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ARTICLE 1 - PROJECT DESCRIPTION

Scope of Work

1.1 The work to be performed shall consist of the construction of the **Avon Ave. @ Haywood Rd. Sanitary Sewer Rehabilitation (MSD Project No. 2021003)** project for the Metropolitan Sewerage District of Buncombe County, North Carolina. The project shall generally consist of the furnishing of all services, supplies, materials and equipment, and performing of all labor for the construction and installation of approximately 33 L.F. of 8-inch DIP and 185 L.F. of 8-inch SDR-26 HW PVC mainline sewer, including manholes and all appurtenances related thereto.

1.2 The work shall be performed under unit price contract, and shall consist of furnishing all materials, supplies, and equipment; performing all labor and services incidental to or necessary for the complete construction of the project in accordance with the Plans and Specifications; and maintenance of each completed portion of the work until final acceptance of the entire project by the DISTRICT, unless otherwise approved by the ENGINEER.

ARTICLE 2 - PHYSICAL CONDITIONS/CONTRACT PLANS

2.1 **Physical Conditions.** There have been no subsurface explorations or reports utilized in the preparation of these contract documents.

2.2 **Contract Plans.** The work shall be performed in accordance with these specifications and contract plans, which are incorporated herein as part of the contract and which are identified by the following numbers and titles:

Construction Plans

Sheet No.	Description
C-1	Index of Drawings and Vicinity Map
PL-1	Sanitary Sewer Plan
PL-2	Sanitary Sewer Profile
D-1	Sanitary Sewer Details

ARTICLE 3 - PROJECT COORDINATION

3.1 **Intent of Plans and Specifications**

The intent of the Plans and Specifications is to prescribe a complete work that the CONTRACTOR undertakes to do in full compliance with the Contract. The CONTRACTOR shall do all work as provided in the Plans, Special Conditions Detail Sheets, Specifications and other parts of the Contract and shall do such additional, extra, and incidental work as may be considered necessary to complete the work in a satisfactory and acceptable manner. Any work or material not shown

on the Plans or described in the Specifications, but which may be fairly implied as included in any item of the Contract, shall be performed and/or furnished by the CONTRACTOR without additional charge therefore. The CONTRACTOR shall furnish all labor, materials, tools, equipment and incidentals necessary to the prosecution of the work.

3.2 **Interpretation of Estimate**

The quantities of the work and materials shown on the Proposal form or on the Plans are believed to approximately represent the work to be performed and materials to be furnished and are to be used for comparison of bids. Payment to the CONTRACTOR will be made only for the actual quantities of work performed or materials furnished in accordance with the Plans and Specifications and it is understood that the quantities may be increased or decreased as hereinafter provided without in any way invalidating the bid prices.

3.3 **Time of Completion**

The CONTRACTOR shall commence work to be performed on the project under this agreement on a date to be specified in a written Notice to Proceed from the DISTRICT and shall duly complete all work under this agreement within **One Hundred Twenty (120) consecutive calendar days** from said date. For each day in excess of the completion time limits specified above, the CONTRACTOR shall pay the DISTRICT the sum of Three Hundred Dollars ($300.00) as liquidated damages reasonably estimated in advance to cover the losses incurred by the DISTRICT by reason of failure of said CONTRACTOR to complete the work within the time specified, such time being in the essence of this Contract and a material consideration thereof.

3.4 **Pre-Construction Conference**

Prior to starting any construction work on this project, a conference will be held in the Construction Office of the DISTRICT for the purpose of verifying general construction procedures, expediting the handling of shop drawings and schedules, and to establish a working understanding between the parties concerned on the project. Present at the conference shall be a responsible representative of the CONTRACTOR and the CONTRACTOR's job superintendent. The time of the conference shall be as agreed upon by the CONTRACTOR and DISTRICT.

3.5 **Progress Meetings**

The CONTRACTOR and any subcontractors, material suppliers or vendors whose presence is necessary or requested shall attend meetings, referred to as Progress Meetings, when requested by the DISTRICT for the purpose of discussing the execution of the work. Each meeting will be held at the time and place designated by the DISTRICT. A schedule for monthly meetings will be agreed upon at the

pre-construction conference. The ENGINEER will call for and schedule additional meetings if necessary. All decisions, instructions and interpretations made at these meetings shall be binding and conclusive on the CONTRACTOR and such decisions, instructions and interpretations shall be confirmed in writing by the DISTRICT.

The proceedings of these meetings will be recorded and the CONTRACTOR will be furnished with a reasonable number of copies for his use and for his distribution to the subcontractors' material suppliers and vendors involved.

3.6 Utility owners within the vicinity of the Project may include, but are not limited to, those listed below. The CONTRACTOR shall contact N.C. OneCall Center for utility locations within public rights of way and easements before digging, as required by NC State Statutes.

Call NC OneCall Center, Inc. (locators for Buncombe County) at "811".

Utility / Agency		**Phone**
Asheville Dispatch City Road Closures		828-252-1122
Asheville		
Public Works Department		828-232-4567
Streets Division		828-259-5852
	Chad Bandy	828-782-0546
	Jerry Yates	828-778-8938
	Rick Gath	828-777-4053
Storm Water		828-259-5973
	Tony Chapman	828-777-5665
	Amy Deyton	828-782-0755
Water Department		828-259-5975
	Travis Mortier	828-778-0191
	Jeremy Godfrey	828-778-0953
	Michele Smith	828-777-3539
Asheville Transit Bus Lines		828-253-5691
AT&T Telephone Co.		877-737-2478
	Chip Lance	828-258-7058
	Jenny Stamey	828-251-8949
Black Mountain		828-669-8610
Public Works Director	Jamie Matthews	828-778-5525

Water Department		828-419-9300 x 1
Buncombe County Board of Education Transportation Department		828-232-4240
Buncombe Co. Emergency Services Fire, Police - NON EMERGENCIES ONLY County Road Closures		828-250-6650
Buncombe County Planning Director		828-250-4830
Charter Spectrum	Don Pullen Karen Allison	828-367-8763 864-598-0816
Dominion Gas	 Richard Walsh	877-776-2427 828-273-8446
Duke Energy	Guard House Power Outages Seth McFee	828-687-5206 800-827-5118 828-271-6271
ERC Fiber	Lewis Lance	828-350-2415 866-372-7110
M.S.D. of Buncombe County Construction Director Sewer Maintenance Division		 828-225-8262 828-255-0061
Norfolk Southern RR	James Peck	828-808-0366
NCDOT Highway Division	Nick Dorato	828-298-2741
Weaverville Town Hall Public Works		828-645-7116 828-645-0606 x 400
Woodfin Street Department Water District		 828-253-4887 828-253-5551 x 8

ARTICLE 4 - USE OF EASEMENTS AND RIGHT OF WAY

4.1 Right of Way Special Provision Detail Sheets and Easements

Six (6) easements and three (3) Special Provision Detail Sheets (SPDS) have been acquired and are attached at the end of this section.

Easement widths are shown on the Plans and Easement Plats. The Plats (not to scale) are included at the end of the Specifications. If requested, scaled copies of the same will be provided to the CONTRACTOR. Exceptions to the typical details are shown as applicable on the Plans.

The CONTRACTOR shall comply with all provisions of the SPDS and easement agreement that may be applicable to his construction process or the general construction of this project.

Unless otherwise specified, all items in these SPDS shall be considered incidental to the mainline sewer construction. Any compensation to the CONTRACTOR for these items shall be included in the per linear foot bid unit price for the mainline sewer pipe, unless otherwise specified herein or listed in the Bid Schedule.

The SPDS and easement maps are attached for the following properties:

Name of Property Owner	PIN No. and Address	SPDS
Billings, Carly and Pennington, David	9638-85-4910 15 W. End Way	N
Bushkar, Laura and Yost, Jeffrey	9638-85-4615 30 Avon Ave	Y
Singleton, Leah Ann	9638-85-4852 18 Euclid Blvd	Y
Sosebee, Amy and Avery	9638-85-5736 33 Euclid Blvd	N
Stone, John and Karen	9638-85-5607 49 Euclid Blvd	N
Varela, Paul and Michelle	9638-85-4746 14 Avon Ave	Y

Bushkar, Laura and Yost, Jeffrey (PIN No. 9638-85-4615) 30 Avon Ave:
Item 2 (fence restoration) of this SPDS shall be considered incidental to the mainline sewer construction.

Singleton, Leah Ann (PIN No. 9638-85-4852) 18 Euclid Blvd:
Item 2 (tree and brush removal) and Item 3 (fence restoration) of this SPDS shall be considered incidental to the mainline sewer construction.

Varela, Paul and Michelle (PIN No. 9638-85-4746) 14 Avon Ave:
Item 2, 3, and 4 (tree and brush removal), Item 6 (surface restoration), Item 7 (roof drain pipes), Item 8 (small 8-12" stone wall repair), and Item 10 (fence restoration) of this SPDS shall be considered incidental to the mainline sewer construction.

Item 9 (shed removal and disposal) of this SPDS has been included on the drawings and shall be considered incidental to the mainline sewer construction.

Item 5 has been included on the drawings and will be paid at the unit price for "Gravel Surface Driveway Repair".

ARTICLE 5 - SPECIAL REQUIREMENTS

5.1 Street Cut Permits and Project Access

NCDOT Roads

Work within NCDOT maintained roadways shall be performed under the NCDOT encroachment permit, which is obtained by the ENGINEER.

City of Asheville Roads

Work performed within City of Asheville streets will require a street-cut permit. It shall be the CONTRACTOR's responsibility to obtain such permits prior to beginning work within said public right of way.

Other Municipalities

Work performed in other municipally-owned public roadways may require a street-cut permit. It shall be the CONTRACTOR's responsibility to obtain such permits prior to beginning work within said public right of way.

All costs associated with NCDOT Encroachments, street-cut permits, and their conditions/requirements shall be included within the various bid items, and no extra or separate payment will be made by the DISTRICT to the CONTRACTOR.

This also includes parking-meter closure fees, where there is an additional charge for existing parking meters on a closed public street.

Where the project work area is not within a Public Street or roadway, the CONTRACTOR shall use existing drives and parking lots as may be reasonable and necessary; however, he shall keep such usage to the minimum required and in accordance to the terms and conditions of the DISTRICT's Right of Way Policy

and the recorded Easement Agreement between the DISTRICT and the Property Owner(s).

The CONTRACTOR shall maintain reasonable access to all properties and drives during construction. Any trench excavations within drive or parking lot that is used for direct access to such property shall be backfilled and provided with an all-weather surface at the end of each day's work. Where the Property Owner SPDS specifies conditions different from the above, the SPDS shall take precedent.

5.2 Maintenance of Traffic

Access to homes and businesses shall be maintained at all times to the properties along and abutting streets disturbed by construction, unless otherwise approved by the ENGINEER. On streets disturbed by construction, a minimum of one lane (with flagmen) shall be maintained at all times and further provided that adequate signing and control is provided as required by the AASHTO MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES FOR STREETS AND HIGHWAYS and NCDOT Guidelines.

All lane closures and traffic measures shall be coordinated with and meet the minimum requirements of each municipality. Flagmen shall be provided on each end of the closed section or at intermediate points where the closed section is in excess of 250' or where the line of sight is impaired.

5.3 Sewer Service Line Connections

Sewer service connections to the existing lines shall be re-connected to the new lines in accordance to the NC Plumbing Codes. Payment for sewer service cleanouts shall be paid on a per unit installed basis at the bid unit price. Where more than 5 feet of 4" or 6" PVC or DIP service line is required to reconnect the existing service to the new sewer mains and/or manholes, the CONTRACTOR shall be compensated for the appropriate linear footage of 4" or 6" pipe installed at the bid unit price for the appropriate size pipe. The first 5 feet of sewer service lateral beyond the point of reconnection, shall be considered as incidental to the project work scope and shall not be included in above calculations of 4" or 6" PVC or DIP service line installed.

5.4 Non-Discharge Permit

Copy is attached.

5.5 NCDEQ 401 Water Quality Certification

A copy of Water Quality General Certification No. 4276 is attached. The Contractor shall review the document thoroughly and comply with all conditions therein.

5.6 US Army Corps of Engineers Nationwide 58 Permit

A copy of the Nationwide Permit 58 is attached. The Contractor shall review the permit thoroughly and comply with all conditions therein.

Items related to DEQ/USACE Requirements:

- Under no circumstances shall pipe be installed in flowing streams. Where sandbags, cofferdams, etc. are required, all materials and labor required for the installation and subsequent removal shall be considered incidental to mainline construction.
- Construction corridors across stream channels shall not exceed 40 ft wide.
- Trench dewatering filter bags are considered incidental to the mainline sewer construction.
- Construction and subsequent removal of temporary stream crossings shall be considered incidental to mainline construction.
- Erosion control matting that incorporates plastic mesh shall not be used along stream banks.
- All necessary measures shall be taken to prevent direct contact between uncured or curing concrete and Waters of the State.

SPECIAL PROVISIONS DETAIL SHEET

August 20, 2024

Project:	Avon Ave @ Haywood Road GSR MSD of Buncombe County Project #2021003
Agent:	Darrell R. Hess
Parcel Number:	9638-85-4615
Owner:	Loren B. Bushkar & Jeffery S. Yost
Phone:	(202)-425-5333
Address:	30 Avon Ave, Asheville NC 28806
Engineer Approval:	8/22/24

1. The MSD Inspector shall contact the property owner at the phone numbers listed above at least one week prior to any work being performed on the property (excepting emergencies) to give owner notice of when work will begin.

2. MSD's contractor shall restore any fencing (panel fence) that is removed or damaged due to sewer line construction with the same type and quality materials as the existing fence. Owner understands MSD's contractor may re-install the existing fence material as long as it has not been damaged. Fencing shall be re-installed in the same location as existed prior to construction.

SPECIAL PROVISIONS DETAIL SHEET

August 6, 2024

Project:	Avon Ave @ Haywood Road GSR MSD of Buncombe County Project #2021003
Agent:	Darrell R. Hess
Parcel Number:	9638-85-4852
Owner:	Leah Ann Singleton
Phone:	(828)-777-6995
Address:	18 Euclid Blvd, Asheville NC 28806
Engineer Approval:	

1. The MSD Inspector shall contact the property owner at the phone numbers listed above at least one week prior to any work being performed on the property (excepting emergencies) to give owner notice of when work will begin.

2. MSD's contractor shall remove all stumps, limbs, brush, logs and cuttings associated with tree and brush removal due to clearing of the permanent easement on this property.

3. MSD's contractor shall restore any fencing that is removed or damaged due to sewer line construction with the same type and quality materials as the existing fence. Owner understands MSD's contractor may re-install the existing fence material as long as it has not been damaged. Fencing shall be re-installed in the same location as existed prior to construction

SPECIAL PROVISIONS DETAIL SHEET

August 7, 2024

Project:	Avon Ave at Haywood Road GSR MSD of Buncombe County Project #2021003
Agent:	Darrell R. Hess
Parcel Number:	9638-85-3746
Owner:	Paul and Michelle Varela
Phone:	323-559-2519
Owner Email:	PaulEVarela@gmail.com
Address:	14 Avon Ave, Asheville NC 28806
Engineer Approval:	8/7/24

1. The MSD Inspector shall contact the property owner at the phone number listed above at least one week prior to any work being performed on the property (excepting emergencies) to provide notice of when work will begin.

2. MSD's contractor shall remove all stumps, limbs, brush, logs and cuttings associated with tree and brush removal due to clearing of the permanent easement on this property.

3. There are several Leyland Cypress trees and smaller trees located along the edge of the permanent sewer easement bordering PIN 9638-85-4852. The MSD Inspector shall contact the owner to determine which trees they desire to be removed. The contractor shall be responsible for removing all logs, stumps, limbs and cuttings associated with the removal of these trees.

4. There is one Tulip Poplar tree approximately 24 inches in size located in the temporary easement 3-4 feet from the permanent easement line at the rear of the dwelling as shown on the plans. MSD's contractor shall remove this tree and the contractor shall be responsible for removing all logs, stumps, limbs and cuttings associated with said tree removal from the property.

5. MSD's contractor shall restore the gravel parking area within the temporary construction easement, where disturbed due to sewer line construction, using wash stone to match existing driveway as practical as possible per MSD Standards.

6. Surface restoration shall be performed according to MSD standards where disturbed due to sewer line construction.

7. There are several storm management drainage systems, including buried lines for gutters and drainpipes, located within and around the project area. The MSD contractor will take necessary precautions to avoid damage to these storm drainage systems. If any drain line is inadvertently damaged, the contractor shall repair or replace the damaged infrastructure to their original condition or better, ensuring proper functionality.

8. In the event that the small 8-inch stone retaining wall located inside the permanent easement and/or the 12-inch stone retaining wall located just outside of the permanent sewer easement on the approved plans is damaged during the new sewer line installation, MSD's contractor agrees to restore or repair the wall in a good workmanlike manner.

9. The MSD's contractor shall remove the existing 12 x 8 wood shed located on the permanent sewer easement found on PB50 PG41 at the back of the property and near manhole #68-14575 to facilitate sewer line replacement. The property owner is responsible for emptying the contents of the shed before the shed removal process occurs. The MSD Inspector shall provide the owner with adequate advance notice, so they can empty the contents of the shed. The property owner has been compensated by MSD for the cost of the shed.

10. MSD's Contractor shall restore any fencing (panel fence and split rail fence) that is removed or damaged due to sewer line construction with the same type and quality materials as the existing fence. Owner understands contractor may re-install the existing fence material as long as it has not been damaged. Fencing shall be re-installed in the same location as existed prior to construction.

AREA TABLE

PERMANENT EASEMENT:	0.008 ACRES	363.1 SQ. FT.
T.C.E. 1:	0.011 ACRES	472.6 SQ. FT.
T.C.E. 2:	0.005 ACRES	197.0 SQ. FT.
TOTAL EASEMENT AREA:	0.024 ACRES	1,032.7 SQ FT.

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

I, _____, REVIEW OFFICER OF BUNCOMBE COUNTY, CERTIFY THAT THE MAP OR PLAT TO WHICH THIS CERTIFICATION IS AFFIXED MEETS ALL STATUTORY REQUIREMENTS FOR RECORDING.

_____
REVIEW OFFICER

_____
DATE

STATE OF NORTH CAROLINA

COUNTY OF BUNCOMBE

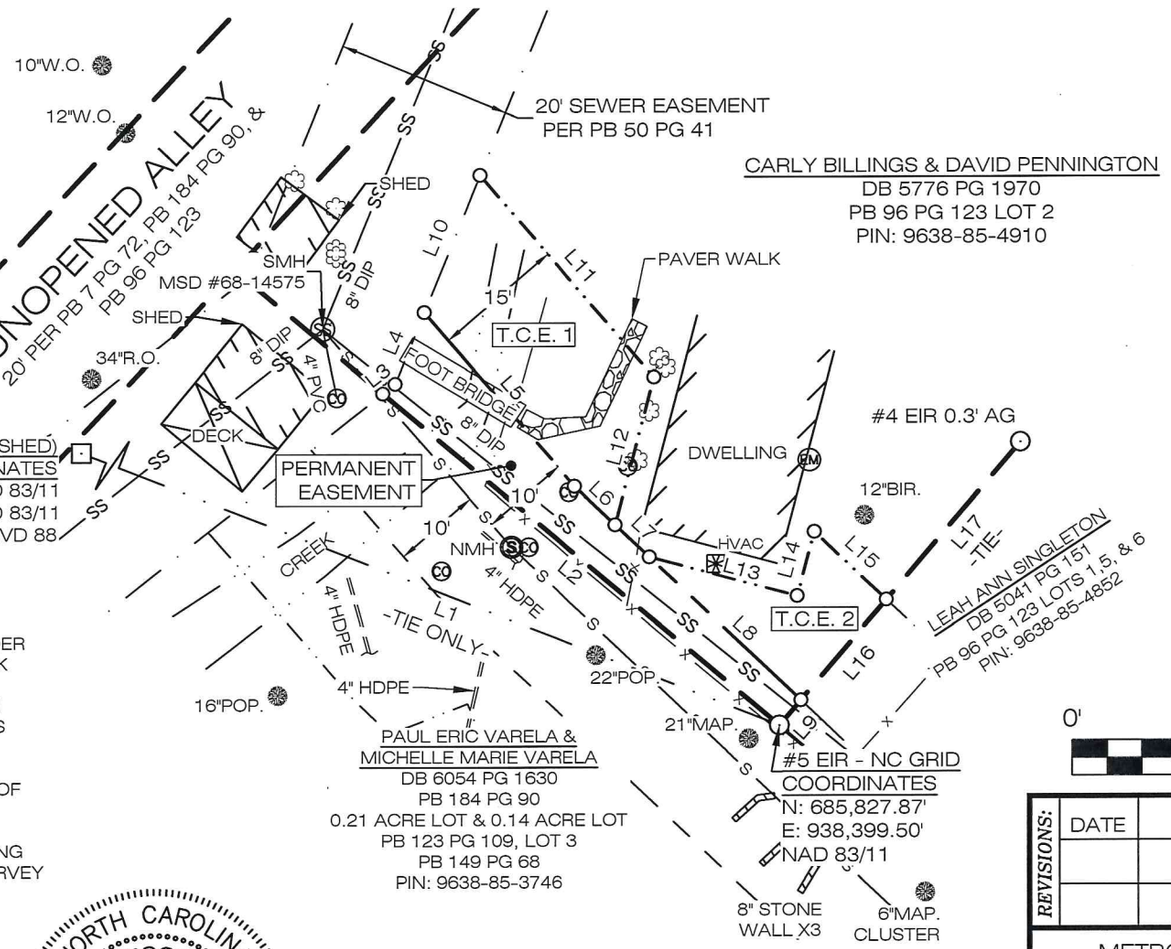
I, JOHN WESLEY COLE, CERTIFY THAT THIS PLAT WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION (DEED DESCRIPTION RECORDED IN DEED BOOK 5776, PAGE 1970); THAT THE BOUNDARIES NOT SURVEYED ARE CLEARLY INDICATED AS DRAWN FROM INFORMATION FOUND IN DEED BOOK 5776, PAGE 1970; THAT THE RATIO OF PRECISION AS CALCULATED IS 1:10,000+; THAT THIS PLAT WAS PREPARED IN ACCORDANCE WITH G.S. 47-30 AS AMENDED. MY ORIGINAL SIGNATURE, REGISTRATION NUMBER AND SEAL THIS 19TH DAY OF SEPTEMBER, A.D., 2023.

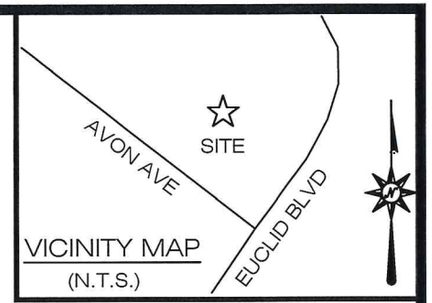
I ALSO HEREBY CERTIFY THAT THIS SURVEY IS OF THE FOLLOWING CATEGORIES AS DESCRIBED IN G.S. 47-30(f)(11)(d): THAT THE SURVEY IS OF ANOTHER CATEGORY, SUCH AS THE RECOMBINATION OF EXISTING PARCELS, A COURT-ORDERED SURVEY, OR OTHER EXCEPTION TO THE DEFINITION OF SUBDIVISION.

JOHN WESLEY COLE, P.L.S. L-4561

COLE SURVEYING & DESIGN, PA
549 ELK PARK DRIVE, SUITE 707
ASHEVILLE, NC 28804
PHONE: 828-251-7025
NC FIRM #C-3106 | SC COA #4052

NORTH CAROLINA PROFESSIONAL SEAL L-4561 LAND SURVEYOR JOHN WESLEY COLE





*SEE SHEET 2 FOR NOTES, LINE TABLE, & LEGEND

NC GRID NORTH NAD 83

0' 20' 40' 60'

REVISIONS:	DATE	REVISIONS MADE	BY:

METROPOLITAN SEWERAGE DISTRICT OF BUNCOMBE COUNTY, NC

AVON AVE @ HAYWOOD RD
MSD PROJECT #2021003

SEWER LINE EASEMENT ACROSS THE PROPERTY OF:

CARLY BILLINGS & DAVID PENNINGTON

SCALE: 1"=20' PROJECT #: 23-015 DATE: 9/19/2023

CITY OF ASHEVILLE, BUNCOMBE COUNTY, NC

MAP SET
SHEET 1 OF 2

THIS SHEET IS PART OF A MAP SET AND IS INTENDED TO ACCOMPANY ALL OTHER SHEETS IN THIS SET AND IS TO BE CONSIDERED INCOMPLETE WITHOUT ALL OTHER SHEETS TO SUPPORT IT.

NOTES

1. THIS PROPERTY IS SUBJECT TO ALL EASEMENTS OF RECORD THAT WOULD BE REVEALED BY A TITLE SEARCH.
2. ALL CORNERS ARE MARKED AS SHOWN IN THE LEGEND UNLESS OTHERWISE NOTED.
3. ALL DISTANCES SHOWN HEREON ARE HORIZONTAL GRID DISTANCES UNLESS OTHERWISE NOTED.
4. NO MISSING CORNERS SET.
5. BEARINGS ARE BASED ON NC GRID NORTH USING THE NCGS RTK NETWORK.
   COMBINED FACTOR 0.999795
   POSITIONAL ACCURACY: 0.02' HORIZ. (NAD 83/11)
   0.06 VERT. (NAVD 88) (GEOID 18).
6. AREA COMPUTED BY THE COORDINATE METHOD.

LINE	BEARING	DISTANCE
L1	N 68°40'52" W	5497.96'
L2	N 50°07'55" W	58.97'
L3	N 51°47'59" E	1.78'
L4	N 22°18'05" E	8.79'
L5	S 40°54'58" E	26.20'
L6	S 46°37'55" E	6.36'
L7	S 46°37'55" E	5.35'
L8	S 46°37'55" E	23.79'
L9	S 40°28'53" W	3.75'
L10	N 22°18'05" E	16.81'
L11	S 40°53'59" E	30.33'
L12	S 14°50'42" W	17.38'
L13	S 75°09'18" E	17.47'
L14	N 14°50'42" E	7.58'
L15	S 46°37'55" E	11.30'
L16	S 40°28'53" W	15.02'
L17	N 40°28'53" E	23.59'

LEGEND:

- CALCULATED POINT (CP)
- EXISTING IRON REBAR (EIR)
- EXISTING IRON PIPE (EIP)
- NCGS MONUMENT
- EX. CLEAN OUT
- EX. SEWER MANHOLE (SMH)
- NMH SEWER MANHOLE (NMH)
- ELECTRIC METER (EM)
- HVAC
- DECIDUOUS TREE (TYPE AS NOTED)
- CONIFEROUS TREE (TYPE AS NOTED)
- SHRUB

T.C.E. - TEMP. CONSTRUCTION EASEMENT
BIR - BIRCH TREE
R.O. - RED OAK TREE
POP - POPLAR TREE
MAP - MAPLE TREE

- SS — EX. SANITARY SEWER LINE
- EX. EASEMENT LINE
- S S — NEW SANITARY SEWER LINE
- BOUNDARY LINE
- NEW PERM. EASEMENT LINE
- NEW T.C.E. LINE
- TIE LINE ONLY
- EDGE OF CREEK
- x x — FENCE LINE
- STORM PIPE

NORTH CAROLINA PROFESSIONAL SEAL L-4561 LAND SURVEYOR JOHN WESLEY COLE

COLE SURVEYING & DESIGN, PA
549 ELK PARK DRIVE, SUITE 707
ASHEVILLE, NC 28804
PHONE: 828-251-7025
NC FIRM #C-3106 | SC COA #4052

MAP SET
SHEET 2 OF 2

THIS SHEET IS PART OF A MAP SET AND IS INTENDED TO ACCOMPANY ALL OTHER SHEETS IN THIS SET AND IS TO BE CONSIDERED INCOMPLETE WITHOUT ALL OTHER SHEETS TO SUPPORT IT.

REVISIONS:	DATE	REVISIONS MADE	BY:

METROPOLITAN SEWERAGE DISTRICT OF BUNCOMBE COUNTY, NC

AVON AVE @ HAYWOOD RD
MSD PROJECT #2021003

SEWER LINE EASEMENT ACROSS THE PROPERTY OF:

CARLY BILLINGS &
DAVID PENNINGTON

SCALE: 1"=20' PROJECT #: 23-015 DATE: 9/19/2023

CITY OF ASHEVILLE, BUNCOMBE COUNTY, NC

EXHIBIT A

NOTES

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   POSITIONAL ACCURACY: 0.02' HORIZ. (NAD 83/11)
   0.06 VERT. (NAVD 88) (GEOID 18).
6. AREA COMPUTED BY THE COORDINATE METHOD.

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

I, _____, REVIEW OFFICER OF BUNCOMBE COUNTY, CERTIFY THAT THE MAP OR PLAT TO WHICH THIS CERTIFICATION IS AFFIXED MEETS ALL STATUTORY REQUIREMENTS FOR RECORDING.

_____
REVIEW OFFICER

_____
DATE

STATE OF NORTH CAROLINA

COUNTY OF BUNCOMBE

I, JOHN WESLEY COLE, CERTIFY THAT THIS PLAT WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION (DEED DESCRIPTION RECORDED IN DEED BOOK 6315, PAGE 1655); THAT THE BOUNDARIES NOT SURVEYED ARE CLEARLY INDICATED AS DRAWN FROM INFORMATION FOUND IN DEED BOOK 6315, PAGE 1655; THAT THE RATIO OF PRECISION AS CALCULATED IS 1:10,000+; THAT THIS PLAT WAS PREPARED IN ACCORDANCE WITH G.S. 47-30 AS AMENDED. MY ORIGINAL SIGNATURE, REGISTRATION NUMBER AND SEAL THIS 19TH DAY OF SEPTEMBER, A.D., 2023.

I ALSO HEREBY CERTIFY THAT THIS SURVEY IS OF THE FOLLOWING CATEGORIES AS DESCRIBED IN G.S. 47-30(f)(11)(d): THAT THE SURVEY IS OF ANOTHER CATEGORY, SUCH AS THE RECOMBINATION OF EXISTING PARCELS, A COURT-ORDERED SURVEY, OR OTHER EXCEPTION TO THE DEFINITION OF SUBDIVISION.

JOHN WESLEY COLE, P.L.S. L-4561

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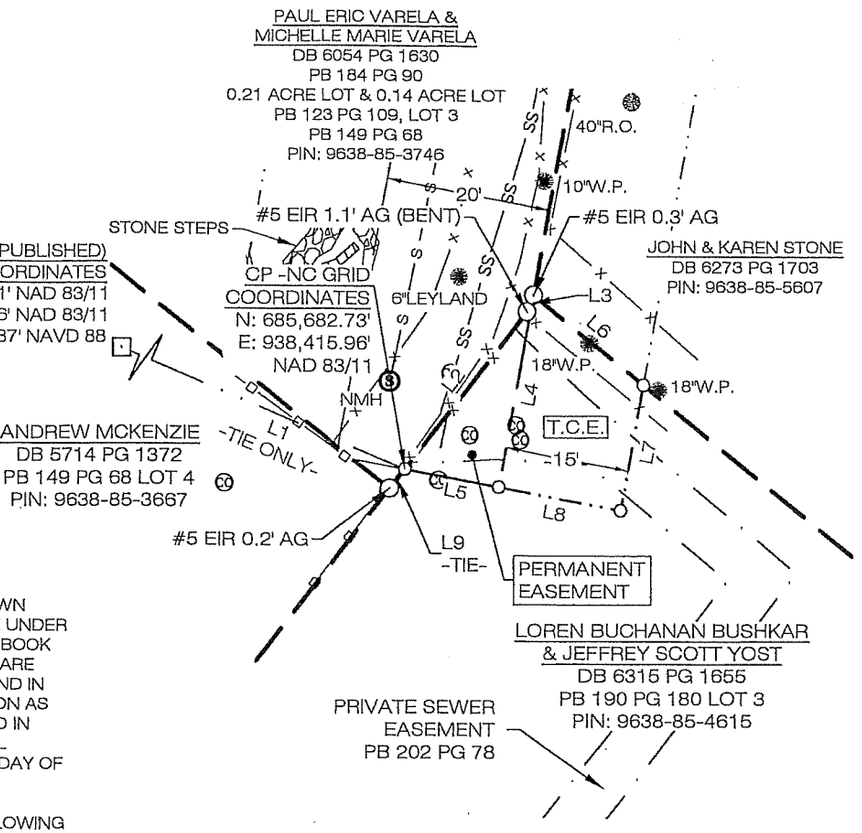
NC FIRM #C-3106 | SC COA #4052

NORTH CAROLINA PROFESSIONAL SEAL L-4561 LAND SURVEYOR JOHN WESLEY COLE



LEGEND:

- CALCULATED POINT (CP)
- EXISTING IRON REBAR (EIR)
- NCGS MONUMENT
- EXISTING CLEANOUT
- NEW SEWER MANHOLE (NMH)
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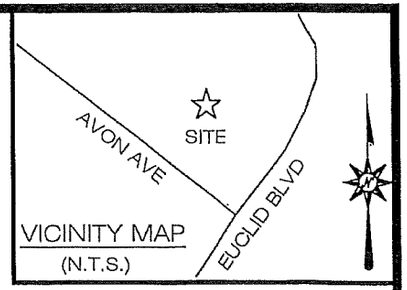
- S — S — NEW SANITARY SEWER LINE
- BOUNDARY LINE
- NEW PERM. EASEMENT LINE
- NEW T.C.E. LINE
- TIE LINE ONLY
- x — x — FENCE LINE



VICINITY MAP
(N.T.S.)

NC GRID NORTH NAD 83

LINE	BEARING	DISTANCE
L1	N 67°21'04" W	5567.56'
L2	N 38°17'42" E	23.98'
L3	N 22°20'47" E	2.13'
L4	S 10°37'39" W	23.32'
L5	N 79°22'21" W	11.57'
L6	S 51°04'21" E	17.04'
L7	S 10°37'39" W	15.25'
L8	N 79°22'21" W	15.00'
L9	S 38°17'42" W	2.96'

AREA TABLE

PERM. EASEMENT:	0.003 ACRES	127.9 SQ. FT.
T.C.E.:	0.007 ACRES	289.3 SQ. FT.
TOTAL EASEMENT AREA:	0.010 ACRES	417.2 SQ FT.

0' 20' 40' 60'

REVISIONS:	DATE	REVISIONS MADE	BY:

METROPOLITAN SEWERAGE DISTRICT OF BUNCOMBE COUNTY, NC
AVON AVE @ HAYWOOD RD
MSD PROJECT #2021003
SEWER LINE EASEMENT ACROSS THE PROPERTY OF:
LOREN BUCHANAN BUSHKAR & JEFFREY SCOTT YOST

SCALE: 1"=20' PROJECT #: 23-015 DATE: 9/19/2023

CITY OF ASHEVILLE, BUNCOMBE COUNTY, NC

NOTES

1. THIS PROPERTY IS SUBJECT TO ALL EASEMENTS OF RECORD THAT WOULD BE REVEALED BY A TITLE SEARCH.
2. ALL CORNERS ARE MARKED AS SHOWN IN THE LEGEND UNLESS OTHERWISE NOTED.
3. ALL DISTANCES SHOWN HEREON ARE HORIZONTAL GRID DISTANCES UNLESS OTHERWISE NOTED.
4. NO MISSING CORNERS SET.
5. BEARINGS ARE BASED ON NC GRID NORTH USING THE NCGS RTK NETWORK.
   COMBINED FACTOR 0.999795
   POSITIONAL ACCURACY: 0.02' HORIZ. (NAD 83/11)
   0.06 VERT. (NAVD 88) (GEOID 18).
6. AREA COMPUTED BY THE COORDINATE METHOD.

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

I, _____, REVIEW OFFICER OF BUNCOMBE COUNTY, CERTIFY THAT THE MAP OR PLAT TO WHICH THIS CERTIFICATION IS AFFIXED MEETS ALL STATUTORY REQUIREMENTS FOR RECORDING.

_____
REVIEW OFFICER

_____
DATE

STATE OF NORTH CAROLINA

COUNTY OF BUNCOMBE

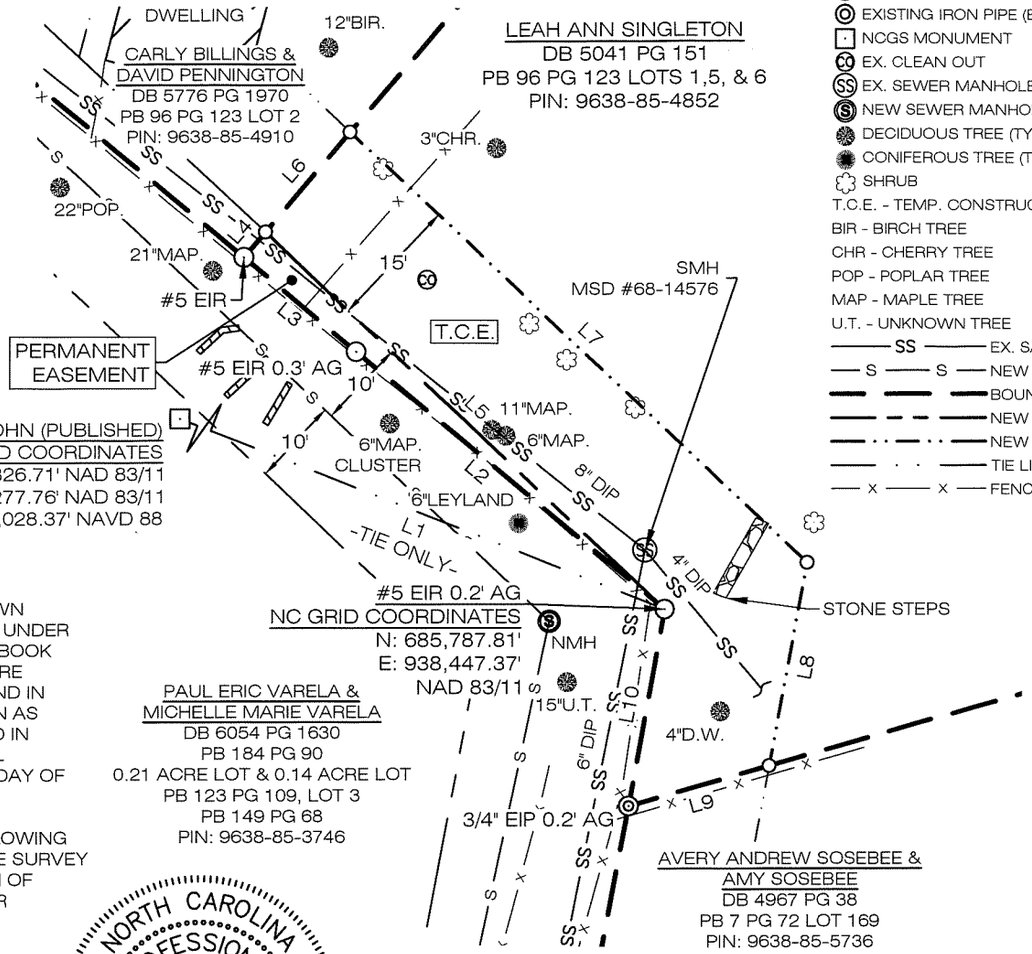
I, JOHN WESLEY COLE, CERTIFY THAT THIS PLAT WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION (DEED DESCRIPTION RECORDED IN DEED BOOK 5041, PAGE 151); THAT THE BOUNDARIES NOT SURVEYED ARE CLEARLY INDICATED AS DRAWN FROM INFORMATION FOUND IN DEED BOOK 5041, PAGE 151; THAT THE RATIO OF PRECISION AS CALCULATED IS 1:10,000+; THAT THIS PLAT WAS PREPARED IN ACCORDANCE WITH G.S. 47-30 AS AMENDED. MY ORIGINAL SIGNATURE, REGISTRATION NUMBER AND SEAL THIS 19TH DAY OF SEPTEMBER, A.D., 2023.

I ALSO HEREBY CERTIFY THAT THIS SURVEY IS OF THE FOLLOWING CATEGORIES AS DESCRIBED IN G.S. 47-30(f)(11)(d): THAT THE SURVEY IS OF ANOTHER CATEGORY, SUCH AS THE RECOMBINATION OF EXISTING PARCELS, A COURT-ORDERED SURVEY, OR OTHER EXCEPTION TO THE DEFINITION OF SUBDIVISION.

JOHN WESLEY COLE, P.L.S. L-4561

COLE SURVEYING & DESIGN, PA
549 ELK PARK DRIVE, SUITE 707
ASHEVILLE, NC 28804
PHONE: 828-251-7025
NC FIRM #C-3106 | SC COA #4052

NORTH CAROLINA PROFESSIONAL SEAL L-4561 LAND SURVEYOR JOHN WESLEY COLE

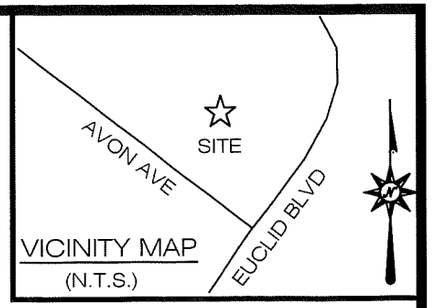


LEGEND:

- CALCULATED POINT (CP)
- EXISTING IRON REBAR (EIR)
- EXISTING IRON PIPE (EIP)
- NCGS MONUMENT
- EX. CLEAN OUT
- EX. SEWER MANHOLE (SMH)
- NEW SEWER MANHOLE (NMH)
- DECIDUOUS TREE (TYPE AS NOTED)
- CONIFEROUS TREE (TYPE AS NOTED)
- SHRUB

T.C.E. - TEMP. CONSTRUCTION EASEMENT
BIR - BIRCH TREE
CHR - CHERRY TREE
POP - POPLAR TREE
MAP - MAPLE TREE
U.T. - UNKNOWN TREE

- SS — EX. SANITARY SEWER LINE
- S — S — NEW SANITARY SEWER LINE
- BOUNDARY LINE
- NEW PERM. EASEMENT LINE
- NEW T.C.E. LINE
- TIE LINE ONLY
- x — x — FENCE LINE



VICINITY MAP
(N.T.S.)

LINE	BEARING	DISTANCE
L1	N 68°28'32" W	5557.16'
L2	N 50°04'21" W	45.70'
L3	N 50°04'21" W	16.73'
L4	N 40°28'53" E	3.75'
L5	S 46°37'55" E	62.51'
L6	N 40°28'53" E	15.02'
L7	S 46°37'55" E	71.42'
L8	S 10°33'58" W	23.57'
L9	S 74°07'48" W	16.67'
L10	N 10°26'16" E	22.81'

AREA TABLE

PERMANENT EASEMENT:	0.003 ACRES	117.1 SQ. FT.
T.C.E.:	0.031 ACRES	1,351.5 SQ. FT.
TOTAL EASEMENT AREA:	0.034 ACRES	1,468.6 SQ FT.

0' 20' 40' 60'

NC GRID NORTH NAD 83 ()

REVISIONS:	DATE	REVISIONS MADE	BY:

METROPOLITAN SEWERAGE DISTRICT OF BUNCOMBE COUNTY, NC

AVON AVE @ HAYWOOD RD
MSD PROJECT #2021003

SEWER LINE EASEMENT ACROSS THE PROPERTY OF:

LEAH ANN SINGLETON

SCALE: 1"=20' PROJECT #: 23-015 DATE: 9/19/2023

CITY OF ASHEVILLE, BUNCOMBE COUNTY, NC

NOTES

1. THIS PROPERTY IS SUBJECT TO ALL EASEMENTS OF RECORD THAT WOULD BE REVEALED BY A TITLE SEARCH.
2. ALL CORNERS ARE MARKED AS SHOWN IN THE LEGEND UNLESS OTHERWISE NOTED.
3. ALL DISTANCES SHOWN HEREON ARE HORIZONTAL GRID DISTANCES UNLESS OTHERWISE NOTED.
4. NO MISSING CORNERS SET.
5. BEARINGS ARE BASED ON NC GRID NORTH USING THE NCGS RTK NETWORK.
   COMBINED FACTOR 0.999795
   POSITIONAL ACCURACY: 0.02' HORIZ. (NAD 83/11)
   0.06 VERT. (NAVD 88) (GEOID 18).
6. AREA COMPUTED BY THE COORDINATE METHOD.

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

I, _____, REVIEW OFFICER OF BUNCOMBE COUNTY, CERTIFY THAT THE MAP OR PLAT TO WHICH THIS CERTIFICATION IS AFFIXED MEETS ALL STATUTORY REQUIREMENTS FOR RECORDING.

_____
REVIEW OFFICER

_____
DATE

STATE OF NORTH CAROLINA

COUNTY OF BUNCOMBE

I, JOHN WESLEY COLE, CERTIFY THAT THIS PLAT WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION (DEED DESCRIPTION RECORDED IN DEED BOOK 4967, PAGE 38); THAT THE BOUNDARIES NOT SURVEYED ARE CLEARLY INDICATED AS DRAWN FROM INFORMATION FOUND IN DEED BOOK 4967, PAGE 38; THAT THE RATIO OF PRECISION AS CALCULATED IS 1:10,000+; THAT THIS PLAT WAS PREPARED IN ACCORDANCE WITH G.S. 47-30 AS AMENDED. MY ORIGINAL SIGNATURE, REGISTRATION NUMBER AND SEAL THIS 19TH DAY OF SEPTEMBER, A.D., 2023.

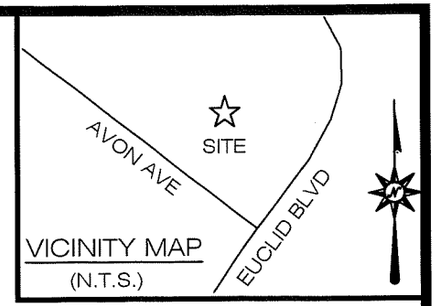
I ALSO HEREBY CERTIFY THAT THIS SURVEY IS OF THE FOLLOWING CATEGORIES AS DESCRIBED IN G.S. 47-30(f)(11)(d): THAT THE SURVEY IS OF ANOTHER CATEGORY, SUCH AS THE RECOMBINATION OF EXISTING PARCELS, A COURT-ORDERED SURVEY, OR OTHER EXCEPTION TO THE DEFINITION OF SUBDIVISION.

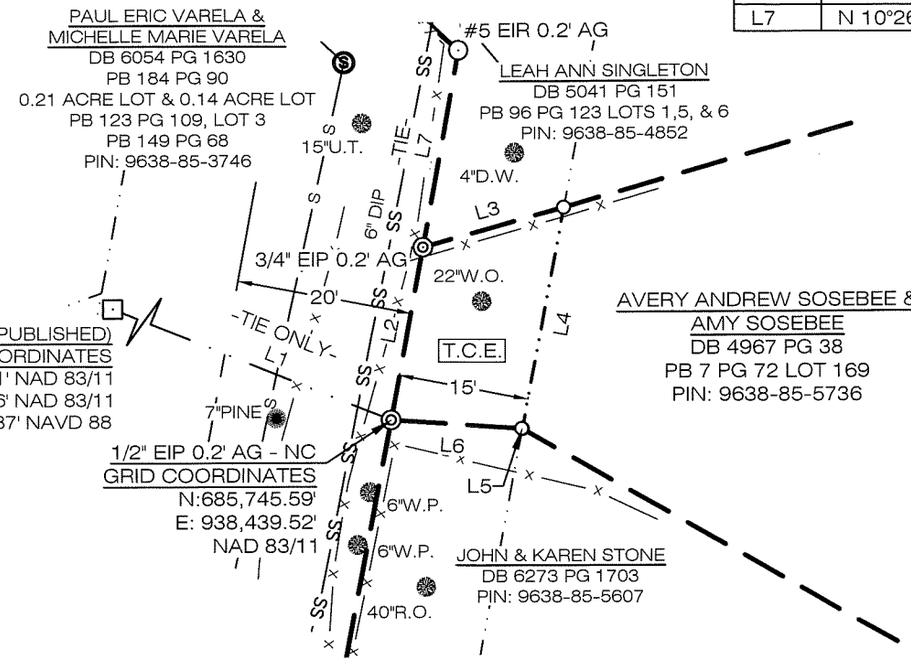
JOHN WESLEY COLE, P.L.S. L-4561

COLE SURVEYING & DESIGN, PA
549 ELK PARK DRIVE, SUITE 707
ASHEVILLE, NC 28804
PHONE: 828-251-7025
NC FIRM #C-3106 | SC COA #4052

NORTH CAROLINA PROFESSIONAL SEAL L-4561 LAND SURVEYOR JOHN WESLEY COLE

LINE	BEARING	DISTANCE
L1	N 68°02'30" W	5565.51'
L2	N 10°37'59" E	20.13'
L3	N 74°07'48" E	16.67'
L4	S 10°33'58" W	25.79'
L5	N 60°13'21" W	0.07'
L6	N 86°18'21" W	15.00'
L7	N 10°26'16" E	22.81'





LEGEND:

- CALCULATED POINT
- NCGS MONUMENT
- EXISTING IRON REBAR (EIR)
- EXISTING IRON PIPE (EIP)
- NEW SEWER MANHOLE
- DECIDUOUS TREE (TYPE AS NOTED)
- CONIFEROUS TREE (TYPE AS NOTED)

T.C.E. - TEMP. CONSTRUCTION EASEMENT
D.W. - DOG WOOD TREE
W.O. - WHITE OAK TREE
W.P. - WHITE PINE TREE
R.O. - RED OAK TREE
U.T. - UNKNOWN TREE

- SS — EX. SANITARY SEWER LINE
- S — S — NEW SANITARY SEWER LINE
- BOUNDARY LINE
- NEW PERM. EASEMENT LINE
- NEW T.C.E. LINE
- TIE LINE ONLY
- x — x — FENCE LINE

NC GRID NORTH NAD 83

AREA TABLE

T.C.E.:	0.008 ACRES	342.8 SQ. FT.
TOTAL EASEMENT AREA:	0.008 ACRES	342.8 SQ FT.

0' 20' 40' 60'

REVISIONS:	DATE	REVISIONS MADE	BY:

METROPOLITAN SEWERAGE DISTRICT OF BUNCOMBE COUNTY, NC

AVON AVE @ HAYWOOD RD
MSD PROJECT #2021003

SEWER LINE EASEMENT ACROSS THE PROPERTY OF:

AVERY ANDREW SOSEBEE & AMY SOSEBEE

SCALE: 1"=20' PROJECT #: 23-015 DATE: 9/19/2023

CITY OF ASHEVILLE, BUNCOMBE COUNTY, NC

NOTES

1. THIS PROPERTY IS SUBJECT TO ALL EASEMENTS OF RECORD THAT WOULD BE REVEALED BY A TITLE SEARCH.
2. ALL CORNERS ARE MARKED AS SHOWN IN THE LEGEND UNLESS OTHERWISE NOTED.
3. ALL DISTANCES SHOWN HEREON ARE HORIZONTAL GRID DISTANCES UNLESS OTHERWISE NOTED.
4. NO MISSING CORNERS SET.
5. BEARINGS ARE BASED ON NC GRID NORTH USING THE NCGS RTK NETWORK.
   COMBINED FACTOR 0.999795
   POSITIONAL ACCURACY: 0.02' HORIZ. (NAD 83/11)
   0.06 VERT. (NAVD 88) (GEOID 18).
6. AREA COMPUTED BY THE COORDINATE METHOD.

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

I, _____, REVIEW OFFICER OF BUNCOMBE COUNTY, CERTIFY THAT THE MAP OR PLAT TO WHICH THIS CERTIFICATION IS AFFIXED MEETS ALL STATUTORY REQUIREMENTS FOR RECORDING.

_____
REVIEW OFFICER

_____
DATE

STATE OF NORTH CAROLINA

COUNTY OF BUNCOMBE

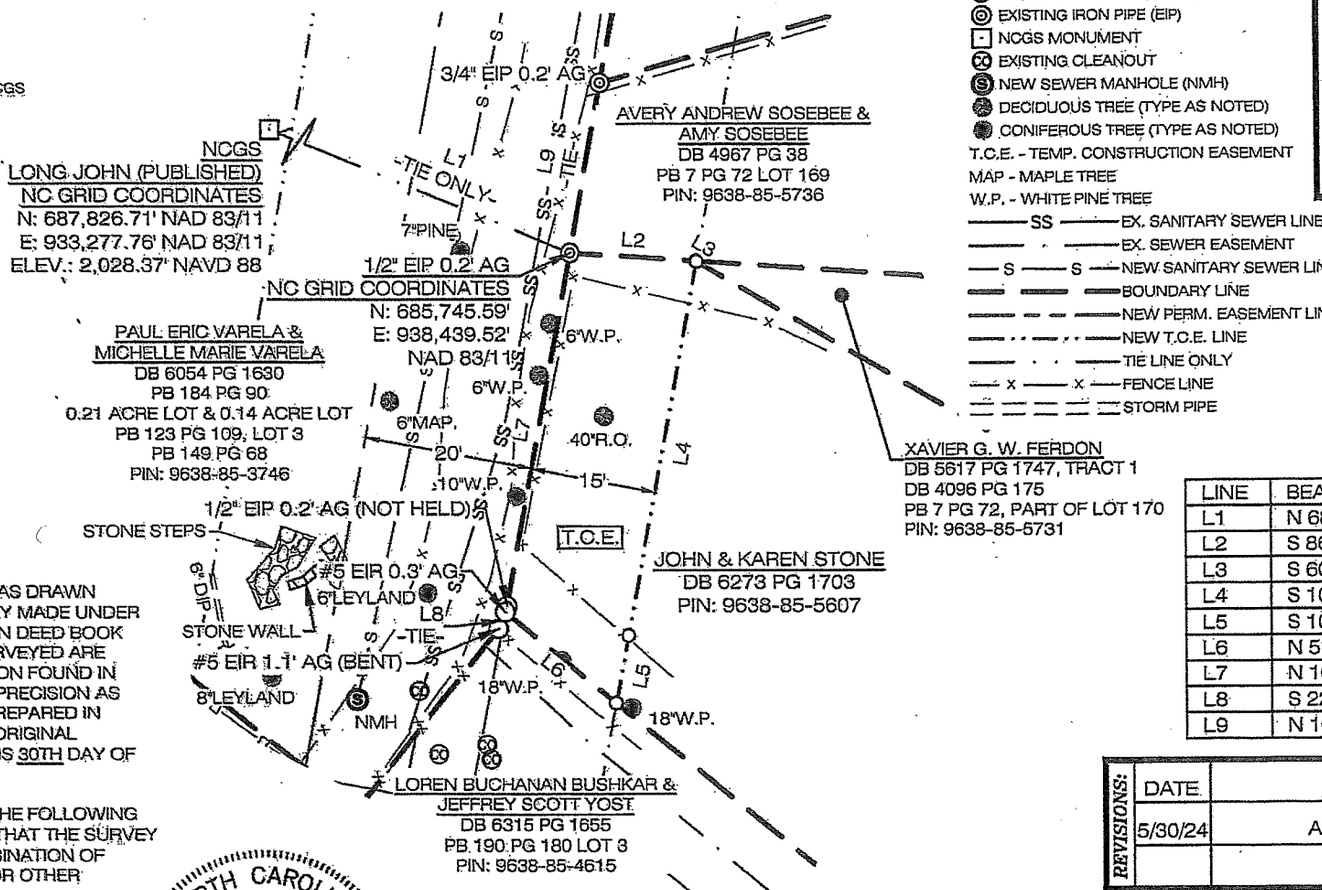
I, JOHN WESLEY COLE, CERTIFY THAT THIS PLAT WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION (DEED DESCRIPTION RECORDED IN DEED BOOK 6273, PAGE 1703); THAT THE BOUNDARIES NOT SURVEYED ARE CLEARLY INDICATED AS DRAWN FROM INFORMATION FOUND IN DEED BOOK 6273, PAGE 1703; THAT THE RATIO OF PRECISION AS CALCULATED IS 1:10,000+; THAT THIS PLAT WAS PREPARED IN ACCORDANCE WITH G.S. 47-30 AS AMENDED. MY ORIGINAL SIGNATURE, REGISTRATION NUMBER AND SEAL THIS 30TH DAY OF MAY, A.D., 2024.

I ALSO HEREBY CERTIFY THAT THIS SURVEY IS OF THE FOLLOWING CATEGORIES AS DESCRIBED IN G.S. 47-30(f)(11)(d): THAT THE SURVEY IS OF ANOTHER CATEGORY, SUCH AS THE RECOMBINATION OF EXISTING PARCELS, A COURT-ORDERED SURVEY, OR OTHER EXCEPTION TO THE DEFINITION OF SUBDIVISION.

JOHN WESLEY COLE, P.L.S. L-4561

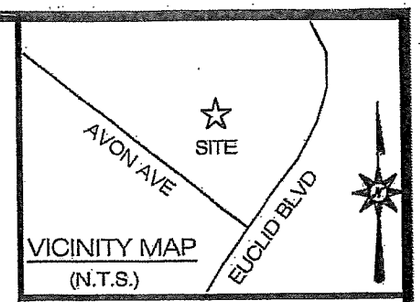
COLE SURVEYING & DESIGN, PA
549 ELK PARK DRIVE, SUITE 707
ASHEVILLE, NC 28804
PHONE: 828-251-7025
NC FIRM #C-3106 | SC COA #4052

NORTH CAROLINA PROFESSIONAL SEAL L-4561 LAND SURVEYOR JOHN WESLEY COLE



LEGEND:
- CALCULATED POINT (CP)
- EXISTING IRON REBAR (EIR)
- EXISTING IRON PIPE (EIP)
- NCGS MONUMENT
- EXISTING CLEANOUT
- NEW SEWER MANHOLE (NMH)
- DECIDUOUS TREE (TYPE AS NOTED)
- CONIFEROUS TREE (TYPE AS NOTED)

T.C.E. - TEMP. CONSTRUCTION EASEMENT
MAP - MAPLE TREE
W.P. - WHITE PINE TREE
SS — EX. SANITARY SEWER LINE
EX. SEWER EASEMENT
S — S — NEW SANITARY SEWER LINE
BOUNDARY LINE
NEW PERM. EASEMENT LINE
NEW T.C.E. LINE
TIE LINE ONLY
x — x — FENCE LINE
STORM PIPE



NC GRID NORTH NAD 83'()

LINE	BEARING	DISTANCE
L1	N 68°02'30" W	5565.51'
L2	S 86°18'21" E	15.00'
L3	S 60°13'21" E	0.07'
L4	S 10°33'58" W	44.59'
L5	S 10°37'39" W	8.08'
L6	N 51°04'21" W	17.04'
L7	N 10°37'39" E	42.80'
L8	S 22°20'47" W	2.13'
L9	N 10°37'59" E	20.13'

AREA TABLE

T.C.E.:	0.016 ACRES	715.2 SQ. FT.
TOTAL EASEMENT AREA:	0.016 ACRES	715.2 SQ FT.

0' 20' 40' 60'

REVISIONS:	DATE	REVISIONS MADE	BY:
	5/30/24	ADD ADJOINER (FERDON)	JWC

METROPOLITAN SEWERAGE DISTRICT OF BUNCOMBE COUNTY, NC
AVON AVE @ HAYWOOD RD
MSD PROJECT #2021003
SEWER LINE EASEMENT ACROSS THE PROPERTY OF:

JOHN & KAREN STONE

SCALE: 1"=20' PROJECT #: 23-015 DATE: 9/19/2023

CITY OF ASHEVILLE, BUNCOMBE COUNTY, NC

Exhibit A

Submitted electronically by "Cole Surveying and Design, PA"
in compliance with North Carolina statutes governing recordable documents
and the terms of the submitter agreement with the Buncombe County Register of Deeds.

LEGEND:

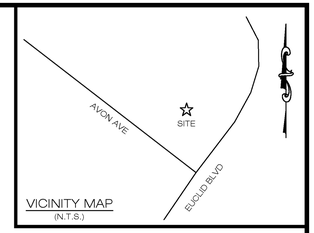
- CALCULATED POINT (CP)
- EXISTING IRON REBAR (EIR)
- EXISTING IRON PIPE (EIP)
- NCGS MONUMENT
- EXISTING SEWER MANHOLE (SMH)
- EXISTING CLEANOUT
- NEW SEWER MANHOLE (NMH)
- HVAC
- ELECTRIC METER
- SHRUB
- DECIDUOUS TREE (TYPE AS NOTED)
- CONIFEROUS TREE (TYPE AS NOTED)

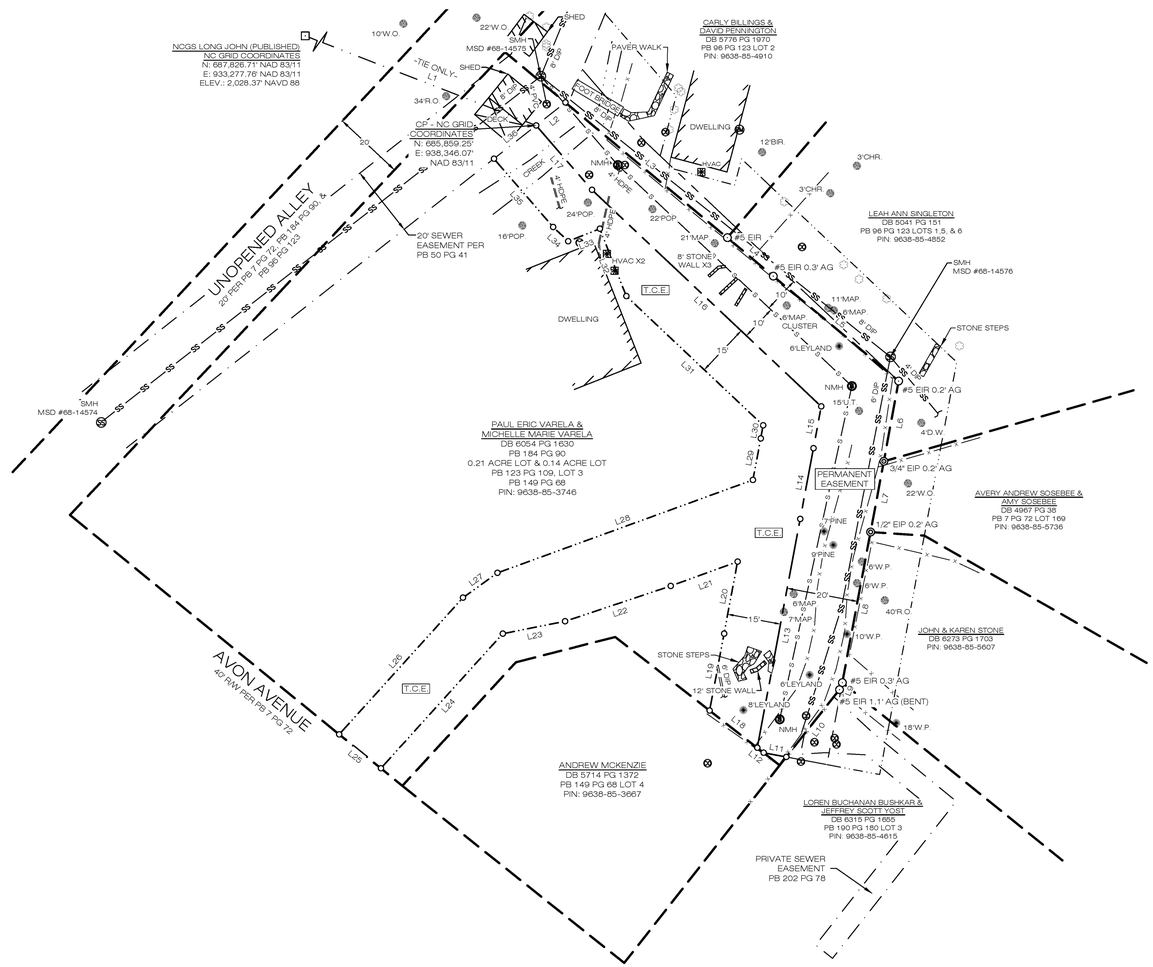
T.C.E. - TEMP. CONSTRUCTION EASEMENT
R.O. - RED OAK TREE
W.P. - WHITE PINE TREE
MAP. - MAPLE TREE
W.O. - WHITE OAK TREE
D.W. - DOGWOOD TREE
U.T. - UNKNOWN TREE
CHR. - CHERRY TREE
POP. - POPLAR TREE
BIR. - BIRCH TREE

- SS SS — EX. SANITARY SEWER LINE
- — · — · — EX. SEWER EASEMENT
- S S — NEW SANITARY SEWER LINE
- BOUNDARY LINE
- NEW PERM. EASEMENT LINE
- NEW T.C.E. LINE
- TIE LINE ONLY
- X X — FENCE LINE
- EDGE OF CREEK
- STORM PIPE

NOTES

1. THIS PROPERTY IS SUBJECT TO ALL EASEMENTS OF RECORD THAT WOULD BE REVEALED BY A TITLE SEARCH.
2. ALL CORNERS ARE MARKED AS SHOWN IN THE LEGEND UNLESS OTHERWISE NOTED.
3. ALL DISTANCES SHOWN HEREON ARE HORIZONTAL GRID DISTANCES UNLESS OTHERWISE NOTED.
4. NO MISSING CORNERS SET.
5. BEARINGS ARE BASED ON NC GRID NORTH USING THE NCGS RTK NETWORK.
   COMBINED FACTOR 0.999795
   POSITIONAL ACCURACY: 0.02' HORIZ. (NAD 83/11)
   0.06 VERT. (NAVD 88) (GEOID 18).
6. AREA COMPUTED BY THE COORDINATE METHOD.





LINE	BEARING	DISTANCE
L1	N 68°47'04" W	5436.79'
L2	N 51°47'59" E	10.39'
L3	S 50°07'55" E	58.97'
L4	S 50°04'21" E	16.73'
L5	S 50°04'21" E	45.70'
L6	S 10°26'16" W	22.81'
L7	S 10°37'59" W	20.13'
L8	S 10°37'39" W	42.80'
L9	S 22°20'47" W	2.13'
L10	S 38°17'42" W	23.98'
L11	N 79°22'21" W	6.43'
L12	N 52°00'58" W	2.25'
L13	N 10°37'39" E	65.09'
L14	N 10°37'59" E	20.10'
L15	N 10°26'16" E	11.90'
L16	N 46°37'55" W	88.13'
L17	N 40°54'58" W	23.81'
L18	N 52°00'58" W	16.89'
L19	N 10°37'39" E	21.89'
L20	N 10°37'46" E	20.47'
L21	S 70°00'00" W	19.90'
L22	S 71°30'35" W	31.12'
L23	S 78°45'37" W	17.76'
L24	S 42°09'06" W	50.75'
L25	N 50°49'27" W	15.02'
L26	N 42°09'06" E	51.53'
L27	N 54°18'04" E	11.87'
L28	N 70°00'00" E	75.98'
L29	N 10°37'46" E	11.80'
L30	N 10°26'16" E	3.72'
L31	N 46°37'55" W	52.59'
L32	N 21°28'17" W	20.23'
L33	S 68°31'43" W	9.50'
L34	N 46°37'55" W	5.78'
L35	N 40°54'58" W	25.27'
L36	N 51°47'59" E	15.02'

AREA TABLE

PERM. EASEMENT:	0.087 ACRES	3,797.8 SQ. FT.
T.C.E.:	0.118 ACRES	5,131.4 SQ. FT.
TOTAL EASEMENT AREA:	0.205 ACRES	8,929.2 SQ FT.

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

I, Jennifer S. Blevins, REVIEW OFFICER OF BUNCOMBE COUNTY, CERTIFY THAT THE MAP OR PLAT TO WHICH THIS CERTIFICATION IS AFFIXED MEETS ALL STATUTORY REQUIREMENTS FOR RECORDING.

Signed by: Jennifer S. Blevins
REVIEW OFFICER

9/3/2024
DATE

STATE OF NORTH CAROLINA

COUNTY OF BUNCOMBE

I, JOHN WESLEY COLE, CERTIFY THAT THIS PLAT WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION (DEED DESCRIPTION RECORDED IN DEED BOOK 6054, PAGE 1630); THAT THE BOUNDARIES NOT SURVEYED ARE CLEARLY INDICATED AS DRAWN FROM INFORMATION FOUND IN DEED BOOK 6054, PAGE 1630; THAT THE RATIO OF PRECISION AS CALCULATED IS 1:10,000+; THAT THIS PLAT WAS PREPARED IN ACCORDANCE WITH G.S. 47-30 AS AMENDED. MY ORIGINAL SIGNATURE, REGISTRATION NUMBER AND SEAL THIS 19TH DAY OF SEPTEMBER, A.D., 2023.

I ALSO HEREBY CERTIFY THAT THIS SURVEY IS OF THE FOLLOWING CATEGORIES AS DESCRIBED IN G.S. 47-30(f)(11)(d): THAT THE SURVEY IS OF ANOTHER CATEGORY, SUCH AS THE RECOMBINATION OF EXISTING PARCELS, A COURT-ORDERED SURVEY, OR OTHER EXCEPTION TO THE DEFINITION OF SUBDIVISION.

DocuSigned by: John Wesley Cole
C4EAC553BA7446B...
JOHN WESLEY COLE, P.L.S. L-4561

NORTH CAROLINA PROFESSIONAL SEAL L-4561 LAND SURVEYOR JOHN WESLEY COLE

COLE SURVEYING & DESIGN, PA
549 ELK PARK DRIVE, SUITE 707
ASHEVILLE, NC 28804
PHONE: 828-251-7025
NC FIRM #C-3106 | SC COA #4052

METROPOLITAN SEWERAGE DISTRICT OF BUNCOMBE COUNTY, NC

AVON AVE @ HAYWOOD RD

MSD PROJECT #2021003

SEWER EASEMENT ACROSS THE PROPERTY OF:

PAUL ERIC VARELA & MICHELLE MARIE VARELA

CITY OF ASHEVILLE, BUNCOMBE COUNTY, NC

0' 20' 40' 60'

DATE OF PLAT: 9/19/2023	REVISIONS			
DATE OF SURVEY: 2/16/23 THRU 3/20/23	NO.	DATE	DESC.	BY
PROJECT NO.: 23-015				
FIELD WORK: CDM/EL				
DRAWN BY: JWC/BJO				
SCALE: 1" = 20'				
PIN: 9638-85-3746				

Type: CONSOLIDATED REAL PROPERTY
Recorded: 9/3/2024 4:00:33 PM
Fee Amt: $21.00 Page 1 of 1
Buncombe County, NC
Drew Reisinger Register of Deeds
BK 245 PG 3

Metropolitan Sewerage District

of Buncombe County, North Carolina

PERMIT

FOR THE DISCHARGE OF SEWAGE, INDUSTRIAL WASTES, OR OTHER WASTES

IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE 21 OF CHAPTER 143, GENERAL STATUTES OF NORTH CAROLINA AS AMENDED, AND OTHER APPLICABLE LAWS, RULES, AND REGULATIONS FOR THE SANITARY SEWERAGE SYSTEM OF THE METROPOLITAN SEWERAGE DISTRICT.

PERMISSION IS HEREBY GRANTED TO:

METROPOLITAN SEWERAGE DISTRICT

2028 RIVERSIDE DRIVE
ASHEVILLE, NC 28804

INSTALLATION AND OPERATION OF THE AVON AVENUE @ HAYWOOD ROAD SEWER REHABILITATION LOCATED IN ASHEVILLE, NC. THIS PROJECT INCLUDES REPLACING/RELOCATING A PUBLIC SEWER WITH APPROXIMATELY 218 LF OF 8-INCH GRAVITY SEWER. NO NEW WASTEWATER FLOW IS EXPECTED DUE TO THESE IMPROVEMENTS. THE DISCHARGE OF COLLECTED DOMESTIC WASTEWATER INTO THE METROPOLITAN SEWERAGE DISTRICT'S EXISTING SYSTEM, PURSUANT TO THE APPLICATION RECEIVED 3/27/2025. THIS PERMIT SHALL BE EFFECTIVE FROM THE DATE OF ISSUANCE UNTIL RESCINDED, AND SHALL BE SUBJECT TO THE FOLLOWING SPECIFIED CONDITIONS AND LIMITATIONS.

1. THIS PERMIT SHALL BECOME VOIDABLE UNLESS THE FACILITIES ARE CONSTRUCTED IN ACCORDANCE WITH THE NON-DISCHARGE PERMIT APPLICATION, APPROVED PLANS, SPECIFICATIONS, AND OTHER SUPPORTING DATA.
2. CONSTRUCTION OF THE SEWERS SHALL BE SO SCHEDULED SO AS NOT TO INTERRUPT SERVICE BY THE EXISTING UTILITIES NOR RESULT IN AN OVERFLOW OR BYPASS OF WASTEWATER TO THE SURFACE WATERS OF THE STATE.
3. THIS PERMIT IS EFFECTIVE ONLY WITH RESPECT TO THE NATURE AND VOLUME OF WASTES DESCRIBED IN THE APPLICATION.
4. THE FACILITIES SHALL BE PROPERLY MAINTAINED AND OPERATED AT ALL TIMES.
5. THE SEWAGE AND WASTEWATER COLLECTED BY THIS SYSTEM SHALL BE ADEQUATELY TREATED IN THE METROPOLITAN SEWERAGE DISTRICT'S WASTEWATER TREATMENT PLANT PRIOR TO BEING DISCHARGED INTO THE RECEIVING STREAM.

PERMIT #: MSD P01563

SIGNATURE: W. Hunter Carson

W. HUNTER CARSON, P.E.

ISSUED: April 01, 2025

STATE OF NORTH CAROLINA
DEPARTMENT OF ENVIRONMENTAL QUALITY
DIVISION OF WATER RESOURCES

WATER QUALITY GENERAL CERTIFICATION NO. 4276

GENERAL CERTIFICATION FOR PROJECTS ELIGIBLE FOR US ARMY CORPS OF ENGINEERS NATIONWIDE PERMIT NUMBER 58 (UTILITY LINE ACTIVITIES FOR WATER AND OTHER SUBSTANCES)

Water Quality General Certification Number 4276 is issued in conformity with the requirements of Section 401, Public Laws 92-500 and 95-217 of the United States and subject to the North Carolina Regulations in 15A NCAC 02H .0500 and 15A NCAC 02B .0200 for the discharge of fill material to surface waters and wetland areas as described in 33 CFR 330 Appendix A (B) (58) of the US Army Corps of Engineers regulations.

The State of North Carolina certifies that the specified category of activity will comply with water quality requirements and applicable portions of Sections 301, 302, 303, 306 and 307 of the Public Laws 92-500 and 95-217 if conducted in accordance with the conditions hereinafter set forth.

Effective date: March 15, 2021

Signed this day: December 18, 2020

By

S. Daniel Smith
Director

GENERAL CERTIFICATION COVERAGE:

Activities that are eligible for US Army Corps of Engineers Nationwide Permit 58 qualify for coverage under this General Certification unless they meet one of the thresholds listed below. Activities meeting any one (1) of the thresholds or circumstances listed below are not eligible for coverage under this General Certification and require *an Individual* 401 Water Quality Certification from the Division of Water Resources (DWR):

a) If any of the conditions of this General Certification cannot be met; or
b) Total temporary impacts to streams greater than 500 feet within the entire utility project; or
c) Any permanent impacts to streams; or
d) Total permanent impacts to wetlands or open waters equal to or greater than one-tenth (1/10) acre within the entire utility project; or
e) Any stream restoration or stream relocation; or
f) Any high-density project, as defined in 15A NCAC 02H .1003(3) and by the density thresholds specified in 15A NCAC 02H .1017, which:
    i. Disturbs one acre or more of land (including a project that disturbs less than one acre of land that is part of a larger common plan of development or sale); and
    ii. Has permanent wetland, stream or open water impacts; and
    iii. Is proposing new built-upon area; and
    iv. Does not have a stormwater management plan reviewed and approved under a state stormwater program[1] or a state-approved local government stormwater program[2].

    Projects that have vested rights, exemptions, or other legacy rights or exemptions from state or locally-implemented stormwater programs and projects that satisfy state or locally-implemented stormwater programs through use of community in-lieu fee programs **require an Individual 401 Certification**; or
g) Any permanent impacts to waters, or to wetlands adjacent to waters, designated as: ORW (including SAV), HQW (including PNA), SA, WS-I, WS-II, Trout, or North Carolina or National Wild and Scenic River; or
h) Any permanent impacts to coastal wetlands [15A NCAC 07H .0205], or Unique Wetlands (UWL) [15A NCAC 02B .0231]; or
i) Any impacts to subject water bodies and/or state regulated riparian buffers along subject water bodies in the Neuse, Tar-Pamlico, or Catawba River Basins or in the Randleman Lake, Jordan Lake or Goose Creek Watersheds (or any other basin or watershed with State Regulated Riparian Area Protection Rules [Buffer Rules] in effect at the time of application) *unless*:
    i. The activities are listed as “EXEMPT” or “DEEMED ALLOWABLE” from these rules; or

[1] e.g. Coastal Counties, HQW, ORW, or state-implemented Phase II NPDES
[2] e.g. Delegated Phase II NPDES, Water Supply Watershed, Nutrient-Sensitive Waters, or Universal Stormwater Management Program

ii. A Buffer Authorization Certificate is issued by the NC Division of Coastal Management (DCM); or
iii. A Buffer Authorization Certificate, Certificate with Exception, or Minor Variance is issued by a delegated or designated local government implementing a state riparian buffer program pursuant to 143-215.23.

In accordance with 15A NCAC 02H .0503(f), the Director of the North Carolina Division of Water Resources may require submission of a formal application for Individual Certification for any project if it is deemed in the public's best interest or determined that the project is likely to have a significant adverse effect upon water quality, including state or federally listed endangered or threatened aquatic species, or will degrade the waters so that existing uses of the waters or downstream waters are precluded.

This General Certification does not relieve the permittee of the responsibility to obtain all other required Federal, State, or Local approvals before proceeding with the project, including those required by, but not limited to, Sediment and Erosion Control, Non-Discharge, Water Supply Watershed, and Trout Buffer regulations.

This General Certification neither grants nor affirms any property right, license, or privilege in any waters, or any right of use in any waters. This General Certification does not authorize any person to interfere with the riparian rights, littoral rights, or water use rights of any other person and does not create any prescriptive right or any right of priority regarding any usage of water. This General Certification shall not be interposed as a defense in any action respecting the determination of riparian or littoral rights or other rights to water use. No consumptive user is deemed by virtue of this General Certification to possess any prescriptive or other right of priority with respect to any other consumptive user regardless of the quantity of the withdrawal or the date on which the withdrawal was initiated or expanded.

Upon the presentation of proper credentials, DWR may inspect the property.

This General Certification shall expire on the same day as the expiration date of the corresponding Nationwide Permit. The conditions in effect on the date of issuance of Certification for a specific project shall remain in effect for the life of the project, regardless of the expiration date of this General Certification. This General Certification is rescinded when the US Army Corps of Engineers reauthorizes the corresponding Nationwide Permit or when deemed appropriate by the Director of the Division of Water Resources.

Non-compliance with or violation of the conditions herein set forth by a specific project may result in revocation of this General Certification for the project and may also result in criminal and/or civil penalties.

I. ACTIVITY SPECIFIC CONDITIONS:

1. All sewer lines shall be designed, constructed and maintained in accordance with Title 15A NCAC Chapter 02T, applicable Minimum Design Criteria (MDC), and/or Alternative Design Criteria.

   Citation: 15A NCAC 02H .0506(b); 15A NCAC 02H .0507(c)
   Justification: The referenced Minimum Design criteria and 02T rules were adopted to ensure that conditions of waters be suitable for all best uses provided for in state rule (including, at minimum: aquatic life propagation, survival, and maintenance of biological integrity; wildlife: secondary contact recreation: agriculture); and that activities must not cause water pollution that precludes any best use on a short-term or long-term basis.

2. Any utility construction corridor that is parallel to a stream or open water shall not be closer than 10 feet to the top of bank or ordinary high-water mark.

   Citation: 15A NCAC 02H .0506(b); 15A NCAC 02H .0507(c)
   Justification: A project that affects waters shall not be permitted unless the existing uses, and the water quality to protect such uses, are protected. In determining that the proposed activity will comply with state water quality standards (including designated uses, numeric criteria, narrative criteria and the state's antidegradation policy), the Division must evaluate if the activity has avoided and minimized impacts to waters, would cause or contribute to a violation of standards or would result in secondary or cumulative impacts.

3. Where there are temporary or permanent impacts from stream crossings, utility lines shall cross the stream channel at a near-perpendicular direction (i.e., between 75 degrees and 105 degrees to the stream bank).

   Citation: 15A NCAC 02H .0506(b); 15A NCAC 02H .0507(c)
   Justification: A project that affects waters shall not be permitted unless the existing uses, and the water quality to protect such uses, are protected. In determining that the proposed activity will comply with state water quality standards (including designated uses, numeric criteria, narrative criteria and the state's antidegradation policy), the Division must evaluate if the activity has avoided and minimized impacts to waters, would cause or contribute to a violation of standards or would result in secondary or cumulative impacts.

4. Construction corridors in wetlands and/or across stream channels shall be minimized to the maximum extent practicable and shall not exceed 40 feet wide.

   For construction corridors in wetlands and across stream channels, stumps shall be grubbed only as needed to install the utility, and remaining stumps shall be cut off at grade level. The general stripping of topsoil within wetlands along the construction corridor is prohibited.

   Citation: 15A NCAC 02H .0506(b); 15A NCAC 02H .0507(c)
   Justification: A project that affects waters shall not be permitted unless the existing uses, and

the water quality to protect such uses, are protected. In determining that the proposed activity will comply with state water quality standards (including designated uses, numeric criteria, narrative criteria and the state's antidegradation policy), the Division must evaluate if the activity has avoided and minimized impacts to waters, would cause or contribute to a violation of standards or would result in secondary or cumulative impacts.

5. Permanent maintained access corridors in wetlands and across stream channels shall be restricted to the minimum width practicable and shall not exceed 30 feet wide.

   Citation: 15A NCAC 02H .0506(b); 15A NCAC 02H .0507(c)
   Justification: A project that affects waters shall not be permitted unless the existing uses, and the water quality to protect such uses, are protected. In determining that the proposed activity will comply with state water quality standards (including designated uses, numeric criteria, narrative criteria and the state's antidegradation policy), the Division must evaluate if the activity has avoided and minimized impacts to waters, would cause or contribute to a violation of standards or would result in secondary or cumulative impacts.

6. For all utility lines constructed within wetlands, an anti-seep collar shall be placed at the downstream (utility line gradient) wetland boundary and every 150 feet up the gradient until the utility exits the wetland. Anti-seep collars may be constructed with class B concrete, compacted clay, PVC pipe, or metal collars. Wetland crossings that are directionally drilled, and perpendicular wetland crossings that are open cut and less than 150 feet long do not require anti-seep collars. The compacted clay shall have a specific infiltration of 1 X 10^{-5} cm/sec or less. A section and plan view diagram is attached for the anti-seep collars.

   The following specifications shall apply to class B concrete:

   i. Minimum cement content, sacks per cubic yard with rounded coarse aggregate 5.0
   ii. Minimum cement content, sacks per cubic yard with angular coarse aggregate 5.5
   iii. Maximum water-cement ratio gallons per sack 6.8
   iv. Slump range 2" to 4"
   v. Minimum strength - 28-day psi 2,500

   Citation: 15A NCAC 02H .0506(b); 15A NCAC 02H .0507(c)
   Justification: A project that affects waters shall not be permitted unless the existing uses, and the water quality to protect such uses, are protected. In determining that the proposed activity will comply with state water quality standards (including designated uses, numeric criteria, narrative criteria and the state's antidegradation policy), the Division must evaluate if the activity has avoided and minimized impacts to waters, would cause or contribute to a violation of standards or would result in secondary or cumulative impacts.

7. The permittee shall restore wetland contours to pre-construction conditions. Any excess material will be removed to a high ground disposal area.

   The mixing of topsoil and subsoils within the wetlands along utility corridors shall be minimized to the greatest extent practical. During excavation, the soils shall be placed on

fabric to minimize impacts whenever possible. Topsoil excavated from utility trenches will be piled separately from subsoils and will be backfilled into the trench only after the subsoils have been placed and compacted.

Citation: 15A NCAC 02H .0506(b); 15A NCAC 02H .0507(c)
Justification: A project that affects waters shall not be permitted unless the existing uses, and the water quality to protect such uses, are protected. In determining that the proposed activity will comply with state water quality standards (including designated uses, numeric criteria, narrative criteria and the state's antidegradation policy), the Division must evaluate if the activity has avoided and minimized impacts to waters, would cause or contribute to a violation of standards or would result in secondary or cumulative impacts.

II. GENERAL CONDITIONS:

1. The permittee shall report to the DWR Regional Office any noncompliance with, and/or any violation of, stream or wetland standards [15A NCAC 02B .0200], including but not limited to sediment impacts to streams or wetlands. Information shall be provided orally within 24 hours (or the next business day if a weekend or holiday) from the time the permittee became aware of the non-compliance circumstances.

   Citation: 15A NCAC 02H .0506(b); 15A NCAC 02H .0507(c)
   Justification: Timely reporting of non-compliance is important in identifying and minimizing detrimental impacts to water quality and avoiding impacts due to water pollution that precludes any best use on a short-term or long-term basis.

2. No waste, spoil, solids, or fill of any kind shall occur in wetlands or waters beyond the footprint of the impacts (including temporary impacts); or beyond the thresholds established for use of this General Certification and Nationwide Permit.

   Citation: 15A NCAC 02H .0506; 15A NCAC 02H .0507(c)
   Justification: Surface water quality standards require that conditions of waters be suitable for all best uses provided for in state rule (including, at minimum: aquatic life propagation, survival, and maintenance of biological integrity; wildlife; secondary contact recreation; agriculture); and that activities must not cause water pollution that precludes any best use on a short-term or long-term basis.

3. All activities shall be in compliance with any applicable State Regulated Riparian Buffer Rules in Chapter 2B of Title 15A in the North Carolina Administrative Code.

   Citation: 15A NCAC 02H .0506(b); 15A NCAC 02H .0507(c)
   Justification: The referenced Riparian Buffer rules were adopted to address water quality impairments and further protect existing uses.

4. When applicable, all construction activities shall be performed and maintained in full compliance with G.S. Chapter 113A Article 4 (Sediment and Pollution Control Act of 1973).

Regardless of applicability of the Sediment and Pollution Control Act, all projects shall incorporate appropriate Best Management Practices for the control of sediment and erosion so that no violations of state water quality standards, statutes, or rules occur.

Design, installation, operation, and maintenance of all sediment and erosion control measures shall be equal to or exceed the requirements specified in the most recent version of the *North Carolina Sediment and Erosion Control Manual*, or for linear transportation projects, the *North Caroline Department of Transportation Sediment and Erosion Control Manual*.

All devices shall be maintained on all construction sites, borrow sites, and waste pile (spoil) sites, including contractor-owned or leased borrow pits associated with the project. Sufficient materials required for stabilization and/or repair of erosion control measures and stormwater routing and treatment shall be on site at all times.

For borrow pit sites, the erosion and sediment control measures shall be designed, installed, operated, and maintained in accordance with the most recent version of the *North Carolina Surface Mining Manual*. Reclamation measures and implementation shall comply with the reclamation in accordance with the requirements of the Sedimentation Pollution Control Act and the Mining Act of 1971.

If the project occurs in waters or watersheds classified as Primary Nursery Areas (PNAs), SA, WS-I, WS-II, High Quality Waters (HQW), or Outstanding Resource Waters (ORW), then the sedimentation and erosion control designs shall comply with the requirements set forth in 15A NCAC 04B .0124, *Design Standards in Sensitive Watersheds*.

Citation: 15A NCAC 02H .0506(b)(2); 15A NCAC 02H .0507(c); 15A NCAC02B .0200; 15A NCAC 02B .0231
Justification: A project that affects waters shall not be permitted unless the existing uses, and the water quality to protect such uses, are protected. Activities must not cause water pollution that precludes any best use on a short-term or long-term basis. As cited in Stream Standards: (2) Oils, deleterious substances, or colored or other wastes: only such amounts as shall not render the waters injurious to public health, secondary recreation, or to aquatic life and wildlife, or adversely affect the palatability of fish, aesthetic quality, or impair the waters for any designated uses; and (12) turbidity in the receiving water shall not exceed 50 Nephelometric Turbidity Units (NTU) in streams not designated as trout waters and 10 NTU in streams, lakes, or reservoirs designated as trout waters; for lakes and reservoirs not designated as trout waters, the turbidity shall not exceed 25 NTU; if turbidity exceeds these levels due to natural background conditions, the existing turbidity level shall not be increased. As cited in Wetland Standards: (1) Liquids, fill or other solids, or dissolved gases shall not be present in amounts that may cause adverse impacts on existing wetland uses; and (3) Materials producing color or odor shall not be present in amounts that may cause adverse impacts on existing wetland uses.

5. Sediment and erosion control measures shall not be installed in wetland or waters except within the footprint of temporary or permanent impacts otherwise authorized by this

Certification. If placed within authorized impact areas, then placement of such measures shall not be conducted in a manner that results in dis-equilibrium of any wetlands, streambeds, or streambanks. Any silt fence installed within wetlands shall be removed from wetlands and the natural grade restored within two (2) months of the date that DEMLR or locally delegated program has released the specific area within the project to ensure wetland standards are maintained upon completion of the project.

Citation: 15A NCAC 02H .0506(b); 15A NCAC 02H .0507(c); 15A NCAC02B .0200; 15A NCAC 02B .0231
Justification: A project that affects waters shall not be permitted unless the existing uses, and the water quality to protect such uses, are protected. Activities must not cause water pollution that precludes any best use on a short-term or long-term basis. As cited in Stream Standards: (2) Oils, deleterious substances, or colored or other wastes: only such amounts as shall not render the waters injurious to public health, secondary recreation, or to aquatic life and wildlife, or adversely affect the palatability of fish, aesthetic quality, or impair the waters for any designated uses; and (12) turbidity in the receiving water shall not exceed 50 Nephelometric Turbidity Units (NTU) in streams not designated as trout waters and 10 NTU in streams, lakes, or reservoirs designated as trout waters; for lakes and reservoirs not designated as trout waters, the turbidity shall not exceed 25 NTU; if turbidity exceeds these levels due to natural background conditions, the existing turbidity level shall not be increased. As cited in Wetland Standards: (1) Liquids, fill or other solids, or dissolved gases shall not be present in amounts that may cause adverse impacts on existing wetland uses; and (3) Materials producing color or odor shall not be present in amounts that may cause adverse impacts on existing wetland uses.

6. Erosion control matting that incorporates plastic mesh and/or plastic twine shall not be used along streambanks or within wetlands.

   Citation: 15A NCAC 02H .0506(b); 15A NCAC 02H .0507(c)
   Justification: A project that affects waters shall not be permitted unless the existing uses (including aquatic life propagation and biological integrity), and the water quality to protect such uses, are protected. Protections are necessary to ensure any remaining surface waters or wetlands, and any surface waters or wetlands downstream, continue to support existing uses during and after project completion. The Division must evaluate if the activity has avoided and minimized impacts to waters, would cause or contribute to a violation of standards, or would result in secondary or cumulative impacts.

7. If the project is covered by NPDES Construction Stormwater Permit Number NCG010000 or NPDES Construction Stormwater Permit Number NCG250000, full compliance with permit conditions including the erosion & sedimentation control plan, inspections and maintenance, self-monitoring, record keeping and reporting requirements is required.

   The North Carolina Department of Transportation (NCDOT) shall be required to be in full compliance with the conditions related to construction activities within the most recent version of their Individual NPDES Stormwater Permit Number NCS000250.

Citation: 15A NCAC 02H .0506(b); 15A NCAC 02H .0507(c); 15A NCAC 02B .0200; 15A NCAC 02B .0231
Justification: A project that affects waters shall not be permitted unless the existing uses, and the water quality to protect such uses, are protected. Activities must not cause water pollution that precludes any best use on a short-term or long-term basis. As cited in Stream Standards: (2) Oils, deleterious substances, or colored or other wastes: only such amounts as shall not render the waters injurious to public health, secondary recreation, or to aquatic life and wildlife, or adversely affect the palatability of fish, aesthetic quality, or impair the waters for any designated uses; and (12) turbidity in the receiving water shall not exceed 50 Nephelometric Turbidity Units (NTU) in streams not designated as trout waters and 10 NTU in streams, lakes, or reservoirs designated as trout waters; for lakes and reservoirs not designated as trout waters, the turbidity shall not exceed 25 NTU; if turbidity exceeds these levels due to natural background conditions, the existing turbidity level shall not be increased. As cited in Wetland Standards: (1) Liquids, fill or other solids, or dissolved gases shall not be present in amounts that may cause adverse impacts on existing wetland uses; and (3) Materials producing color or odor shall not be present in amounts that may cause adverse impacts on existing wetland uses.

8. All work in or adjacent to streams shall be conducted so that the flowing stream does not come in contact with the disturbed area. Approved best management practices from the most current version of the *NC Sediment and Erosion Control Manual*, or the *NC Department of Transportation Construction and Maintenance Activities Manual*, such as sandbags, rock berms, cofferdams, and other diversion structures shall be used to minimize excavation in flowing water.

   Citation: 15A NCAC 02H .0506(b); 15A NCAC 02H .0507(c); 15A NCAC 02B .0200
   Justification: Surface water quality standards require that conditions of waters be suitable for all best uses provided for in state rule, and that activities must not cause water pollution that precludes any best use on a short-term or long-term basis. As cited in Stream Standards: (2) Oils, deleterious substances, or colored or other wastes: only such amounts as shall not render the waters injurious to public health, secondary recreation, or to aquatic life and wildlife, or adversely affect the palatability of fish, aesthetic quality, or impair the waters for any designated uses; and (12) turbidity in the receiving water shall not exceed 50 Nephelometric Turbidity Units (NTU) in streams not designated as trout waters and 10 NTU in streams, lakes, or reservoirs designated as trout waters; for lakes and reservoirs not designated as trout waters, the turbidity shall not exceed 25 NTU; if turbidity exceeds these levels due to natural background conditions, the existing turbidity level shall not be increased.

9. If activities must occur during periods of high biological activity (e.g. sea turtle nesting, fish spawning, or bird nesting), then biological monitoring may be required at the request of other state or federal agencies and coordinated with these activities.

   All moratoriums on construction activities established by the NC Wildlife Resources Commission (WRC), US Fish and Wildlife Service (USFWS), NC Division of Marine Fisheries

(DMF), or National Marine Fisheries Service (NMFS) shall be implemented. Exceptions to this condition require written approval by the resource agency responsible for the given moratorium.

Work within a designated trout watershed of North Carolina (as identified by the Wilmington District of the US Army Corps of Engineers), or identified state or federal endangered or threatened species habitat, shall be coordinated with the appropriate WRC, USFWS, NMFS, and/or DMF personnel.

Citation: 15A NCAC 02H .0506(b); 15A NCAC 02H .0507(c); 15A NCAC 04B .0125
Justification: In order to protect against impairment of water quality standards and best usage of receiving and downstream waters, water quality based management practices must be employed to protect against direct or indirect discharge of waste or other sources of water pollution. Surface water quality standards require that conditions of waters be suitable for all best uses provided for in state rule (including, at minimum: aquatic life propagation, survival, and maintenance of biological integrity, wildlife, secondary contact recreation, agriculture), and that activities must not cause water pollution that precludes any best use on a short-term or long-term basis.

10. In-stream structures installed to mimic natural channel geomorphology such as cross-vanes, sills, step-pool structures, etc. shall be designed and installed in such a manner that allow for continued aquatic life movement.

    Citation: 15A NCAC 02H .0506(b); 15A NCAC 02H .0507(c)
    Justification: Surface water quality standards require that conditions of waters be suitable for all best uses provided for in state rule, and that activities must not cause water pollution that precludes any best use on a short-term or long-term basis. Ensuring that in-stream structures are installed properly will ensure that surface water quality standards are met and conditions of waters are suitable for all best uses.

11. Culverts shall be designed and installed in such a manner that the original stream profiles are not altered and allow for aquatic life movement during low flows. The dimension, pattern, and profile of the stream above and below a pipe or culvert shall not be modified by widening the stream channel or by reducing the depth of the stream in connection with the construction activity. The width, height, and gradient of a proposed culvert shall be such as to pass the average historical low flow and spring flow without adversely altering flow velocity. If the width of the culvert is wider than the stream channel, the culvert shall include multiple boxes/pipes, baffles, benches and/or sills to maintain the natural width of the stream channel. If multiple culverts/pipes/barrels are used, low flows shall be accommodated in one culvert/pipe and additional culverts/pipes shall be installed such that they receive only flows above bankfull.

    Placement of culverts and other structures in streams shall be below the elevation of the streambed by one foot for all culverts with a diameter greater than 48 inches, and 20% of the culvert diameter for culverts having a diameter less than or equal to 48 inches, to allow low flow passage of water and aquatic life. If the culvert outlet is submerged within a pool

or scour hole and designed to provide for aquatic passage, then culvert burial into the streambed is not required.

For structures less than 72" in diameter/width, and topographic constraints indicate culvert slopes of greater than 2.5% culvert burial is not required, provided that all alternative options for flattening the slope have been investigated and aquatic life movement/connectivity has been provided when possible (e.g. rock ladders, cross-vanes, sills, baffles etc.). Notification, including supporting documentation to include a location map of the culvert, culvert profile drawings, and slope calculations, shall be provided to DWR 30 calendar days prior to the installation of the culvert.

When bedrock is present in culvert locations, culvert burial is not required, provided that there is sufficient documentation of the presence of bedrock. Notification, including supporting documentation such as a location map of the culvert, geotechnical reports, photographs, etc. shall be provided to DWR a minimum of 30 calendar days prior to the installation of the culvert. If bedrock is discovered during construction, then DWR shall be notified by phone or email within 24 hours of discovery.

Installation of culverts in wetlands shall ensure continuity of water movement and be designed to adequately accommodate high water or flood conditions. When roadways, causeways, or other fill projects are constructed across FEMA-designated floodways or wetlands, openings such as culverts or bridges shall be provided to maintain the natural hydrology of the system as well as prevent constriction of the floodway that may result in destabilization of streams or wetlands.

The establishment of native woody vegetation and other soft stream bank stabilization techniques shall be used where practicable instead of rip-rap or other bank hardening methods.

Citation: 15A NCAC 02H .0506(b); 15A NCAC 02H .0507(c)
Justification: Surface water quality standards require that conditions of waters be suitable for all best uses provided for in state rule, and that activities must not cause water pollution that precludes any best use on a short-term or long-term basis. Ensuring that in-stream structures are installed properly will ensure that surface water quality standards are met and conditions of waters are suitable for all best uses.

12. Bridge deck drains shall not discharge directly into the stream. Stormwater shall be directed across the bridge and pre-treated through site-appropriate means to the maximum extent practicable (e.g. grassed swales, pre-formed scour holes, vegetated buffers, etc.) before entering the stream.

    Citation: 15A NCAC 02H .0506(b); 15A NCAC 02H .0507(c)
    Justification: Surface water quality standards require that conditions of waters be suitable for all best uses provided for in state rule and that activities must not cause water pollution that precludes any best use on a short-term or long-term basis. Ensuring that in-stream

structures are installed properly will ensure that surface water quality standards are met and conditions of waters are suitable for all best uses.

13. Application of fertilizer to establish planted/seeded vegetation within disturbed riparian areas and/or wetlands shall be conducted at agronomic rates and shall comply with all other Federal, State and Local regulations. Fertilizer application shall be accomplished in a manner that minimizes the risk of contact between the fertilizer and surface waters.

    Citation: 15A 02H .0506(b); 15A NCAC 02H .0507(c); 15A NCAC 02B .0231
    Justification: A project that affects waters shall not be permitted unless the existing uses, and the water quality to protect such uses, are protected. Activities must not cause water pollution that precludes any best use on a short-term or long-term basis. As cited in Stream Standards: (2) Oils, deleterious substances, or colored or other wastes: only such amounts as shall not render the waters injurious to public health, secondary recreation, or to aquatic life and wildlife, or adversely affect the palatability of fish, aesthetic quality, or impair the waters for any designated uses.

14. If concrete is used during construction, then all necessary measures shall be taken to prevent direct contact between uncured or curing concrete and waters of the state. Water that inadvertently contacts uncured concrete shall not be discharged to waters of the state.

    Citation: 15A 02H .0506(b); 15A NCAC 02H .0507(c); 15A NCAC 02B .0200
    Justification: A project that affects waters shall not be permitted unless the existing uses, and the water quality to protect such uses, are protected. Activities must not cause water pollution that precludes any best use on a short-term or long-term basis. As cited in Stream Standards: (2) Oils, deleterious substances, or colored or other wastes: only such amounts as shall not render the waters injurious to public health, secondary recreation, or to aquatic life and wildlife, or adversely affect the palatability of fish, aesthetic quality, or impair the waters for any designated uses.

15. All proposed and approved temporary fill and culverts shall be removed and the impacted area shall be returned to natural conditions within 60 calendar days after the temporary impact is no longer necessary. The impacted areas shall be restored to original grade, including each stream's original cross-sectional dimensions, planform pattern, and longitudinal bed profile. All temporarily impacted sites shall be restored and stabilized with native vegetation.

    Citation: 15A NCAC 02H.0506(b); 15A NCAC 02H .0507(c)
    Justification: A project that affects waters shall not be permitted unless the existing uses, and the water quality to protect such uses, are protected. Protections are necessary to ensure any remaining surface waters or wetlands, and any surface waters or wetlands downstream, continue to support existing uses after project completion.

16. All proposed and approved temporary pipes/culverts/rip-rap pads etc. in streams shall be installed as outlined in the most recent edition of the *North Carolina Sediment and Erosion Control Planning and Design Manual* or the *North Carolina Surface Mining Manual* or the

North Carolina Department of Transportation Best Management Practices for Construction and Maintenance Activities so as not to restrict stream flow or cause dis-equilibrium during use of this General Certification.

Citation: 15A NCAC 02H .0506(b); 15A NCAC 02H .0507(c)
Justification: Surface water quality standards require that conditions of waters be suitable for all best uses provided for in state rule, and that activities must not cause water pollution that precludes any best use on a short-term or long-term basis. Ensuring that in-stream structures are installed properly will ensure that surface water quality standards are met and conditions of waters are suitable for all best uses.

17. Any rip-rap required for proper culvert placement, stream stabilization, or restoration of temporarily disturbed areas shall be restricted to the area directly impacted by the approved construction activity. All rip-rap shall be placed such that the original streambed elevation and streambank contours are restored and maintained and shall consist of clean rock or masonry material free of debris or toxic pollutants. Placement of rip-rap or other approved materials shall not result in de-stabilization of the stream bed or banks upstream or downstream of the area or be installed in a manner that precludes aquatic life passage.

    Citation: 15A NCAC 02H .0506(b); 15A NCAC 02H .0507(c)
    Justification: Surface water quality standards require that conditions of waters be suitable for all best uses provided for in state rule, and that activities must not cause water pollution that precludes any best use on a short-term or long-term basis. The Division must evaluate if the activity has avoided and minimized impacts to waters, would cause or contribute to a violation of standards, or would result in secondary or cumulative impacts.

18. Any rip-rap used for stream or shoreline stabilization shall be of a size and density to prevent movement by wave, current action, or stream flows, and shall consist of clean rock or masonry material free of debris or toxic pollutants. Rip-rap shall not be installed in the streambed except in specific areas required for velocity control and to ensure structural integrity of bank stabilization measures.

    Citation: 15A NCAC 02H .0506(b); 15A NCAC 02H .0507(c); 15A NCAC 02B .0201
    Justification: Surface water quality standards require that conditions of waters be suitable for all best uses provided for in state rule, and that activities must not cause water pollution that precludes any best use on a short-term or long-term basis. The Division must evaluate if the activity has avoided and minimized impacts to waters, would cause or contribute to a violation of standards, or would result in secondary or cumulative impacts.

19. Rip-rap groins proposed in accordance with 15A NCAC 07H .1401 (NC Division of Coastal Management General Permit for construction of Wooden and Rip-rap Groins in Estuarine and Public Trust Waters) shall meet all the specific conditions for design and construction specified in 15A NCAC 07H .1405.

    Citation: 15A NCAC 02H .0507(c); 15A NCAC 07H .1400 et seq.

Justification: Surface water quality standards require that conditions of waters be suitable for all best uses provided for in state rule, and that activities must not cause water pollution that precludes any best use on a short-term or long-term basis. The Division must evaluate if the activity has avoided and minimized impacts to waters, would cause or contribute to a violation of standards, or would result in secondary or cumulative impacts.

20. All mechanized equipment operated near surface waters shall be inspected and maintained regularly to prevent contamination of surface waters from fuels, lubricants, hydraulic fluids, or other toxic materials. Construction shall be staged in order to minimize the exposure of equipment to surface waters to the maximum extent practicable. Fueling, lubrication, and general equipment maintenance shall be performed in a manner to prevent, to the maximum extent practicable, contamination of surface waters by fuels and oils.

    Citation: 15A NCAC 02H .0506(b); 15A NCAC 02H .0507(c); 15A NCAC 02B .0200
    Justification: A project that affects waters shall not be permitted unless the existing uses, and the water quality to protect such uses, are protected. Activities must not cause water pollution that precludes any best use on a short-term or long-term basis. As cited in Stream Standards: (2) Oils, deleterious substances, or colored or other wastes: only such amounts as shall not render the waters injurious to public health, secondary recreation, or to aquatic life and wildlife, or adversely affect the palatability of fish, aesthetic quality, or impair the waters for any designated uses.

21. Heavy equipment working in wetlands shall be placed on mats or other measures shall be taken to minimize soil disturbance and compaction.

    Citation: 15A NCAC 02H .0506(b); 15A NCAC 02H .0507(c); 15A NCAC 02B .0231
    Justification: Wetland standards require maintenance or enhancement of existing uses of wetlands such that hydrologic conditions necessary to support natural biological and physical characteristics are protected; populations of wetland flora and fauna are maintained to protect biological integrity of the wetland; and materials or substances are not present in amounts that may cause adverse impact on existing wetland uses.

22. In accordance with 143-215.85(b), the permittee shall report any petroleum spill of 25 gallons or more; any spill regardless of amount that causes a sheen on surface waters; any petroleum spill regardless of amount occurring within 100 feet of surface waters; and any petroleum spill less than 25 gallons that cannot be cleaned up within 24 hours.

    Citation: 15A NCAC 02H .0507(c); N.C.G.S 143-215.85(b)
    Justification: Person(s) owning or having control over oil or other substances upon notice of discharge must immediately notify the Department, or any of its agents or employees, of the nature, location, and time of the discharge and of the measures which are being taken or are proposed to be taken to contain and remove the discharge. This action is required in order to contain or divert the substances to prevent entry into the surface waters. Surface water quality standards require that conditions of waters be suitable for all best uses provided for in state rule (including, at minimum: aquatic life propagation, survival, and maintenance of biological integrity; wildlife; secondary contact recreation; agriculture); and

that activities must not cause water pollution that precludes any best use on a short-term or long-term basis.

23. The permittee and their authorized agents shall conduct all activities in a manner consistent with State water quality standards (including any requirements resulting from compliance with §303(d) of the Clean Water Act), and any other appropriate requirements of State and Federal Law.

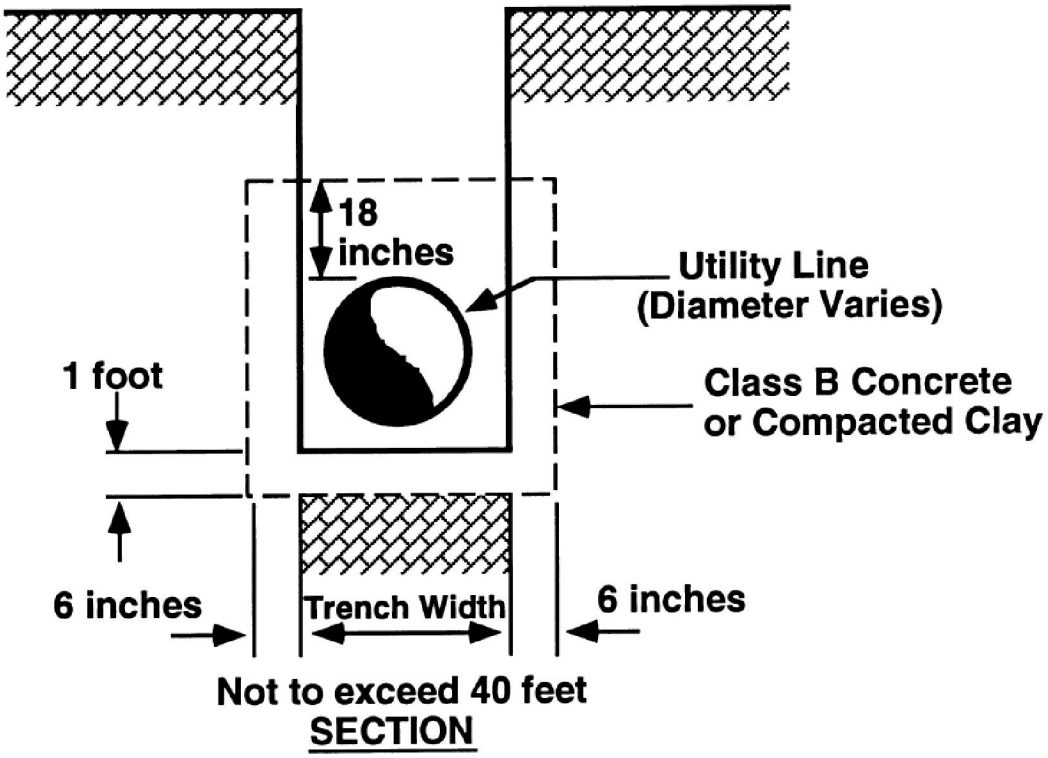
    Citation: 15A NCAC 02H .0506(b); 15A NCAC 02H .0507(c)
    Justification: Surface water quality standards require that conditions of waters be suitable for all best uses provided for in state rule, and that activities must not cause water pollution that precludes any best use on a short-term or long-term basis. The Division must evaluate if the activity has avoided and minimized impacts to waters, would cause or contribute to a violation of standards, or would result in secondary or cumulative impacts.

24. The permittee shall require its contractors and/or agents to comply with the terms and conditions of this permit in the construction and maintenance of this project, and shall provide each of its contractors and/or agents associated with the construction or maintenance of this project with a copy of this General Certification. A copy of this General Certification shall be available at the project site during the construction and maintenance of this project.

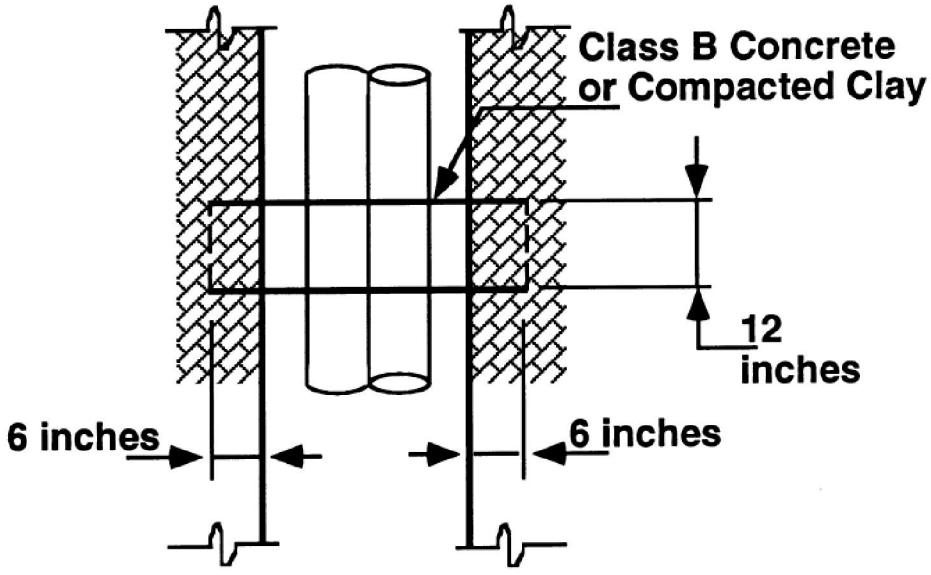
    Citation: 15A NCAC 02H .0506(b); 15A NCAC 02H .0507(c)
    Justification: Those actually performing the work should be aware of the requirements of this 401 Water Quality General Certification to minimize water quality impacts.

History Note: Water Quality Certification (WQC) Number 4276 issued December 18, 2020 replaces WQC 4133 issued December 1, 2017 for activities eligible for USACE NWP 58; WQC 4086 issued March 3, 2017; WQC 3884 issued March 19, 2012; WQC 3819 issued March 19, 2010; WQC 3699 issued November 1, 2007; WQC 3625 issued March 19, 2007; WQC 3374 issued March 18, 2002; WQC 3288 issued June 1, 2000; WQC 3101 issued February 11, 1997; WQC 3022 issued September 6, 1995, WQC 2664 issued January 21, 1992.

ANTI -SEEP COLLAR



SECTION



PLAN

Nationwide Permit 58
Utility Line Activities for Water and Other Substances

Effective Date: March 15, 2021 / Expiration Date: March 15, 2026

Authorities: Sections 10 and 404

Activities required for the construction, maintenance, repair, and removal of utility lines for water and other substances, excluding oil, natural gas, products derived from oil or natural gas, and electricity. Oil or natural gas pipeline activities or electric utility line and telecommunications activities may be authorized by NWPs 12 or 57, respectively. This NWP also authorizes associated utility line facilities in waters of the United States, provided the activity does not result in the loss of greater than 1/2-acre of waters of the United States for each single and complete project.

Utility lines: This NWP authorizes discharges of dredged or fill material into waters of the United States and structures or work in navigable waters for crossings of those waters associated with the construction, maintenance, or repair of utility lines for water and other substances, including outfall and intake structures. There must be no change in pre-construction contours of waters of the United States. A "utility line" is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquescent, or slurry substance, for any purpose that is not oil, natural gas, or petrochemicals. Examples of activities authorized by this NWP include utility lines that convey water, sewage, stormwater, wastewater, brine, irrigation water, and industrial products that are not petrochemicals. The term "utility line" does not include activities that drain a water of the United States, such as drainage tile or french drains, but it does apply to pipes conveying drainage from another area.

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

Utility line substations: This NWP authorizes the construction, maintenance, or expansion of substation facilities associated with a utility line in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not result in the loss of greater than 1/2-acre of waters of the United States. This NWP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters of the United States to construct, maintain, or expand substation facilities.

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

Access roads: This NWP authorizes the construction of access roads for the construction and maintenance of utility lines, including utility line substations, in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. This NWP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters for access roads. Access roads must be the minimum width necessary (see Note 2, below). Access roads must be constructed so that the length of the road minimizes any adverse effects on waters of the United States and must be as near as possible to pre-construction contours and elevations (e.g., at grade corduroy roads or geotextile/gravel roads). Access roads constructed above pre-construction contours and elevations in waters of the United States must be properly bridged or culverted to maintain surface flows.

This NWP may authorize utility lines in or affecting navigable waters of the United States even if there is no associated discharge of dredged or fill material (see 33 CFR part 322). Overhead utility lines constructed over section 10 waters and utility lines that are routed in or under section 10 waters without a discharge of dredged or fill material require a section 10 permit.

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

This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to conduct the utility line activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges of dredged or fill material, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. After construction, temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) a section 10 permit is required; or (2) the discharge will result in the loss of greater than 1/10-acre of waters of the United States. (See general condition 32.) (Authorities: Sections 10 and 404)

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

Note 2: For utility line activities crossing a single waterbody more than one time at separate and distant locations, or multiple waterbodies at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. Utility line activities must comply with 33 CFR 330.6(d).

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

Note 4: Pipes or pipelines used to transport gaseous, liquid, liquescent, or slurry substances over navigable waters of the United States are considered to be bridges, not utility lines, and may require a permit from the U.S. Coast Guard pursuant to the General Bridge Act of 1946. However, any discharges of dredged or fill material into waters of the United States associated with such pipelines will require a section 404 permit (see NWP 15).

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

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

GENERAL CONDITIONS

Note: To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as applicable, in addition to any regional or case-specific

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

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

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

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

2. **Aquatic Life Movements.** No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species. If a bottomless culvert cannot be used, then the crossing should be designed and constructed to minimize adverse effects to aquatic life movements.

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

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

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

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

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

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

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

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

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

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

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

14. **Proper Maintenance.** Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.

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

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

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

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

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

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

section 7 regarding "activities that are reasonably certain to occur" and "consequences caused by the proposed action."

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

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

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

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

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

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

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

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

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

(b) Federal permittees should follow their own procedures for complying with the requirements of section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)(1)). If pre-construction notification is required for the proposed NWP activity, the Federal permittee must provide the district engineer with the appropriate

documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation is not submitted, then additional consultation under section 106 may be necessary. The respective federal agency is responsible for fulfilling its obligation to comply with section 106.

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

(d) Where the non-Federal applicant has identified historic properties on which the proposed NWP activity might have the potential to cause effects and has so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects to historic properties or that NHPA section 106 consultation has been completed. For non-federal permittees, the district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA section 106 consultation is required. If NHPA section 106 consultation is required, the district engineer will notify the non-Federal applicant that he or she cannot begin the activity until section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

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

21. **Discovery of Previously Unknown Remains and Artifacts.** Permittees that discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by an NWP, they must immediately notify the district engineer of what they have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

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

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

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

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

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

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

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

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

(e) Compensatory mitigation plans for NWP activities in or near streams or other open waters will normally include a requirement for the restoration or enhancement, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, the restoration or maintenance/protection of riparian areas may be the only compensatory mitigation required. If restoring riparian areas involves planting vegetation, only native species should be planted. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address

documented water quality or habitat loss concerns. If it is not possible to restore or maintain/protect a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or maintaining/protecting a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of minimization or compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

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

(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in no more than minimal adverse environmental effects. For the NWPs, the preferred mechanism for providing compensatory mitigation is mitigation bank credits or in-lieu fee program credits (see 33 CFR 332.3(b)(2) and (3)). However, if an appropriate number and type of mitigation bank or in-lieu credits are not available at the time the PCN is submitted to the district engineer, the district engineer may approve the use of permittee-responsible mitigation.

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

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

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

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

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

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

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

(i) Where certain functions and services of waters of the United States are permanently adversely affected by a regulated activity, such as discharges of dredged or fill material into waters of the United States that will convert a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse environmental effects of the activity to the no more than minimal level.

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

25. **Water Quality.** (a) Where the certifying authority (state, authorized tribe, or EPA, as appropriate) has not previously certified compliance of an NWP with CWA section 401,

a CWA section 401 water quality certification for the proposed discharge must be obtained or waived (see 33 CFR 330.4(c)). If the permittee cannot comply with all of the conditions of a water quality certification previously issued by certifying authority for the issuance of the NWP, then the permittee must obtain a water quality certification or waiver for the proposed discharge in order for the activity to be authorized by an NWP.

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

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

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

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

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

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

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

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

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

_____
(Transferee)

_____
(Date)

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

(a) A statement that the authorized activity was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions;

(b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the

certification must include the documentation required by 33 CFR 332.3(l)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and

(c) The signature of the permittee certifying the completion of the activity and mitigation.

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

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

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

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

(2) 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or are in the vicinity of the activity, or to notify the Corps pursuant to general condition 20 that the activity might have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33

CFR 330.4(f)) and/or section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)) has been completed. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

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

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

(2) Location of the proposed activity;

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

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

(ii) For linear projects where one or more single and complete crossings require pre-construction notification, the PCN must include the quantity of anticipated losses of wetlands, other special aquatic sites, and other waters for each single and complete crossing of those wetlands, other special aquatic sites, and other waters (including those single and complete crossings authorized by an NWP but do not require PCNs). This information will be used by the district engineer to evaluate the cumulative adverse environmental effects of the proposed linear project, and does not change those non-PCN NWP activities into NWP PCNs.

(iii) Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the activity and when provided

results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);

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

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

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

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

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

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

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

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

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

(3) When agency coordination is required, the district engineer will immediately provide (e.g., via e-mail, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (FWS, state natural resource or water quality agency, EPA, and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to notify the district engineer via telephone, facsimile transmission, or e-mail that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse environmental effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure that the net adverse environmental effects of the proposed activity are no more than minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will

consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

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

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

District Engineer's Decision

1. In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If a project proponent requests authorization by a specific NWP, the district engineer should issue the NWP verification for that activity if it meets the terms and conditions of that NWP, unless he or she determines, after considering mitigation, that the proposed activity will result in more than minimal individual and cumulative adverse effects on the aquatic environment and other aspects of the public interest and exercises discretionary authority to require an individual permit for the proposed activity. For a linear project, this determination will include an evaluation of the single and complete crossings of waters of the United States that require PCNs to determine whether they individually satisfy the terms and conditions of the NWP(s), as well as the cumulative effects caused by all of the crossings of waters of the United States authorized by an NWP. If an applicant requests a waiver of an applicable limit, as provided for in NWPs 13, 36, or 54, the district engineer will only grant the waiver upon a written determination that the NWP activity will result in only minimal individual and cumulative adverse environmental effects.

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

engineer to assist in the minimal adverse environmental effects determination. The district engineer may add case-specific special conditions to the NWP authorization to address site-specific environmental concerns.

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

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

submit a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal. When compensatory mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan or has determined that prior approval of a final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation.

Further Information

1. District engineers have authority to determine if an activity complies with the terms and conditions of an NWP.

2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.

3. NWPs do not grant any property rights or exclusive privileges.

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

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

Definitions

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

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

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

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

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

Ecological reference: A model used to plan and design an aquatic habitat and riparian area restoration, enhancement, or establishment activity under NWP 27. An ecological reference may be based on the structure, functions, and dynamics of an aquatic habitat

type or a riparian area type that currently exists in the region where the proposed NWP 27 activity is located. Alternatively, an ecological reference may be based on a conceptual model for the aquatic habitat type or riparian area type to be restored, enhanced, or established as a result of the proposed NWP 27 activity. An ecological reference takes into account the range of variation of the aquatic habitat type or riparian area type in the region.

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

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

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

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

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

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

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

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

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

Open water: For purposes of the 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 flowing or standing water is either non-emergent, sparse, or absent. Vegetated shallows are considered to be open waters. Examples of “open waters” include rivers, streams, lakes, and ponds.

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

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

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

Pre-construction notification: A request submitted by the project proponent to the Corps for confirmation that a particular activity is authorized by nationwide permit. The request

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

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

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

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

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

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

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

Shellfish seeding: The placement of shellfish seed and/or suitable substrate to increase shellfish production. Shellfish seed consists of immature individual shellfish or individual shellfish attached to shells or shell fragments (i.e., spat on shell). Suitable substrate

may consist of shellfish shells, shell fragments, or other appropriate materials placed into waters for shellfish habitat.

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

Single and complete non-linear project: For non-linear projects, the term "single and complete project" is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete non-linear project must have independent utility (see definition of "independent utility"). Single and complete non-linear projects may not be "piecemealed" to avoid the limits in an NWP authorization.

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

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

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

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

Structure: An object that is arranged in a definite pattern of organization. Examples of structures include, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef,

permanent mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other manmade obstacle or obstruction.

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

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

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

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

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

REGIONAL CONDITIONS:

The following Regional Conditions have been approved by the Wilmington District for the Nationwide Permits (NWPs) published in the January 13, 2021, *Federal Register* (86 FR 2744) announcing the reissuance of 12 existing (NWPs) and four new NWPs, as well as the reissuance of NWP general conditions and definitions with some modifications.

A. EXCLUDED WATERS AND/OR AREAS

The Corps has identified waters that will be excluded from the use of all NWP's during certain timeframes. These waters are:

1. **Anadromous Fish Spawning Areas.** Work in waters of the U.S. designated by either the North Carolina Division of Marine Fisheries (NCDMF) or the North Carolina Wildlife Resources Commission (NCWRC) as anadromous fish spawning areas are prohibited from February 15th through June 30th, without prior written approval from the Corps and the appropriate wildlife agencies (NCDMF, NCWRC and/or the National

Marine Fisheries Service (NMFS)). Work in waters of the U.S. designated by NCWRC as primary nursery areas in inland waters are prohibited from February 15th through September 30th, without prior written approval from the Corps and the appropriate wildlife agencies. Work in waters of the U.S. designated by NCDMF as primary nursery areas shall be coordinated with NCDMF prior to being authorized by this NWP. Coordination with NCDMF may result in a required construction moratorium during periods of significant biological productivity or critical life stages.

2. **Trout Waters Moratorium.** Work in waters of the U.S. in the designated trout watersheds of North Carolina are prohibited from October 15th through April 15th without prior written approval from the NCWRC, or from the Eastern Band of Cherokee Indians (EBCI) Fisheries and Wildlife Management (FWM) office if the project is located on EBCI trust land. (See Section C.3. above for information on the designated trout watersheds).

3. **Sturgeon Spawning Areas.** No in-water work shall be conducted in waters of the U.S. designated by the National Marine Fisheries Service as Atlantic sturgeon critical habitat from February 1st through June 30th. No in-water work shall be conducted in waters of the U.S. in the Roanoke River designated as Atlantic sturgeon critical habitat from February 1st through June 30th, and August 1st through October 31st, without prior written approval from NMFS.

4. **Submerged Aquatic Vegetation.** Impacts to Submerged Aquatic Vegetation (SAV) are not authorized by any NWP, except NWP 48, NWP 55 and NWP 56, unless Essential Fish Habitat (EFH) consultation has been completed pursuant to the Magnuson-Stevens Fisheries Conservation and Management Act (Magnuson-Stevens Act). Permittees shall submit a PCN (See NWP General Condition 32) to the District Engineer prior to commencing the activity if the project would affect SAV. The permittee may not begin work until notified by the Corps that the requirements of the Magnuson-Stevens Act have been satisfied and that the activity is verified.

B. REGIONAL CONDITIONS APPLICABLE TO ALL NWP's

1. **Critical Habitat in Western NC.** For proposed activities within waters of the U.S. that require a Pre-Construction Notification (PCN) and are located in the thirteen counties listed below, permittees must provide a copy of the PCN to the U.S. Fish and Wildlife Service (USFWS), 160 Zillicoa Street, Asheville, North Carolina 28801 and the Corps Asheville Regulatory Field Office. Please see General Condition 18 for specific PCN requirements related to the Endangered Species Act and the below website for information on the location of designated critical habitat.

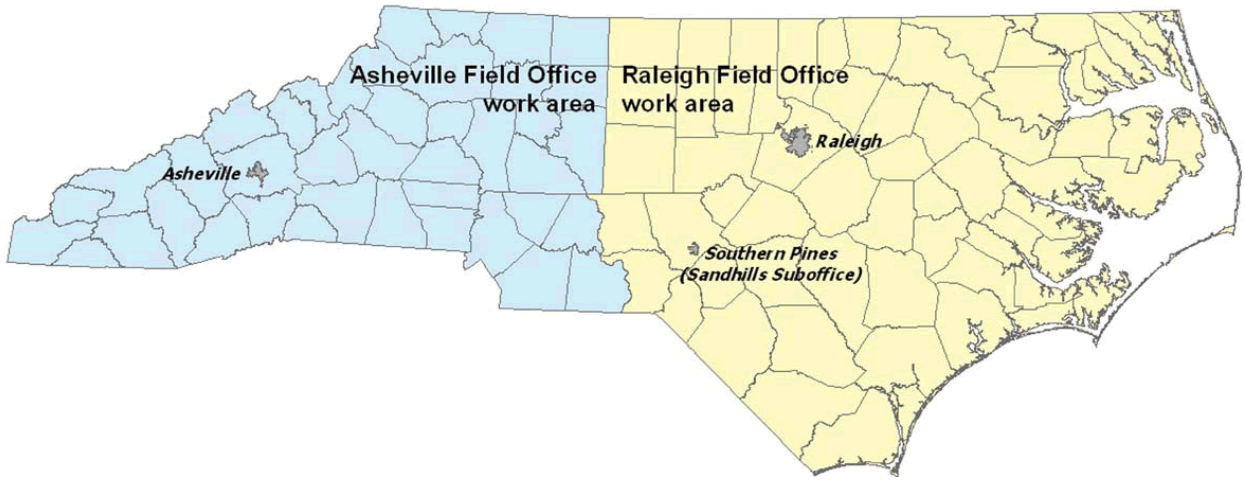
Counties with tributaries that drain to designated critical habitat that require notification to the Asheville U.S. Fish and Wildlife Service: Avery, Cherokee, Graham, Haywood, Henderson, Jackson, Macon, Mecklenburg, Mitchell, Swain, Transylvania, Union and Yancey.

Website and office addresses for Endangered Species Act Information:

The Wilmington District has developed the following website for permittees which provides guidelines on how to review linked websites and maps in order to fulfill NWP General Condition 18 (Endangered Species) requirements: http://www.saw.usace.army.mil/Missions/RegulatoryPermitProgram/AgencyCoordination/ESA.aspx.

Permittees who do not have internet access may contact the appropriate U.S. Fish and Wildlife Service offices listed below or Corps at (910) 251-4850.

Below is a map of the USFWS Field Office Boundaries:



Asheville U.S. Fish and Wildlife Service Office counties: All counties west of and including Anson, Stanly, Davidson, Forsythe and Stokes Counties.

U.S. Fish and Wildlife Service
Asheville Field Office
160 Zillicoa Street
Asheville, NC 28801
Telephone: (828) 258-3939

Raleigh U.S. Fish and Wildlife Service Office counties: All counties east of and including Richmond, Montgomery, Randolph, Guilford, and Rockingham Counties.

U.S. Fish and Wildlife Service
Raleigh Field Office
Post Office Box 33726
Raleigh, NC 27636-3726
Telephone: (919) 856-4520

2. **Special Designation Waters.** Prior to the use of any NWP that involves a discharge of dredged or fill material in any of the following identified waters and/or adjacent wetlands in North Carolina, permittees shall submit a PCN to the District Engineer prior to commencing the activity (see General Condition 32). The North Carolina waters and wetlands that require additional PCN requirements are:

"Primary Nursery Areas" (PNA), including inland PNA, as designated by the North Carolina Marine Fisheries Commission and/or the North Carolina Wildlife Resources Commission. The definition of and designated PNA waters can be found in the North Carolina State Administrative Code at Title 15A, Subchapters 3R and 10C (15A NCAC 03R .0103; 15A NCAC 10C .0502; and 15A NCAC 10C .0503) and at the following web pages:

- http://reports.oah.state.nc.us/ncac/title%2015a%20-%20environmental%20quality/chapter%2003%20-%20marine%20fisheries/subchapter%20r/15a%20ncac%2003r%20.0103.pdf

- http://reports.oah.state.nc.us/ncac/title%2015a%20-%20environmental%20quality/chapter%2010%20-%20wildlife%20resources%20and%20water%20safety/subchapter%20c/15a%20ncac%2010c%20.0502.pdf

- http://reports.oah.state.nc.us/ncac/title%2015a%20-%20environmental%20quality/chapter%2010%20-%20wildlife%20resources%20and%20water%20safety/subchapter%20c/15a%20ncac%2010c%20.0503.pdf

3. **Trout Waters.** Prior to any discharge of dredge or fill material into streams, waterbodies or wetlands within the 294 designated trout watersheds of North Carolina, the permittee shall submit a PCN (see General Condition 32) to the District Engineer prior to commencing the activity. The permittee shall also provide a copy of the PCN to the appropriate NCWRC office, or to the EBCI FWM Office (if the project is located on EBCI trust land), to facilitate the determination of any potential impacts to designated Trout Waters.

NCWRC and NC Trout Watersheds:

NCWRC Contact**	**Counties that are entirely within Trout Watersheds***		**Counties that are partially within Trout Watersheds***	
Mountain Coordinator 645 Fish Hatchery Rd., Building B Marion, NC 28752 828-803-6054 For NCDOT Projects: NCDOT Coordinator 12275 Swift Rd. Oakboro, NC 28129 704-984-1070	Alleghany Ashe Avery Graham Haywood	Jackson Macon Swain Transylvania Watauga	Burke Buncombe Caldwell Cherokee Clay Henderson Madison	McDowell Mitchell Polk Rutherford Surry Wilkes Yancey
EBCI Contact**	**Counties that are within Trout Watersheds***			
Office of Natural Resources P.O. Box 1747, Cherokee, NC 28719 (828) 359-6113	Qualla Boundary and non-contiguous tracts of trust land located in portions of Swain, Jackson, Haywood, Graham and Cherokee Counties.			

*NOTE: To determine PCN requirements, contact the Corps Asheville Regulatory Field Office at (828) 271-7980 or view maps showing trout watersheds in each County at the following webpage: http://www.saw.usace.army.mil/Missions/Regulatory-Permit-Program/Agency-Coordination/Trout/.

**If a project is located on EBCI trust land, submit the PCN in accordance with Regional Condition C.16. Contact the Corps Asheville Regulatory Field Office at (828) 271-7980 with questions.

4. **Western NC Waters and Corridors.** The permittee shall submit a PCN (see General Condition 32) to the District Engineer prior to commencing the activity in waters of the U.S. if the activity will occur within any of the following identified waters in western North Carolina, within 0.5 mile on either side of these waters, or within 0.75 mile of the Little Tennessee River, as measured from the top of the bank of the respective water (i.e., river, stream, or creek):

Brasstown Creek
Burningtown Creek
Cane River
Caney Fork
Cartoogechaye Creek
Chattooga River
Cheoah River
Cowee Creek
Cullasaja River
Deep Creek
Ellijay Creek
French Broad River
Garden Creek
Hiwassee River
Hominy Creek
Iotla Creek
Little Tennessee River (within the river or within 0.75 mile on either side of this river)
Nantahala River
Nolichucky River
North Fork French Broad River
North Toe River
Nottley River
Oconaluftee River (portion not located on trust/EBCI land)
Peachtree Creek
Shooting Creek
Snowbird Creek
South Toe River
Stecoah Creek
Swannanoa River
Sweetwater Creek
Tuckasegee River (also spelled Tuckaseegee or Tuckaseigee)
Valley River
Watauga Creek
Watauga River
Wayah Creek

West Fork French Broad River

To determine PCN requirements, contact the Corps Asheville Regulatory Field Office at (828) 271-7980 or view maps for all corridors at the following webpage: http://www.saw.usace.army.mil/Missions/Regulatory-Permit-Program/Agency-Coordination/Designated-Special-Waters.aspx .

5. **Limitation of Loss of Stream Bed.** NWPs may not be used for activities that may result in the loss of more than 0.05 acres of stream bed, except for NWP 32.

6. **Pre-Construction Notification for Loss of Stream Bed Exceeding 0.02 acres.** The permittee shall submit a PCN to the District Engineer prior to commencing the activity (see General Condition 32) prior to the use of any NWP for any activity that results in the loss of more than 0.02 acres of stream bed. This applies to NWPs that do not have PCN requirements as well as those NWPs that require a PCN.

7. **Mitigation for Loss of Stream Bed.** For any NWP that results in a loss of more than 0.02 acres of stream bed, the permittee shall provide a mitigation proposal to compensate for more than minimal individual and cumulative adverse impacts to the aquatic environment, unless the District Engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse effects of the proposed activity are minimal. For stream bed losses of 0.02 acres or less that require a PCN, 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 effect on the aquatic environment.

8. **Riprap.** For all NWPs that allow for the use of riprap material for bank stabilization, the following conditions shall be applied:

a. Filter cloth must be placed underneath the riprap as an additional requirement of its use in North Carolina waters. The placement of filter fabric is not required if the riprap will be pushed or “keyed” into the bank of the waterbody. A waiver from the specifications in this Regional Condition must be requested in writing.

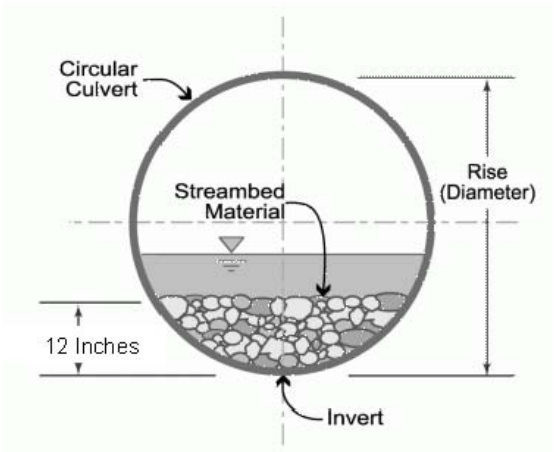
b. Riprap shall be placed only on the stream banks, or, if it is necessary to be placed in the stream bed, the finished top elevation of the riprap should not exceed that of the original stream bed.

9. **Culvert Placement.** For all NWPs that allow for culvert placement, the following conditions shall be applied:

a. For all NWPs that involve the construction/installation of culverts, measures shall be included in the construction/installation that will promote the safe passage of fish and other aquatic organisms

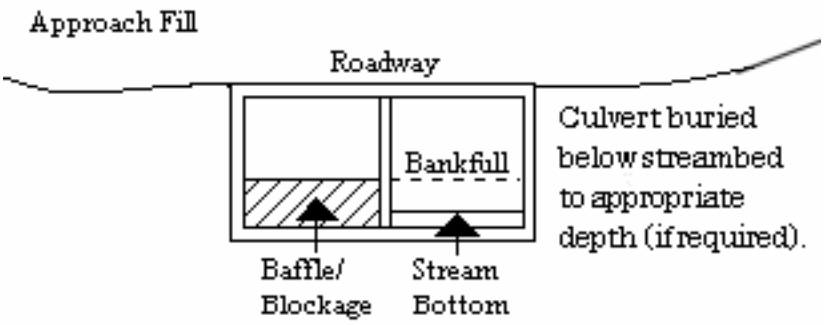
Placement of culverts and other structures in streams shall be below the elevation of the streambed by one foot for all culverts with a diameter greater than 48 inches, and 20% of the culvert diameter for culverts having a diameter less than or equal to 48 inches. If the culvert outlet is submerged within a pool or scour hole and designed to provide for aquatic passage, then culvert burial into the streambed is not required.
Culvert burial is not required for structures less than 72 inch diameter/width, where the slope of the culvert will be greater than 2.5%, provided that all alternative options for flattening the slope have been investigated and aquatic life movement/connectivity has been provided when possible (e.g., rock ladders, cross vanes, sills, baffles etc.). Culvert burial is not required when bedrock is present in culvert locations.

Installation of culverts in wetlands shall ensure continuity of water movement and be designed to adequately accommodate high water or flood conditions. When roadways, causeways, or other fill projects are constructed across FEMA-designated floodways or wetlands, openings such as culverts or bridges shall be provided to maintain the natural hydrology of the system as well as prevent constriction of the floodway that may result in destabilization of streams or wetlands.



A waiver from the depth specifications in this condition may be requested, in writing, by the permittee and issued by the Corp. This waiver request must be specific as to the reasons(s) for the request. The waiver will be issued if it can be demonstrated that the proposed design would result in less impacts to the aquatic environment. Culverts placed across wetland fills purely for the purposes of equalizing surface water do not have to be buried, but the culverts must be of adequate size and/or number to ensure unrestricted transmission of water.

b. Bank-full flows (or less) shall be accommodated through maintenance of the existing bank-full channel cross sectional area. Additional culverts or culvert barrels at such crossings shall be allowed only to receive bank-full flows.



c. Culverts shall be designed and installed in such a manner that the original stream profiles are not altered and allow for aquatic life movement during low flows. The dimension, pattern, and profile of the stream above and below a pipe or culvert shall not be modified by widening the stream channel or by reducing the depth of the stream in connection with the construction activity. The width, height, and gradient of a proposed culvert shall be such as to pass the average historical low flow and spring flow without adversely altering flow velocity. If the width of the culvert is wider than the stream channel, the culvert shall include multiple boxes/pipes, baffles, benches and/or sills to maintain the natural width of the stream channel. If multiple culverts/pipes/barrels are used, low flows shall be accommodated in one culvert/pipe and additional culverts/pipes shall be installed such that they receive only flows above bankfull.

10. **Utility Lines.** For all NWPs that allow for the construction and installation of utility lines, the following conditions shall be applied:

a. Utility lines consisting of aerial electric power transmission lines crossing navigable waters of the U.S. (which are defined at 33 CFR part 329) must comply with the applicable minimum clearances specified in 33 CFR 322.5(i).

b. The work area authorized by this permit, including temporary and/or permanent fills, will be minimized to the greatest extent practicable. Justification for work corridors exceeding forty (40) feet in width is required and will be based on pipeline diameter and length, size of equipment required to construct the utility line, and other construction information deemed necessary to support the request. The permittee is required to provide this information to the Corps with the initial PCN package.

c. A plan to restore and re-vegetate wetland areas cleared for construction must be submitted with the required PCN. Cleared wetland areas shall be re-vegetated, as appropriate, with species of canopy, shrub, and herbaceous species. The permittee shall not use fescue grass or any other species identified as invasive or exotic species by the NC Native Plant Society (NCNPS): https://ncwildflower.org/invasive-exotic-species-list/.

d. Any permanently maintained corridor along the utility right of way within forested wetlands shall be considered a loss of aquatic function. A compensatory mitigation plan will be required for all such impacts associated with the requested activity if the activity requires a PCN and the cumulative total of permanent conversion of forested wetlands

exceeds 0.1 acres, unless the District Engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse effects of the proposed activity are minimal.

Where permanently maintained corridor within forested wetlands is 0.1 acres or less, 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.

e. When directional boring or horizontal directional drilling (HDD) under waters of the U.S., including wetlands, permittees shall closely monitor the project for hydraulic fracturing or "fracking." Any discharge from hydraulic fracturing or "fracking" into waters of the U.S., including wetlands, shall be reported to the appropriate Corps Regulatory Field Office within 48 hours. Restoration and/or compensatory mitigation may be required as a result of any unintended discharges.

11. **Temporary Access Fills.** The permittee shall submit a PCN to the District Engineer prior to commencing the activity if the activity will involve the discharge of dredged or fill material into more than 0.1 acres of wetlands or 0.02 acres of stream channel for the construction of temporary access fills and/or temporary road crossings. The PCN must include a restoration plan that thoroughly describes how all temporary fills will be removed, how pre-project conditions will be restored, and include a timetable for all restoration activities.

12. **Federal Navigation Channel Setbacks.** Authorized structures and fills located in or adjacent to Federally authorized waterways must be constructed in accordance with the latest setback criteria established by the Wilmington District Engineer. You may review the setback policy at http://www.saw.usace.army.mil/Missions/Navigation/Setbacks.aspx. This general permit does not authorize the construction of hardened or permanently fixed structures within the Federally Authorized Channel Setback, unless the activity is approved by the Corps. The permittee shall submit a PCN (see General Condition 32) to the District Engineer to obtain a written verification prior to the construction of any structures or fills within the Federally Authorized Channel Setback.

13. **Northern Long-eared Bat – Endangered Species Act Compliance**

The Wilmington District, U.S. Army Corps of Engineers has consulted with the United States Fish and Wildlife Service (USFWS) in regard to the threatened Northern long-eared bat (NLEB) (*Myotis septentrionalis*) and Standard Local Operating Procedures for Endangered Species (SLOPES) have been approved by the Corps and the USFWS. This condition concerns effects to the NLEB only and does not address effects to other federally listed species and/or federally designated critical habitat.

A. Procedures when the Corps is the lead federal* agency for a project:

The permittee must comply with (1) and (2) below when:

• the project is located in the western 41 counties of North Carolina, to include non-federal aid North Carolina Department of Transportation (NCDOT) projects, OR;
• the project is located in the 59 eastern counties of North Carolina and is a non-NCDOT project.

*Generally, if a project is located on private property or on non-federal land, and the project is not being funded by a federal entity, the Corps will be the lead federal agency due to the requirement to obtain Department of the Army authorization to impact waters of the U.S. If the project is located on federal land, contact the Corps to determine the lead federal agency.

(1) A permittee using an NWP must check to see if their project is located in the range of the NLEB by using the following website: http://www.fws.gov/midwest/endangered/mammals/nleb/pdf/WNSZone.pdf. If the project is within the range of the NLEB, or if the project includes percussive activities (e.g., blasting, pile driving, etc.), the permittee is then required to check the appropriate website in the paragraph below to discover if their project:

• is located in a 12-digit Hydrologic Unit Code area ("red HUC" - shown as red areas on the map), AND/OR;
• involves percussive activities within 0.25 mile of a red HUC.

Red HUC maps - for the western 41 counties in NC (covered by the Asheville Ecological Services Field Office), check the project location against the electronic maps found at: http://www.fws.gov/asheville/htmls/project_review/NLEB_in_WNC.html. For the eastern 59 counties in NC (covered by the Raleigh Ecological Services Field Office), check the project location against the electronic maps found at: https://www.fws.gov/raleigh/NLEB_RFO.html.

(2) A permittee must submit a PCN to the District Engineer, and receive written verification from the District Engineer, prior to commencing the activity, if the activity will involve any of the following:

• tree clearing/removal and/or, construction/installation of wind turbines in a red HUC, AND/OR;
• bridge removal or maintenance, unless the bridge has been inspected and there is no evidence of bat use, (applies anywhere in the range of the NLEB), AND/OR:
• percussive activities in a red HUC, or within 0.25 mile of a red HUC.

The permittee may proceed with the activity without submitting a PCN to either the Corps or the USFWS, provided the activity complies with all applicable NWP terms and

general and regional conditions, if the permittee's review under A.(1) and A.(2) above shows that the project is:

- located outside of a red HUC (and there are no percussive activities), and the activity will NOT include bridge removal or maintenance, unless the bridge has been inspected and there is no evidence of bat use, OR;
- located outside of a red HUC and there are percussive activities, but the percussive activities will not occur within 0.25-mile of a red HUC boundary, and the activity will NOT include bridge removal or maintenance, unless the bridge has been inspected and there is no evidence of bat use, OR;
- located in a red HUC, but the activity will NOT include tree clearing/removal; construction/installation of wind turbines; bridge removal or maintenance, unless the bridge has been inspected and there is no evidence of bat use, and/or; any percussive activities.

B. Procedures when the USACE is not the lead federal agency:

For projects where another federal agency is the lead federal agency - if that other federal agency has completed project-specific ESA Section 7(a)(2) consultation for the NLEB, and has (1) determined that the project would not cause prohibited incidental take of the NLEB, and (2) completed coordination/consultation that is required by the USFWS (per the directions on the respective USFWS office's website), that project may proceed without PCN to either the USACE or the USFWS, provided all General and Regional Permit Conditions are met.

The NLEB SLOPES can be viewed on the USACE website at: http://www.saw.usace.army.mil/Missions/Regulatory-Permit-Program/Agency-Coordination/ESA/. Permittees who do not have internet access may contact the USACE at (910) 251- 4633.

14. **West Indian Manatee Protection.** In order to protect the endangered West Indian manatee (*Trichechus manatus*) the Permittee shall implement the USFWS' Manatee Guidelines, and strictly adhere to all requirements therein. The guidelines can be found at https://www.fws.gov/raleigh/pdfs/ManateeGuidelines2017.pdf.

15. **ESA Programmatic Biological Opinions.** The Wilmington District, USFWS, NCDOT, and the FHWA have conducted programmatic Section 7(a)(2) consultation for a number of federally listed species and designated critical habitat (DCH), and programmatic consultation concerning other federally listed species and/or DCH may occur in the future. The result of completed programmatic consultation is a Programmatic Biological Opinion (PBO) issued by the USFWS. These PBOs contain mandatory terms and conditions to implement the reasonable and prudent measures that are associated with "incidental take" of whichever species or critical habitat is covered by a specific PBO. Authorization under NWPs is conditional upon the permittee's compliance with all the mandatory terms and conditions associated with incidental take of the applicable PBO (or PBOs), which are incorporated by reference in

the NWPs. Failure to comply with the terms and conditions associated with incidental take of an applicable PBO, where a take of the federally listed species occurs, would constitute an unauthorized take by the permittee, and would also constitute permittee non-compliance with the authorization under the NWPs. If the terms and conditions of a specific PBO (or PBOs) apply to a project, the Corps will include this/these requirements in any NWP verification that may be issued for a project. For an activity/project that does not require a PCN, the terms and conditions of the applicable PBO(s) also apply to that non-notifying activity/project. The USFWS is the appropriate authority to determine compliance with the terms and conditions of its PBO and the ESA. All PBOs can be found on our website at: https://www.saw.usace.army.mil/Missions/Regulatory-Permit-Program/Agency-Coordination/ESA/.

16. **Work on Eastern Band of Cherokee Land.**

Notifying NWPs - All PCNs submitted for activities in waters of the U.S. on Eastern Band of Cherokee Indians (EBCI) trust land (i.e., Qualla Boundary and non-contiguous tracts of trust land located in portions of Swain, Jackson, Haywood, Graham and Cherokee Counties), must comply with the requirements of the latest MOU between the Wilmington District and the EBCI.

Non-notifying NWPs - Prior to the use of any non-notifying NWP for activities in waters of the U.S. on EBCI trust land (i.e., Qualla Boundary and non-contiguous tracts of trust land located in portions of Swain, Jackson, Haywood, Graham and Cherokee Counties), all prospective permittees must comply with the requirements of the latest MOU between the Wilmington District and the EBCI; this includes coordinating the proposed project with the EBCI Natural Resources Program and obtaining a Tribal Approval Letter from the Tribe.

The EBCI MOU can be found at the following URL: http://saw-reg.usace.army.mil/FO/Final-MOU-EBCI-USACE.pdf

17. **Sedimentation and Erosion Control Structures and Measures**
All PCNs will identify and describe sedimentation and erosion control structures and measures proposed for placement in waters of the U.S. The structures and measures should be depicted on maps, surveys or drawings showing location and impacts to jurisdictional wetlands and streams.

C. SECTION 401 WATER QUALITY CERTIFICATION (WQC) AND/OR COASTAL ZONE MANAGEMENT ACT (CZMA) CONSISTENCY DETERMINATION SUMMARY AND APPLICABLE CONDITIONS

The CZMA Consistency Determination and all Water Quality Certifications for the NWPs can be found at: https://www.saw.usace.army.mil/Missions/Regulatory-Permit-Program/Permits/2017-Nationwide-Permits/