aquatic sites, and other waters (including those single and complete crossings authorized by an NWP but do not require PCNs). This information will be used by the district engineer to evaluate the cumulative adverse environmental effects of the proposed linear project, and does not change those non-PCN NWP activities into NWP PCNs.

(iii) Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the activity and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);

(5) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial and intermittent streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many wetlands, other special aquatic sites, and other waters. Furthermore, the 45-day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate;

(6) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands or 3/100-acre of stream bed and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse environmental effects are no more than minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(7) For non-federal permittees, if any listed species (or species proposed for listing) or

designated critical habitat (or critical habitat proposed for such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat (or critical habitat proposed for such designation), the PCN must include the name(s) of those endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or utilize the designated critical habitat (or critical habitat proposed for such designation) that might be affected by the proposed activity. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with the Endangered Species Act;

(8) For non-federal permittees, if the NWP activity might have the potential to cause effects to a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, the PCN must state which historic property might have the potential to be affected by the proposed activity or include a vicinity map indicating the location of the historic property. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with section 106 of the National Historic Preservation Act;

(9) For an activity that will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, the PCN must identify the Wild and Scenic River or the "study river" (see general condition 16); and

(10) For an NWP activity that requires permission from, or review by, the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers federally authorized civil works project, the pre-construction notification must include a statement confirming that the project proponent has submitted a written request for section 408 permission from, or review by, the Corps office having jurisdiction over that USACE project.

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

(d) *Agency Coordination:* (1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the activity's adverse environmental effects so that they are no more than minimal.

(2) Agency coordination is required for: (i) all NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States; (ii) NWP 13 activities in excess of 500 linear feet, fills greater than one cubic yard per running foot, or involve discharges of dredged or fill material into special aquatic sites; and (iii) NWP 54 activities in excess of 500 linear feet, or that extend into the waterbody more than 30 feet from the mean low water line in tidal waters or the ordinary high water mark in the Great Lakes.

(3) When agency coordination is required, the district engineer will immediately provide (e.g., via e-mail, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (FWS, state natural resource or water quality agency, EPA, and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to notify the district engineer via telephone, facsimile transmission, or e-mail that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse environmental effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The

district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure that the net adverse environmental effects of the proposed activity are no more than minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

(4) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

(5) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of pre-construction notifications to expedite agency coordination.

2021 District Engineer's Decision

1. In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If a project proponent requests authorization by a specific NWP, the district engineer should issue the NWP verification for that activity if it meets the terms and conditions of that NWP, unless he or she determines, after considering mitigation, that the proposed activity will

result in more than minimal individual and cumulative adverse effects on the aquatic environment and other aspects of the public interest and exercises discretionary authority to require an individual permit for the proposed activity. For a linear project, this determination will include an evaluation of the single and complete crossings of waters of the United States that require PCNs to determine whether they individually satisfy the terms and conditions of the NWP(s), as well as the cumulative effects caused by all of the crossings of waters of the United States authorized by an NWP. If an applicant requests a waiver of an applicable limit, as provided for in NWPs 13, 36, or 54, the district engineer will only grant the waiver upon a written determination that the NWP activity will result in only minimal individual and cumulative adverse environmental effects.

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

the NWP authorization to address site-specific environmental concerns.

3. If the proposed activity requires a PCN and will result in a loss of greater than 1/10-acre of wetlands or 3/100-acre of stream bed, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for NWP activities with smaller impacts, or for impacts to other types of waters. The district engineer will consider any proposed compensatory mitigation or other mitigation measures the applicant has included in the proposal in determining whether the net adverse environmental effects of the proposed activity are no more than minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse environmental effects are no more than minimal, after considering mitigation, the district engineer will notify the permittee and include any activity-specific conditions in the NWP verification the district engineer deems necessary. Conditions for compensatory mitigation requirements must comply with the appropriate provisions at 33 CFR 332.3(k). The district engineer must approve the final mitigation plan before the permittee commences work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the proposed compensatory mitigation plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure that the NWP activity results in no more than minimal adverse environmental effects. If the net adverse environmental effects of the NWP activity (after consideration of the mitigation proposal) are determined by the district engineer to be no more than minimal, the district engineer will provide a timely written response to the applicant. The response will state that the NWP

activity can proceed under the terms and conditions of the NWP, including any activity-specific conditions added to the NWP authorization by the district engineer.

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

2021 Further Information

1. District engineers have authority to determine if an activity complies with the terms and conditions of an NWP.
2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.
3. NWPs do not grant any property rights or exclusive privileges.

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

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

2021 Nationwide Permit Definitions

Best management practices (BMPs): Policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural.

Compensatory mitigation: The restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

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

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

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

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

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

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

High Tide Line: The line of intersection of the land with the water’s surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

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

Independent utility: A test to determine what constitutes a single and complete non-

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

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

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

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

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

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

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

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

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

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

that the activity is authorized by nationwide permit.

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

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

Rehabilitation: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.

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

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

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

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

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

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

non-linear project must have independent utility (see definition of “independent utility”). Single and complete non-linear projects may not be “piecemealed” to avoid the limits in an NWP authorization.

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

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

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

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

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

Tidal wetland: A tidal wetland is a jurisdictional wetland that is inundated by tidal waters. Tidal waters rise and fall in a predictable and measurable rhythm or cycle

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

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

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

Vegetated shallows: Vegetated shallows are special aquatic sites under the 404(b)(1) Guidelines. They are areas that are permanently inundated and under normal circumstances have rooted aquatic vegetation, such as seagrasses in marine and estuarine systems and a variety of vascular rooted plants in freshwater systems.

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