



CUY-90-14.90

PID 77332/85531

APPENDIX EC-22

**ACOE 404 Permit
(Contract Document)**

State of Ohio
Department of Transportation
Jolene M. Molitoris, Director

**Innerbelt Bridge
Construction Contract Group 1 (CCG1)**

Revision Date: April 14, 2010



3 - Addendum No. 3 - New Appendix

SPECIAL PROVISIONS

404 PERMIT- WATERWAY PERMITS

CRS: CUY-90-14.52

PID: 77332/85531

- **404 PERMIT (NWP #3 and 7) FROM THE US ARMY CORPS OF ENGINEERS (PERMIT No. Cuyahoga River-2010-00142-CUY; EFFECTIVE 4/14/2010, **EXPIRES ON 3/18/2012**)**

1. Waterway Permit Time Restrictions:

Complete all work in streams /and wetlands depicted in the plans, Special Provisions, and/or working drawings for temporary fill by **3/18/2012**.

For work on streams and wetlands, the Department will consider the Contractor's submission of an extension to the waterway permit end date based on project constraints. In order to be considered, the Contractor must submit a justification to the Engineer at least two months prior to the waterway permit end date.

The Engineer will submit the request for a time extension to ODOT- Office of Environmental Services- Waterway Permits Unit (614-466-7100) for consideration and coordination with the USACE and/or Ohio EPA.

2. Deviations from Permitted Construction Activities

No deviation from the requirements for work in streams and wetlands depicted in the plans, Special Provisions, and/or working drawings may be made unless a modification has been submitted to ODOT and approved by the appropriate agencies (i.e., USACE, Ohio EPA, USCG, ODNR, and USFWS).

For emergency situations resulting in unanticipated impacts to streams or wetlands, provide notification (verbal or written) to the Engineer as soon as possible following discovery of the situation. Written notification to the Engineer and notification to the ODOT- Office of Environmental Services- Waterway Permits Unit must be made within 24 hours.

For non-emergency situations, notify the Engineer in writing for submission to the ODOT- Office of Environmental Services- Waterway Permits Unit (614-466-7100) for consideration and coordination with the appropriate agencies. Notification must be made at least two months prior to planned non-permitted activities. Consideration of the requested deviation is at the discretion of the Director and must be coordinated with the appropriate regulatory agencies.

3. In-Stream Work Restrictions

Work in the following sensitive streams is further restricted as follows

Stream Name /Description	Location	Work restriction dates (No in-stream work permitted)
Cuyahoga River- (LRW)	14.52	No Date Restrictions

In-stream work has been defined as the placement and/or removal of fill materials (temporary or permanent) below ordinary high water of a stream. Examples of "fill" include (but are not limited to) bridge piers, abutments, culverts, rock channel protection, scour protection, and temporary work pads.

Fills (such as temporary work pads) placed within a stream identified in the above table outside of the work restriction dates can continue to be worked from during the work restriction dates, but cannot be expanded, removed, or otherwise modified (below ordinary high water) until once again outside of the work restriction dates.

The Engineer will submit the request for a time extension to ODOT- Office of Environmental Services- Waterway Permits Unit (614-466-7100) for consideration and coordination with the USACE and/or Ohio EPA.

4. Materials:

Materials utilized in or adjacent to streams and wetlands on this project for temporary or permanent fill or bank protection shall consist of suitable material free from toxic contaminants in other than trace quantities. Broken asphalt is specifically excluded.

Cadmium, chromium, arsenate (CCA), creosote, and other pressure treated lumber shall not be used in structures that are placed in wetlands and streams.

5. Cultural Resources

If archeological sites or human remains are discovered, cease all work in the immediate area and notify the Engineer who will immediately contact the Office of Environmental Services – Cultural Resource Section (614-466-7100) and the Ohio Historic Preservation Office.

In the event of human remains are discovered the Engineer shall also contact the (Cuyahoga County) County Sheriff's Office. (216-443-6000).

6. Water Resource Demarcation:

All streams, wetlands, lakes, and ponds indicated on the plans shall be demarcated in the field as per SS 832 prior to site disturbance. The fence shall remain in place and be maintained throughout the construction process. Following the completion of the project, the fence and posts shall be removed.

7. Spill containment:

Provide and Maintain an Oil Spill Kit with a minimum capacity of 65 gallons. The Spill Kit shall contain:

- 6 - 3 in. X 8 ft. Oil only socks
- 4 - 18 in. X18 in. Oil only pillows
- 2 - 5 in. X 10ft. Booms
- 50 - 16in. X 20 in. Oil only pads
- 10- Disposable Bags
- 1- 65 Gallon drum with lid
- 25 pounds of Granular Oil Absorbent

The Oil Spill Kit shall be located within 150 feet of any equipment working in a stream or wetland. The oil Spill Kit shall be maintained for the life of the contract. Any materials utilized during the project will be replaced within 48 hours.

All costs associated with furnishing and maintaining the above referenced spill containment kit is incidental to work.

8. Blasting:

State law requires notification to the Ohio Department of Natural Resources should blasting be required within or near stream channels (See ORC 1533.58 & CMS 107.09).

Notify Engineer, in writing, for submission to ODOT Office of Environmental Services – Waterway Permits Unit (614-466-7100) for coordination with the Ohio Department of Natural Resources.

9. Waterway Permits:

A copy of the waterway permits (i.e., USACE 404, USCG Section 9 Bridge Permit and the OEPA WQC and/or Isolated Wetland Permit) shall be kept at the work site at all times and made available to all contractors and subcontractors.

10. Bridge Inspection:

Prior to the removal of bridge structures, the underside must be carefully examined for the presence of birds and bats. Should any birds or bats be found roosting on the underside of the bridge, the Contractor is required to notify the Engineer for coordination with ODOT- Office of Environmental Services (614-466-7100).

11. Project Inspection:

Inspection of Work may include inspection by representatives of other government agencies or railroad corporations that pay a portion of the cost of the Work or regulate the Work through State and Federal law. Comments from the representatives of these agencies shall be directed to the Engineer. Please forward a copy to ODOT Office of Environmental Services. Waterway Permits Unit (614-466-7100).

12. Temporary Access Fills (Stream and River Crossings and Fills)

Special Provisions Notes:

Regional General Permit (RGP) for the State of Ohio Department of Transportation

Definitions:

Hydraulic Opening

The cross sectional area allowing an unimpeded discharge equal to twice the highest monthly flow without producing a rise in the backwater above the Ordinary High Water Mark (OHWM)*.

Standard Temporary Discharge

The hydraulic opening providing a capacity for a discharge equal to twice the *highest monthly flow* without producing a rise in the backwater above the OHWM shall be known as the Standard Temporary Discharge. The U.S. Geologic Service publication "Techniques for estimating Selected Streamflow Characteristics of Rural Unregulated Streams in Ohio" provides equations that estimate monthly flow for Ohio Waterways These flows are also available in a web application by USGS StreamStats, (<http://water.usgs.gov/osw/streamstat/ohi.html>).

Average Monthly Flow

The average monthly flow represents the estimated "normal" flow.

Temporary Access Fills (TAFs)

In Streams and Rivers may include, but are not limited to, causeways, cofferdams (as described by other items of work), access pads, temporary bridges, etc. The Contractor will make every attempt minimize disturbance to water bodies, stream banks, stream beds, and approach sections during the construction, maintenance, and removal of the TAFs. Forging of streams and rivers is prohibited.

Construct TAFs in such a manner that will maintain flows, minimize upstream flooding, and avoid overtopping the TAF on a regular basis. ***TAFs shall be designed and constructed so that the hydraulic opening provides capacity for a discharge equal to twice the highest monthly flow without producing a rise in the backwater above the Ordinary High Water Mark (OHWM)*.***

Do not exceed an overall length of 250 feet measured linearly upstream to downstream.

Requirements

21 calendar days prior to the initiation of any in-stream work, provide the Engineer with working drawings that include:

- Plan view drawing (200 scale or less) showing the location of all jurisdictional temporary fill proposed for use on the project
- Scaled Cross section and profile drawing showing the OHWM and the proposed compliant hydraulic opening.
- A description of the installation and staging of all temporary jurisdictional fill over the life of the contract.
- A description of the removal of all jurisdictional temporary fill and restoration of the channel and all areas impacted by the jurisdictional temporary fill.
- A schedule outlining the timing of the placement and removal of all TAF.

- Have an Ohio Registered Engineer prepare, sign, seal and date the working drawings. Have a second Ohio Registered Engineer check, sign, seal and date the working drawings. The preparer and checker are two different Engineers. Include the following statement on the working drawings:
 “These working drawings were prepared in compliance with the terms of the Regional General Permit and all contract documents.”
- Include supporting hydraulic calculations developed by the engineer(s) who sealed the working drawings.
- Do not begin instream work until the Engineer has accepted the working drawings.

If the OHWM is not shown on the plans, the Department will establish the OHWM based on the definition of OHWM (as defined in SS 832) or the peak discharge from the 2 year event, using the method described in the most current version of the Department's Location and Design Manual Volume II.

If the Contractor proposes a TAF which does not provide for the Standard Temporary Discharge (discharge equal to twice the highest monthly flow without producing a rise in the backwater), the Contractor is required to coordinate the request for the contractor's proposed TAF with the Engineer and the ODOT Office of Environmental Services (OES). The Department makes no guarantee to grant the request. The contractor's proposed TAF request will be coordinated by OES with the U.S. Army Corps of Engineers and the Ohio Environmental Protection Agency, as appropriate.

In addition to the requirements described in SS 832, supply the Engineer/OES with the following:

1. A plan and Profile showing the temporary access fill(s) with the OHWM.
2. Cross section showing the hydraulic opening and the anticipated discharge flow.
3. A restoration plan for the area affected by the temporary access fill(s).
4. A schedule outlining the timing of the placement and removal of the temporary access fill(s)

The time frame allowed for the coordination of the contractor's proposed TAF will be a minimum of 60 days.

Installation of any jurisdictional fill without a 404 Permit authorized by the USACE is strictly prohibited. All direct coordination with the USACE and/or OEPA will be performed through OES.

Temporary Access Fills Construction and Payment

Begin planning and installing causeways and access fills as early in construction as possible to avoid conflicts with 404/401 permits or other environmental commitments that have been included in the construction plans.

Temporary Access Fills (TAFs) in Streams and Rivers may include, but are not limited to, causeways, cofferdams, access pads, temporary bridges, etc. Make every attempt minimize disturbance to water bodies, stream banks, stream beds, and approach sections during the construction, maintenance, and removal of the TAFs. Make every attempt to minimize disturbance to water bodies during construction, maintenance and removal of the causeway and access fills. Construct the causeway and access fills as narrow as practical. Install instream conduits parallel to the stream banks. Make the causeway and access fills in shallow areas rather than deep pools where possible. Minimize clearing, grubbing, and excavation of stream banks, bed, and approach sections. Construct the causeway and access fills as to not erode stream banks or allow sediment deposits in the channel.

Prior to the initiation of any in-stream work, establish a monument upstream of proposed temporary crossing or temporary construction access fill to visually monitor the water elevation in the waterway where the fill is permitted. Maintain the monument throughout the project. Provide a visual mark on the monument that identifies the elevation 1 foot above the OHWM. If the OHWM is not shown on the plans, the Department will establish the OHWM based on the definition of OHWM (SS 832.02) or the peak discharge from the 2 year event, using the method described in the most current version of the Department's Location and Design Manual Volume II.

Ensure that the monument can be read from the bank of the waterway. Have this elevation set and certified by an Ohio Registered Surveyor.

Temporary access fills placed by the contractor above the OHWM are not subject to the 404/401 permit constraints.

Should the water elevation of the waterway, exceed the elevation 1 foot above OHWM, the Department will compensate the Contractor for repair of any resulting damage to the permitted temporary access fill up to the elevation of 1 foot above the OHWM. The Department will not pay for repair and maintenance of temporary access structures that are related to the construction access fill.

Should the water elevation of the waterway exceed the elevation shown on the monument, the Department will recognize this event as an excusable, non-compensable delay in accordance with Section 108.06 of the Construction & Materials Specifications.

All costs associated with furnishing and maintaining the above referenced monument is incidental to the work.

Construct the causeway and access fills to a water elevation at least 1 foot (0.3 m) above the OHWM. If the causeway fills more than one-third the width of the stream, then use culvert pipes to allow the movement of aquatic life. Ensure that any ponding of water behind the causeway and access fills will not damage property or threaten human health and safety.

The following minimum requirements apply to TAFs where culverts are used.

- A. Furnish culverts on the existing stream bottom.
- B. Avoid a drop in water elevation at the downstream end of the culvert.
- C. Furnish a sufficient number of culverts in addition to stream openings to providing a discharge equal to twice the highest monthly flow without producing a rise in the backwater above the OHWM.
- D. Furnish culverts with a minimum diameter of 18 inches (0.5 m)...

Special Provisions / Plan Notes: March 8, 2010

For all fill and surface material placed in the channel, around the culverts, or on the surface of the causeway and access fills furnish clean, non-erodible, nontoxic dumped rock fill, Type B, C, or D, as specified in C&MS 703.19.B. Extend rock fill up the slope from original stream bank for 50 feet (10 m) to catch and remove erodible material from equipment.

When the work requiring the TAFs is complete all portions of the TAF (including all rock and culverts) will be removed in its entirety. The material will not be disposed in other waters of the US or isolated wetland. The stream bottom affected by the causeway and access fills will be restored to its pre-construction elevations. The TAF will not be paid as a separate item but will be included by the Contractor as part of the total project cost.

All environmental protection and control associated with the 404/401 permit activities are incidental to the work within the boundaries of the 404/401 permit or as otherwise identified in the 404/401 permit application.



DEPARTMENT OF THE ARMY
HUNTINGTON DISTRICT, CORPS OF ENGINEERS
502 EIGHTH STREET
HUNTINGTON, WEST VIRGINIA 25701-2070

April 14, 2010

Operations and Readiness Division
Regulatory Branch
2010-00142-CUY – Cuyahoga River
CUY-90-14.52, PID: 77332/85531

Mr. Timothy Hill
Ohio Department of Transportation
1980 West Broad Street
Columbus, Ohio 43223

Dear Mr. Hill:

I refer to your permit application and plans received by this office on January 21, 2010 requesting authorization to discharge fill material into the Cuyahoga River. You have indicated the proposed project is needed in order to replace the existing, deficient bridge that carries Interstate Route (IR) 90 over the Cuyahoga River, and replace and repair failed bulkheads along the Cuyahoga River in the City of Cleveland, Cuyahoga County, Ohio.

The United States Army Corps of Engineers (USACE) authority to regulate waters of the United States is based on the definitions and limits of jurisdiction contained in 33 CFR 328 and 33 CFR 329. Section 404 of the Clean Water Act (CWA) requires that a Department of the Army (DA) permit be obtained prior to placing dredged or fill material into waters of the United States, including wetlands. Section 10 of the Rivers and Harbors Act of 1899 requires that a DA permit be obtained for any work in, on, over or under a navigable water.

The Cuyahoga River is regulated by the Corps of Engineers under Section 10 of the Rivers and Harbors Act of 1899 from the mouth, to the confluence of the Little Cuyahoga River, (River Mile 41.1) in Akron, Ohio. In addition, it has been determined that the same portion of the Cuyahoga River is a traditional navigable water (TNW) subject to regulation under Section 404 of the Clean Water Act. This determination was made on the form titled "CELRH-OR-F-Cuyahoga River Section 10 Jurisdictional Determination, 2008-245-CUY" dated June 11, 2008. Therefore, this proposal is subject to regulation under Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the CWA.

In the pre-construction notification you requested authorization from the DA to permanently discharge of 1,420 cubic yards of fill material into 0.05 acre (167 linear feet) of the Cuyahoga River to replace a failed bulkhead along the left descending bank of the Cuyahoga River partially under the IR-90 Bridge and to install storm water outfall structures. These outfall structures would be located within the length of the failed bulkhead and within the reconstructed

bulkhead lengths as described below. In addition, the temporary discharge of approximately 1,366 cubic yards of fill material into 0.25 acre of the Cuyahoga River would be necessary for construction of work access areas to repair a 118-foot section and a 90-foot section of the bulkhead along the left descending bank of the Cuyahoga River, and a 260-foot section along the right descending bank.

Based on the provided information, it has been determined the proposal meets the criteria of Nationwide Permits (NWP) 3 and 7 (attached), under the March 12, 2007 Federal Register, Final Notice of Reissuance of Nationwide Permits (72 FR 11092) provided you abide by the attached Special Conditions.

In view of the above, your project is permitted subject to the terms and conditions of the enclosed material. This verification is valid until the NWP is modified, reissued, or revoked. All of the existing NWPs are scheduled to be modified, reissued, or revoked prior to March 18, 2012. It is incumbent upon you to remain informed of changes to the NWPs. We will issue a public notice when the NWPs are reissued. Furthermore, if you commence or are under contract to commence this activity before the date that the relevant nationwide permit is modified or revoked, you will have twelve (12) months from the date of the modification or revocation of the NWP to complete the activity under the present terms and conditions of this nationwide permit.

It is your responsibility to ensure that your work conforms to all of the environmental management conditions listed within the enclosed material. Please be aware this nationwide permit authorization does not obviate the requirement to obtain state or local assent required by law for the activities.

Upon completion of the work, the attached certification must be signed and returned to this office. If you have any questions concerning the above, please contact Peter Clingan of the Columbus Field Office at (614) 692-4654.

Sincerely,



For LuAnne S. Conley, P.E.

Chief, South/Transportation Section

Enclosures

Copy Furnished w/o enclosures:

Mr. Mark Epstein
Ohio Historic Preservation Office
1982 Velma Avenue
Columbus, Ohio 43211-2497

Copy Furnished w/o enclosures via email:

Art.Coleman@epa.state.oh.us

Karen_Hallberg@fws.gov

Mike.Pettegrew@dot.state.oh.us

Ric.Queen@epa.state.oh.us

Bill.Cody@dot.state.oh.us

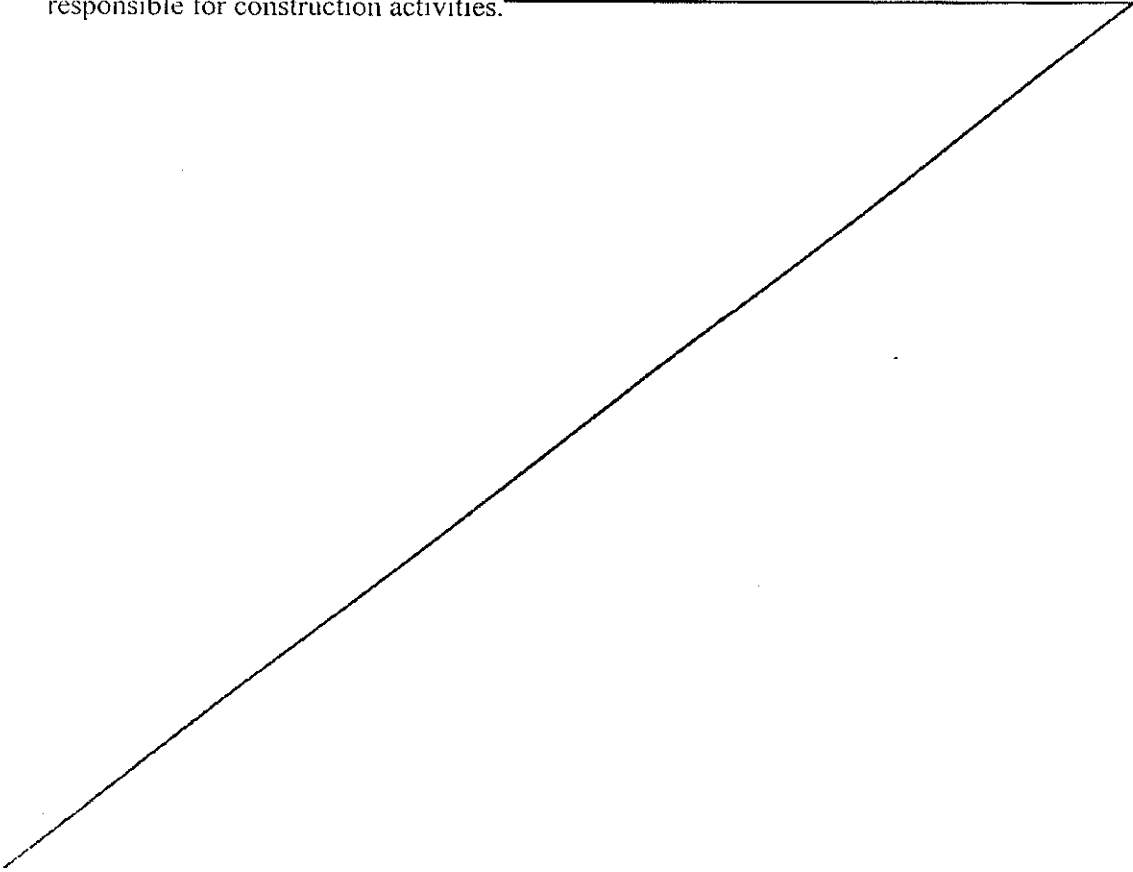
Robert.W.Remmers@usace.army.mil

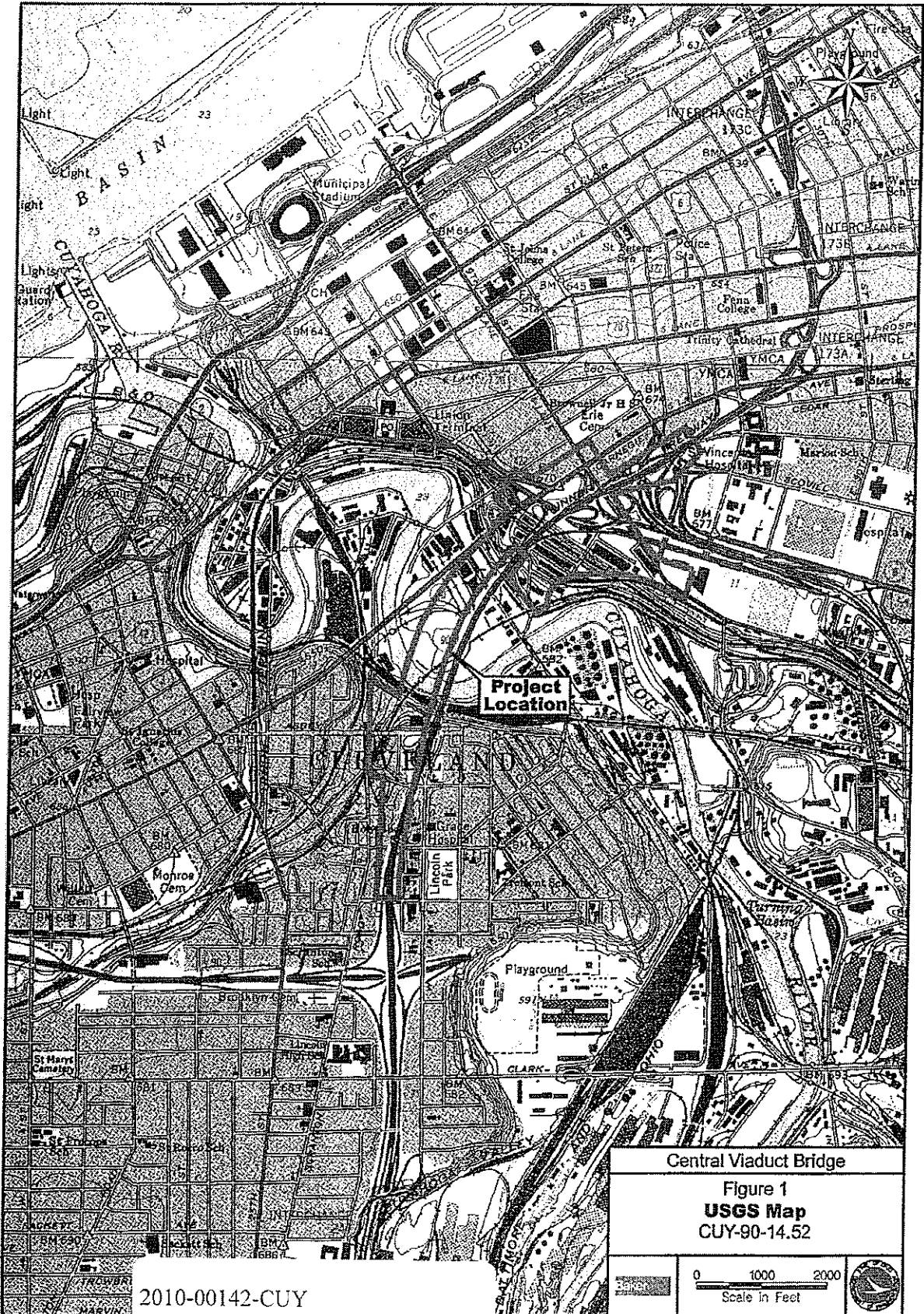
Scot.M.Striffler@uscg.mil

SPECIAL CONDITIONS OF THE PERMIT ISSUED TO
THE OHIO DEPARTMENT OF TRANSPORTATION
2010-00142-CUY – Cuyahoga River
CUY-90-14.52, PID: 77332/85531
Page 1 (2)

1. Work shall be performed in accordance with the attached drawings and maps labeled 2010-00142-CUY; CUY-90-14.52, PID: 77332/85531, Sheets 1-7.
2. You must coordinate and receive approval from the United States Coast Guard for any activity that will restrict the movement of vessel traffic on the Cuyahoga River.
3. You must coordinate and submit a work plan to Robert Remmers, Chief of the Operations and Technical Services Section of the U.S. Army Corps of Engineers, Buffalo District.(716) 879-4277 or robert.w.remmers@usace.army.mil.
4. Prior to the initiation of any construction activities on the bridge, including the removal of any bridge structures, the underside of the bridge must be carefully examined for the presence of bats, especially between April 1 and September 30. If any bats are found roosting on the underside of the bridge, the applicant shall immediately contact the United States Fish and Wildlife Service at (614) 416-8993.
5. All stream work must be conducted during low flow periods to minimize impacts to the aquatic environment.
6. Appropriate best management practices for sediment and erosion control must be used and maintained in effective operating condition during construction. In addition, all exposed soil and other fill, as well as work below the ordinary high water mark, must be permanently stabilized at the earliest practicable date. Upon completion of construction activities, all exposed soils will be seeded with approved seed mixes and/or revegetated with native species (where practicable)
7. In the event of an inadvertent discovery of archaeological or cultural resources, including suspected human remains, during construction activities on site, you shall immediately cease all work and contact this office at 614-692-4654 and the Ohio Historic Preservation Office at 614-298-2000. USACE will initiate the Federal, state, and Native American coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places. If such events occur, you shall ensure work on site is not reinitiated until you have received notification in writing from this office that obligations under Section 106 of the National Historic Preservation Act are fulfilled and on-site disturbance may occur. In the event that human remains are discovered, you shall also contact the Cuyahoga County Sheriff's office at 216-443-6000.

SPECIAL CONDITIONS OF THE PERMIT ISSUED TO
THE OHIO DEPARTMENT OF TRANSPORTATION
2010-00142-CUY – Cuyahoga River
CUY-90-14.52, PID: 77332/85531
Page 2 (2)

8. Section 7 obligations under the Federal Endangered Species Act must be reconsidered if new information revealing impacts of the proposed project that may affect federally listed species or critical habitat in a manner not previously considered, the project is subsequently modified to include actions which were not considered during Section 7 consultation with the USFWS or new species are listed or critical habitat designated might be affected by the proposed project.
 9. All temporary fill material shall be removed to an upland location at the completion of construction activities and the river bottom restored to pre-construction contours to the maximum extent practicable.
 10. If any changes in the location and plans of the work are found necessary, revised plans must be submitted to this office for approval as required by law, before the work can commence.
 11. Enclosed are copies of Nationwide Permits 3 and 7, which shall be kept at the site during construction. You shall supply a copy of these permits to your project engineer responsible for construction activities.
- 



2010-00142-CUY
 CUY-90-14.52, PID: 77332/85531
 Sheet 1 of 7

Source: USGS - Clev

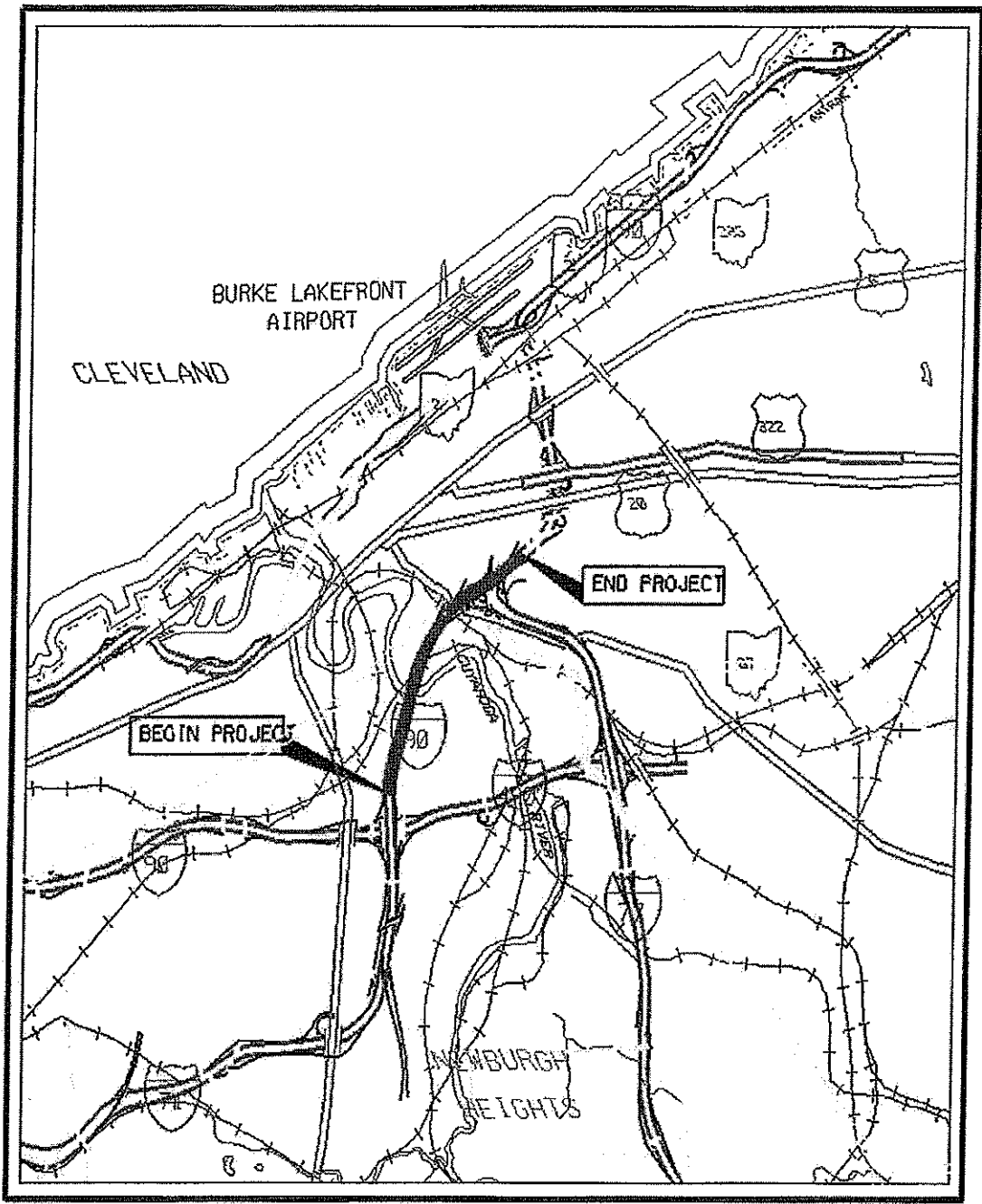
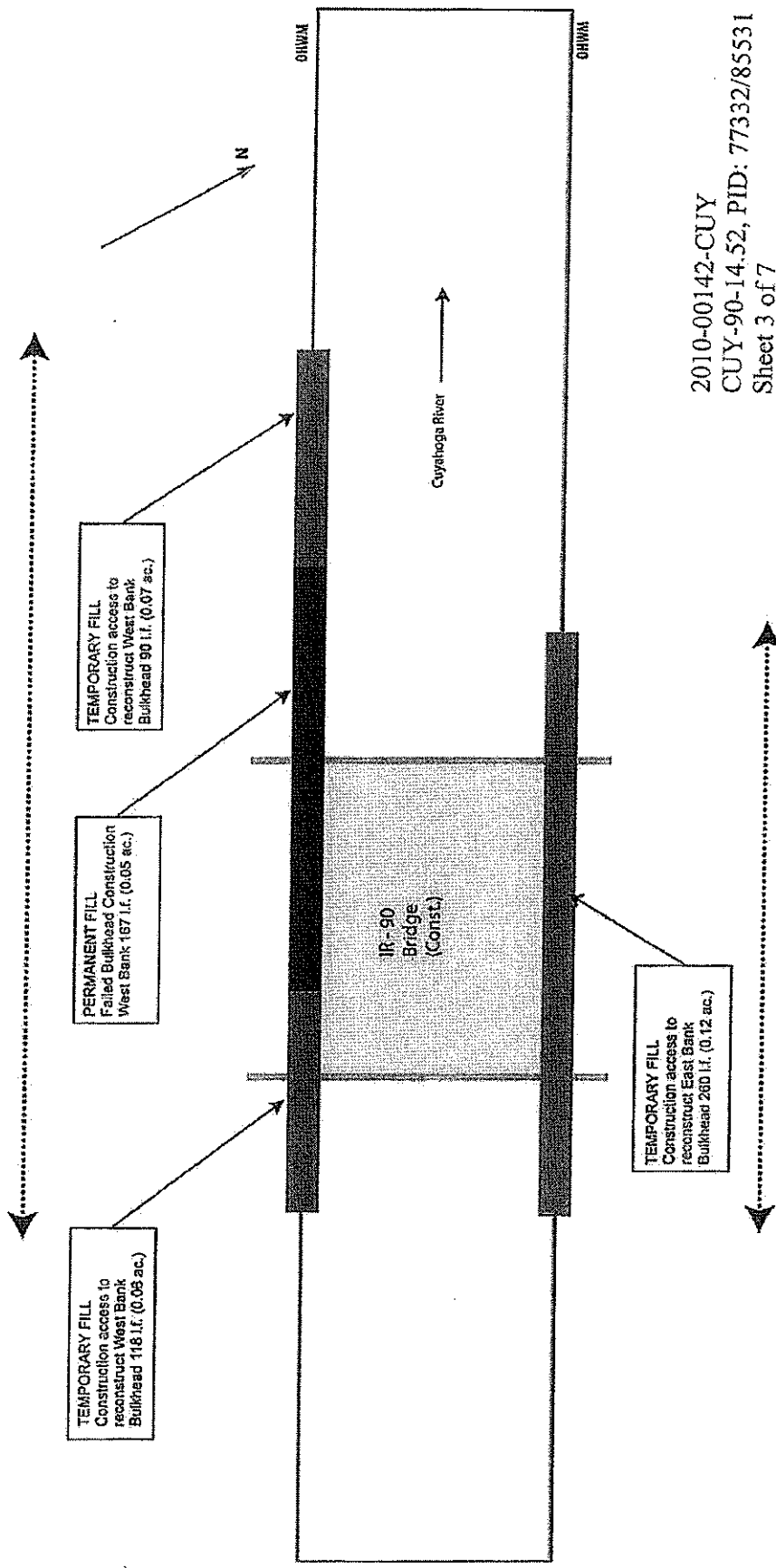


Figure 2
Project Location Map
CUY-90-14.52
Innerbelt Bridge Construction
Cleveland, Cuyahoga County, Ohio



TOTAL LINEAR FEET OF IMPACT TO THE WEST BANK CUYAHOGA RIVER = 118 l.f. + 167 l.f. + 90 l.f. = 375 l.f.



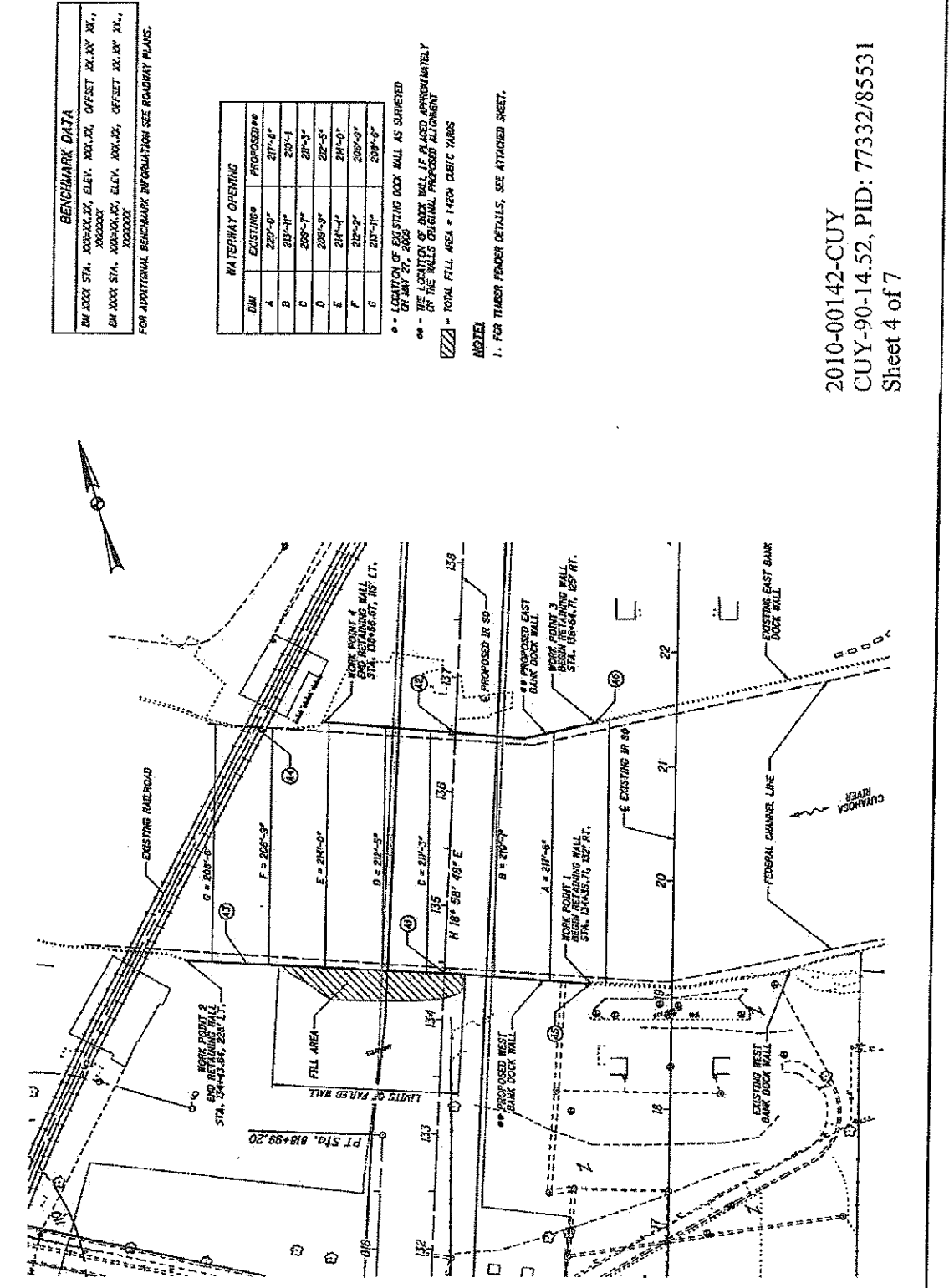
TOTAL LINEAR FEET OF IMPACT TO THE EAST BANK CUYAHOGA RIVER = 260 l.f.

SUMMARY OF SURFACE WATER IMPACTS

Activity	Duration	Length of Channel Impacted (linear feet)	Area Impacted (acre)	Fill Below CHWMM (cubic yards)
Bulkhead Construction (West Bank)	permanent	167	0.05	1,420
Reconstruction of Bulkhead (West Bank)	temporary	118	0.06	340
Reconstruction of Bulkhead (West Bank)	temporary	90	0.07	202
Reconstruction of Bulkhead (East Bank)	temporary	260	0.12	824

Note: The presented impacts are "maximum extent" or "worst case" estimates that will not be exceeded. The final outfall locations are to be determined however they will be located within the extent of the temporary fill shown and the permanent fill from the outfalls will not exceed the volume, area and LF provided.

Generic plan-view schematic showing type of proposed impacts below the CHWMM of the Cuyahoga River. (figure not to scale)



BENCHMARK DATA

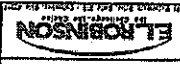
BM XXXX STA. XXX+XX.XX, ELEV. XXX.XX, OFFSET XX.XX BY XX',
 XXXXXXX
 BM XXXX STA. XXX+XX.XX, ELEV. XXX.XX, OFFSET XX.XX BY XX',
 XXXXXXX
 FOR ADDITIONAL BENCHMARK INFORMATION SEE ROADWAY PLANS.

WATERWAY OPENING	
DIM	PROPOSED**
A	217'-4"
B	207'-1"
C	207'-3"
D	207'-5"
E	214'-0"
F	208'-9"
G	208'-9"

- ** LOCATION OF EXISTING DOCK WALL AS DERIVED BY MAY 27, 2005
- ** THE LOCATION OF DOCK WALL, IF PLACED APPROXIMATELY ON THE ORIGINAL PROPOSED ALIGNMENT
- ▨ - TOTAL FILL AREA = 1.46M CUBIC YARDS
- NOTES
- 1. FOR THAMER FENDER DETAILS, SEE ATTACHED SHEET.

2010-00142-CUY
 CUY-90-14.52, PID: 77332/85531
 Sheet 4 of 7

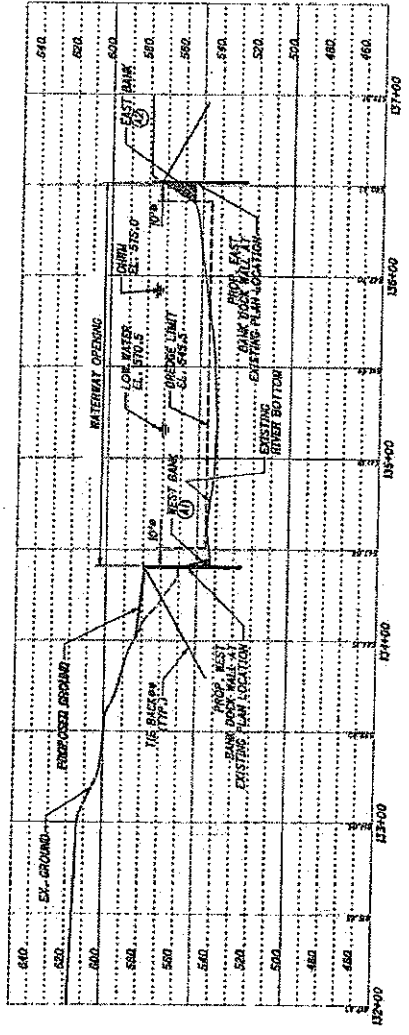




DATE	REVISION	BY	DESCRIPTION
1/11/10	1	JN	ISSUE FOR PERMIT
1/11/10	2	JN	REVISED TO REFLECT COMMENTS
1/11/10	3	JN	REVISED TO REFLECT COMMENTS
1/11/10	4	JN	REVISED TO REFLECT COMMENTS
1/11/10	5	JN	REVISED TO REFLECT COMMENTS
1/11/10	6	JN	REVISED TO REFLECT COMMENTS
1/11/10	7	JN	REVISED TO REFLECT COMMENTS
1/11/10	8	JN	REVISED TO REFLECT COMMENTS
1/11/10	9	JN	REVISED TO REFLECT COMMENTS
1/11/10	10	JN	REVISED TO REFLECT COMMENTS

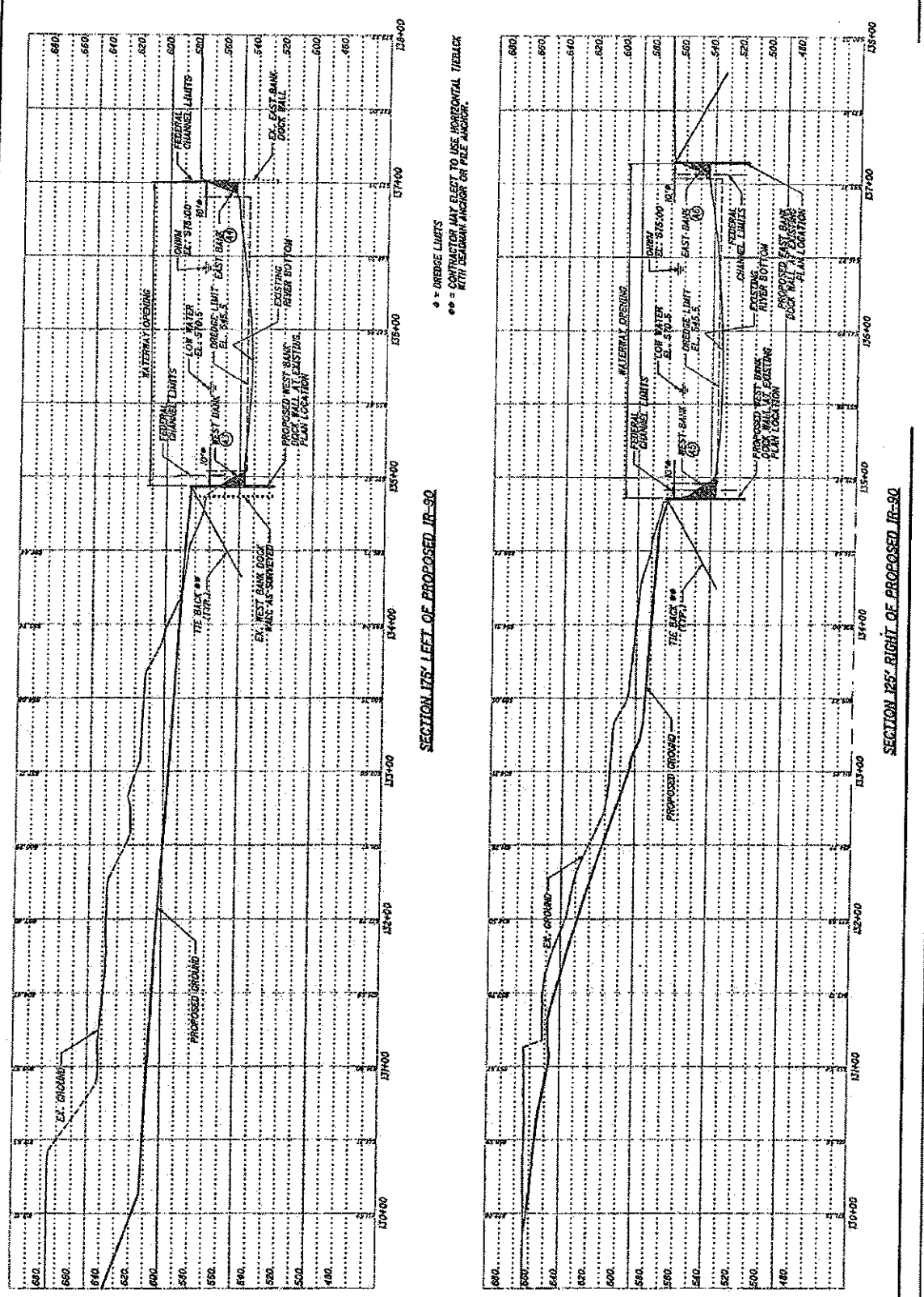
PRELIMINARY DOCK WALL DETAILS
 BRIDGE NO. CUY-90-14.52
 OVER CUYAHOGA RIVER

PID No. 77332	CUY-90-14.52
4	6



SECTION ALONG PROPOSED JR-92
 * = DREDGE LIMITS
 ** = CONTRACTOR MAY ELECT TO USE HORIZONTAL TIEBACK WITH SEISMIC ANCHOR OR PALE ANCHOR.

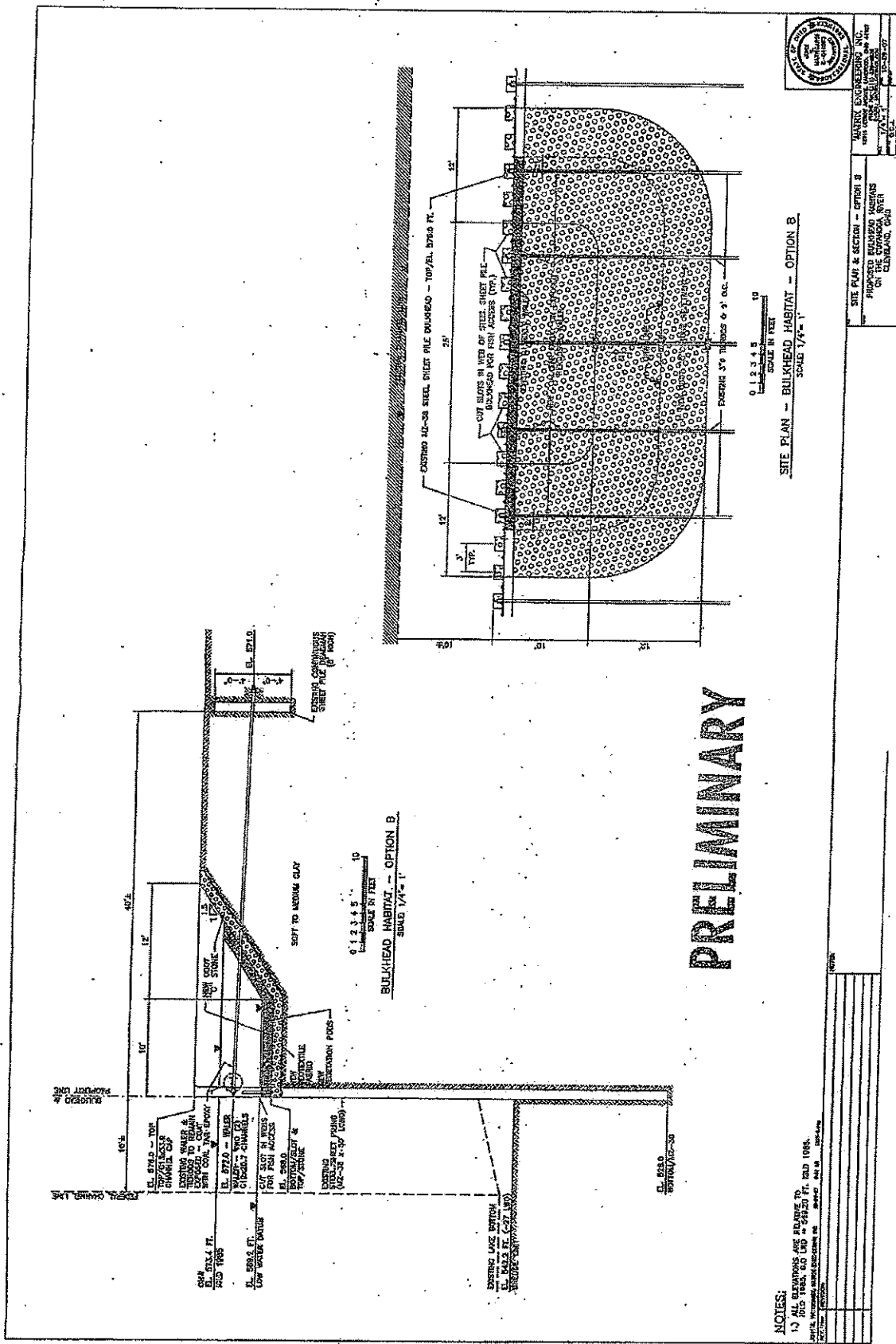
2010-00142-CUY
 CUY-90-14.52, PID: 77332/85531
 Sheet 5 of 7



SECTION 125' LEFT OF PROPOSED IR-30

SECTION 125' RIGHT OF PROPOSED IR-30





PRELIMINARY



MARK E. ENGLE
 PROFESSIONAL ENGINEER
 STATE OF MICHIGAN
 LICENSE NO. 9657
 EXPIRES 10/15/07

SITE PLAN & SECTION - OPTION B
 PROPOSED BULKHEAD HABITAT
 ON THE CORMORANT CENTER
 GRAND MARSH, OHIO

SCALE: 1/4" = 1'
 0 1 2 3 4 5 10
 FEET IN FEET

NOTES:
 1) ALL ELEVATIONS ARE REFERENCE TO
 MGS 1885, CG LWD # 58920 FT. MGD 1088.
 DATE: 10/15/07
 DRAWN BY: MEE
 CHECKED BY: MEE

2010-00142-CUY
 CUY-90-14.52, PID: 77332/85531
 Sheet 7 of 7



US Army Corps of Engineers
Huntington District

Permit Number: 2010-00142-CUY

Name of Permittee: Ohio Department of Transportation

Date of Issuance: April 14, 2010

Upon completion of the activity authorized by this permit and any mitigation required by the permit, sign this certification and return it to the following address:

U.S. Army Corps of Engineers
Huntington District
Ohio Regulatory Transportation Office
Building 10, Section 10
3990 East Broad Street
Columbus, Ohio 43218-3990

Please note that your permitted activity is subject to a compliance inspection by an U.S. Army Corps of Engineers representative. If you fail to comply with this permit you are subject to permit suspension, modification, or revocation.

I hereby certify that the work authorized by the above-referenced permit has been completed in accordance with the terms and conditions of the said permit, and required mitigation was completed in accordance with the permit conditions.

Signature of Permittee

Date

NATIONWIDE PERMIT #3 – MAINTENANCE

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

(b) This NWP also authorizes the removal of accumulated sediments and debris in the vicinity of and within existing structures (e.g., bridges, culverted road crossings, water intake structures, etc.) and the placement of new or additional riprap to protect the structure. The removal of sediment is limited to the minimum necessary to restore the waterway in the immediate vicinity of the structure to the approximate dimensions that existed when the structure was built, but cannot extend further than 200 feet in any direction from the structure. This 200 foot limit does not apply to maintenance dredging to remove accumulated sediments blocking or restricting outfall and intake structures or to maintenance dredging to remove accumulated sediments from canals associated with outfall and intake structures. All dredged or excavated materials must be deposited and retained in an upland area unless otherwise specifically approved by the district engineer under separate authorization. The placement of riprap must be the minimum necessary to protect the structure or to ensure the safety of the structure. Any bank stabilization measures not directly associated with the structure will require a separate authorization from the district engineer.

(c) This NWP also authorizes temporary structures, fills, and work necessary to conduct the maintenance activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, 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. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

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

Notification: For activities authorized by paragraph (b) of this NWP, the permittee must submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 27). Where maintenance dredging is proposed, the pre-construction notification must include information regarding the original design capacities and configurations of the outfalls, intakes, small impoundments, and canals. **(Sections 10 and 404)**

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

Nationwide 3 Specific Regional Conditions:

- a. Pre-Construction Notification in accordance with the “Pre-Construction Notification” Nationwide Permit General Condition is required prior to the use of vertical sheet piling and closed structures in the special habitat waters of Lake Erie (See Nationwide Permit General Condition 19 *Designated Critical Resource Waters*, and Regional General Condition (3f) for *Critical Resource Waters*.)
- b. The placement of any new rip-rap is limited to a total of 200 feet.
- c. Pre-Construction Notification in accordance with the “Pre-Construction Notification” Nationwide Permit General Condition is required for temporary construction, access, and dewatering activities in Section 10 waters, perennial streams, and wetlands. The PCN must include a restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-project conditions.

WATER QUALITY CERTIFICATION

Pursuant to Section 401 of the Federal Water Pollution Control Act, 33 U.S.C. Section 1341; Ohio Revised Code Chapters 119 and 6111; Ohio Administrative Code (QAG) Chapters 3745-1, 3745-32, and 3745-47; and, Corps regional conditions public noticed on October 20, 2006, the director of the Ohio Environmental Protection Agency hereby certifies that the above referenced replacement Nationwide Permits (NWPs) I - as proposed in the March 12, 2007, *Federal Register* will comply with the applicable provisions of Sections 301, 302, 303, 306, and 307 of the Federal Water Pollution Control Act. These Certifications are specifically limited to 401 Certifications with respect to water pollution and do not relieve the applicant of further certifications or permits as may be necessary under applicable state and federal laws and/or local ordinances. Corps of Engineers Civil Works Projects in the State of Ohio are subject to the general and special limitations and conditions of this certification.

Water Quality Certification - Special Conditions:

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit except as modified below:

Ohio State Certification Special Limitations and Conditions:

- 1 Bridge Replacement:

- a. This Certification shall only authorize minor deviations from the existing structure's centerline, unless these deviations are necessary to follow current safety standards.
 - b. Bridge replacements shall not result in additional lanes unless necessary to follow current safety standards.
2. Maintenance or repair of existing fills (stabilization projects):
- a. Minor Deviations from the original filled area are authorized provided these minor deviations are necessary to accommodate safety standards and/or new construction practices/methods/techniques and/or new materials available which are necessary for the rehabilitation/replacement/repair; and,
 - b. This nationwide shall not authorize the replacement of existing structures that are open to the flow of water with structures that are not open to the flow of water.
3. Replacement vertical bulkheads:
- a. For ship channels and harbors adjacent to federal navigation channels within the following harbors: Sandusky Harbor, Huron Harbor, Vermilion Harbor, Lorain Harbor, *Conneaut Harbor*, *Port Clinton Harbor*, *Rocky River Harbor*, Cleveland Harbor, Fairport Harbor, Ashtabula Harbor, and Toledo Harbor, 1,000 feet of existing vertical bulkheads may be replaced if recessed areas for aquatic habitat, or other aquatic habitat improvements, are incorporated within the design and construction of the replacement vertical bulkhead;
 - b. For all other areas, except Lake Erie, Lake Erie Islands, or Sandusky Bay, up to 1,000 feet of existing vertical bulkheads may be replaced. Toe stone shall be placed at the base of these replacement vertical bulkheads except in areas where the shoreline is composed of bedrock and slopes are predominately greater than 75 percent;
 - c. Replacement vertical bulkheads are not to be placed more than an average of one foot waterward of the intersection of the ordinary high water level of the waterbody and the existing shoreline;
 - d. Minor dredging necessary for the installation of the replacement vertical bulkhead is authorized;
 - e. Placement of fill between the replacement vertical bulkhead and existing shoreline is authorized; and
 - f. Toe stone shall be placed at the base of these replacement vertical bulkheads except in areas where the original shoreline is composed of bedrock and slopes are predominately greater than 75 percent or where the placement of toe stone would

interfere with shipping activity. When required, *toe stone* shall be placed *at an average rate of one-third the total height of the replacement vertical bulkhead* at a 2:1 slope.

4. Removal of accumulated sediment:
 - a. Removal of accumulated sediment shall occur only once per year, except in cases of emergency situations that threaten life or property.
 - b. Removal of accumulated sediments shall be limited to low-flow conditions whenever practicable, except in cases of emergency situations that threaten life or property.

NATIONWIDE PERMIT CONDITIONS

GENERAL CONDITIONS:

The following general conditions must be followed in order for any authorization by a NWP to be valid:

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 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. Culverts placed in streams must be installed to maintain low flow conditions.

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.

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 and storm water management activities, 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.

13. Removal of Temporary Fills. 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.

15. Wild and Scenic Rivers. No 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. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).

16. 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.

17. Endangered Species.

(a) No activity is authorized under any NWP which is likely to 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 destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which “may affect” a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements.

(c) Non-federal permittees shall notify the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, 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 designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that may be affected by the proposed work or that utilize the designated critical habitat that may be affected by the proposed work. 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. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed activities will have “no effect” on listed species or critical habitat, or until Section 7 consultation has been completed.

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

(e) Authorization of an activity by a 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 U.S. FWS or the NMFS, both lethal and non-lethal “takes” of protected species are in violation of the ESA. Information on the location of threatened and

endangered species and their critical habitat can be obtained directly from the offices of the U.S. FWS and NMFS or their world wide Web pages at <http://www.fws.gov/> and <http://www.noaa.gov/fisheries.html> respectively.

18. Historic Properties.

(a) In cases where the district engineer determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, 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. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the authorized activity may have the potential to cause effects to any historic properties listed, 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 may be affected by the proposed work 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 resources can be sought from the State Historic Preservation Officer or Tribal Historic Preservation Officer, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted and these efforts, the district engineer shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where the non-Federal applicant has identified historic properties which the activity may have the potential to cause effects and 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 or that consultation under Section 106 of the NHPA has been completed.

(d) 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. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). If NHPA section 106 consultation is required and will occur, the district engineer will notify the non-Federal applicant that he or she cannot begin work until Section 106 consultation is completed.

(e) Prospective permittees should be aware that section 110k of the NHPA (16 U.S.C. 470h-2(k)) 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, explaining 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.

19. Designated Critical Resource Waters. Critical resource waters include, NOAA-designated marine sanctuaries, National Estuarine Research Reserves, state natural heritage sites, and outstanding national resource waters or other waters officially designated by a state as having particular environmental or ecological significance and identified by the district engineer after notice and opportunity for public comment. The district engineer may also designate additional critical resource waters after notice and opportunity for 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, and 50 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, and 38, notification is required in accordance with general condition 27, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

20. Mitigation. The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are 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) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are 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 some other form of mitigation would be more environmentally appropriate and provides a project-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 minimal adverse effects on the aquatic environment. Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, wetland restoration should be the first compensatory

mitigation option considered.

(d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation, such as stream restoration, to ensure that the activity results in minimal adverse effects on the aquatic environment.

(e) 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 project 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 a project already meeting the established acreage limits also satisfies the minimal impact requirement associated with the NWPs.

(f) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the establishment, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, riparian areas may be the only compensatory mitigation required. Riparian areas should consist of native species. 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. 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 compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(g) Permittees may propose the use of mitigation banks, in-lieu fee arrangements or separate activity-specific compensatory mitigation. In all cases, the mitigation provisions will specify the party responsible for accomplishing and/or complying with the mitigation plan.

(h) Where certain functions and services of waters of the United States are permanently adversely affected, such as the conversion of 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 effects of the project to the minimal level.

21. Water Quality. Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA Section 401, individual 401 Water Quality Certification must be obtained or waived (see 33 CFR 330.4(c)). The district engineer or State or Tribe may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

22. 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)). The district engineer or a State may require additional measures to ensure that the authorized activity is consistent with state coastal zone management

requirements.

23. 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 section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

24. Use of Multiple Nationwide Permits. The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not 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.

25. 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)

26. Compliance Certification. Each permittee who received an NWP verification from the Corps must submit a signed certification regarding the completed work and any required mitigation. The certification form must be forwarded by the Corps with the NWP verification letter and will include:

- (a) A statement that the authorized work was done in accordance with the NWP authorization, including any general or specific conditions;
- (b) A statement that any required mitigation was completed in accordance with the permit conditions; and
- (c) The signature of the permittee certifying the completion of the work and mitigation.

27. 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, as a general rule, 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) Forty-five 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 17 that listed species or critical habitat might be affected or in the vicinity of the project, or to notify the Corps pursuant to general condition 18 that the activity may have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that 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)) is completed. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee cannot 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 project;

(3) A description of the proposed project; the project's purpose;

direct and indirect adverse environmental effects the project would cause; 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. The description should be sufficiently detailed to allow the district engineer to determine that the adverse effects of the project will be minimal and to determine the need for compensatory mitigation. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the project and when provided result in a quicker decision);

(4) The PCN must include a delineation of special aquatic sites and other waters of the United States 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 of the United States, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many waters of the United States. Furthermore, the 45 day period will not start until the delineation has been submitted to or completed by the Corps, where appropriate;

(5) If the proposed activity will result in the loss of greater than 1/10 acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(6) If any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, for non-Federal applicants the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work. Federal applicants must provide documentation demonstrating compliance with the Endangered Species Act; and

(7) For an activity that may affect a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, for non-Federal applicants the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property. Federal applicants must provide documentation demonstrating compliance with Section 106 of the National Historic Preservation Act.

(c) Form of Pre-Construction Notification: The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is a PCN and must include all of the information required in paragraphs (b)(1) through (7) of this general condition. A letter containing the required information may also be used.

(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 NWP and the need for mitigation to reduce the project's adverse environmental effects to a minimal level.

(2) For all NWP 48 activities requiring pre-construction notification and for other NWP activities requiring pre-construction notification to the district engineer that result in the loss of greater than 1/2-acre of waters of the United States, the district engineer will immediately provide (e.g., via facsimile transmission, overnight mail, or other expeditious manner) a copy of the PCN to the appropriate Federal or state offices (U.S. FWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Office (THPO), and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will then have 10 calendar days from the date the material is transmitted to telephone or fax the district engineer notice that they intend to provide substantive, site-specific comments. 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, but 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.

(3) 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.

(4) Applicants are encouraged to provide the Corps multiple copies of pre-construction notifications to expedite agency coordination.

(5) For NWP 48 activities that require reporting, the district engineer will provide a copy of each report within 10 calendar days of receipt to the appropriate regional office of the NMFS.

(e) District Engineer's Decision: 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 the proposed activity requires a PCN and will result in a loss of greater than 1/10 acre of wetlands, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for projects with smaller impacts. The district engineer will consider any proposed compensatory mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects to the aquatic environment of the proposed work are 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 effects on the aquatic environment are minimal, after considering mitigation, the district engineer will notify the permittee and include any conditions the district engineer deems necessary. The district engineer must approve any compensatory mitigation proposal before the permittee commences work. 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 plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure no more than minimal adverse effects on the aquatic environment. If the net adverse effects of the project on the aquatic environment (after consideration of the compensatory mitigation proposal) are determined by the district engineer to be minimal, the district engineer will provide a timely written response to the applicant. The response will state that the project

can proceed under the terms and conditions of the NWP. If the district engineer determines that the adverse effects of the proposed work are more than minimal, then the district engineer will notify the applicant either:

- (1) That the project does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit;
- (2) that the project is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level; or
- (3) that the project 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 effects occur to the aquatic environment, the activity will be authorized within the 45-day PCN period. The authorization will include the necessary conceptual or specific mitigation or a requirement that the applicant submit a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level. When mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan.

28. 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.

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

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, establishment (creation), enhancement, or preservation of aquatic resources for the purpose of compensating for 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.

Discharge: The term “discharge” means any discharge of dredged or fill material.

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.

Ephemeral stream: An ephemeral stream has flowing water only during, and for a short duration after, precipitation events in a typical year. Ephemeral stream beds are located above the water table year-round. Groundwater is not a source of water for the stream. Runoff from rainfall is the primary source of water for stream flow.

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.

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 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.

Intermittent stream: An intermittent stream has flowing water during certain times of the year, when groundwater provides water for stream flow. During dry periods, intermittent streams may not have flowing water. Runoff from rainfall is a supplemental source of water for stream flow.

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. 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 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. The loss of stream bed includes the linear feet of stream bed that is filled or excavated. 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 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.

Non-tidal wetland: A non-tidal wetland is a wetland that is not subject to the ebb and flow of tidal waters. The definition of a wetland can be found at 33 CFR 328.3(b). 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 standing or flowing 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: An ordinary high water mark is a line on the shore established by the fluctuations of water and indicated by physical characteristics, or by other appropriate means that consider the characteristics of the surrounding areas (see 33 CFR 328.3(e)).

Perennial stream: A perennial stream has flowing water year-round during a typical year. The water table is located above the stream bed for most of the year. Groundwater is the primary source of water for stream flow. Runoff from rainfall is a supplemental source of water for stream flow.

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.

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 adjacent to streams, lakes, and estuarine-marine shorelines. Riparian areas are transitional between terrestrial and aquatic ecosystems, through which surface and subsurface hydrology connects waterbodies with their adjacent uplands. Riparian areas provide a variety of ecological functions and services and help improve or maintain local water quality. (See general condition 20.)

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 project: 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 project must have independent utility (see definition). For linear projects, a “single and complete project” is 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 waterbody several times at separate and distant locations, each crossing is considered a single and complete project. 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.

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 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 wetland (i.e., water of the United States) that is inundated by tidal waters. The definitions of a wetland and tidal waters can be found at 33 CFR 328.3(b) and 33 CFR 328.3(f), respectively. 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, which is defined at 33 CFR 328.3(d).

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 NWP, a waterbody is a jurisdictional water of the United States that, during a year with normal patterns of precipitation, has water flowing or standing above ground to the extent that an ordinary high water mark (OHWM) or other indicators of jurisdiction can be determined, as well as any wetland area (see 33 CFR 328.3(b)). If a jurisdictional wetland is adjacent--meaning bordering, contiguous, or neighboring--to a jurisdictional waterbody displaying an OHWM or other indicators of jurisdiction, that waterbody and its adjacent wetlands are considered together as a single aquatic unit (see 33 CFR 328.4(c)(2)). Examples of "waterbodies" include streams, rivers, lakes, ponds, and wetlands.

REGIONAL GENERAL CONDITIONS

1. Nationwide Permits shall not authorize any activity which impact bogs and/or fens.
2. No Nationwide permit may be used in Lake Erie for purposes of diverting water from the Great Lakes.
3. **ODNR In-Water Work Exclusion Dates:** Any work associated with a Nationwide permit cannot take place during the restricted period of the following ODNR Division of Wildlife Statewide In-Water Work Restrictions unless the permittee notifies the District Engineer in accordance with the Nationwide Permit Pre-Construction Notification General Condition and receives written approval from the Corps:

<u>Location</u>	<u>Restricted Period</u>
Salmonid streams ¹	9/15 – 6/30
Percid streams ²	3/15 – 6/30
Other streams ³	4/15 – 6/30

1. Arcola Creek (entire reach), Ashtabula River (to Hadlock Rd.), Ashtabula Harbor, Chagrin River (to I-90), Cold Creek (entire reach), Conneaut Creek (entire reach), Conneaut Harbor, Cowles Creek (entire reach), Euclid Creek (entire reach), Grand River (to dam at Harpersfield Covered Bridge Park just upstream of the S.R. 534 bridge)/Fairport Harbor, Indian Creek (entire reach), Rocky River (to dam off Park Dr. just south of the I-90 bridge south of Rock River), Turkey Creek (entire reach), Vermillion River (to dam at Wakeman upstream of the S.R. 20/60 bridge), Wheeler Creek (entire reach), Whitman Creek (entire reach).

2. Cuyahoga River (to dam below the S.R. 82 bridge east of Brecksville (Chippewa Rd.)), Great Miami River (to dam south of New Baltimore), Hocking River (lower section), Little Miami River (lower section), Maumee River (to split dam at Mary Jane Thurston State Park and Providence Park in Grand Rapids), Maumee Bay, Muskingum River (to Devola Dam No. 2 off S.R. 60 north of Marietta), Ohio River (entire reach), Portage River (entire reach), Sandusky River (to Ballville Dam off River Road in Fremont), Sandusky Bay, Scioto River (lower section), Toussaint Rive (entire reach).

3. Class 3 primary headwater streams (watershed ≤ 1 mi²), EWH, CWH, WWH, or streams with T&E species. Includes Lake Erie & bays. Special conditions (such as occurrence of T&E species) may mandate local variation of restrictions.

Note: This condition does not apply to Ohio Department of Transportation projects that are covered under the “Memorandum of Agreement between Ohio Department of Transportation, Federal Highway Administration, Ohio Department of Natural Resources, and United States Fish and Wildlife Service For Interagency Coordination For Highway Projects Which Involve Stream Crossings, Bank Stabilization, and/or Minor

Wetland Fills.

4. Waters of Special Concern: The permittee must notify the District Engineer in accordance with the Nationwide Permit Pre-Construction Notification General Condition for activities in the following resources:

a. Category 3 Wetlands: Pre-Construction Notification is required for all temporary or permanent impacts to Category 3 wetlands as determined through use of the latest approved version of Ohio EPA's Ohio Rapid Assessment Method (ORAM) for wetland evaluation **long form**.

b. Ohio Stream Designations: Pre-Construction Notification is required for all temporary or permanent impacts to Exceptional Warmwater Habitat, Cold Water Habitat, Seasonal Salmonid, or any equivalent designation; or water bodies with an antidegradation category of Superior High Quality Water, Outstanding National Resource Water, or Outstanding High Quality Waters as determined by Ohio EPA except for NWP 3, 20, 27, 32, 37, 38, 45, and 47 or maintenance activities covered under NWP 7 and 12. The current list of these streams can be found on the Ohio EPA web-site at: <http://www.epa.state.oh.us/dsw/rules/3745-1.html>. You should look for these designations under the aquatic life use of the stream within its basin and under the "Anti-deg Rule #05."

c. State Wild and Scenic Rivers: Pre-Construction Notification is required for all activities in State Wild and Scenic Rivers. The following are **State Wild and Scenic Rivers**:

Little Miami River - Clermont County line at Loveland to headwaters, including North Fork, Clermont County line at Loveland to confluence with East Fork and from the confluence with East Fork to Ohio River. Miles designated (approximate): 105

Sandusky River - US Rt. 30 in Upper Sandusky to Roger Young Memorial Park in Fremont. Miles designated (approximate): 65

Olentangy River - Delaware Dam to Old Wilson Bridge Road in Worthington. Miles designated (approximate): 22

Little Beaver Creek - *Wild segments* - West Fork from 1/4 mile downstream from Twp. Rd. 914 to confluence with Middle Fork. North Fork from Twp Rd. 952 to confluence with Little Beaver Creek. Little Beaver Creek from confluence of West and Middle Forks downstream to 3/4 mile north of Grimm's Bridge.

Scenic segments - North Fork from Ohio-Pennsylvania line downstream to Jackman Road. Middle Fork from Elkton Rd. (Twp. Rd. 901) downstream to confluence with West Fork. Little Beaver Creek from 3/4 mile north of

Grimm's Bridge downstream to the Ohio-Pennsylvania line. Miles designated (approximate): Wild 20, Scenic 16

Grand River - *Wild segment* - from Harpersfield covered bridge downstream to Norfolk and Western Railroad trestle south of Painesville.

Scenic segment - from St. Rt. 322 bridge in Ashtabula County downstream to Harpersfield covered bridge. Miles designated (approximate): Scenic 33, Wild 23

Upper Cuyahoga River - Troy-Burton Township line in Geauga County to US Rt. 14. Miles designated (approximate): 25

Maumee River - Scenic segment - Ohio-Indiana line to St. Rt. 24 bridge west of Defiance.

Recreational segment - St. Rt. 24 bridge west of Defiance to US Rt. 25 bridge near Perrysburg. Miles designated (approximate): Scenic 43, Recreational 53

Stillwater River System - *Recreational segment* - Englewood dam to confluence with Great Miami River.

Scenic segments - Stillwater River from Riffle Road bridge in Darke Co. to Englewood dam. Greenville Creek from the Ohio-Indiana state line to the confluence with the Stillwater. Miles designated (approximate): Scenic 83, Recreational 10

Chagrin River - Aurora Branch from St. Rt. 82 bridge downstream to confluence with Chagrin. Chagrin River from confluence with Aurora Branch downstream to St. Rt. 6 bridge. East Branch from Heath Road bridge downstream to confluence with Chagrin. Miles designated (approximate): 49

Big and Little Darby Creeks - Big Darby Creek from the Champaign-Union County line downstream to the U.S. Rt. 40 Bridge, from the northern boundary of Battelle-Darby Creek Metro Park to the confluence with the Little Darby Creek downstream to the Scioto River. Little Darby Creek from the Lafayette-Plain City Road Bridge downstream to the confluence with Big Darby Creek. Miles designated (approximate): 84

Kokosing River - Knox/Morrow County line to confluence with Mohican River. North Branch of Kokosing from confluence with East Branch downstream to confluence with main stem. Miles designated (approximate): 48

d. National Wild and Scenic Rivers: Pre-Construction Notification is required for all work in components of the National Wild and Scenic River System. The following are components of the **National Wild and Scenic River System:**

Big and Little Darby Creeks (National Wild and Scenic River System): Big Darby Creek from Champaign-Union County line downstream to the Conrail railroad trestle and from the confluence with the Little Darby Creek downstream to the Scioto River. Little Darby Creek from the Lafayette-Plain City Road Bridge downstream to within 0.8 mile from the confluence with Big Darby Creek. Total designation is approximately 82 miles.

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

Little Miami (Scenic component of the National System from Clifton to Foster): the portion from Foster to the Ohio River was designated a Recreational component of the National system. Total designation is 92 miles.

e. Endangered Species: Due to the potential presence of Federally endangered species or their habitats, Pre-Construction Notification is required for all work in the following waterway or township of the corresponding county:

County	Waterway	Township
Adams	Ohio River	
Allen		Sugar Creek,
Ashtabula	Pymatuning Creek	Harperfield, Hartsgrove, Kingsville, Morgan, Orwell, Rome, Trumbell, Wayne, Williamsfield
Athens	Ohio River	
Brown	East Fork Little Miami River, Ohio River	Huntington, Pleasant, Union
Champaign	Little Darby Creek	Urbana
Clark		Bethel, Moorefield, Springfield
Clinton		Chester
Clermont	East Fork of Little Miami River, Ohio River	
Columbiana		Butler, Hanover

Coshocton	Killbuck Creek, Muskingum River, Walhonding River	Franklin, Linton, Newcastle, Virginia
Crawford		Auburn, Bucyrus, Cranberry, Lykens, Texas
Cuyahoga		Brooklyn
Defiance	St. Joseph River	Defiance, Hicksville, Mark, Milford, Richland
Delaware	Alum Creek Olentangy River, Scioto River,	Genoa, Orange, Radnor, Thompson, Troy
Erie		Berlin, Florence, Huron, Kelleys Island, Margaretta, Milan, Oxford, Perkins, Vermilion.
Fairfield	Walnut Creek	Walnut
Franklin	Alum Creek, Big Darby Creek, Blacklick Creek, Little Darby Creek, Olentangy River, Scioto River, Big Walnut Creek, Walnut Creek	
Fayette		Concord, Green, Jefferson, Jasper
Fulton		Fulton, Swan Creek
Gallia	Ohio River	
Geauga		Auburn, Burton, Munson, Troy
Greene	Little Miami River	Spring Valley, Bath
Guernsey		Jefferson
Hancock	Blanchard River	Amanda, Blanchard
Hamilton	Ohio River	
Hardin	Blanchard River	Blanchard, Dudley, Hale, Jackson
Harrison		Franklin, Stock
Henry		Flat Rock, Harrison, Liberty
Highland		Marshall, Paint
Holmes		Killbuck, Prairie, Washington,
Huron		Hartland, New Haven, Norwalk, Peru, Richmond, Sherman
Knox		Berlin, Butler, Union
Lake		Concord, Painesville, Willoughby
Lawrence	Ohio River	
Licking		Hanover, Newark, Union
Logan		Zane
Lorain		Brownhelm, Henrietta, Ridgeville, Russia
Lucas	Swan Creek	Adams, Jerusalem, Monclova, Oregon, Providence, Richfield, Spencer, Springfield, Swanton, Sylvania, Washington, Waterville

Madison	Big Darby Creek, Little Darby Creek	
Mahoning		Austintown, Beaver, Boardman, Jackson, Milton
Marion	Olentangy River	Big Island, Bowling Green, Green Camp
Medina		Harrisville
Meigs	Ohio River	
Mercer		Butler, Franklin, Jefferson
Miami	Stillwater River	
Montgomery		Mad River
Morgan	Muskingum River	Windsor
Morrow	Alum Creek	
Muskingum	Muskingum River	Blue Rock, Falls, Harrison, Hopewell, Madison, Muskingum
Noble		Beaver, Marion, Seneca, Wayne
Ottawa		Bay, Benton, Carroll, Clay, Erie, Danbury, Harris, North Bass Island (Put-in-Bay Twp.), Portage, Put-in-Bay, Riley, Salem
Paulding		Brown
Pickaway	Big Darby Creek, Scioto River, Walnut Creek.	Deer Creek, Monroe
Portage		Atwater, Aurora, Brimfield, Charleston, Franklin, Palmyra, Streetsboro
Preble		Gasper, Somers
Putnam		Sugar Creek
Richland		Blooming Grove, Butler, Franklin, Madison, Mifflin, Troy, Washington, Weller
Ross		Paint, Paxton, Twin
Sandusky		Ballville, Jackson, Green Creek, Madison, Rice, Riley, Sandusky, Townsend, Woodville, Washington
Scioto	Ohio River, Scioto Brush Creek	Union, Rush
Seneca		Adams, Bloom, Eden, Pleasant, Seneca, Venice
Stark		Lake, Marlboro, Sugar Creek
Summit		Northfield, Twinsburg

Trumbull	Pymatuning Creek	Bloomfield, Bristol, Farmington, Greene, Gustavus, Hartford, Kinsman, Mecca, Mesopotamia, Vernon
Tuscarawas	Tuscarawas River	Franklin
Union	Big Darby Creek, Little Darby Creek, Mill Creek	
Warren	Little Miami River	Wayne
Washington	Muskingum River, Ohio River	
Wayne		Chester, Clinton, Franklin, Wooster
Williams	Fish Creek, St. Joseph River	Bridgewater, Center, Florence, Jefferson, Madison, Northwest, St. Joseph, Superior
Wood		Center, Freedom, Middleton, Perrysburg, Troy
Wyandot	Tymochtee Creek	Antrim, Crane, Marseilles, Mifflin, Pitt, Sycamore, Tymochtee

Note: As mentioned in General Condition 17-*Endangered Species*, Federal Agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements.

f. Critical Resource Waters: Pre-Construction Notification is required for all work in Critical Resource Waters. The following are designated as **Critical Resource Waters**:

Special habitat waters of Lake Erie including the shoreline, off shore islands, rock outcrops, and adjacent waters within the boundaries defined as 82 22' 30" West Longitude, 83 07' 30" West Longitude, 41 33' 00" North Latitude, and 42 00'00" North Latitude.

In Ohio, two areas have been designated critical habitat for the piping plover (*Charadrius melodus*) and are defined as lands 0.62 miles inland from normal high water line. Unit OH-1 extends from the mouth of Sawmill Creek to the western property boundary of Sheldon Marsh State Natural Area, Erie County, encompassing approximately 2.0 miles. Unit OH-2 extends from the eastern boundary line of Headland Dunes Nature Preserve to the western boundary of the Nature Preserve and Headland Dunes State Park, Lake County, encompassing approximately 0.5 mile.

g. Oak Openings: Pre-Construction Notification is required for all activities conducted in the Oak Openings Region of Northwest Ohio located in Lucas, Henry, and Fulton

counties. For a map of the Oak Openings Region, visit <http://www.oakopen.org/maps/>.

5. Pre-Construction Notification (PCN) Submittals: In addition to the information required under the Nationwide Permit Pre-Construction Notification General Condition (GC 27), the following information is needed for all Pre-Construction Notifications:

a. Drawings: The PCN must include project drawings on 8 1/2" x 11" paper. Three types of illustrations are needed to properly depict the work to be undertaken. These illustrations or drawings are identified as a Vicinity Map (i.e. a location map such as a USGS topographical map), a Plan View and a Typical Cross-Section Map. Each illustration should identify the project, the applicant, and the type of illustration (vicinity map, plan view or cross-section). In addition, each illustration should be identified with a figure or attachment number.

b. Endangered Species: Prior to submitting notifications, it is recommended that the applicant contact the United States Fish & Wildlife Service (USFWS) office in Reynoldsburg, Ohio, at (614) 469-6923 or by writing to United States Fish & Wildlife Service, 6950 Americana Parkway, Suite H, Reynoldsburg, Ohio 43068-4127 for assistance in complying with Nationwide Permit General Condition 17. All relevant information obtained from the USFWS should be submitted with the notification.

c. Cultural Resources: The PCN must provide information concerning whether the proposed activity would affect any historic properties listed, determined to be eligible, or which you have reason to believe may be eligible, for listing on the National Register of Historic Places. This is necessary to ensure compliance with Nationwide Permit General Condition 18. To initiate efforts in identifying those properties on the project site which may be listed on the National Register or may be eligible for inclusion in the National Register, it is recommended that the applicant compile basic information about the general project area, as listed below, and submit this information to the District Engineer. This preliminary resource review should encompass a search radius of 2 miles and be centered on the project area. The following resources may be consulted during this review:

- 1) OHPO United States Geological Survey (USGS) 7.5' series topographic maps;
- 2) Ohio Archaeological Inventory (OAI) files;
- 3) Ohio Historic Inventory files (OHI);
- 4) OHPO Cultural Resources Management (CRM)/contract archaeology files;
- 5) National Register of Historic Places (NRHP) files including Historic Districts; and
- 6) County atlases, histories and historic USGS 15' series topographic map(s).

As an alternative, the applicant may choose to complete the Ohio Historic Preservation Office Section 106 Review Project Summary Form or request comments from the Ohio

Historic Preservation Office and District Engineer on specific requirements appropriate to the particular circumstances of the project.

In addition to the information requested above, the applicant should provide information regarding the terrain and topography of the project area, acreage of the project area, proximity of the project area to major waterways, past land uses in the project area, and any past cultural resources studies or coordination for the project area, if available. It is also helpful if the applicant includes photographs, keyed to mapping, showing the project area and any buildings or structures on adjacent parcels. Upon receipt and review of this information and the information listed above, the Corps will be able to determine if further studies of the project area should be conducted (e.g., Phase I Cultural Resources Management Survey or Archeological Survey).

While accomplishing the activity authorized by a NWP, the inadvertent discovery of any artifacts (human remains, funerary objects, sacred objects, and objects of cultural matrimony/patrimony, etc.) shall result in immediately ceasing work and contacting the Regulatory Branch of the appropriate Corps of Engineers District. The Corps will initiate the Federal, state, and tribal coordination required to satisfy the National Historic Preservation Act and all other applicable laws and regulations. Federally recognized tribes are afforded a government-to-government status as sovereign nations and consultation is required under both Executive Order 13175 and 36 CFR Part 800.

d. National Wild and Scenic Rivers: Prior to submitting notifications for work in a National Wild and Scenic River System, it is recommended that the applicant contact the National Park Service Regional Wild and Scenic Rivers Specialist, at the Midwest Regional Office, 601 Riverfront Drive, Omaha, Nebraska 68102, for assistance in complying with Nationwide Permit General Condition 15.

e. 401 Water Quality Certification: For activities that result in between 1/10 and 1/2 acre of loss of waters of the US **two copies of** the PCN must be submitted. In order to determine if a project meets the terms and conditions of Ohio EPA's 401 water quality certification the following additional information must be submitted:

- 1) To determine the quality of the wetlands on the site, all wetland delineations must include the latest approved version of the Ohio Rapid Assessment Method (ORAM) for wetland evaluation **long form**; and
- 2) Photographs of all the waterbodies on the site are recommended.

f. Agency Coordination: Activities that result in the loss of greater than 1/2 acre of waters of the US require full agency coordination (See Nationwide Permit General Condition 27 *Pre-construction Notification*). In an effort to expedite permit review, it is requested that all PCN's for activities resulting in the loss of greater than 1/2 acre of waters of the US include five (5) copies of the notification package. Applicants are encouraged to submit this information in electronic format in order to minimize the use of paper.

g. Floodplain Coordination: All PCN's must include a copy of the applicable FIRM map. You can get a FIRMette free from: <http://www.msc.fema.gov>. From this page select the "Product Catalog" tab at the top. Then select "FEMA Issued Flood Maps". The choices allow you to select a state and county. Then you follow the instructions to create a FIRMette. In addition, from the same web-site, you can obtain a FIRMette for a specific address. From <http://www.msc.fema.gov> **conduct a "Product Search" for "Public Flood Map" and then follow the instructions to create a FIRMette.**

Note 1: In circumstances where there is another lead federal agency with set procedures for addressing Endangered Species, Cultural Resources, and National Wild and Scenic River Coordination, the applicant can submit documentation showing the coordination has already been completed instead of submitting the additional PCN information requested above.

Note 2: Nationwide Permit General Condition 27 *Pre-construction Notification* requires the permittee to include a delineation of special aquatic sites and all other waters of the United States on the project site. Special aquatic sites include sanctuaries and refuges, wetlands, mudflats, vegetated shallows, coral reefs, and riffle and pool complexes.

OHIO STATE CERTIFICATION GENERAL LIMITATIONS AND CONDITIONS (WATER QUALITY CERTIFICATION)

A. STREAMS

- 1) Temporary or permanent impacts to streams are limited to 500 linear feet, of which no more than 200 linear feet can be impacts to intermittent or perennial streams [except for NWPs 3, 12, 13, 20, 21, 27, 32, 37, 38, 41, 45 and 47]. Impacts shall be measured linearly from upstream to downstream, including the length of permanent or temporary stream impoundments, when calculating the total length of stream impacts [except for NWP 12, for which impacts shall be measured bank-to-bank];
- 2) Temporary or permanent impacts to water bodies meeting any of the criteria set forth in a through d below, are prohibited [except for NWP 3, 20, 27, 32, 37, 38, 45, and 47 or maintenance activities covered under NWP 7 and 12]:
 - a. Exceptional Warmwater Habitat, Cold Water Habitat, Seasonal Salmonid, or any equivalent designation;
 - b. Waters bodies with an antidegradation category of Superior High Quality Water, Outstanding National Resource Waters or Outstanding High Quality Waters; and,
 - c. General high quality water bodies, such as Killbuck Creek in Coshocton

County and Pymatuning Creek in Ashtabula County, which harbor federally listed threatened and/or endangered species.

For an alphabetical listing of the Superior High Quality Waters, go to

<http://www.epa.state.oh.us/dsw/rules/antidegHQiistJuly03.pdf>

3) Stream reconstruction activities shall maintain or enhance the habitat values of the stream as determined by an appropriate habitat assessment method and adhere to "natural channel design" principles. Natural channel design means a technique that integrates knowledge of natural stream processes to create a stable stream that maintains its form and function over time and achieves a targeted habitat or biological endpoint.

4) Stream or buffer improvements and/or mitigative measures required by the Corps shall address the following:

a. In order of priority, these measures shall focus on the following:

- i. the stream segment being impacted;
- ii. upstream segments and tributaries; the receiving stream

The measures should, to the extent practicable, consider the causes and sources of impairment of the stream where the measures would be undertaken if the stream is listed as impaired in the most recent final report submitted to the United States Environmental Protection Agency by the director of Ohio EPA to fulfill the requirements of Section 303(d) of the Clean Water Act. The current list of impaired streams, as of the date of this certification, can be found at on Ohio EPA's web site at:

http://www.epa.state.oh.us/dsw/tmdl/20041ntReportlfinal_20041R_appB_2.pdf

b. If the applicant cannot find appropriate mitigation on streams listed in Section "a" above, mitigation shall be in the Ohio EPA 8-digit watershed.

c. Vegetative buffers on both stream banks shall be of an appropriate length (at least the length of the impacted stream segment), and, if practicable,

- i. Provide a minimum width of 25 feet for preservation of existing vegetative buffers; or,
- ii. Provide a minimum width of 50 feet for re-vegetating buffers cleared during construction.
- iii. Buffer width is measured from the top of bank or level of bankfull

discharge.

- d. Vegetated buffers shall be planted, or restored, as soon as practicable after in-stream work is complete and shall extend to the top of both stream banks, or beyond as stipulated by the Corps or Ohio EPA, using native tree and shrub species with rapid growth characteristics,
- e. Impacts to existing vegetative buffers shall be minimized to the *maximum extent* practicable. *Entry to surface waters* shall be through a single point of access on each side of the stream whenever practicable to minimize disturbance to buffer vegetation;

5) In-stream activities shall not result in the permanent destabilization of the stream banks or stream bed. The stream bed and substrates shall be restored to conditions that existed prior to work.

6) In-stream work shall be conducted during low-flow conditions whenever practicable in order to minimize adverse impacts to water quality away from the project site, except in emergency situations that threaten human life or property.

7) Culverts

- a. For an individual stream, the combined length of an existing culvert and culvert extension shall not exceed 500 linear feet, and the individual culvert extension shall not exceed 200 linear feet if installed on an intermittent or perennial stream, or 500 linear feet if installed on an ephemeral stream.
- b. For new road construction, flood plain culverts shall be installed where the flood prone area is greater than twice the width of the stream at Ordinary High Water Mark (OHWM).
- c. New Culverts on Low Gradient Streams (<3% slope)
 - i. Culverts shall be installed at the existing streambed slope, not exceeding three percent, to allow for the natural movement of bedload and aquatic organisms.
 - ii. The culvert base or invert for intermittent and perennial streams with bottom substrate shall be installed below the sediment to allow natural channel bottom to develop and to be retained. The channel bottom substrate shall be similar to and contiguous with the immediate upstream and downstream reaches of the stream. The culvert shall be designed and sized to accommodate bankfull discharge and match the existing depth of flow to facilitate the passage of aquatic organisms.

- iii. *For perennial and intermittent streams*, culverts with *less than* three percent grade or not installed on bedrock shall have the lower 10 percent of all culvert bottoms buried below the existing stream grade. Hydraulic design shall be based upon the remaining open portion of the culvert.

8) Compensatory mitigation for linear projects (e.g., highways) in streams may be mitigated for by the following, in descending order of practicability:

- a. Stream impacts associated with a linear project may be mitigated on-site, defined as within one mile of the linear project, and within the same 4-digit watershed as shown in OAC 3745-1-54(F)(2); or,
- b. Stream impacts associated with a linear project may be mitigated at a single stream mitigation location or stream mitigation bank acceptable to the director, within each Ohio EPA 8-digit watershed in which such impacts occur; or,
- c. If no stream mitigation bank, acceptable to the director, is located within one or more of the Ohio EPA 8-digit watersheds in which the impact occurs, then mitigation may occur in another Ohio EPA 8-digit watershed impacted by the linear project; at a single stream mitigation location, or a stream mitigation bank, acceptable to the director; or,
- d. If no stream mitigation bank exists within any of the watersheds connected with the linear project, then mitigation should occur within the watershed in which the largest impacts (in terms of area) occur.

B. WETLANDS

1) Temporary or permanent impacts to Category 3 wetlands are prohibited [except for NWP 27].

2) Temporary or permanent impacts to Category 1 and 2 wetlands are limited to a maximum total of one-half acre [except for NWP 20, 21, 27, 32, 37, 38, 45, and 47].

3) Wetland Mitigation

- a. Ohio state certification for the use of any NWP to authorize the activities associated with the construction and or development of new mitigation banks is denied. Banks that have been approved for operation by the director of Ohio EPA may utilize NWPs for approved activities.
- b. Wetland mitigation shall adhere to the requirements set forth in Ohio EPA's Wetland Water Quality Standards [OAC Chapter 3745-1].

- c. When it is determined that use of a mitigation bank is the best option, mitigation shall only be authorized at those mitigation banks having an active instrument signed by the director of Ohio EPA.

4) Discharges or diversions of storm water into wetlands shall not negatively alter the wetland's natural hydrologic regime as required by OAC Rule 3745-1-51 (Wetland Narrative Criteria) and shall meet warmwater habitat chemical criteria as required by OAC Rule 3745-1-52 (Numeric Chemical Criteria for Waste Water Discharges to Wetlands) unless the applicant has obtained alternate criteria from the director.

C. LAKE ERIE

1) No nationwide permit may be used to divert water from outside of the Lake Erie drainage basin.

2) Temporary or permanent impacts to Lake Erie coastal wetlands, including coastal wetlands located on Lake Erie Islands and Sandusky Bay are prohibited [except for NWP 3 and 27].

3) Disposal of Dredge Material from Lake Erie, Lake Erie Islands, and Sandusky Bay.

- a. Dredged material that is greater than 60 percent sand (0.063 mm grain size), as determined by grain size analysis, shall be disposed of in the littoral drift, downdrift of the project site.
- b. Dredged material that is less than 60 percent sand and is below the 75th percentile of the surficial background sediment contamination concentrations of the basin proposed for disposal (as identified in "Surficial Sediment Contamination in Lakes Erie and Ontario, (Table 1) 2002, Journal of Great Lakes Research Volume 28(3) pages 437-450 by Christopher H. Marvin et al) may be disposed of in the open lake.
- c. Sand and gravel suitable for nearshore disposal shall not be entombed by any structure, but should be removed prior to construction, and placed in the littoral system, downdrift of the project site.

D. GENERAL

1) NWP's cannot be combined to increase any of the aforementioned limitations.

2) Ohio state certification for the use of any NWP to authorize the activities associated with the construction and or development of new mitigation banks that do not possess a mitigation banking agreement signed by the director of Ohio EPA is denied. Banks that have been approved for operation by the director of Ohio EPA may utilize NWP's for approved

activities.

3) Authorization under this Certification does not relieve the permittee from the responsibility of obtaining any other federal, state or local permits, approvals or authorizations required by law, including without limitation, National Pollutant Discharge Elimination System (NPDES) permits including general or individual stormwater permits, or Permits to Install (PTIs).

4) In nationwide permits where the district engineer has been granted authority to waive certain requirements, the corresponding limitations and conditions of this certification shall apply unless written authorization from the director of Ohio EPA is obtained to authorize additional impacts.

5) To the extent that this condition does not conflict with the Construction General Storm Water Permit in effect at the time of application, peak rates of runoff from an area after development may be no greater than the peak rates of runoff from the same area before development for all twenty-four-hour storms from one to one-hundred-year frequency.

6) To the extent that this condition does not conflict with the Construction General Storm Water Permit in effect at the time of application, locally required post development stormwater ponds shall incorporate specific design features for water quality such as those listed in Ohio's Rainwater and Land Development, Ohio's Standards for Storm Water Management, Land Development and Urban Stream Protection, 3^d Edition (2006), available at <http://www.dnr.state.oh.us/soilandwater/Rainwater.htm>, to the extent allowed by local stormwater requirements. These features include, but are not limited to, infiltration trenches, extended detention, wet pools, forebays, aquatic benches and vegetated shallows, optimum flow length, reverse flow pipe, optimum pool depth, shading and buffer plants, and runoff reuse.

7) To the extent that this condition does not conflict with the Construction General Storm Water Permit in effect at the time of application, the Best Management Practices (BMPs) listed below shall be utilized with all NWP when applicable.

- a. Only suitable material, free of toxic contaminants in other than trace quantities, shall be used as fill material;
- b. The use of asphalt and rubber tires as fill is prohibited under this permit;
- c. Upon the cessation of temporary impacts authorized under a NWP, any hydric topsoil removed from a trench shall be separated and saved for later placement as the topmost back fill layer when the trench is refilled;
- d. The stockpiling of side-cast dredged material in wetlands in excess of three months is not authorized;

- e. The applicant shall comply with all final stabilization requirements contained in applicable NPDES construction stormwater permits for the site;
- f. Construction equipment shall not be placed below the Ordinary High Water Mark (OHWM) of any surface water, except when no other alternative is practicable;
- g. All dredged material placed at an upland site shall be controlled so *that sediment runoff to adjacent surface waters is minimized to the maximum extent practicable*; and,
- h. BMPs shall be installed and maintained to minimize sediment runoff to adjacent surface waters.

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

NATIONWIDE PERMIT #7– OUTFALL STRUCTURES AND ASSOCIATED INTAKE STRUCTURES

Activities related to the construction or modification of outfall structures and associated intake structures, where the effluent from the outfall is authorized, conditionally authorized, or specifically exempted by, or that are otherwise in compliance with regulations issued under the National Pollutant Discharge Elimination System Program (Section 402 of the Clean Water Act). The construction of intake structures is not authorized by this NWP, unless they are directly associated with an authorized outfall structure.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 27.) (**Sections 10 and 404**)

Nationwide 7 Specific Regional Conditions:

None

WATER QUALITY CERTIFICATION

Pursuant to Section 401 of the Federal Water Pollution Control Act, 33 U.S.C. Section 1341; Ohio Revised Code Chapters 119 and 6111; Ohio Administrative Code (QAG) Chapters 3745-1, 3745-32, and 3745-47; and, Corps regional conditions public noticed on October 20, 2006, the director of the Ohio Environmental Protection Agency hereby certifies that the above referenced replacement Nationwide Permits (NWPs) I - as proposed in the March 12, 2007, *Federal Register* will comply with the applicable provisions of Sections 301, 302, 303, 306, and 307 of the Federal Water Pollution Control Act. These Certifications are specifically limited to 401 Certifications with respect to water pollution and do not relieve the applicant of further certifications or permits as may be necessary under applicable state and federal laws and/or local ordinances. Corps of Engineers Civil Works Projects in the State of Ohio are subject to the general and special limitations and conditions of this certification.

Water Quality Certification - Special Conditions:

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit except as modified below:

Ohio State Certification Special Limitations and Conditions:

This Certification shall only authorize outfall structures which have been authorized by a Permit-to-Install (PTI) and/or National Pollutant Discharge Elimination System (NPDES) permit issued by Ohio EPA pursuant to Ohio Revised Code Chapter 6111, and Ohio Administrative Code Chapters 3745-31 and -33 and outfall structures from stormwater ponds that do not require an NPDES permit.

NATIONWIDE PERMIT CONDITIONS

GENERAL CONDITIONS:

The following general conditions must be followed in order for any authorization by a NWP to be valid:

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 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. Culverts placed in streams must be installed to maintain low flow conditions.

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

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

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

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 and storm water management activities, 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.

13. Removal of Temporary Fills. 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.

15. Wild and Scenic Rivers. No 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. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).

16. 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.

17. Endangered Species.

- (a) No activity is authorized under any NWP which is likely to 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 destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which “may affect” a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.
- (b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements.
- (c) Non-federal permittees shall notify the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, 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 designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that may be affected by the proposed work or that utilize the designated critical habitat that may be affected by the proposed work. 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. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed activities will have “no effect” on listed species or critical habitat, or until Section 7 consultation has been completed.
- (d) As a result of formal or informal consultation with the FWS or NMFS the district engineer may add species-specific regional endangered species conditions to the NWPs.
- (e) Authorization of an activity by a 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 U.S. FWS or the NMFS, both lethal and non-lethal “takes” of protected species are in violation of the ESA. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. FWS and NMFS or their world wide Web pages at <http://www.fws.gov/> and <http://www.noaa.gov/fisheries.html> respectively.

18. Historic Properties.

- (a) In cases where the district engineer determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, 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. Federal permittees

must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the authorized activity may have the potential to cause effects to any historic properties listed, 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 may be affected by the proposed work 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 resources can be sought from the State Historic Preservation Officer or Tribal Historic Preservation Officer, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted and these efforts, the district engineer shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where the non-Federal applicant has identified historic properties which the activity may have the potential to cause effects and 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 or that consultation under Section 106 of the NHPA has been completed.

(d) 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. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). If NHPA section 106 consultation is required and will occur, the district engineer will notify the non-Federal applicant that he or she cannot begin work until Section 106 consultation is completed.

(e) Prospective permittees should be aware that section 110k of the NHPA (16 U.S.C. 470h-2(k)) 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, explaining 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.

19. Designated Critical Resource Waters. Critical resource waters include, NOAA-designated marine sanctuaries, National Estuarine Research Reserves, state natural heritage sites, and outstanding national resource waters or other waters officially designated by a state as having particular environmental or ecological significance and identified by the district engineer after notice and opportunity for public comment. The district engineer may also designate additional critical resource waters after notice and opportunity for 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, and 50 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, and 38, notification is required in accordance with general condition 27, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

20. Mitigation. The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are 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) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are 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 some other form of mitigation would be more environmentally appropriate and provides a project-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 minimal adverse effects on the aquatic environment. Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, wetland restoration should be the first compensatory mitigation option considered.

(d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation, such as stream restoration, to ensure that the activity results in minimal adverse effects on the aquatic environment.

(e) 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 project 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 a project already meeting the established acreage limits also satisfies the minimal impact requirement associated with the NWPs.

(f) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the establishment, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, riparian areas may be the only compensatory mitigation required. Riparian areas should consist of native species. 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. 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 compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(g) Permittees may propose the use of mitigation banks, in-lieu fee arrangements or separate activity-specific compensatory mitigation. In all cases, the mitigation provisions will specify the party responsible for accomplishing and/or complying with the mitigation plan.

(h) Where certain functions and services of waters of the United States are permanently adversely affected, such as the conversion of 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 effects of the project to the minimal level.

21. Water Quality. Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA Section 401, individual 401 Water Quality Certification must be obtained or waived (see 33 CFR 330.4(c)). The district engineer or State or Tribe may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

22. 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)). The district engineer or a State may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

23. 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 section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

24. Use of Multiple Nationwide Permits. The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States

authorized by the NWP does not 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.

25. 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)

26. Compliance Certification. Each permittee who received an NWP verification from the Corps must submit a signed certification regarding the completed work and any required mitigation. The certification form must be forwarded by the Corps with the NWP verification letter and will include:

- (a) A statement that the authorized work was done in accordance with the NWP authorization, including any general or specific conditions;
- (b) A statement that any required mitigation was completed in accordance with the permit conditions; and
- (c) The signature of the permittee certifying the completion of the work and mitigation.

27. 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, as a general rule, 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) Forty-five 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 17 that listed species or critical habitat might be affected or in the vicinity of the project, or to notify the Corps pursuant to general condition 18 that the activity may have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that 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)) is completed. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee cannot 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 project;
- (3) A description of the proposed project; the project’s purpose; direct and indirect adverse environmental effects the project would cause; 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. The description should be sufficiently detailed to allow the district engineer to determine that the adverse effects of the project will be minimal and to determine the need for compensatory mitigation. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the project and when provided result in a quicker decision);
- (4) The PCN must include a delineation of special aquatic sites and other waters of the United States 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 of the United States, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many waters of the United States. Furthermore, the 45 day period will not start until the delineation has been submitted to or completed by the Corps, where appropriate;
- (5) If the proposed activity will result in the loss of greater than 1/10 acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.
- (6) If any listed species or designated critical habitat might be affected or is in the

vicinity of the project, or if the project is located in designated critical habitat, for non-Federal applicants the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work. Federal applicants must provide documentation demonstrating compliance with the Endangered Species Act; and

(7) For an activity that may affect a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, for non-Federal applicants the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property. Federal applicants must provide documentation demonstrating compliance with Section 106 of the National Historic Preservation Act.

(c) Form of Pre-Construction Notification: The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is a PCN and must include all of the information required in paragraphs (b)(1) through (7) of this general condition. A letter containing the required information may also be used.

(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 NWP and the need for mitigation to reduce the project's adverse environmental effects to a minimal level.

(2) For all NWP 48 activities requiring pre-construction notification and for other NWP activities requiring pre-construction notification to the district engineer that result in the loss of greater than 1/2-acre of waters of the United States, the district engineer will immediately provide (e.g., via facsimile transmission, overnight mail, or other expeditious manner) a copy of the PCN to the appropriate Federal or state offices (U.S. FWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Office (THPO), and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will then have 10 calendar days from the date the material is transmitted to telephone or fax the district engineer notice that they intend to provide substantive, site-specific comments. 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, but 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.

(3) 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.

(4) Applicants are encouraged to provide the Corps multiple copies of pre-construction notifications to expedite agency coordination.

(5) For NWP 48 activities that require reporting, the district engineer will provide a copy of each report within 10 calendar days of receipt to the appropriate regional office of the NMFS.

(e) District Engineer's Decision: 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 the proposed activity requires a PCN and will result in a loss of greater than 1/10 acre of wetlands, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for projects with smaller impacts. The district engineer will consider any proposed compensatory mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects to the aquatic environment of the proposed work are 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 effects on the aquatic environment are minimal, after considering mitigation, the district engineer will notify the permittee and include any conditions the district engineer deems necessary. The district engineer must approve any compensatory mitigation proposal before the permittee commences work. 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 plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure no more than minimal adverse effects on the aquatic environment. If the net adverse effects of the project on the aquatic environment (after consideration of the compensatory mitigation proposal) are determined by the district engineer to be minimal, the district engineer will provide a timely written response to the applicant. The response will state that the project can proceed under the terms and conditions of the NWP. If the district engineer determines that the adverse effects of the proposed work are more than minimal, then the district engineer will notify the applicant either:

(1) That the project does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit;

(2) that the project is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level; or

(3) that the project 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 effects occur to the aquatic environment,

the activity will be authorized within the 45-day PCN period. The authorization will include the necessary conceptual or specific mitigation or a requirement that the applicant submit a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level. When mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan.

28. 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.

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

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, establishment (creation), enhancement, or preservation of aquatic resources for the purpose of compensating for 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.

Discharge: The term “discharge” means any discharge of dredged or fill material.

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.

Ephemeral stream: An ephemeral stream has flowing water only during, and for a short duration after, precipitation events in a typical year. Ephemeral stream beds are located above the water table year-round. Groundwater is not a source of water for the stream. Runoff from rainfall

is the primary source of water for stream flow.

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.

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 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.

Intermittent stream: An intermittent stream has flowing water during certain times of the year, when groundwater provides water for stream flow. During dry periods, intermittent streams may not have flowing water. Runoff from rainfall is a supplemental source of water for stream flow.

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. 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 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. The loss of stream bed includes the linear feet of stream bed that is filled or excavated. 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 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.

Non-tidal wetland: A non-tidal wetland is a wetland that is not subject to the ebb and flow of tidal waters. The definition of a wetland can be found at 33 CFR 328.3(b). 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 NWPs, an open water is any area that in a year with normal patterns of precipitation has water flowing or standing above ground to the extent that an

ordinary high water mark can be determined. Aquatic vegetation within the area of standing or flowing 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: An ordinary high water mark is a line on the shore established by the fluctuations of water and indicated by physical characteristics, or by other appropriate means that consider the characteristics of the surrounding areas (see 33 CFR 328.3(e)).

Perennial stream: A perennial stream has flowing water year-round during a typical year. The water table is located above the stream bed for most of the year. Groundwater is the primary source of water for stream flow. Runoff from rainfall is a supplemental source of water for stream flow.

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.

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 adjacent to streams, lakes, and estuarine-marine shorelines. Riparian areas are transitional between terrestrial and aquatic ecosystems, through which surface and subsurface hydrology connects waterbodies with their adjacent uplands. Riparian areas provide a variety of ecological functions and services and help improve or maintain local water quality. (See general condition 20.)

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 project: 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 project must have independent utility (see definition). For linear projects, a “single and complete project” is 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 waterbody several times at separate and distant locations, each crossing is considered a single and complete project. 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.

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 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 wetland (i.e., water of the United States) that is inundated by tidal waters. The definitions of a wetland and tidal waters can be found at 33 CFR 328.3(b) and 33 CFR 328.3(f), respectively. 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, which is defined at 33 CFR 328.3(d).

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 NWP, a waterbody is a jurisdictional water of the United States that, during a year with normal patterns of precipitation, has water flowing or standing above ground to the extent that an ordinary high water mark (OHWM) or other indicators of jurisdiction can be determined, as well as any wetland area (see 33 CFR 328.3(b)). If a jurisdictional wetland is adjacent--meaning bordering, contiguous, or neighboring--to a jurisdictional waterbody displaying an OHWM or other indicators of jurisdiction, that waterbody and its adjacent wetlands are considered together as a single aquatic unit (see 33 CFR 328.4(c)(2)). Examples of "waterbodies" include streams, rivers, lakes, ponds, and wetlands.

REGIONAL GENERAL CONDITIONS

1. Nationwide Permits shall not authorize any activity which impact bogs and/or fens.
2. No Nationwide permit may be used in Lake Erie for purposes of diverting water from the Great Lakes.
3. ***ODNR In-Water Work Exclusion Dates:*** Any work associated with a Nationwide permit cannot take place during the restricted period of the following ODNR Division of Wildlife Statewide In-Water Work Restrictions unless the permittee notifies the District Engineer in accordance with the Nationwide Permit Pre-Construction Notification General Condition and

receives written approval from the Corps:

<u>Location</u>	<u>Restricted Period</u>
Salmonid streams ¹	9/15 – 6/30
Percid streams ²	3/15 – 6/30
Other streams ³	4/15 – 6/30

1. Arcola Creek (entire reach), Ashtabula River (to Hadlock Rd.), Ashtabula Harbor, Chagrin River (to I-90), Cold Creek (entire reach), Conneaut Creek (entire reach), Conneaut Harbor, Cowles Creek (entire reach), Euclid Creek (entire reach), Grand River (to dam at Harpersfield Covered Bridge Park just upstream of the S.R. 534 bridge)/Fairport Harbor, Indian Creek (entire reach), Rocky River (to dam off Park Dr. just south of the I-90 bridge south of Rock River), Turkey Creek (entire reach), Vermillion River (to dam at Wakeman upstream of the S.R. 20/60 bridge), Wheeler Creek (entire reach), Whitman Creek (entire reach).

2. Cuyahoga River (to dam below the S.R. 82 bridge east of Brecksville (Chippewa Rd.)), Great Miami River (to dam south of New Baltimore), Hocking River (lower section), Little Miami River (lower section), Maumee River (to split dam at Mary Jane Thurston State Park and Providence Park in Grand Rapids), Maumee Bay, Muskingum River (to Devola Dam No. 2 off S.R. 60 north of Marietta), Ohio River (entire reach), Portage River (entire reach), Sandusky River (to Ballville Dam off River Road in Fremont), Sandusky Bay, Scioto River (lower section), Toussaint Rive (entire reach).

3. Class 3 primary headwater streams (watershed ≤ 1 mi²), EWH, CWH, WWH, or streams with T&E species. Includes Lake Erie & bays. Special conditions (such as occurrence of T&E species) may mandate local variation of restrictions.

Note: This condition does not apply to Ohio Department of Transportation projects that are covered under the “Memorandum of Agreement between Ohio Department of Transportation, Federal Highway Administration, Ohio Department of Natural Resources, and United States Fish and Wildlife Service For Interagency Coordination For Highway Projects Which Involve Stream Crossings, Bank Stabilization, and/or Minor Wetland Fills.

4. Waters of Special Concern: The permittee must notify the District Engineer in accordance with the Nationwide Permit Pre-Construction Notification General Condition for activities in the following resources:

a. Category 3 Wetlands: Pre-Construction Notification is required for all temporary or permanent impacts to Category 3 wetlands as determined through use of the latest approved version of Ohio EPA’s Ohio Rapid Assessment Method (ORAM) for wetland evaluation **long form**.

b. Ohio Stream Designations: Pre-Construction Notification is required for all temporary or permanent impacts to Exceptional Warmwater Habitat, Cold Water Habitat, Seasonal Salmonid, or any equivalent designation; or water bodies with an antidegradation category of Superior High Quality Water, Outstanding National Resource Water, or Outstanding High Quality Waters as determined by Ohio EPA except for NWP 3, 20, 27, 32, 37, 38, 45, and 47 or maintenance activities covered under NWP 7 and 12. The current list of these streams can be found on the Ohio EPA web-site at: <http://www.epa.state.oh.us/dsw/rules/3745-1.html>. You should look for these designations under the aquatic life use of the stream within its basin and under the “Anti-deg Rule #05.”

c. State Wild and Scenic Rivers: Pre-Construction Notification is required for all activities in State Wild and Scenic Rivers. The following are **State Wild and Scenic Rivers:**

Little Miami River - Clermont County line at Loveland to headwaters, including North Fork, Clermont County line at Loveland to confluence with East Fork and from the confluence with East Fork to Ohio River. Miles designated (approximate): 105

Sandusky River - US Rt. 30 in Upper Sandusky to Roger Young Memorial Park in Fremont. Miles designated (approximate): 65

Olentangy River - Delaware Dam to Old Wilson Bridge Road in Worthington. Miles designated (approximate): 22

Little Beaver Creek - *Wild segments* - West Fork from 1/4 mile downstream from Twp. Rd. 914 to confluence with Middle Fork. North Fork from Twp Rd. 952 to confluence with Little Beaver Creek. Little Beaver Creek from confluence of West and Middle Forks downstream to 3/4 mile north of Grimm's Bridge.

Scenic segments - North Fork from Ohio-Pennsylvania line downstream to Jackman Road. Middle Fork from Elkton Rd. (Twp. Rd. 901) downstream to confluence with West Fork. Little Beaver Creek from 3/4 mile north of Grimm's Bridge downstream to the Ohio-Pennsylvania line. Miles designated (approximate): Wild 20, Scenic 16

Grand River - *Wild segment* - from Harpersfield covered bridge downstream to Norfolk and Western Railroad trestle south of Painesville.

Scenic segment - from St. Rt. 322 bridge in Ashtabula County downstream to Harpersfield covered bridge. Miles designated (approximate): Scenic 33, Wild 23

Upper Cuyahoga River - Troy-Burton Township line in Geauga County to

US Rt. 14. Miles designated (approximate): 25

Maumee River - Scenic segment - Ohio-Indiana line to St. Rt. 24 bridge west of Defiance.

Recreational segment - St. Rt. 24 bridge west of Defiance to US Rt. 25 bridge near Perrysburg. Miles designated (approximate): Scenic 43, Recreational 53

Stillwater River System - *Recreational segment* - Englewood dam to confluence with Great Miami River.

Scenic segments - Stillwater River from Riffle Road bridge in Darke Co. to Englewood dam. Greenville Creek from the Ohio-Indiana state line to the confluence with the Stillwater. Miles designated (approximate): Scenic 83, Recreational 10

Chagrin River - Aurora Branch from St. Rt. 82 bridge downstream to confluence with Chagrin. Chagrin River from confluence with Aurora Branch downstream to St. Rt. 6 bridge. East Branch from Heath Road bridge downstream to confluence with Chagrin. Miles designated (approximate): 49

Big and Little Darby Creeks - Big Darby Creek from the Champaign-Union County line downstream to the U.S. Rt. 40 Bridge, from the northern boundary of Battelle-Darby Creek Metro Park to the confluence with the Little Darby Creek downstream to the Scioto River. Little Darby Creek from the Lafayette-Plain City Road Bridge downstream to the confluence with Big Darby Creek. Miles designated (approximate): 84

Kokosing River - Knox/Morrow County line to confluence with Mohican River. North Branch of Kokosing from confluence with East Branch downstream to confluence with main stem. Miles designated (approximate): 48

d. National Wild and Scenic Rivers: Pre-Construction Notification is required for all work in components of the National Wild and Scenic River System. The following are components of the **National Wild and Scenic River System:**

Big and Little Darby Creeks (National Wild and Scenic River System): Big Darby Creek from Champaign-Union County line downstream to the Conrail railroad trestle and from the confluence with the Little Darby Creek downstream to the Scioto River. Little Darby Creek from the Lafayette-Plain City Road Bridge downstream to within 0.8 mile from the confluence with Big Darby Creek. Total designation is approximately 82 miles.

Little Beaver Creek (National Wild and Scenic River System): Little Beaver

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

Little Miami (Scenic component of the National System from Clifton to Foster): the portion from Foster to the Ohio River was designated a Recreational component of the National system. Total designation is 92 miles.

e. Endangered Species: Due to the potential presence of Federally endangered species or their habitats, Pre-Construction Notification is required for all work in the following waterway or township of the corresponding county:

County	Waterway	Township
Adams	Ohio River	
Allen		Sugar Creek,
Ashtabula	Pymatuning Creek	Harperfield, Hartsgrove, Kingsville, Morgan, Orwell, Rome, Trumbell, Wayne, Williamsfield
Athens	Ohio River	
Brown	East Fork Little Miami River, Ohio River	Huntington, Pleasant, Union
Champaign	Little Darby Creek	Urbana
Clark		Bethel, Moorefield, Springfield
Clinton		Chester
Clermont	East Fork of Little Miami River, Ohio River	
Columbiana		Butler, Hanover
Coshocton	Killbuck Creek, Muskingum River, Walhonding River	Franklin, Linton, Newcastle, Virginia
Crawford		Auburn, Bucyrus, Cranberry, Lykens, Texas
Cuyahoga		Brooklyn
Defiance	St. Joseph River	Defiance, Hicksville, Mark, Milford, Richland
Delaware	Alum Creek Olentangy River, Scioto River,	Genoa, Orange, Radnor, Thompson, Troy
Erie		Berlin, Florence, Huron, Kelleys Island, Margaretta, Milan, Oxford, Perkins, Vermilion.
Fairfield	Walnut Creek	Walnut

Franklin	Alum Creek, Big Darby Creek, Blacklick Creek, Little Darby Creek, Olentangy River, Scioto River, Big Walnut Creek, Walnut Creek	
Fayette		Concord, Green, Jefferson, Jasper
Fulton		Fulton, Swan Creek
Gallia	Ohio River	
Geauga		Auburn, Burton, Munson, Troy
Greene	Little Miami River	Spring Valley, Bath
Guernsey		Jefferson
Hancock	Blanchard River	Amanda, Blanchard
Hamilton	Ohio River	
Hardin	Blanchard River	Blanchard, Dudley, Hale, Jackson
Harrison		Franklin, Stock
Henry		Flat Rock, Harrison, Liberty
Highland		Marshall, Paint
Holmes		Killbuck, Prairie, Washington,
Huron		Hartland, New Haven, Norwalk, Peru, Richmond, Sherman
Knox		Berlin, Butler, Union
Lake		Concord, Painesville, Willoughby
Lawrence	Ohio River	
Licking		Hanover, Newark, Union
Logan		Zane
Lorain		Brownhelm, Henrietta, Ridgeville, Russia
Lucas	Swan Creek	Adams, Jerusalem, Monclova, Oregon, Providence, Richfield, Spencer, Springfield, Swanton, Sylvania, Washington, Waterville
Madison	Big Darby Creek, Little Darby Creek	
Mahoning		Austintown, Beaver, Boardman, Jackson, Milton
Marion	Olentangy River	Big Island, Bowling Green, Green Camp
Medina		Harrisville
Meigs	Ohio River	
Mercer		Butler, Franklin, Jefferson
Miami	Stillwater River	
Montgomery		Mad River
Morgan	Muskingum River	Windsor
Morrow	Alum Creek	

Muskingum	Muskingum River	Blue Rock, Falls, Harrison, Hopewell, Madison, Muskingum
Noble		Beaver, Marion, Seneca, Wayne
Ottawa		Bay, Benton, Carroll, Clay, Erie, Danbury, Harris, North Bass Island (Put-in-Bay Twp.), Portage, Put-in-Bay, Riley, Salem
Paulding		Brown
Pickaway	Big Darby Creek, Scioto River, Walnut Creek.	Deer Creek, Monroe
Portage		Atwater, Aurora, Brimfield, Charleston, Franklin, Palmyra, Streetsboro
Preble		Gasper, Somers
Putnam		Sugar Creek
Richland		Blooming Grove, Butler, Franklin, Madison, Mifflin, Troy, Washington, Weller
Ross		Paint, Paxton, Twin
Sandusky		Ballville, Jackson, Green Creek, Madison, Rice, Riley, Sandusky, Townsend, Woodville, Washington
Scioto	Ohio River, Scioto Brush Creek	Union, Rush
Seneca		Adams, Bloom, Eden, Pleasant, Seneca, Venice
Stark		Lake, Marlboro, Sugar Creek
Summit		Northfield, Twinsburg
Trumbull	Pymatuning Creek	Bloomfield, Bristol, Farmington, Greene, Gustavus, Hartford, Kinsman, Mecca, Mesopotamia, Vernon
Tuscarawas	Tuscarawas River	Franklin
Union	Big Darby Creek, Little Darby Creek, Mill Creek	
Warren	Little Miami River	Wayne
Washington	Muskingum River, Ohio River	
Wayne		Chester, Clinton, Franklin, Wooster
Williams	Fish Creek, St. Joseph River	Bridgewater, Center, Florence, Jefferson, Madison, Northwest, St. Joseph, Superior
Wood		Center, Freedom, Middleton, Perrysburg, Troy

Wyandot	Tymochtee Creek	Antrim, Crane, Marseilles, Mifflin, Pitt, Sycamore, Tymochtee
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Note: As mentioned in General Condition 17-*Endangered Species*, Federal Agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements.

f. Critical Resource Waters: Pre-Construction Notification is required for all work in Critical Resource Waters. The following are designated as **Critical Resource Waters:**

Special habitat waters of Lake Erie including the shoreline, off shore islands, rock outcrops, and adjacent waters within the boundaries defined as 82° 22' 30" West Longitude, 83° 07' 30" West Longitude, 41° 33' 00" North Latitude, and 42° 00' 00" North Latitude.

In Ohio, two areas have been designated critical habitat for the piping plover (*Charadrius melodus*) and are defined as lands 0.62 miles inland from normal high water line. Unit OH-1 extends from the mouth of Sawmill Creek to the western property boundary of Sheldon Marsh State Natural Area, Erie County, encompassing approximately 2.0 miles. Unit OH-2 extends from the eastern boundary line of Headland Dunes Nature Preserve to the western boundary of the Nature Preserve and Headland Dunes State Park, Lake County, encompassing approximately 0.5 mile.

g. Oak Openings: Pre-Construction Notification is required for all activities conducted in the Oak Openings Region of Northwest Ohio located in Lucas, Henry, and Fulton counties. For a map of the Oak Openings Region, visit <http://www.oakopen.org/maps/>.

5. Pre-Construction Notification (PCN) Submittals: In addition to the information required under the Nationwide Permit Pre-Construction Notification General Condition (GC 27), the following information is needed for all Pre-Construction Notifications:

a. Drawings: The PCN must include project drawings on 8 1/2" x 11" paper. Three types of illustrations are needed to properly depict the work to be undertaken. These illustrations or drawings are identified as a Vicinity Map (i.e. a location map such as a USGS topographical map), a Plan View and a Typical Cross-Section Map. Each illustration should identify the project, the applicant, and the type of illustration (vicinity map, plan view or cross-section). In addition, each illustration should be identified with a figure or attachment number.

b. Endangered Species: Prior to submitting notifications, it is recommended that the applicant contact the United States Fish & Wildlife Service (USFWS) office in Reynoldsburg, Ohio, at (614) 469-6923 or by writing to United States Fish & Wildlife Service, 6950 Americana Parkway, Suite H, Reynoldsburg, Ohio 43068-4127 for

assistance in complying with Nationwide Permit General Condition 17. All relevant information obtained from the USFWS should be submitted with the notification.

c. Cultural Resources: The PCN must provide information concerning whether the proposed activity would affect any historic properties listed, determined to be eligible, or which you have reason to believe may be eligible, for listing on the National Register of Historic Places. This is necessary to ensure compliance with Nationwide Permit General Condition 18. To initiate efforts in identifying those properties on the project site which may be listed on the National Register or may be eligible for inclusion in the National Register, it is recommended that the applicant compile basic information about the general project area, as listed below, and submit this information to the District Engineer. This preliminary resource review should encompass a search radius of 2 miles and be centered on the project area. The following resources may be consulted during this review:

- 1) OHPO United States Geological Survey (USGS) 7.5' series topographic maps;
- 2) Ohio Archaeological Inventory (OAI) files;
- 3) Ohio Historic Inventory files (OHI);
- 4) OHPO Cultural Resources Management (CRM)/contract archaeology files;
- 5) National Register of Historic Places (NRHP) files including Historic Districts; and
- 6) County atlases, histories and historic USGS 15' series topographic map(s).

As an alternative, the applicant may choose to complete the Ohio Historic Preservation Office Section 106 Review Project Summary Form or request comments from the Ohio Historic Preservation Office and District Engineer on specific requirements appropriate to the particular circumstances of the project.

In addition to the information requested above, the applicant should provide information regarding the terrain and topography of the project area, acreage of the project area, proximity of the project area to major waterways, past land uses in the project area, and any past cultural resources studies or coordination for the project area, if available. It is also helpful if the applicant includes photographs, keyed to mapping, showing the project area and any buildings or structures on adjacent parcels. Upon receipt and review of this information and the information listed above, the Corps will be able to determine if further studies of the project area should be conducted (e.g., Phase I Cultural Resources Management Survey or Archeological Survey).

While accomplishing the activity authorized by a NWP, the inadvertent discovery of any artifacts (human remains, funerary objects, sacred objects, and objects of cultural patrimony/patrimony, etc.) shall result in immediately ceasing work and contacting the Regulatory Branch of the appropriate Corps of Engineers District. The Corps will initiate

the Federal, state, and tribal coordination required to satisfy the National Historic Preservation Act and all other applicable laws and regulations. Federally recognized tribes are afforded a government-to-government status as sovereign nations and consultation is required under both Executive Order 13175 and 36 CFR Part 800.

d. National Wild and Scenic Rivers: Prior to submitting notifications for work in a National Wild and Scenic River System, it is recommended that the applicant contact the National Park Service Regional Wild and Scenic Rivers Specialist, at the Midwest Regional Office, 601 Riverfront Drive, Omaha, Nebraska 68102, for assistance in complying with Nationwide Permit General Condition 15.

e. 401 Water Quality Certification: For activities that result in between 1/10 and ½ acre of loss of waters of the US **two copies** of the PCN must be submitted. In order to determine if a project meets the terms and conditions of Ohio EPA's 401 water quality certification the following additional information must be submitted:

- 1) To determine the quality of the wetlands on the site, all wetland delineations must include the latest approved version of the Ohio Rapid Assessment Method (ORAM) for wetland evaluation **long form**; and
- 2) Photographs of all the waterbodies on the site are recommended.

f. Agency Coordination: Activities that result in the loss of greater than ½ acre of waters of the US require full agency coordination (See Nationwide Permit General Condition 27 *Pre-construction Notification*). In an effort to expedite permit review, it is requested that all PCN's for activities resulting in the loss of greater than ½ acre of waters of the US include five (5) copies of the notification package. Applicants are encouraged to submit this information in electronic format in order to minimize the use of paper.

g. Floodplain Coordination: All PCN's must include a copy of the applicable FIRM map. You can get a FIRMette free from: <http://www.msc.fema.gov>. From this page select the "Product Catalog" tab at the top. Then select "FEMA Issued Flood Maps". The choices allow you to select a state and county. Then you follow the instructions to create a FIRMette. In addition, from the same web-site, you can obtain a FIRMette for a specific address. From <http://www.msc.fema.gov> **conduct a "Product Search" for "Public Flood Map" and then follow the instructions to create a FIRMette.**

Note 1: In circumstances where there is another lead federal agency with set procedures for addressing Endangered Species, Cultural Resources, and National Wild and Scenic River Coordination, the applicant can submit documentation showing the coordination has already been completed instead of submitting the additional PCN information requested above.

Note 2: Nationwide Permit General Condition 27 *Pre-construction Notification* requires the permittee to include a delineation of special aquatic sites and all other waters of the

United States on the project site. Special aquatic sites include sanctuaries and refuges, wetlands, mudflats, vegetated shallows, coral reefs, and riffle and pool complexes.

OHIO STATE CERTIFICATION GENERAL LIMITATIONS AND CONDITIONS (WATER QUALITY CERTIFICATION)

A. STREAMS

1) Temporary or permanent impacts to streams are limited to 500 linear feet, of which no more than 200 linear feet can be impacts to intermittent or perennial streams [except for NWP 3, 12, 13, 20, 21, 27, 32, 37, 38, 41, 45 and 47]. Impacts shall be measured linearly from upstream to downstream, including the length of permanent or temporary stream impoundments, when calculating the total length of stream impacts [except for NWP 12, for which impacts shall be measured bank-to-bank];

2) Temporary or permanent impacts to water bodies meeting any of the criteria set forth in a through d below, are prohibited [except for NWP 3, 20, 27, 32, 37, 38, 45, and 47 or maintenance activities covered under NWP 7 and 12]:

- a. Exceptional Warmwater Habitat, Cold Water Habitat, Seasonal Salmonid, or any equivalent designation;
- b. Water bodies with an antidegradation category of Superior High Quality Water, Outstanding National Resource Waters or Outstanding High Quality Waters; and,
- c. General high quality water bodies, such as Killbuck Creek in Coshocton County and Pymatuning Creek in Ashtabula County, which harbor federally listed threatened and/or endangered species.

For an alphabetical listing of the Superior High Quality Waters, go to

<http://www.epa.state.oh.us/dsw/rules/antidegHQiistJuly03.pdf>

3) Stream reconstruction activities shall maintain or enhance the habitat values of the stream as determined by an appropriate habitat assessment method and adhere to "natural channel design" principles. Natural channel design means a technique that integrates knowledge of natural stream processes to create a stable stream that maintains its form and function over time and achieves a targeted habitat or biological endpoint.

4) Stream or buffer improvements and/or mitigative measures required by the Corps shall address the following:

- a. In order of priority, these measures shall focus on the following:

- i. the stream segment being impacted;
- ii. upstream segments and tributaries; the receiving stream

The measures should, to the extent practicable, consider the causes and sources of impairment of the stream where the measures would be undertaken if the stream is listed as impaired in the most recent final report submitted to the United States Environmental Protection Agency by the director of Ohio EPA to fulfill the requirements of Section 303(d) of the Clean Water Act. The current list of impaired streams, as of the date of this certification, can be found at on Ohio EPA's web site at:

http://www.epa.state.oh.us/dsw/tmdl/20041ntReportlfinal_20041R_appB_2.pdf

- b. If the applicant cannot find appropriate mitigation on streams listed in Section "a" above, mitigation shall be in the Ohio EPA 8-digit watershed.
 - c. Vegetative buffers on both stream banks shall be of an appropriate length (at least the length of the impacted stream segment), and, if practicable,
 - i. Provide a minimum width of 25 feet for preservation of existing vegetative buffers; or,
 - ii. Provide a minimum width of 50 feet for re-vegetating buffers cleared during construction.
 - iii. Buffer width is measured from the top of bank or level of bankfull discharge.
 - d. Vegetated buffers shall be planted, or restored, as soon as practicable after in-stream work is complete and shall extend to the top of both stream banks, or beyond as stipulated by the Corps or Ohio EPA, using native tree and shrub species with rapid growth characteristics,
 - e. Impacts to existing vegetative buffers shall be minimized to the *maximum extent* practicable. *Entry to surface waters* shall be through a single point of access on each side of the stream whenever practicable to minimize disturbance to buffer vegetation;
- 5) In-stream activities shall not result in the permanent destabilization of the stream banks or stream bed. The stream bed and substrates shall be restored to conditions that existed prior to work.
- 6) In-stream work shall be conducted during low-flow conditions whenever practicable in order to minimize adverse impacts to water quality away from the project site, except in

emergency situations that threaten human life or property.

7) Culverts

- a. For an individual stream, the combined length of an existing culvert and culvert extension shall not exceed 500 linear feet, and the individual culvert extension shall not exceed 200 linear feet if installed on an intermittent or perennial stream, or 500 linear feet if installed on an ephemeral stream.
- b. For new road construction, flood plain culverts shall be installed where the flood prone area is greater than twice the width of the stream at Ordinary High Water Mark (OHWM).
- c. New Culverts on Low Gradient Streams (<3% slope)
 - i. Culverts shall be installed at the existing streambed slope, not exceeding three percent, to allow for the natural movement of bedload and aquatic organisms.
 - ii. The culvert base or invert for intermittent and perennial streams with bottom substrate shall be installed below the sediment to allow natural channel bottom to develop and to be retained. The channel bottom substrate shall be similar to and contiguous with the immediate upstream and downstream reaches of the stream. The culvert shall be designed and sized to accommodate bankfull discharge and match the existing depth of flow to facilitate the passage of aquatic organisms.
 - iii. *For perennial and intermittent streams*, culverts with *less than* three percent grade or not installed on bedrock shall have the lower 10 percent of all culvert bottoms buried below the existing stream grade. Hydraulic design shall be based upon the remaining open portion of the culvert.

8) Compensatory mitigation for linear projects (e.g., highways) in streams may be mitigated for by the following, in descending order of practicability:

- a. Stream impacts associated with a linear project may be mitigated on-site, defined as within one mile of the linear project, and within the same 4-digit watershed as shown in OAC 3745-1-54(F)(2); or,
- b. Stream impacts associated with a linear project may be mitigated at a single stream mitigation location or stream mitigation bank acceptable to the director, within each Ohio EPA 8-digit watershed in which such impacts occur; or,

- c. If no stream mitigation bank, acceptable to the director, is located within one or more of the Ohio EPA 8-digit watersheds in which the impact occurs, then mitigation may occur in another Ohio EPA 8-digit watershed impacted by the linear project; at a single stream mitigation location, or a stream mitigation bank, acceptable to the director; or,
- d. If no stream mitigation bank exists within any of the watersheds connected with the linear project, then mitigation should occur within the watershed in which the largest impacts (in terms of area) occur.

B. WETLANDS

- 1) Temporary or permanent impacts to Category 3 wetlands are prohibited [except for NWP 27].
- 2) Temporary or permanent impacts to Category 1 and 2 wetlands are limited to a maximum total of one-half acre [except for NWP 20, 21, 27, 32, 37, 38, 45, and 47].
- 3) Wetland Mitigation
 - a. Ohio state certification for the use of any NWP to authorize the activities associated with the construction and or development of new mitigation banks is denied. Banks that have been approved for operation by the director of Ohio EPA may utilize NWPs for approved activities.
 - b. Wetland mitigation shall adhere to the requirements set forth in Ohio EPA's Wetland Water Quality Standards [OAC Chapter 3745-1].
 - c. When it is determined that use of a mitigation bank is the best option, mitigation shall only be authorized at those mitigation banks having an active instrument signed by the director of Ohio EPA.
- 4) Discharges or diversions of storm water into wetlands shall not negatively alter the wetland's natural hydrologic regime as required by OAC Rule 3745-1-51 (Wetland Narrative Criteria) and shall meet warmwater habitat chemical criteria as required by OAC Rule 3745-1-52 (Numeric Chemical Criteria for Waste Water Discharges to Wetlands) unless the applicant has obtained alternate criteria from the director.

C. LAKE ERIE

- 1) No nationwide permit may be used to divert water from outside of the Lake Erie drainage basin.
- 2) Temporary or permanent impacts to Lake Erie coastal wetlands, including coastal

wetlands located on Lake Erie Islands and Sandusky Bay are prohibited [except for NWP 3 and 27].

3) Disposal of Dredge Material from Lake Erie, Lake Erie Islands, and Sandusky Bay.

- a. Dredged material that is greater than 60 percent sand (0.063 mm grain size), as determined by grain size analysis, shall be disposed of in the littoral drift, downdrift of the project site.
- b. Dredged material that is less than 60 percent sand and is below the 75th percentile of the surficial background sediment contamination concentrations of the basin proposed for disposal (as identified in "Surficial Sediment Contamination in Lakes Erie and Ontario, (Table 1) 2002, Journal of Great Lakes Research Volume 28(3) pages 437-450 by Christopher H. Marvin et al) may be disposed of in the open lake.
- c. Sand and gravel suitable for nearshore disposal shall not be entombed by any structure, but should be removed prior to construction, and placed in the littoral system, downdrift of the project site.

D. GENERAL

- 1) NWP's cannot be combined to increase any of the aforementioned limitations.
- 2) Ohio state certification for the use of any NWP to authorize the activities associated with the construction and or development of new mitigation banks that do not possess a mitigation banking agreement signed by the director of Ohio EPA is denied. Banks that have been approved for operation by the director of Ohio EPA may utilize NWP's for approved activities.
- 3) Authorization under this Certification does not relieve the permittee from the responsibility of obtaining any other federal, state or local permits, approvals or authorizations required by law, including without limitation, National Pollutant Discharge Elimination System (NPDES) permits including general or individual stormwater permits, or Permits to Install (PTIs).
- 4) In nationwide permits where the district engineer has been granted authority to waive certain requirements, the corresponding limitations and conditions of this certification shall apply unless written authorization from the director of Ohio EPA is obtained to authorize additional impacts.
- 5) To the extent that this condition does not conflict with the Construction General Storm Water Permit in effect at the time of application, peak rates of runoff from an area after development may be no greater than the peak rates of runoff from the same area before development for all twenty-four-hour storms from one to one-hundred-year frequency.

6) To the extent that this condition does not conflict with the Construction General Storm Water Permit in effect at the time of application, locally required post development stormwater ponds shall incorporate specific design features for water quality such as those listed in Ohio's Rainwater and Land Development, Ohio's Standards for Storm Water Management, Land Development and Urban Stream Protection, 3rd Edition (2006), available at <http://www.dnr.state.oh.us/soilandwater/Rainwater.htm>, to the extent allowed by local stormwater requirements. These features include, but are not limited to, infiltration trenches, extended detention, wet pools, forebays, aquatic benches and vegetated shallows, optimum flow length, reverse flow pipe, optimum pool depth, shading and buffer plants, and runoff reuse.

7) To the extent that this condition does not conflict with the Construction General Storm Water Permit in effect at the time of application, the Best Management Practices (BMPs) listed below shall be utilized with all NWP's when applicable.

- a. Only suitable material, free of toxic contaminants in other than trace quantities, shall be used as fill material;
- b. The use of asphalt and rubber tires as fill is prohibited under this permit;
- c. Upon the cessation of temporary impacts authorized under a NWP, any hydric topsoil removed from a trench shall be separated and saved for later placement as the topmost back fill layer when the trench is refilled;
- d. The stockpiling of side-cast dredged material in wetlands in excess of three months is not authorized;
- e. The applicant shall comply with all final stabilization requirements contained in applicable NPDES construction stormwater permits for the site;
- f. Construction equipment shall not be placed below the Ordinary High Water Mark (OHWM) of any surface water, except when no other alternative is practicable;
- g. All dredged material placed at an upland site shall be controlled so *that sediment runoff to adjacent surface waters is minimized to the maximum extent practicable*; and,
- h. BMPs shall be installed and maintained to minimize sediment runoff to adjacent surface waters.

8) Representatives from Ohio EPA, Division of Surface Water will be allowed to inspect the authorized activity at any time deemed necessary to insure that it is being or has been accomplished in accordance with the terms and conditions of this water quality certification.

This includes, but is not limited to, access to and copies of any records any records that must be kept under the conditions of this certification; and, authorization to sample and/or monitor any discharge activity or mitigation site. Ohio EPA will make a reasonable attempt to notify the applicant of its intention to inspect the site in advance of that inspection.

SPECIAL PROVISIONS

404 PERMIT- WATERWAY PERMITS

CRS: CUY-90-14.52

PID: 77332/85531

- **SECTION 404 WATERWAY PERMIT
APPLICATION (SUBMITTED TO THE US
ARMY CORPS OF ENGINEERS AND OHIO
EPA ON1/19/10)**



OHIO DEPARTMENT OF TRANSPORTATION

CENTRAL OFFICE • 1980 WEST BROAD STREET • COLUMBUS, OH 43223

TED STRICKLAND, GOVERNOR • JOLENE M. MOLITORIS, DIRECTOR

January 19, 2010

U.S. Army Corps of Engineers
Ohio Regulatory Transportation Office
DSCC Building 10, Section 10
3990 E. Broad Street
Columbus, OH 43218

Attention: Mr. Peter Clingan

Re: **CUY-90-14.52, PID: 77332/85531 Innerbelt Bridge Construction**
Pre-Construction Notification for Section 404 Dept. of the Army Permit

Dear Mr. Clingan:

Enclosed for your review and processing, is one copy of a 404 Permit Application (Pre-Construction Notification) for the proposed project. The Ohio Department of Transportation intends to construct a new bridge that will carry I-90 over the Cuyahoga River in Cuyahoga County. This project is "design build" meaning that at this time the exact extent of the fill in the Cuyahoga River is not known. No bridge piers will be placed in the water. Fill activities in the Cuyahoga River will only include temporary construction access fill to install outfall structures and reconstruct bulkheads, and permanent fill for the replacement of a failed bulkhead.

At this time, the precise impacts are not known. Maximum extent impacts have been calculated that will not be exceeded during construction on the east and west banks of the Cuyahoga River. Permanent impacts to replace the failed bulkhead will include 1,420 CY (167 LF, 0.05 ac.) of granular material, shale, rock, or other clean non-erodible fill material. Temporary construction access fill will include 1,366 CY (208 LF, 0.25 ac.).

ODOT is requesting your review and processing of this application under the Nationwide Permit Program in order to facilitate the project schedule. Please begin the review process for the project. Should any questions arise or should you need additional information please contact Bill Cody at (614) 466-5198 or Matt Perlik at (614) 466-1937.

Respectfully,

A handwritten signature in black ink, appearing to read "Timothy M. Hill".

Timothy M. Hill
Administrator
Office of Environmental Services

TMH:WRC:MAP:mkp

Enclosure: PCN application and supporting materials

c: Mark Carpenter (D12), Mark Epstein (SHPO), File, Reading File

APPLICATION FOR DEPARTMENT OF THE ARMY PERMIT

(33 CFR 325)

OMB APPROVAL NO. 0710-0003
Expires December 31, 2006

The Public reporting burden for this collection of information is estimated to average 10 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Defense, Washington Headquarters Service Directorate of Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302; and to the Office of Management and Budget, Paperwork Reduction Project (0710-0003), Washington, DC 20503. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection it does not display a currently valid OMB control number Please DO NOT RETURN your form to either of those addresses. Completed applications must be submitted to the District Engineer having jurisdiction over the location of the proposed activity.

PRIVACY ACT STATEMENT

Authorities: Rivers and Harbors Act, Section 10, 33 USC 403; Clean Water Act, Section 404, 33 USC 1344; Marine Protection, Research and Sanctuaries Act, 33 USC 1413. Principal Purpose: Information provided on this form will be used in evaluating the application for a permit. Routine Uses: This information may be shared with the Department of Justice and other federal, state, and local government agencies. Submission of requested information is voluntary, however, if information is not provided the permit application cannot be processed nor can a permit be issued.

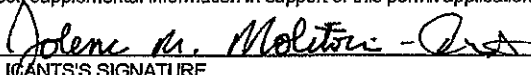
One set of original drawings or good reproducible copies which show the location and character of the proposed activity must be attached to this application (see sample drawings and instructions) and be submitted to the District Engineer having jurisdiction over the location of the proposed activity. An application that is not completed in full will be returned.

(ITEMS 1 THRU 4 TO BE FILLED BY THE CORPS)

1. APPLICATION NO.	2. FIELD OFFICE CODE	3. DATE RECEIVED	4. DATE APPLICATION COMPLETED
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(ITEMS BELOW TO BE FILLED BY APPLICANT)

5. APPLICANT'S NAME Jolene M. Molitoris, Director	8. AUTHORIZED AGENT'S NAME AND TITLE (an agent isn't required) Michael A. Pettegrew, OES Waterway Permits Supervisor
6. APPLICANT'S ADDRESS Ohio Department of Transportation Office of Environmental Services, Third Floor 1980 West Broad Street Columbus, Ohio 43223	9. AGENT'S ADDRESS Ohio Department of Transportation Office of Environmental Services, Third Floor 1980 West Broad Street Columbus, Ohio 43223
7. APPLICANT'S PHONE NUMBERS WITH AREA CODE a. Residence b. Business: William R. Cody (614) 466-5198	10. AGENT'S PHONE NUMBERS WITH AREA CODE a. Residence b. Business: Michael A. Pettegrew (614) 466-7102

11. STATEMENT OF AUTHORIZATION	
I hereby authorize, <u>Michael A. Pettegrew</u> to act in my behalf as my agent in the processing of this application and to furnish, upon request, supplemental information in support of this permit application.	
	1/19/10
APPLICANT'S SIGNATURE	DATE:

NAME, LOCATION AND DESCRIPTION OF PROJECT OR ACTIVITY

12. PROJECT NAME OR TITLE (see instructions) CUY-90-14.52 Innerbelt Bridge Construction , PID 77332/85531	
13. NAME OF WATERBODY, IF KNOWN (see instructions) Cuyahoga River (HUC 04110002) – Ship Channel Limited Resource Water (June through January) (OEPA) Fish Passage (February through May) (OEPA)	14. PROJECT STREET ADDRESS (if applicable)
15. LOCATION OF PROJECT Cuyahoga Ohio _____ COUNTY STATE	
16. OTHER LOCATION DESCRIPTIONS, IF KNOWN (see instructions) Located in the City of Cleveland, Ohio. Latitude: N41° 29' 12" Longitude: W81° 41'28"	
17. DIRECTIONS TO THE SITE From Columbus: Take I-70 E to I-71 N. I-71 N becomes I-90E. New bridge to be located north of the existing I-90 bridge.	

18. NATURE OF ACTIVITY (DESCRIPTION OF PROJECT, INCLUDE ALL FEATURES)

The project proposes to construct a new bridge over the Cuyahoga River Valley on I-90 that will accommodate six lanes of traffic. See attached Block 18 detailing additional information regarding the description of the project.

19. PROJECT PURPOSE (DESCRIBE THE REASON OR PURPOSE OF THE PROJECT, SEE INSTRUCTIONS)

The purpose of the proposed project is to replace a structurally deficient bridge in order to maintain a safe route of travel. See attached Block 19 detailing additional information regarding the project purpose.

USE BLOCKS 20-22 IF DREDGED AND/OR FILL MATERIAL IS TO BE DISCHARGED

20. REASON(S) FOR DISCHARGE

The project is a design-build project, therefore at this time, the construction plans are not final. However, for purposes of this PCN, the worst case (impact) scenario will be submitted for approval. Discharges associated with the project will be addressed as both temporary and permanent. The only work below the OHWM associated with this bridge replacement project is the replacement of sections of the existing bulkheads and the installation of outfall structures resulting in temporary and permanent impacts. See attached Block 20 detailing additional information regarding the reasons for discharge.

21. TYPE(S) OF MATERIAL BEING DISCHARGED AND THE AMOUNT OF EACH TYPE IN CUBIC YARDS

At this time ODOT does not know exactly what construction method(s) the contractor will use to reconstruct the existing bulkheads. Therefore, worst case impacts have been estimated for the fills below ordinary high water (OHW) based on the experience of the District's Construction Engineer and the following figures have been developed:

Temporary fill, composed of clean non-erodible material, will impact the east bank of the Cuyahoga River for 824 CY (0.12 acres, 260 LF), and temporary impact to the west bank Cuyahoga River for 542 CY (0.13 acres, 208 LF). No permanent impact to the east bank Cuyahoga River is anticipated. Permanent impact to the west bank Cuyahoga River = 1,420 CY (0.05 acres, 167 LF). Permanent fill will be composed of granular material, shale, rock, and/or other clean non erodible fill material. See attached block 21 for summary table of proposed impacts.

22. SURFACE AREA IN ACRES OF WETLANDS OR OTHER WATERS FILLED (SEE INSTRUCTIONS)

A total of 0.05 acre (167 LF) of the Cuyahoga River will be permanently impacted by the proposed project. A total of 0.25 acre (468 LF) of the Cuyahoga River will be temporarily impacted to provide construction access. No wetlands will be impacted by the proposed project. Please note that there is no overlap between temporary and permanent impacts. See attached Block 22 detailing proposed temporary and permanent impacts.

23. IS ANY PORTION OF THE WORK ALREADY COMPLETE? Yes _____ No IF YES, DESCRIBE THE COMPLETED WORK

24. ADDRESSES OF ADJOINING PROPERTY OWNERS, LESSEES, ETC., WHO'S PROPERTY ADJOINS THE WATERBODY (IF MORE THAN CAN BE ENTERED HERE PLEASE ATTACH SUPPLEMENTAL LIST).



See attached Block 24 for adjoining property owners.

25. LIST OF OTHER CERTIFICATIONS OR APPROVALS/DENIALS RECEIVED FROM OTHER FEDERAL, STATE, OR LOCAL AGENCIES FOR WORK DESCRIBED IN THIS APPLICATION

AGENCY	TYPE OF APPROVAL*	IDENTIFICATION NUMBER	DATE APPLIED	DATE APPROVED	DATE DENIED
FHWA	ROD			9/18/09	

Multiple agency coordination was conducted during the completion of the EIS document. A copy of the ROD and agency coordination is attached.

26. Application is hereby made for a permit or permits to authorize the work described in this application. I certify that the information in this application is complete and accurate. I further certify that I possess the authority to undertake the work described herein or am acting as the duly authorized agent of this applicant.

SIGNATURE OF APPLICANT DATE 1/19/10 SIGNATURE OF AGENT DATE 1/19/10

The application must be signed by the person who desires to undertake the proposed activity (applicant) or it may be signed by a dully authorized agent if the statement in block 11 has been filled out and signed.

18 U.S.C. Section 1001 provides that: Whoever, in any manner within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals, or covers up any trick, scheme, or disguises a material fact or makes any false, fictitious or fraudulent statements or representations or makes or uses any false writing or document knowing same to contain any false, fictitious or fraudulent statements or entry, shall be fined not more than \$10,000 or imprisoned not more than five years or both.

BLOCK 18 – NATURE OF ACTIVITY (CONTINUED)

In general, the Design Build Team (DBT) will design and construct a new bridge over the Cuyahoga River Valley on I-90 that will accommodate six (6) lanes of bi-directional traffic on opening day and 5 (five) lanes of traffic westbound through traffic at some point in the future (after opening day). This will include temporary and permanent approach pavement and structures from I-90 WB at Kenilworth Avenue to I-90 WB at East 14th Street.

The overall project also includes:

1. Bridge deck replacement and bridge rehabilitations for I-90 EB and WB Mainline and Ramp bridges over East 14th Street and I-90 EB and WB Mainline over I-77 ramps to/from I-90 (E-8 and E-10);
2. Reconstruction of West Bound I-90 entrance ramps and associated structures from East 14th Street, East Ninth Street and Ontario Avenue in the Central Business District;
3. Reconstruction of Ontario Avenue, Carnegie Avenue and Ramp Intersection and associated structures;
4. Construction of new sections of East Ninth Street, Broadway Avenue and East 14th Street and associated structures;
5. Replacing deck of existing I-71 SB bridge over Starkweather Avenue;
6. Replacing deck of existing I-90 WB bridge over Starkweather Avenue;
7. Modifying and replacing deck of existing I-90 WB bridge over Kenilworth Avenue;
8. Reconstruction of Commercial Road and Central Viaduct Street and Fire Station and Museum Area;
9. Construction of new Commercial Road alignment to new East Ninth Street Alignment;
10. Major earthwork grading of the West Slope region between Abbey Avenue and Cuyahoga River;
11. Reconstruction of I-90 Exit to Abbey and Fairfield including construction of West 14th Street Extension;
12. Reconstruction of bulkheads along Cuyahoga River;
13. Removal of sections of University Avenue;
14. Closure and removal of I-77 NB to I-90 WB Ramp and I-90 EB to I-77 SB Ramp; and,
15. All associated items including but not limited to earthwork, pavements, landscaping, sidewalks, drainage facilities, utilities, walls, traffic control, and aesthetic or other enhancements for the completion of a facility that can be opened to traffic.

Activities with potential impacts to the Cuyahoga River addressed in this permit application include:

1. Reconstruction of approximately 260 linear feet of bulkhead located on the east bank of the Cuyahoga River.
2. Reconstruction of approximately 375 linear feet of bulkhead located on the west bank of the Cuyahoga River.
3. Construction of approximately three storm outfalls on the east bank of the Cuyahoga River and two storm outfalls on the west bank of the Cuyahoga River. Exact locations for the outfalls will be determined during the design phase.

Although construction of the Central Viaduct Bridge will be subject to Contractor means and methods, the proposed construction will be in accordance with ODOT's Location & Design, Volume 2 Manual. Bridge foundations will not be permitted within the limits of the Cuyahoga River. Construction activities will likely consist of standard construction, such as the use of cofferdams, may be placed around the existing

bulkhead locations to divert the channel flow away from construction. The existing bulkheads will be removed and new bulkheads constructed, which would temporarily impact the Cuyahoga River.

Demolition debris shall not be permitted to enter the Cuyahoga River. Please refer to the project plan set for preliminary project details. The Regional and Special Limitations and Conditions applicable to this project as identified in the Nationwide 3 for maintenance (i.e., bridge replacement) and Nationwide 7 for the outfall structures will be included with the plans implemented by the contractor(s). To further avoid and minimize impacts to the river from the stormwater outfalls an Ohio EPA issued General National Pollution Discharge Elimination System (NPDES) permit utilizing post construction storm water best management practices (BMPs) shall be prepared for the project (see Appendix C - Supplemental Specification 832-Temporary Sediment and Erosion Control) and executed by the contractor.

The project will comply with the Ohio Department of Natural Resources Coastal Zone Management Act's federal consistency determination general condition, as well as compliance with applicable FEMA approved state or local floodplain management requirements. The corresponding FEMA map is included in Appendix A.

No compensatory mitigation is being proposed due to the minimal effects anticipated from the project on the Cuyahoga River, as well as employing to the fullest extent possible construction related BMP's. Replacement of the vertical bulkheads will incorporate recessed areas for increased aquatic habitat, to the extent practical.

No impacts to any species listed or proposed as threatened or endangered or designated critical habitat will be affected by the project. The project does impact cultural resources in association with Section 106 of the National Historic Preservation Act. However, the project will be implemented in compliance with the *"Programmatic Agreement Among the Federal Highway Administration, the Ohio State Historic Preservation Office, and the Ohio Department of Transportation Regarding the Federal-Aid Highway Improvement of Interstate Routes 71, 77, and 90 in the City of Cleveland, Cuyahoga County, Ohio CUY-90 Innerbelt; PID 77510 Agreement Number 15498"* as signed by the FHWA, ODOT, and SHPO. The attached NEPA documentation satisfying Section 7 of the Endangered Species Act (33 CFR 330.4(f)) and Section 106 of the National Historic Preservation (33 CFR 330.4(g)) is located in Appendix D.

BLOCK 19 – PURPOSE (CONTINUED)

The Central Viaduct Bridge is identified as CUY-90-1524 and carries I-90 over the Cuyahoga River Valley from Fairfield Avenue on the west to Broadway Avenue on the east. The Central Viaduct Bridge was put into service in 1959 and has been continuously used throughout its 47-year history. The Central Viaduct Bridge is comprised of three structures:

1. The 1,226-foot rear or west approach structure spans over Fairfield Avenue, Abbey Avenue, and University Road;
2. The 2,277-foot main truss (consisting of a total of nine spans) passes over the Cuyahoga River, the industrial Valley, the Norfolk-Southern trestle, Harrison Street, West 4th Street, West 3rd Street, the CSX system tracks, and Canal Road;
3. The 1,131-foot forward or east approach structure spans over Commercial Road, Greater Cleveland Regional Transit Authority railroad tracks and Broadway Avenue.

A 1997 ODOT inspection found major deficiencies in the bridge deck and stringers, with replacement of these structural elements recommended by 2008. Because of extensive cracking and spalling discovered in that inspection, ODOT authorized application of a high-molecular weight sealant, which was completed in 1999.

In the fall of 2007, it was determined that the existing Cleveland Innerbelt Central Viaduct Bridge was in substantially worse condition than previously understood. On September 30, 2008, the ODOT closed the outside lanes on the bridge and the Ontario Street on ramp to traffic.

Due to the deteriorated conditions of the existing Central Viaduct Bridge, as well as its important connection over the Cuyahoga River Valley, construction of a new Innerbelt bridge is necessary in order to maintain a safe route of travel.

The new bridge is programmed and scheduled for construction beginning in November 2010 and tentative completion in June 2014.

BLOCK 20 – REASON(S) FOR DISCHARGE (CONTINUED)

Permanent impacts will occur from the replacement of the metal sheetpiling associated with the reconstruction of the failed bulkheads. Approximately 260 linear feet of bulkheads on the east bank of the river and approximately 375 linear feet of bulkheads on the west bank of the river will be replaced. Temporary impacts will occur during construction activities. Fill material may be used to create a temporary work area for the contractor to work while reconstructing the bulkheads. All temporary fill material will be removed upon completion of the project and the area will be restored to its original condition. A note will be added to the DBT plans to ensure that all temporary fill material is removed and the area restored.

BLOCK 21 – TYPE(S) OF MATERIAL BEING DISCHARGED AND THE AMOUNT OF EACH TYPE IN CUBIC YARDS (CONTINUED)

SUMMARY OF VOLUME OF FILL

Permanent Impacts		
Left (west) Bank (CY)	Right (east) Bank (CY)	Project Total (CY)
1,420	0	1,420
Temporary Impacts		
Left (west) Bank (CY)	Right (east) Bank (CY)	Project Total (CY)
542	824	1,366

BLOCK 22 – SURFACE AREA IN ACRES OF WETLANDS OR OTHER WATERS (CONTINUED)

Approximately 824 cubic yards of granular material, shale, rock, and/or other clean non erodible material may temporarily be discharged below the ordinary high water elevation of the Cuyahoga River to reconstruct approximately 260 linear feet (0.12 acre) of bulkheads located on the east bank of the river.

Approximately 542 cubic yards of granular material, shale, rock, and/or other clean non erodible material may temporarily be discharged below the ordinary high water elevation of the Cuyahoga River to reconstruct approximately 208 linear feet of bulkheads located on the west bank of the river.

Approximately 1,420 cubic yards of granular material, shale, rock, and/or other clean non erodible fill will be placed below the ordinary high water elevation along the west bank of the Cuyahoga River to repair the failed portion of the existing bulkhead.

SUMMARY OF SURFACE AREA AND LENGTH OF IMPACTS*

Permanent Impacts		
Left (west) Bank	Right (east) Bank	Project Total
0.05 acre	0 acre	0.05 acre
167 LF	0 LF	167 LF
Temporary Impacts		
Left (west) Bank	Right (east) Bank	Project Total
0.13 acre	0.12 acre	0.25 acre
208 LF	260 LF	468 LF

*NOTE: Temporary and permanent impact totals are cumulative and no overlap occurs.

BLOCK 24 – ADDRESSES OF ADJOINING PROPERTY OWNERS, LESSEES, ETC.

1. CSub Corporation
LaFarge, North America
12735 Morris Road, Suite 300
Alpharetta, GA 30004
2. University Cuyahoga Inc.
PO Box 40482
Bay Village, OH 44140