

Lake Metroparks  
Hemlock Ridge - 5900 Vrooman Rd.,  
Leroy Twp., OH 44077  
Entrance Drive and Parking Construction  
Bid No. 2024-033



Lake County Probate Judge  
**Mark J. Bartolotta**

Lake Metroparks Board of Park Commissioners  
**Gretchen Skok DiSanto**  
**Frank J. Polivka**  
**John C. Redmond, CPA**

Executive Director  
**Paul Palagyi**

**May 31, 2024**

## INDEX TO SPECIFICATIONS

### BIDDING MATERIAL

	<u>No. of Pages</u>
Invitation to Bid - Legal Notice	1
Instructions to Bidder	4
Supplemental Instructions to Bidders	2
Prevailing Wage Determination Cover Letter	1
Bid Form Information	1
*Bid Form	
Bid Form Information	2
Pricing Sheet	1
Offer Sheet	1
Bidders Signature & Business Information	1
Request for Approved Equal	1
Affidavit of Non-Collusion	2
Instructions & Affidavit of Delinquent Personal Property Tax Statement	2
Statement of Bidder's Qualifications and Experience	2
Bid Guarantee and Performance Bond	2
Checklist of Bid Proposal Forms	1

### CONTRACT MATERIAL

Board-Contractor Agreement (sample)	1-14
Contract Forms	
Application & Certificate for Payment - AIA Document G-702 and G-703	2
Certificate of Substantial Completion - AIA Document G-704	1
Consent of Surety to Final Payment - AIA Document G-707	1
Affidavit of Contractor - Ohio Legal Blank Form 47	2
Waivers of Liens for Material and Labor - Ohio Legal Blank, Form 50B	1
Affidavit of Prevailing Wages	1
List of Drawing Index	1
Army Corps of Engineers Nationwide Permit	40

**\* Bid Form must be purchased through SE Blueprint, Inc. 2035 Hamilton Avenue, Cleveland, Ohio 44114 (216) 241-2250 or [www.seblueprint.com](http://www.seblueprint.com).**

## **INVITATION TO BID - LEGAL NOTICE**

Sealed bids will be received at Lake Metroparks Administrative Offices, 11211 Spear Road, Concord Township, Ohio 44077 until **10:00 a.m.** local time, on **June 26, 2024** and thereafter will be publicly opened, read and recorded for the following:

NAME OF PROJECT: Hemlock Ridge Entrance Drive and Parking Construction

BID NUMBER: 2024-033

PRE-BID MEETING: June 18, 2024 at 10:00 a.m. (5900 Vrooman Rd. Leroy Twp. 44077- Northwest corner of I-90 & Vrooman Road)

All documents, specifications, plans, etc., can be VIEWED AND PURCHASED at [www.seblueprint.com](http://www.seblueprint.com). Copies may be PURCHASED for \$30.00 (Thirty Dollars), (non-refundable fee) through SE Blueprint, Inc., 2035 Hamilton Avenue, Cleveland, Ohio 44114, (216) 241-2250. A \$15 shipping/delivery fee is applicable for each set of Bidding Documents. Documents may also be REVIEWED, at Lake Metroparks Administrative Offices, 11211 Spear Road, Concord Township, Ohio 44077 or at [www.lakemetroparks.com](http://www.lakemetroparks.com), click on "About Us".

Each bid (\$50,000 or greater) shall be accompanied by a Bid Guarantee in the form of either:

1. A certified check or cashier's check (Bid Check) made payable to "Lake Metroparks", in an amount equal to 10% of the bid amount conditioned to provide that if the bid is accepted the bidder will enter into a proper contract for the work; or
2. A Bid Guarantee and Performance Bond, for the full amount of the bid as provided in Section 153.571 of the Ohio Revised Code. A form of this bond is included in the Bidding Documents.

Bids must be submitted in sealed envelopes and clearly marked with the Bid No. and Project Title. No bid may be withdrawn before sixty (60) days have elapsed after the Bid Opening Date. This bond shall be written on an acceptable surety company authorized to do business in the State of Ohio and in an amount equal to 100% of the contract price. Bid guarantees of all unsuccessful bidders will be held until a proper contract is entered into or until all bids are rejected, as the case may be, and will be returned immediately thereafter. The successful bidder shall be required to file, at the time a contract is entered into, a Performance Bond and Labor and Material Payment Bond.

The Board intends to award a contract to the lowest and best bidder whose bid is submitted in accordance with the requirements of these bidding documents and does not exceed the funds available for the Project. The Board reserves the right to accept separate bids on various items of work, or to accept any combination of bids, or to reject any or all bids, and to waive any technical deficiencies or irregularities in bids.

BY THE ORDER OF      **Lake Metroparks Board of Park Commissioners**  
                                 **Paul Palagyi, Executive Director**

Published: News-Herald, SE Blueprint and [www.lakemetroparks.com](http://www.lakemetroparks.com) on **May 31, 2024**.

# INSTRUCTION TO BIDDERS

## 1. **Bidding Documents**

1.1 Copies of the Contract Documents, including any Drawings and Specifications, may be obtained for bidding purposes upon the conditions set forth in the Invitation to Bid.

1.2 Persons or entities other than the bidder may view the Contract Documents at locations stated in the Invitation to Bid or at the office of the bidder. Persons or entities desiring additional information shall request such information from the bidder who shall then make a written request on its own letterhead to the Board for the additional information. The requesting person or entity shall bear the costs of printing and handling or any other cost arising from production of the requested information and shall be billed for printing costs directly by the printing company.

1.3 The bidder shall be responsible for advising any suppliers, subcontractors or sub-subcontractors of any alternates or changes to the Drawings and Specifications that may be issued as Addenda, and the Board assumes no responsibility for any bidder's failure to do so. The Board assumes no responsibility for errors or misinterpretations resulting from the use of incomplete sets of Contract Documents.

1.4 All prices and notations must be in ink or typewritten. Mistakes may be crossed out and corrections typed or printed adjacent to the mistake and initialed in ink by the person who signs bid. Prices shall be stated in units and quotations made separately on each item. In case of conflict, unit prices will govern. Where there is a conflict between words and figures, words will govern.

1.5 Bidders who have received this document from an outside source, not the Issuing Office (Lake Metroparks Planning Department), or obtained the documents from the Lake Metroparks website, should immediately contact the Issuing Office and provide their name, mailing address, email address, phone/fax number in order to be placed on the BIDDERS LIST. Bidders who fail to notify the Issuing Office with this information assume complete responsibility in the event that they do not receive communications from the Issuing Office prior to the closing date.

## 2. **Bid Form**

2.1 Bids must be made on the documents furnished in the Bid Documents. Each bid must contain the full name of all persons or entities submitting the bid and any parties-in-interest to such persons or entities.

2.2 Bids made by unincorporated entities or partnerships must set forth the name and place of residence or each principal or partner thereof, respectively.

2.3 Bids made by corporations must indicate the state of incorporation and the names and titles of officers having authority to sign the bid and Contract on behalf of the corporation. A copy of the corporate resolution authorizing those officers' signatures of the bid and Contract must be attached to the bid.

2.4 Proposals shall be addressed and sent to the address stated in the Invitation to Bid. Before the Board may consider any proposal, the Board must receive the proposal on or before the date and hour set for opening the bids. Conditions, limitations or provisions other than those expressly called for by any bidding document inserted as part of the proposal may cause the bid to be rejected by the Board.

2.5 Alterations of any Contract Document by erasure or interlineations must be explained or noted in such Contract Document over signature of bidder.

### **3. General Requirements**

3.1 Bidders may bid on any or all parts of the Work and on any alternate described in the Contract Documents. Bidders may bid on any combination of contracts to be let in connection with the Project provided that the bidder must be engaged in the type of work for which the bid is submitted.

3.2 The Board reserves the right to accept bids in the combinations shown on the bid form, or to reject any or all bids, and to waive any technical deficiencies or irregularities in bids.

3.3. No contract will be awarded to any bidder who is in arrears to the Board for any debt or contractual obligation or who is in default as a surety or otherwise on any obligation owed to the Board.

3.4. Oral, telephonic or telegraphic bids are invalid and will not receive consideration.

3.5 The bidder shall submit a properly executed statement regarding personal property taxes in accordance with the enclosed statement entitled "Personal Property Tax Delinquency."

3.6 The Bidder (Prime Contractor) shall supply a minimum of 15% of the total labor force required to complete this Project, exclusive of supervisory and administrative personnel.

### **4. Bonds or Guaranties**

*(Note - Bid Guarantee and Performance Bond are only required on Bids/Proposals in excess of \$50,000)*

4.1 A Bid Guarantee in the amount and manner prescribed in the Invitation to Bid shall accompany each bid.

4.2 The bidder shall furnish a Performance Bond and Labor and Material Payment Bond in the manner and amount prescribed in the Invitation to Bid.

4.3. The Board reserves the right to retain the Bid Guarantees of all bidders for a period of sixty (60) days after the bids are opened and read. During this sixty-day period, no bid may be withdrawn without the Board's permission or as otherwise provided by law. Bidders to whom contracts are awarded shall execute the contracts within (5) five days from the date of these bidders' receipt of notice of the contract award. Bidders whose Bid Guarantees are in a form other than the form set forth in section 153.571 of the Ohio Revised Code shall provide sureties in conjunction with execution of the contracts. Failure of any bidder to execute a contract or provide sureties within the time specified will be deemed an abandonment of the contract, will result in forfeiture by the bidder of its Bid Guarantee.

## **5. Examination of Drawings, Specifications and Work Site**

5.1 Prior to submitting a bid, each bidder shall carefully examine the Drawings, Specifications and all other Contract Documents as well as visit the site of the Work to fully apprise itself of all conditions and limitations under which the Work will be performed. The bid shall reflect the costs of all items necessary to perform the Work. No allowances will be made to any bidder because of a lack of examination of the Contract Documents or inspection of the Work Site, and upon submission of the bid, the bidder shall be deemed to have made such examination and inspection.

## **6. Statement of Bidder's Qualifications**

6.1 Each bidder shall complete and submit the enclosed "STATEMENT OF BIDDER'S QUALIFICATIONS".

## **7. Disclosures**

7.1 The bidder to whom the Contract is awarded shall within seven (7) calendar days of notification of such award submit in writing to the Board the following information:

- (a) the nature and extent of Work to be performed by the bidder's own employees and forces;
- (b) the names of suppliers of principal items, systems, materials or equipment proposed to be used for the Work as well as the names and descriptions of such items, systems, materials or equipment; and
- (c) the names of any Subcontractors and Sub-subcontractors proposed to be used for any part of the Work.

7.2 Bidders shall establish to the satisfaction of the Board the reliability and capability of any proposed Subcontractors, Sub-subcontractor or supplier.

7.3 Persons or entities proposed by bidders to be Subcontractors, Sub-subcontractors or suppliers must perform the Work for which they were initially proposed and shall not be removed or replaced without prior written consent of the Board.

7.4 The qualifications of all subcontractors must be included in the bid package as noted in the detailed specifications.

## **8. Working Hours**

8.1 Bids shall be based on the assumption that the Work will be performed on an eight (8) hour day, five (5) days a week basis. Any overtime expenses necessary to meet the construction schedule shall be borne by the contractor.

## **9. Administration of the Contract and Any Other Prime Contracts Relating to the Project**

9.1 The Bidder awarded the General Trades Contract shall be the Contract Administrator and as such shall schedule and coordinate the work performed under its contract as well as any work performed under any other prime contracts relating to the Project. The Contract Administrator shall include in its bid all costs involved in the scheduling and coordination of such work, including but not limited to costs attributable to compiling progress reports.

9.2 The Contract Administrator shall schedule, coordinate and direct all phases of construction to ensure timely completion of the Project. All prime contractors and Subcontractors shall cooperate with the Contract Administrator in preparing the work schedule and maintaining construction progress in accordance with the schedule. They shall also provide requested information to the Contract Administrator on a monthly basis to assist the Contract Administrator in performing its responsibilities as such. Failure of any prime contractor or any Subcontractor to cooperate with the Contract Administrator shall be deemed by the Board to be a breach of contract by the party failing to so cooperate.

9.3 The Board shall not certify monthly payments for any prime contractor until it receives from the Contract Administrator certification that such prime contractor's work progress is satisfactory and that the prime contractor is completing its work according to the schedule prepared by the Contract Administrator.

9.4 Progress meetings shall occur on the same day and hour each week for the duration of the Project, or as otherwise agreed to by the Board, prime contractors and subcontractors. The Board shall distribute accurate minutes of these meetings to all prime contractors. Decisions reached at such meetings shall be binding upon all parties involved in the Project.

9.5 The Contract Administrator shall prepare and submit to the Board a progress schedule for the Project. Upon the Board's approval of the schedule, the Contract Administrator shall furnish four (4) copies to the Board. The schedule shall be revised monthly or as otherwise necessary to ensure timely completion of the Project. The schedule and all revisions thereof, as approved by the Board, shall be binding upon all parties involved in the Project.

9.6 The Contract Administrator shall coordinate the distribution of all Drawings for the Project. A copy of such Drawings shall be kept at the job site at all times.

## **10. Wage Rates**

10.1 Any bidder awarded the Contract shall comply with the Wage Rate Requirements as described in Section 6 in Supplemental Instructions to Bidders in this this Document and ARTICLE 12 of the BOARD-CONTRACTOR AGREEMENT.

## **11. Discrimination**

11.1 Any bidder awarded the Contract shall comply with ARTICLE 20 of the BOARD-CONTRACTOR AGREEMENT.

End of Instructions to Bidders

## **SUPPLEMENTAL INSTRUCTIONS TO BIDDERS**

### **1. Questions about the Project**

1.1 All questions concerning the Project shall be referred to:

**Lake Metroparks Representative:**

Seth Oldham  
Park Planner  
(440) 639-7275 ext. 1874  
soldham@lakemetroparks.com

**Consultant Representative:**

John Urbanick – Rockaway Civil  
jurbanick@rockawaycivil.com

### **2. Pre-bid Conference**

2.1 There will be a pre-bid conference for this project on the dates(s) listed below.  
Attendance is recommended.

Date

Location

June 18, 2024 10:00 a.m.  
Vrooman Road)

5900 Vrooman Rd. Leroy Twp. 44077- (Northwest corner of I-90 &

### **3. Proposed Schedule for Project Completion**

3.1 This schedule reflects the anticipated time required to complete the work defined in the specifications and shown on the drawings. Bidders are requested to submit with their bid, their proposed schedule for completion of the work described.

Advertised Public Bidding .....	May 31, 2024
Pre-Bid Conference .....	June 18, 2024
Bid Opening .....	June 26, 2024
Award of Bid by Board .....	July 10, 2024
Authorization to Proceed and Contracts .....	July 17, 2024
Construction to Commence .....	August 1, 2024
Substantial Completion .....	December 1, 2024
Punch List Completion .....	December 8, 2024
Occupancy by Lake Metroparks and Final Completion ....	December 22, 2024
The work shall commence no later than five (5) days after the Contractor's receipt of written notice to commence work, and, subject to authorized adjustments	



#### **4. Time of Completion**

4.1 **Substantial Completion**, as defined in Paragraph 4.3 & 4.5 of Board –Contractor Agreement, shall be achieved not later than the date of December 1, 2024, but not later than the **Final Completion Date** of December 22, 2024.

#### **5. Estimate of Cost**

5.1 The following is an estimated range of cost for completing the project:

BASE BID TOTAL RANGE: \$657,000.00

#### **6. Prevailing Wage Threshold Levels**

6.1 Under guidelines established by AM Sub. H.B.350, if the Contract Sum under this Agreement exceeds the dollar thresholds established by the *Ohio Department of Employment Services - Wage and Hour Division*, the contractor(s) are required to conform to the prevailing wage rates as established by the Ohio Industrial Relations Board. Thresholds are to be adjusted biennially (every two years) by the Director of Ohio Department of Commerce.

Biennial adjustments to threshold levels are made according to the Price Deflator for Construction Index, United States Department of Commerce, Bureau of the Census.

##### 6.2 Threshold Levels

“New” construction threshold for *Building Construction* – **\$250,000**

“Reconstruction, enlargement, alteration, repair, remodeling, renovation, or painting” threshold level for *Building Construction* – **\$75,000**

##### **As of January 1, 2024:**

“New” construction that involves *roads, streets, alleys, sewers, ditches and other works connected to road or bridge construction* threshold level has been adjusted to – **\$98,974**

“Reconstruction, enlargement, alteration, repair, remodeling, renovation, or painting” that involves *roads, streets, alleys, sewers, ditches and other works connected to road or bridge construction* threshold level has been adjusted to – **\$29,653**

6.3 The Prevailing Wage Determination Schedule for this project is available for review at the office of the Owner’s Prevailing Wage Coordinator, or for the complete Prevailing Wage information packet please contact:

Ohio Department of Commerce  
Division of Industrial Compliance and Labor  
Bureau of Wage and Hour Administration  
6606 Tussing Road, PO Box 4009  
Reynoldsburg, Ohio 43068-9009  
614-644-2239

[www.com.ohio.gov/laws/](http://www.com.ohio.gov/laws/)

6.4 Current prevailing wage rates are available through the Ohio Department of Commerce at the following link:

<http://www.com.ohio.gov/dico/>

## Prevailing Wage Determination Cover Letter

County: LAKE  
Determination Date: May 31, 2024  
Expiration Date: August 31, 2024

THE FOLLOWING PAGES ARE PREVAILING RATES OF WAGES ON PUBLIC IMPROVEMENTS FAIRLY ESTIMATED TO BE MORE THAN THE AMOUNT IN O.R.C. SEC. 4115.03 (b) (1) or (2), AS APPLICABLE.

Section 4115.05 provides, in part: "Where contracts are not awarded or construction undertaken within ninety days from the date of the establishment of the prevailing wages, there shall be a redetermination of the prevailing rate of wages before the contract is awarded." The expiration date of this wage schedule is listed above for your convenience only. This wage determination is not intended as a blanket determination to be used for all projects during this period without prior approval of this Department.

Section 4115.04, Ohio Revised Code provides, in part: "Such schedule of wages shall be attached to and made a part of the specifications for the work, and shall be printed on the bidding blanks where the work is done by contract..."

The contract between the letting authority and the successful bidder shall contain a statement requiring that mechanics and laborers be paid a prevailing rate of wage as required in Section 4115.06, Ohio Revised Code. The contractor or subcontractor is required to file with the contracting public authority upon completion of the project and prior to final payment therefore an affidavit stating that he has fully complied with Chapter 4115 of the Ohio Revised Code.

The wage rates contained in this schedule are the "Prevailing Wages" as defined by Section 4115.03, Ohio Revised Code (the basic hourly rates plus certain fringe benefits). These rates and fringes shall be a minimum to be paid under a contract regulated by Chapter 4115 of the Ohio Revised Code by contractors and subcontractors. The prevailing wage rates contained in this schedule include the effective dates and wage rates currently on file. In cases where future effective dates are not included in this schedule, modifications to the wage schedule will be furnished to the Prevailing Wage Coordinator appointed by the public authority as soon as prevailing wage rates increases are received by this office.

"There shall be posted in a prominent and accessible place on the site of work a legible statement of the Schedule of Wage Rates specified in the contract to the various classifications of laborers, workmen, and mechanics employed, said statement to remain posted during the life of such contract." Section 4115.07, Ohio Revised Code.

Apprentices will be permitted to work only under a bona fide apprenticeship program if such program exists and if such program is registered with the Ohio Apprenticeship Council.

Section 4115.071 provides that no later than ten days before the first payment of wages is due to any employee of any contractor or subcontractor working on a contract regulated by Chapter 4115, Ohio Revised Code, the contracting public authority shall appoint one of his own employees to act as the prevailing wage coordinator for said contract. The duties of the prevailing wage coordinator are outlined in Section 4115.071 of the Ohio Revised Code.

Section 4115.05 provides for an escalator in the prevailing wage rate. Each time a new rate is established, that rate is required to be paid on all ongoing public improvement projects.

A further requirement of Section 4115.05 of the Ohio Revised Code is: "On the occasion of the first pay date under a contract, the contractor shall furnish each employee not covered by a collective bargaining agreement or understanding between employers and bona fide organizations of Labor with individual written notification of the job classification to which the employee is assigned, the prevailing wage determined to be applicable to that classification, separated into the hourly rate of pay and the fringe payments, and the identity of the prevailing wage Coordinator appointed by the public authority. The contractor or subcontractor shall furnish the same notification to each affected employee every time the job classification of the employee is changed."

Work performed in connection with the installation of modular furniture may be subject to prevailing wage.

**THIS PACKET IS NOT TO BE SEPARATED BUT IS TO REMAIN COMPLETE AS IT IS SUBMITTED TO YOU. (Reference guidelines and forms are included in this packet to be helpful in the compliance of the Prevailing Wage law.)**

# BID FORM

**Bid Form documents can only be purchased from SE Blueprint, Inc.**

SE Blueprint, Inc.  
2035 Hamilton Avenue  
Cleveland, Ohio 44114  
[seblue@seblueprint.com](mailto:seblue@seblueprint.com)  
(216) 241-2250 phone  
(216) 241-2075 fax

## Contents of Bid Form:

Price Sheet  
Offer Sheet  
Bidders Signature & Business Information  
Request for Approved Equal  
Affidavit of Non-Collusion  
Affidavit of Delinquent Personal Property Tax Statement  
Statement of Bidder's Qualifications & Experience  
Bid Guarantee and Performance Bond  
Checklist of Bid Proposal Forms

## **Contract Forms**

The following forms shall be used during the contract:

LAKE METROPARKS BOARD-CONTRACTOR AGREEMENT

AIA DOCUMENT G702 AND G703, APPLICATION & CERTIFICATE FOR PAYMENT

AIA DOCUMENT G704, CERTIFICATE OF SUBSTANTIAL COMPLETION

AIA DOCUMENT G707, CONSENT OF SURETY COMPANY TO FINAL PAYMENT

OHIO LEGAL BLANK FORM 47, AFFIDAVIT OF ORIGINAL OR SUB-CONTRACTOR

OHIO LEGAL BLANK FORM 50 B, WAIVER OF LIEN

AFFIDAVIT OF PREVAILING WAGES



**LAKE METROPARKS**  
**BOARD - CONTRACTOR AGREEMENT**  
11211 SPEAR ROAD, CONCORD TWP., OHIO 44077  
(440) 639-7275

**CONTRACT INFORMATION**

NAME OF CONTRACT: \_\_\_\_\_

LOCATION: \_\_\_\_\_

Bid No: \_\_\_\_\_

Bid Open: \_\_\_\_\_

Contract Amount: \_\_\_\_\_

P.O Number: \_\_\_\_\_

Board Approval: \_\_\_\_\_

Completion Date: \_\_\_\_\_

**CONTRACTOR INFORMATION**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**BONDING / SURETY INFORMATION**

**Surety/Bond Company**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**MISCELLANEOUS INFORMATION**

SIGNED CONTRACT RECEIVED

PERFORMANCE BOND

WORKER'S COMP. CERTIFICATE

CERTIFICATE OF INSURANCE

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## **BOARD-CONTRACTOR AGREEMENT**

THIS AGREEMENT (AKA the "CONTRACT") is made between Lake Metroparks Board of Park Commissioners (the "BOARD") of the State of Ohio and **CONTRACTOR**. (the "Contractor") of the State of Ohio. This Contract shall be effective on the last date set forth on the signature page.

### **Article 1**

#### **THE CONTRACT DOCUMENTS**

1.1 The Contract Documents consist of the Instructions to Bidders, if any, the bid of the Contractor (Including his bid guarantee), if any, the Contractor's performance bond, this Contract and all schedules and exhibits attached hereto, the Drawings, if any, listed on Schedule A hereto by issue date and revision date, the Specifications (both general and technical) contained in the Project Manual, if any, and any Addenda issued prior to the Execution of this Contract and modifications issued after execution of this Contract (such as Change Orders and Field Orders for minor changes in the Work). These form the binding Contract Documents if required by all. Capitalized terms used herein shall be defined as stated in Article 2 hereof or elsewhere in the Contract Documents. In the event of any inconsistency between this Contract and any of the other Contract Documents, the provisions of this Contract shall control. The intent of the Contract Documents is to include all labor, materials, equipment and other items necessary for the proper execution and completion of the Work and the terms and conditions of payment therefore. Work not covered in the Contract Documents will not be required unless it is consistent therewith and reasonably inferable there from as being necessary to produce the intended results. All of the Contract Documents form the total Contract, and all are as fully a part of the Contract as if attached hereto or repeated herein.

1.2 Nothing contained in the Contract Documents shall create any contractual relationship between the Board and any Subcontractor or Sub-subcontractor.

1.3 By executing this Contract, the Contractor represents that he has visited the site and familiarized itself with the local conditions under which the Work is to be performed.

### **Article 2**

#### **DEFINITIONS**

2.1 The Project Manager will provide administration of the Contract and is an Authorized Agent of the Board. The Project Manager will have authority to act on behalf of the Board only to the extent provided in the Contract Documents.

2.2 Subcontractor is a person or entity who has a direct contract with the Contractor to perform any of the Work at the site. A sub-subcontractor is a person or entity who has a direct contract with any Subcontractor to perform any of the Work at the site.

2.3 Instructions to bidders are instructions contained in the bidding requirements for preparing and submitting bids for the Work.

2.4 Specifications are written descriptions of a technical nature of materials, equipment construction systems, standards and workmanship.

2.5 Addenda are written or graphic instruments issued prior to the execution of the Contract which modify or interpret the bidding documents, including Drawings and Specifications, by additions, deletions, clarifications or corrections. Addenda become part of the Contract Documents when the Contract is executed.

2.6 Samples are physical examples furnished by the Contractor for the Project Manager's review and approval, which illustrate materials, equipment or workmanship, and which establish standards by which the Work will be judged.

2.7 Product Data is information furnished by the Contractor for the Project Manager's review and approval regarding materials or products to be used in the Work and which establish standards by which the Work will be judged.

2.8 Work comprises the completed structures, products or services, or any combination thereof, required by the Contract Documents, and includes all labor necessary to produce such structures, products or services, and all materials and equipment incorporated or to be incorporated in such structures, products or services.

2.9 Drawings and Plans are documents showing in graphic or pictorial form the design, location and dimension of the elements of the Work.

2.10 Application for Payment is the Contractor's written request for payment of amount due for completed portions of the Work and, if provided herein, for materials delivered and suitably stored pending their incorporation into the Work.

2.11 Project Manual is the manual containing any bidding documents, Specifications, and certain other Contract Documents.

2.12 Change Order is a written order to the Contractor, made and executed as provided in Article 17 hereof, issued after execution of the Contract, authorizing a Change in the Plans or an adjustment in the Contract Sum or the Contract Time.

2.13 Field Order is a written order issued by the Project Manager to the Contractor effecting minor interpretations of the Contract Documents or minor changes in the Work not involving an adjustment in the Contract sum or an extension of the Contract Time.

### **Article 3**

#### **THE WORK**

3.1 The Contractor shall perform all Work required by the Contract Documents for **Lake Metroparks PROJECT**. As more fully described in Exhibit A hereto.

### **Article 4**

#### **TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

4.1 The Work shall commence no later than five (5) days after the Contractor's receipt of written notice to commence work, and, subject to authorized adjustments. **Substantial Completion**, as defined in Section 4.3 hereof, shall be achieved no later than **DATE** (the "Contract time").

4.2 If the time for Substantial Completion is exceeded, the Board is hereby authorized to deduct and retain out of the payments that may be due or become due the Contractor liquidated damages, and not as a penalty, for each and every day the Work is delayed beyond the time so stipulated, it being understood and agreed that actual



damages would be difficult to ascertain with precision in any such case and that the amount of such liquidated damages bears a reasonable relationship to the actual damages that may be projected.

Liquidated Damages will be based on Original Contract Amount.

Original Contract Amount		Damages to be deducted for each calendar day of overrun
(From) \$0	(To and Including) \$50,000	\$25.00
\$50,001	\$100,000	\$50.00
\$100,001	\$300,000	\$100.00
\$300,001	\$500,000	\$200.00
\$500,001	\$750,000	\$325.00
\$750,001	\$1,000,000	\$450.00
\$1,000,001	\$1,500,000	\$625.00
\$1,500,001	\$2,000,000	\$875.00
OVER	\$2,000,000	\$1,000.00

4.3 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Board can occupy or utilize the Work for its intended use (subject only to minor punch list items which will not unreasonably interfere with the Board's full use, occupancy and enjoyment of the Project site), and all required occupancy permits, if any, have been issued. The Contractor shall thereafter use due-diligence to complete such minor punch list items to the end that Final Completion will be achieved within fourteen (14) days after Substantial Completion and shall cause the least possible interference with the Board, its employees and guests.

4.4 The Date of Substantial Completion of the Work is the date upon which the Board can occupy or utilize the Work for the use for which it is intended or upon which in all material respects it serves the purpose for which it was intended.

## Article 5

### **CONTRACT SUM**

5.1 The Board shall pay the contractor for the performance of the Work subject to deductions and additions by properly authorized written Change Orders as provided herein, the Contract Sum of **AMOUNT (\$)**. (Bid Amount in Lump Sum).

The Contract Sum is determined as follows:

- |                      |                        |               |
|----------------------|------------------------|---------------|
| 1.                   | <b>Item 1 Base Bid</b> | \$ <b>XXX</b> |
| TOTAL, Not to Exceed |                        | \$ <b>XXX</b> |

5.2 Unless otherwise directed by the contract documents, the Contractor shall include in the Contract Sum any Contingencies stated in the Contract Documents. Items covered by this Contingency shall be supplied for such amounts and by such persons as the Board may direct.

A. The Contingency shall cover the cost to the Contractor, less any applicable trade discount, of the materials and equipment required by the Contingency delivered at the site.

B. The Contractor's costs for unloading and handling on the site, labor, installation costs, overhead, profit and other expenses contemplated for the original contract shall be included in the Contract Sum and not in the Contingency.

C. Whenever the cost is more than or less than the Contingency, the Contract Sum shall be adjusted accordingly by Change Order, the amount of which will recognize changes, if any, in handling costs on the site, labor, installation costs, overhead, profit and other expenses.

5.3 Within the Schedule of Items, several items may have cash Contingency assigned to them. This Contingency is ONLY an Estimate of what the item may actually cost. The final actual cost of the item(s) may be higher or lower than what is shown for the Contingency. The contractor will be paid ONLY for what is finally and actually installed. The contractor will provide all necessary documentation, invoices, receipts, time cards, payroll records, shipping tickets, records, data, etc. That indicates the actual and final cost of the item(s). If the actual and final cost of the item(s) is less than what is indicated in the Contingency amount, the Board shall receive a credit. If the actual and final cost of the item(s) is more than what is indicated in Contingency amount, the contractor will receive the correct amount, provided that all invoices and records, etc. are submitted to the Board.

## **Article 6**

### **PROGRESS PAYMENTS**

6.1 Based upon Applications for Payment submitted by the Contractor, the Project Manager may make progress payments on account of the Contract Sum.

6.2 Application for progress payments may be made on intervals as requested by the Contractor, but not more frequently than monthly.

6.3 Before the first Application for Payment, the Contractor shall submit to the Project Manager a schedule that apportions the lump sum price to the major components forming the work which schedule shall be prepared in such form and supported by such data to substantiate its accuracy as the Project Manager may require. This schedule, unless objected to by the Project Manager, shall be used only as a basis for the Contractor's applications for payment.

6.4 At least fourteen (14) days before the date for each progress payment, the Contractor shall submit to the Project Manager an itemized Application for Payment, notarized, supported by such data substantiating the Contractor's right to payment as the Project Manager may require, and reflecting retainage, if any, as provided in the Contract Documents.

6.5 The Project Manager will, within forty-five (45) days after the receipt of the Contractor's application for payment, either pay the amount that the Project Manager determines is properly due, or notify the Contractor in writing of the reasons for withholding payment.

6.6 No progress payment, nor any partial or entire use or occupancy of the Work by the Project Manager shall constitute an acceptance of any work not in accordance with the Contract Documents.

6.7 Progress payments for acceptable labor and work in place shall be made at the rate of ninety percent (90%) of the total amount approved by the Project Manager as an estimated progress payment, less former payments therein, provided that said work in place is free from any attested accounts, or from any claims for damages that might in any manner become a liability or charge against the Board, and except as herein provided, the allowance of such estimates shall not be deemed a final acceptance of the work or material therein included. The Project Manager upon receipt of the Contractor's lien waivers from the contractor and his subcontractors, that indicate any and all liens and encumbrances on the Work have been fully discharged, will make such progress payments.

6.8 Retainage held, in order to ensure the faithful and proper performance of the Contract, shall be deposited in an escrow account as designated in Section 153.63 of the Ohio Revised Code. The escrow instructions to the escrow agent shall be in conformance with the provisions of this Contract and with Sections 153.13 and 153.63 of the Ohio Revised Code. This Section 6.8 shall not apply to contracts the total cost of which is less than fifteen thousand dollars (\$15,000).

6.9 If the Contractor fails to comply with the terms of any of the Contract Documents, or with the orders or directions of the Project Manager as provided herein, the Project Manager reserves the right to withhold any payment that may be due until such terms, orders or directions have been complied with to the satisfaction of the Project Manager.

6.10 Payments may be withheld on account of (1) defective work not remedied, (2) claims filed, (3) failure of the Contractor to make payments properly to Subcontractors or for labor, materials, or equipment, (4) damage to the Project Manager or another contractor, of (5) persistent failure to carry out the Work in accordance with the Contract Documents.

## **Article 7**

### **FINAL PAYMENT**

7.1 The Project Manager shall make final payment, constituting the entire unpaid balance of the Contract Sum, to the Contractor when the Work has been completed, the Contract fully performed, and any and all liens and encumbrances released and discharged.

7.2 Final payment shall not be due until the Project Manager determines that Substantial Completion of the Work has occurred and the Contractor has delivered to the Project Manager a complete release of all liens and encumbrances arising out of this Contract and/or the Work or receipts in full covering all labor, materials and equipment for which a lien could be filed, or a bond satisfactory to the Project Manager indemnifying it against any lien. If any lien remains unsatisfied after all payments are made, the Contractor shall refund to the Project Manager all moneys the latter may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees, if any liens remain unsatisfied prior to final payment to contractor, the Project Manager shall retain those funds until all appropriate executed and notarized lien waiver(s) are provided.

7.3 The making of final payment shall constitute a waiver of all claims by the Project Manager except those arising from (1) potential or unsettled liens, (2) faulty or defective Work appearing after Substantial Completion, (3) failure of the Work to comply with the requirements of the Contract Documents, or (4) terms of any special warranties required by the Contract Documents. The acceptance of final payment shall constitute a waiver of all claims by the Contractor except those previously made in writing and identified by the Contractor as unsettled at the time of the final application for payment.

**Article 8**  
**THE BOARD**

8.1 The Board shall at all times have access to the Work wherever it is in preparation and progress.

8.2 Based on the Board's observations and an evaluation of any application for payment, the Board will determine the amounts owing to the Contractor in accordance with Article 6.

8.3 The Board may reject Work that does not conform to the Contract Documents.

8.4 To the extent required for the Work, the Board shall furnish all surveys and a legal description of the site.

8.5 Except as provided in Section 9.5, the Board shall secure and pay for any approval, easement, assessment or charge required for any construction, use or occupancy of any permanent structure or permanent change in any existing facility.

8.6 The Board shall forward all instructions directly to the Contractor.

8.7 If the Contractor fails to correct defective Work or persistently fails to carry out the Work in accordance with the Contract Documents, The Board, by written order, may order the Contractor to stop the Work or any portion thereof, until the cause for such order has been eliminated; however, this right of the Board to stop the Work shall not give rise to any duty on the part of the Board to exercise this right for the benefit of the Contractor or any other person or entity.

**Article 9**  
**THE CONTRACTOR**

9.1 The Contractor shall supervise and direct the Work using its best skill and attention and shall be solely responsible for all means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract.

9.2 Unless otherwise specifically provided in the Contract Documents, the Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

9.3 The Contractor shall at all times enforce strict discipline and good order among its employees and shall not employ on the Work any unfit person or anyone not skilled in the task assigned to him.

9.4 The Contractor warrants to the Board that all materials and equipment incorporated in the Work will be new unless otherwise specified, and that all Work will be of good quality, free from faults and defects and in conformance with the Contract Documents. All Work not conforming to these requirements may be considered defective.

9.5 Unless otherwise indicated in the Contract Documents, the Contractor shall secure and pay for any building permit and for all other permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Work.

9.6 The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations, and lawful orders of any public authority bearing on the performance of the Work, and shall promptly notify the Board if the Drawings and Specifications, of any, are at variance therewith.

9.7 The Contractor shall be responsible to the Board for the acts and omissions of its employees and Subcontractors and their agents and employees, and any other persons performing any of the Work under a contract with the Contractor.

9.8 The Contractor shall review, approve and submit any Drawings, Product Data and Samples required by the Contract Documents. The Work shall be in accordance with approved submittals.

9.9 The Contractor at all times shall keep the premises free from accumulation of waste materials or rubbish caused by its operations. At the completion of the Work, it shall remove all of its waste materials and rubbish from and about the Work site as well as its tools, equipment, machinery and surplus materials.

9.10 The Contractor shall pay all royalties and license fees. It shall defend all suits or claims for infringement of any patent, copyright, trade secured or other proprietary rights and shall save the Board harmless from loss on account thereof.

9.11 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Board and its agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense

A. is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, including but not limited to the Work itself, including the loss of use resulting there from, and

B. is caused in whole or in part by any negligent act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Section 9.11. In any and all claims against the Board or any of its agents or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by either of them, or anyone for whose acts either of them may be liable, the indemnification obligation under this Section 9.11 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or Subcontractor under workers or workmen's compensation acts, disability benefit acts or other employee benefit acts.

## **Article 10**

### **SUBCONTRACTS**

10.1 Unless otherwise required by the Contract Documents or the Bidding Documents, the Contractor, within seven (7) days of being awarded the Contract, shall furnish to the Board in writing the names of any Subcontractors for each of the principal portions of the Work. The Contractor shall not be required to contract with anyone to whom he has a reasonable objection. Contracts between the Contractor, which are to be performed by a Subcontractor, shall include language that shall bind the subcontractor to the same terms of the contract documents as to which the contractor is bound and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by such Contract Documents, assumes toward the Board.

## Article 11

### **INSURANCE**

11.1 The Contractor agrees to provide and maintain at its own expense, worker's compensation coverage that is in compliance with the laws of the State of Ohio.

A. The Contractor also agrees to provide and maintain, at its own expense, Contractor's general liability insurance, covering premises operations, underground, explosion and collapse hazards, products/completed operation, contractual liability, independent contractor's liability, broad form property damage liability, personal injury liability with the employee exclusion deleted, incidental malpractice and extended bodily injury. The Board is to be named as additional insured under the policy, and certification shall be provided prior to the award of the Contract.

B. Limits of liability for general liability coverage shall be a minimum of \$1,000,000 combined single limit - bodily injury and property damage liabilities combined. The Board must be provided a minimum of (30) thirty days' notice of cancellation by the insurance carrier.

C. The Contractor shall also provide automobile liability insurance at limits not less than \$1,000,000 combined single limit - bodily injury and property damage liabilities combined. Coverage must be extended to provide protection for liabilities arising from the use of hired or non-owned automobiles. Any fellow employee exclusion must be deleted. The Board must be named as additional insured under this policy, with certification and endorsement provided prior to the award of Contract. The Board must be provided a minimum of thirty (30) days' notice of cancellation by the insurance carrier.

11.2 The Board shall be responsible for purchasing and maintaining its own liability insurance and, at its option, may maintain such insurance as will protect it against claims which may arise from operations under the Contract.

## Article 12

### **WAGE RATES**

12.1 The Contractor and any Subcontractor shall comply with Chapter 4115 of the Ohio Revised Code. Failure by the Contractor to so comply will be deemed by the Board to be a breach of contract. A schedule of the wage rates applicable under said chapter will be furnished to the Contractor by the Board upon request, if such schedule is not included in any Project Manual. The Contractor and any Subcontractor must submit, before beginning performance under this Contract, a schedule of the dates upon which wage payments are to be made, and for each such date thereafter, a copy of his or its complete payroll for that date, exhibiting for each employee his name, current address, social security number, number of hours worked per day and for the week, his hourly rate of pay, job classification, fringe benefits and deductions from wages. The Contractor and any Subcontractor must file with the Board upon completion of the Work and prior to final payment therefore an affidavit stating that it has complied with Chapter 4115 of the Ohio Revised Code. This Section 12.1 shall apply only if the Contract Sum under this Contract exceeds the dollar thresholds established by the Ohio Department of Commerce, Division of Industrial Compliance, Bureau of Wage and Hour.

**As of January 1, 2014**

***New Construction*** has been adjusted to **\$84,314.**

“New” construction that involves roads, streets, alleys, sewers, ditches and other works connected to road or bridge construction threshold level.

***Reconstruction*** has been adjusted to **\$25,261.**



“Reconstruction, enlargement, alteration, repair, remodeling, renovation, or painting” that involves roads, streets, alleys, sewers, ditches and other works connected to road or bridge construction threshold level.

The Prevailing Wage Determination Schedule for this project is available for review at the office of the Owner’s Prevailing Wage Coordinator and via the internet at <http://www.com.ohio.gov/dico/default.aspx>.

### **Article 13**

#### **WORK BY BOARD OR BY SEPARATE CONTRACTORS**

13.1 The Board reserves the right to perform work related to the Work with its own personnel, and to award separate contracts in connection with portions of the Work or other work on the site. If the Contractor claims that delay or added cost is involved because of such action by the Board, he shall make such claim as he would under Section 17.4 hereof.

13.2 The Contractor shall afford the Board reasonable opportunity for the introduction and storage of their materials and equipment for the execution of their work, and shall coordinate its work with theirs.

### **Article 14**

#### **TIME**

14.1 All time limits stated in the Contract Documents are of the essence. The Contractor shall expedite the Work and achieve Substantial Completion within the Contract Time.

14.2 If the Contractor is delayed at any time in the progress of the Work by changes ordered in the Work, labor disputes, fire, unusual delay in transportation, adverse weather conditions not reasonably anticipated, unavoidable casualties, or any causes beyond the Contractor's control, then the Contract Time shall be extended by Change Order for such reasonable time as the Board may determine.

### **Article 15**

#### **PROTECTION OF UNDERGROUND UTILITY FACILITIES**

15.1 If the Work affects or otherwise involves underground utility facilities, both the Board and the Contractor shall adhere to the requirements of Section 153.64 of the Ohio Revised Code.

### **Article 16**

#### **PROTECTION OF PERSONS AND PROPERTY**

16.1 The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. It shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to

- A. All employees on the Work and other persons who may be affected thereby,
- B. All the Work and all materials and equipment to be incorporated therein, and
- C. Other property at the site or adjacent thereto.

He shall give all notices and comply with all applicable laws, ordinances, rules, regulations and orders of any public authority bearing on the safety of persons and property and their protection from damage, injury or loss. The Contractor shall promptly remedy all damage or loss to any property caused in whole or in part by the Contractor,

any Subcontractor, any Sub-subcontractor, or anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable. The foregoing obligations of the Contractor are in addition to its obligations under Article 9.

### **Article 17**

#### **CHANGES IN THE PLANS**

17.1 The Board, without invalidating the Contract, may order Changes in the Plans, consisting of additions, deletions, or modifications, the Contract Sum and the Contract Time being adjusted accordingly. All such Changes in the Plans shall be authorized by written Change Order, signed by the Board prior to any alleged Work commencing.

17.2 The Contract Sum and the Contract Time may be changed only by Change Order.

17.3 If the Contractor wishes to make any claim/proposal for an increase in the Contract Sum, because of claimed/proposed extra work, concealed conditions, or for any reason, no such claim/proposal for payment over and above the Contract Sum shall be authorized or valid unless each of the following occurs:

- A. A written claim/proposal is made by the Contractor to the Board within twenty (20) days of the occurrence or event giving rise to the claim/proposal.
- B. The claim/proposal is filed prior to proceeding with the claimed/proposed extra work; and
- C. A written Change Order is issued, agreed to and signed by the Board/Project Manager.

17.4 The Contractor agrees that he shall have no compensation or claim/proposal for extra work that will increase the Contract Sum unless and until the procedures set forth above are followed and approved, and the Contractor hereby agrees that any claim/proposal for an increase in the Contract Sum will not be made and is waived and invalid hereunder, unless and until the procedures set forth above are followed and a duly approved written Change Order is issued prior to proceeding with any alleged extra work.

### **Article 18**

#### **CORRECTION OF WORK**

18.1 The Contractor shall promptly correct any Work rejected by the Board as defective or as failing to conform to the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. Such correction shall be completed within the time period agreed to by the Board. The provisions of this Article 18 apply to Work done by any Subcontractor of Sub-subcontractor as well as to Work done by employees of the Contractor.

### **Article 19**

#### **TERMINATION OF THE CONTRACT**

19.1 If the Contractor defaults or persistently fails or neglects to carry out the Work in accordance with the Contract Documents or fails to perform any provision of the Contract, the Board, after seven days' written notice to the Contractor and without prejudice to any other remedy it may have, may make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due the Contractor or, at its option, may terminate the Contract and take possession of the site and of all materials, equipment, tools, and any construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever method it may deem expedient, and if the unpaid balance of the Contract Sum exceed the expense of finishing the Work, such excess shall be paid to the Contractor, but if such expense exceeds such unpaid balance, the Contractor shall pay the difference to the Board.



## **Article 20**

### **DISCRIMINATION**

#### **20.1 The Contractor agrees:**

- A. That in the hiring of employees for the performance of work under this Contract or any subcontract, neither it nor any Subcontractor or Sub-subcontractor or any person acting on behalf of it or any Subcontractor or Sub-subcontractor shall, by reason of race, creed, sex, handicap, or color, discriminate against any citizen of the state who is qualified and available to perform the work to which the employment relates; and
- B. That neither it nor any Subcontractor or Sub-subcontractor or any person acting on behalf of it or any Subcontractor or Sub-subcontractor shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this Contract on account of race, creed, sex, handicap, or color.

## **Article 21**

### **MISCELLANEOUS PROVISIONS**

21.1 Governing Law: This agreement shall be governed by the laws of the State of Ohio. Any claims, actions or causes of action that arise out of this agreement shall be brought in Lake County, Ohio. In signing this contract, the parties agree that venue for any claims shall be resolved solely by recourse to the Courts of Lake County, Ohio.

21.2 Written Notice: Written notice shall be deemed to have been served if delivered in person to the individual or member of the firm or entity or to an officer of the corporation for whom it was intended, or if delivered at or sent by registered or certified mail to the last business address known to him who gives the notice.

21.3 Board's Right To Clean Up: If a dispute arises between the Contractor and separate contractors as to their responsibility for cleaning up as required by the detailed specifications, the Board may clean up and charge the cost thereof to the contractors responsible therefore as it shall deem to be just.

21.4 Independent Contractor Acknowledgement: All individuals employed under this contract that provide services to Lake Metroparks are not considered public employees for the purpose of Ohio Public Employees Retirement System (OPERS) membership.

## **Article 22**

### **GUARANTEE**

22.1 The Contractor or the work as called for in the contract documents, in consideration of the price bid and the payments received or to be received, guarantees that all work done and all material used in the project under contract are in all respects first-class, of the proper kind and quality and has been done and is being done in accordance with the requirements of the contract documents, and also guarantees that the improvements will remain in good condition for and during the entire period of guarantee.

22.2 The period of guarantee shall begin upon the date of final acceptance by the Board in writing, of the construction work, and shall continue for a period of twelve (12) months thereafter or as otherwise provided in the general conditions.

22.3 If at any time before or during said period of guarantee, any defects or omissions become apparent in the work, or if it becomes apparent that any of the work is not in accordance with the requirements of the contract documents, or if any of the work constructed under this contract requires repairs due to defects in materials or workmanship, or for any other cause which may be attributed to the work which is being done by the Contractor, the Board or its authorized representative, will notify the Contractor to rectify such defects or omissions, or to make the repairs so required.

22.4 If the Contractor shall fail to begin to rectify such defects or omissions or to start such repairs within five (5) days from the date of such notification, or if such rectification or repair work is not made in a manner satisfactory to the Board or to its representative, the Board shall have the right to purchase any necessary materials, rent any necessary tools and equipment and to employ such other person or persons as may be deemed proper to make such repairs, and to pay the expense thereof out of moneys then due, or which may thereafter become due to the Contractor, or out of the amount retained for that purpose by the Board.

22.5 If moneys to correct defects, omissions or to resolve any guarantee issues are not sufficient to meet such expense, the additional moneys shall be furnished by the Contractor, and if he refuses or neglects to provide the necessary moneys, they shall be provided by his sureties.

22.6 If it is necessary to remove any part of the work to rectify defects or omissions or to repair defects in materials or workmanship, or if any part of the work becomes damaged due to such rectification or repairing, all such shall be replaced or repaired, all to the satisfaction of the Director or said representative. The guarantee provisions shall also apply to all rectified or repaired work.

Lake Metroparks Board of Park Commissioners  
11211 Spear Road, Concord Twp., OH 44077

\_\_\_\_\_  
Witness Paul Palagyi, Executive Director \_\_\_\_\_  
Date

and by

NAME

ADDRESS

ADDRESS

\_\_\_\_\_  
Witness CONTRACTOR \_\_\_\_\_  
Date

## **EXHIBIT A**

The Work consists of providing of all labor, materials, equipment, appliances and services necessary, including those reasonable inferred,

SAMPLE

APPLICATION AND CERTIFICATE FOR PAYMENT

Invoice #:

Page 1 of 2

To Owner: LAKE METROPARKS  
11211 Spear Road  
Concord Twp, OH 44077  
Paul Palagyi

Project:

Application #:

Distribution to :

	Owner
	Architect
	Contractor

Period To:

From Contractor:

Project Nos:

Via (Architect):

Contract Date:

Contract For:

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contact.  
Continuation Sheet is attached.

1. Original Contract Sum .....	\$	-
2. Net Change By Change Order .....	\$	-
3. Contract Sum To Date .....	\$	-
4. Total Completed and Stored To Date .....	\$	-
5. Retainage :		
a. 10.00% of Completed Work	\$	-
b. 10.00% of Stored Material	\$	-
Total Retainage .....	\$	-
6. Total Earned Less Retainage .....	\$	-
7. Less Previous Certificates For Payments .....		
8. Current Payment Due .....	\$	-
9. Balance To Finish, Plus Retainage .....	\$	-

CHANGE ORDER SUMMARY	Additions	Deductions
Total changes approved in previous months by Owner		\$ -
Total Approved this Month	\$ -	
TOTALS	\$ -	\$ -
Net Changes By Change Order		\$ -

The undersigned Contractor certfies that to the best of the Contractor's knowledge,  
information and belief the Work covered by this Application for Payment has been completed  
in accordance with the Contract Documents, that all amounts have been paid by the Contractor  
for Work for which previous Certificates for Payment were issued and payments received from  
the Owner, and that current payment shown herein is now due.

CONTRACTOR: 0

By: \_\_\_\_\_ Date: \_\_\_\_\_

State of: \_\_\_\_\_ County of: \_\_\_\_\_  
Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_

Notary Public:  
My Commission expires: \_\_\_\_\_

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the contract Documents, based on on-site observations and the data  
comprising the above application, the Architect certifies to the Owner that to the best of the  
Architect's knowledge, information and belief the Work has progressed as indicated,  
the quality of the Work is in accordance with the Contract Documents, and the Contractor  
is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$ -

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this application  
on the Continuation Sheet that are changed to conform with the amount certified)

ARCHITECT:

By: \_\_\_\_\_ Date: \_\_\_\_\_

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the  
Contractor named herein. Issuance, payment and acceptance of payment are without  
prejudice to any rights of the Owner or Contractor under this Contract.

CONTINUATION SHEET

Application and Certification for Payment, containing

Application No. : 0

Contractor's signed certification is attached.

In tabulations below, amounts are stated to the nearest dollar.

Use Column I on Contracts where variable retainage for line items may apply.

Application Date :

To:

Architect's Project No.:

Invoice # :

Contract :

A	B	C	D	E	F	G		H	I
Item No.	Description of Work	Scheduled Value	Work Completed From Previous Application (D+E)	Completed This Period In Place	Materials Presently Stored (Not in D or E)	Total Completed and Stored To Date (D+E+F)	% (G / C)	Balance To Finish (C-G)	Retainage
					\$ -	\$ -	#DIV/0!	\$0.00	\$ -
					\$ -	\$ -	#DIV/0!	\$0.00	\$ -
					\$ -	\$ -	#DIV/0!	\$0.00	\$ -
					\$ -	\$ -	#DIV/0!	\$0.00	\$ -
					\$ -	\$ -	#DIV/0!	\$0.00	\$ -
					\$ -	\$ -	#DIV/0!	\$0.00	\$ -
Page Totals		\$ -	\$ -	\$ -	\$ -	\$ -	#DIV/0!	\$ -	\$ -



## CERTIFICATE OF SUBSTANTIAL COMPLETION

**Project / Bid Number:**

Contract Date:

Final Contract Amount:

<b>Owner:</b> Lake Metroparks 11211 Spear Road Concord, Ohio 44077	<b>Contractor:</b>
---	--------------------

- ☐ This Certificate of Substantial Completion **applies to all Work** under the Contract Documents.
- ☐ This Certificate of Substantial Completion **applies to the following specified parts of** the Contract Documents.
- Documents:

The Work in which this Certificate applies has been inspected and reviewed by authorized representatives of the Owner, Contractor and Architect/Engineer and found to be substantially complete, and is also the date of commencement of applicable warranties required by the Contract Documents, except as attached. Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the owner can occupy or utilize the Work for intended use.

The date of **Substantial Completion** of the Project or portion thereof designated above is hereby established as

**Date**

- ☐ A "Punch-List" of items to be completed or corrected is listed below. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. The Contractor shall complete or correct the Work within **XX** days from the above date of Substantial Completion.

"Punch-List" items:

Lake Metroparks will issue a Final Completion Certificate upon the acceptance of the Work or designated portion thereof as determined by the Owner, Contractor and Architect/Engineer as complete. Upon this time Final Payment will be authorized and Lake Metroparks will assume full possession.

OR

Lake Metroparks accepts the Work or designated portion thereof as substantially complete and will assume full possession thereof at (location) --, on (date) --.

\_\_\_\_\_  
Signature

Paul B. Palagy  
Lake Metroparks  
Executive Director  
Date:

\_\_\_\_\_  
Signature

**Name**  
Lake Metroparks  
Project Manager  
Date:

\_\_\_\_\_  
Signature

**Name**  
**Company**  
**Title**  
Date:

*This certification does not constitute an acceptance of Work NOT in accordance with the Contract Documents nor is it a release of contractor's obligation to complete the work in accordance with the Contract Documents. Lake Metroparks and Contractor's legal and insurance counsel should determine and review insurance requirements and coverage.*

# CONSENT OF SURETY TO FINAL PAYMENT

AIA Document G707

(Instructions on reverse side)

OWNER	<input type="checkbox"/>
ARCHITECT	<input type="checkbox"/>
CONTRACTOR	<input type="checkbox"/>
SURETY	<input type="checkbox"/>
OTHER	<input type="checkbox"/>

TO OWNER:  
(Name and address)

ARCHITECT'S PROJECT NO.:

CONTRACT FOR:

PROJECT:  
(Name and address)

CONTRACT DATED:

In accordance with the provisions of the Contract between the Owner and the Contractor as indicated above, the  
(Insert name and address of Surety)

on bond of  
(Insert name and address of Contractor)

, SURETY,

hereby approves of the final payment to the Contractor, and agrees that final payment to the Contractor shall not relieve the Surety of  
any of its obligations to  
(Insert name and address of Owner)

, CONTRACTOR,

, OWNER,

as set forth in said Surety's bond.

IN WITNESS WHEREOF, the Surety has hereunto set its hand on this date:  
(Insert in writing the month followed by the numeric date and year.)

(Surety)

(Signature of authorized representative)

Attest:  
(Seal):

(Printed name and title)



**CAUTION: You should sign an original AIA document that has this caution printed in red. An original assures that changes will not be obscured as may occur when documents are reproduced. See Instruction Sheet for Limited License for Reproduction of this document.**



AFFIDAVIT OF (SUB OR ORIGINAL) CONTRACTOR

\_\_\_\_\_, Ohio \_\_\_\_\_, 20\_\_\_\_  
STATE OF OHIO, \_\_\_\_\_ COUNTY, ss:

\_\_\_\_\_ being first duly sworn says that he is  
\_\_\_\_\_ of \_\_\_\_\_  
the (Sub/Original) Contractor having a contract with LAKE METROPARKS, the OWNER for  
\_\_\_\_\_

Situated on or around or in front of the following described property:  
\_\_\_\_\_ whereof  
LAKE METROPARKS was the OWNER.

Affiant further says that the following shows the names of every sub-contractor in the employ of said  
\_\_\_\_\_

giving the amount, if any, which is due, or to become due, to them, or any of them, for work done or machinery,  
material or fuel furnished to date hereof, under said contracts.  
NOTE: This statement must be accompanied by a similar sworn statement signed by each of the sub-contractors  
listed below.

SUB-CONTRACTORS

Name	Trade	Amount due or to become due for work and material furnished to date hereof

Said affiant further says that the following shows the names of every person furnishing machinery, material or  
fuel to \_\_\_\_\_ giving them the amount, if any, which is due, or  
to become due, to them, for machinery, material or fuel furnished to date hereof, under said contracts.

MATERIAL MEN

Name	Trade	Amount due or to become due for work and material furnished to date hereof



AFFIDAVIT OF (SUB OR ORIGINAL) CONTRACTOR

Said affiant further says that the following shows the names of every unpaid laborer in the employ of \_\_\_\_\_ furnishing labor under said contract, giving the amount, if any, which is due, or to become due, for labor done to date hereof.

Name	Trade	Amount due or to become due for labor furnished to date hereof

That the amounts due or become due to said sub-contractors, material men and laborers, for work done, or machinery, material or fuel furnished to date hereof, to \_\_\_\_\_ Is fully and correctly set forth opposite their names, respectfully, in the aforesaid statements, and further evidenced by certificates of every person furnishing machinery, material or fuel, hereto attached, and made a part hereof.

Affiant further says that \_\_\_\_\_ has not employed or purchased or procured machinery, material or fuel from, or sub-contracted with any person, firm or corporation, other than those mentioned above, and owes for no labor performed, or machinery or fuel furnished under said contracts, other than above set forth.

\_\_\_\_\_  
Name / Title

Sworn to before me and subscribed in my presence, at \_\_\_\_\_, Ohio, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Ohio, \_\_\_\_\_, 20\_\_\_\_

The undersigned certifies that to date hereof that have furnished machinery, material or fuel as set out herein to \_\_\_\_\_ for \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Situated on or around or in front of the property described in the foregoing affidavit; that the nature of said machinery, material or fuel furnished, the date when they commenced furnishing the same and the amount now due or owing to each of them, is correctly stated and set opposite their respective names or that have been paid in full, if so acknowledged hereon.

Name	Machinery, materials or fuel and nature of the same	Commenced Furnishing	Amount due or to become due to date hereof.

# WAIVER OF LIEN

## To All Whom It May Concern:

In consideration of the FINAL sum of \_\_\_\_\_ dollars,  
Written words

\$\_\_\_\_\_, and other valuable consideration in hand paid, the receipt where of is hereby acknowledged, the undersigned does hereby waive, release and relinquish any and all liens or claims, right to lien or claim, for labor or materials, or both, furnished to date hereof, for premises known and described as follows:

**Lake Metroparks Project:** \_\_\_\_\_

**Project Address:** \_\_\_\_\_

\_\_\_\_\_  
Contractor/Sub-Contractor Name

\_\_\_\_\_  
Trade

Witness the hand and seal given this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_,

City of \_\_\_\_\_ County of \_\_\_\_\_ State of \_\_\_\_\_.

\_\_\_\_\_  
Address

\_\_\_\_\_  
Authorized Agents' Name (print)

\_\_\_\_\_  
Signature of Authorized Agent

State of Ohio

County of \_\_\_\_\_

Subscribed and sworn to before me by \_\_\_\_\_

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Notary Public \_\_\_\_\_

My commission expires \_\_\_\_\_.

(seal)

## AFFIDAVIT OF PREVAILING WAGES

I, \_\_\_\_\_, of

(Print Name)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Company name & address)

do hereby certify that the wages paid to all employees for the full number of hours worked in connection with the Contract to the Improvement, Repair and Construction of:

\_\_\_\_\_  
(Project and Location)

during the following period, from \_\_\_\_\_ to \_\_\_\_\_ is in accordance with the prevailing wage prescribed by the contract document.

I further certify that no rebates or deductions for any wages due any person have been directly or indirectly made other than those provided by law.

\_\_\_\_\_  
Name (print)

\_\_\_\_\_  
Signature of Officer or Agent

Sworn to and subscribed in my presence this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(Notary Public)

The above affidavit must be executed and sworn to by the officer or agent of the Contractor or Subcontractor who supervises the payment of employees, before the Board will release the surety and/or make a final payment due under the terms of the Contract.

**Schedule "A"**  
**List of Drawing Index**

**Drawing Number & Title**

Cover Sheet & Overall Driveway Context Map	C100
Driveway Plan & Profile STA 0+00 to 10+00	C101
Driveway Plan & Profile STA 10+00 to 17+90	C102
Grading Details	C103
Typical Sections	C104
Culvert Crossing Sections	C105
SWP3-1	C200
SWP3-2	C201
Details	C300

## NATIONWIDE PERMITS FOR THE STATE OF OHIO

### U.S. ARMY CORPS OF ENGINEERS (CORPS) REGULATORY PROGRAM REISSUANCE AND MODIFICATION OF NATIONWIDE PERMITS WITH OHIO DEPARTMENT OF NATURAL RESOURCES CONSISTENCY DETERMINATION UNDER THE COASTAL ZONE MANAGEMENT ACT AND WAIVED OHIO EPA 401 WATER QUALITY CERTIFICATION

Final rule published in the *Federal Register* (86 FR 2744) on January 13, 2021

## NWP 42

**NWP 42. *Recreational Facilities.*** Discharges of dredged or fill material into non-tidal waters of the United States for the construction or expansion of recreational facilities. Examples of recreational facilities that may be authorized by this NWP include playing fields (e.g., football fields, baseball fields), basketball courts, tennis courts, hiking trails, bike paths, golf courses, ski areas, horse paths, nature centers, and campgrounds (excluding recreational vehicle parks). This NWP also authorizes the construction or expansion of small support facilities, such as maintenance and storage buildings and stables that are directly related to the recreational activity, but it does not authorize the construction of hotels, restaurants, racetracks, stadiums, arenas, or similar facilities. The discharge must 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.

**Notification:** The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) (Authority: Section 404)

### **Nationwide Permit General Conditions**

**Note:** To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as applicable, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer. Prospective permittees should contact the appropriate Corps district office to determine if regional conditions have been imposed on an NWP. Prospective permittees should also contact the appropriate Corps district office to determine the status of Coastal Zone Management Act consistency for an NWP. Every person who may wish to obtain permit authorization under one or more NWPs, or who is currently relying on an existing or prior permit authorization under one or more NWPs, has been and is on notice that all of the provisions of 33 CFR 330.1 through 330.6 apply to every NWP authorization. Note especially 33 CFR 330.5 relating to the modification, suspension, or revocation of any NWP authorization.

#### **1. Navigation.**

- a. No activity may cause more than a minimal adverse effect on navigation.
- b. Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.
- c. The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his or her authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

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

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

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

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

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

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

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

**9. Management of Water Flows.** To the maximum extent practicable, the preconstruction 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 preconstruction 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 preconstruction 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
- b. 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.”



- c. 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.
- d. 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.
- e. 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 NWP.
- f. 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.

- g. 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
- h. activity or whether additional ESA section 7 consultation is required.
- i. 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 preconstruction 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 preconstruction 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 NWP's 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 NWP's 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 preconstruction 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 preconstruction 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 preconstruction 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 preconstruction 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
  - 2. district engineer may approve the use of permittee-responsible mitigation.
  - 3. 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).)
  - 4. 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
  - 5. considered for permittee-responsible mitigation.
  - 6. 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.

7. 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)).
8. 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. (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 preconstruction 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);
  - iv. 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 email, 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 email 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 preconstruction 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 preconstruction 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).

## **Nationwide Permit Definitions**

**Best management practices (BMPs):** Policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural. Compensatory mitigation: The restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

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

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

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

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

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

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

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

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

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

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

**Loss of waters of the United States:** Waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. The loss of stream bed includes the acres of stream bed that are permanently adversely affected by filling or excavation because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the

use of a waterbody. The acreage of loss of waters of the United States is a threshold measurement of the impact to jurisdictional waters or wetlands for determining whether a project may qualify for an NWP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and services. Waters of the United States temporarily filled, flooded, excavated, or drained, but restored to pre-construction contours and elevations after construction, are not included in the measurement of loss of waters of the United States. Impacts resulting from activities that do not require Department of the Army authorization, such as activities eligible for exemptions under section 404(f) of the Clean Water Act, are not considered when calculating the loss of waters of the United States.

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

**Non-tidal wetland:** A non-tidal wetland is a wetland that is not subject to the ebb and flow of tidal waters. Nontidal 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. Preconstruction 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 preconstruction 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. Reestablishment 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: Reestablishment and rehabilitation.

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

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

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

**Single and complete linear project:** A linear project is a project constructed for the purpose of getting people, goods, or services from a point of origin to a terminal point, which often involves multiple crossings of one or more waterbodies at separate and

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

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

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

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

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

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

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

**Tidal wetland:** A tidal wetland is a jurisdictional wetland that is inundated by tidal waters. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of

the water surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line.

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

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

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

**Waterbody:** For purposes of the NWP, 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)).

### **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).

### **Nationwide Permits Regional General Conditions For the State of Ohio**

1. NWPs shall not authorize any regulated activity which negatively impacts bogs and/or fens.
2. NWPs shall not authorize any regulated activity in Lake Erie which would result in diversion of water from the Great Lakes.

3. NWP's shall not authorize any regulated activity which has an adverse impact on littoral transport within Lake Erie.

**4. In-Water Work Exclusion Dates:** Any work associated with a regulated activity under a nationwide permit cannot take place during the restricted period of the following Ohio Department of Natural Resources (ODNR), Division of Wildlife (DOW) In-Water Work Restrictions, unless the applicant receives advanced written approval from the DOW, notifies the District Engineer in accordance with Nationwide Permit General Condition 32 and Regional General Condition 6, and receives written approval from the Corps:

#### Statewide In-Water Work Restriction Periods and Locations

##### 1. Salmonid Locations Restriction Period: September 15 – June 30

Arcola Creek (entire reach)  
Ashtabula Harbor  
Ashtabula River (Hadlock Rd. to mouth)  
Aurora Branch (Chagrin River (RM 0.38 to mouth))  
Big Creek (Grand River (Girdled Road to mouth))  
Black River (entire reach)  
Chagrin River (Chagrin Falls to mouth)  
Cold Creek (entire reach)  
Conneaut Creek (entire reach)  
Conneaut Harbor  
Corporation Creek (Chagrin River (entire reach))  
Cowles Creek (entire reach)  
Ellison Creek (Grand River (entire reach))  
Euclid Creek (entire reach)  
Fairport Harbor  
Grand River (Dam at Harpersfield Covered Bridge Park to mouth)  
Gulley Brook (Chagrin River (entire reach))  
Huron River (East Branch-West Branch confluence to mouth)  
Indian Creek (entire reach)  
Kellogg Creek (Grand River (entire reach))  
Mill Creek (Grand River (entire reach))  
Paine Creek (Grand River (Paine Falls to mouth))  
Rocky River (East Branch-West Branch confluence to mouth)  
Smokey Run (Conneaut Creek (entire reach))  
Turkey Creek (entire reach)  
Vermilion River (dam at Wakeman upstream of the US 20/SR 60 bridge to mouth)  
Ward Creek (Chagrin River (entire reach))  
Wheeler Creek (entire reach)  
Whitman Creek (entire reach)

## 2. Other Locations Restriction Period: March 15 – June 30

All other perennial streams not listed above as salmonid.  
Also includes Lake Erie and bays not listed above as salmonid.

Note: This condition does not apply to Ohio Department of Transportation projects that are covered under the “Memorandum of Agreement Between The Ohio Department of Transportation, The Ohio Department of Natural Resources, and The United States Fish and Wildlife Service For Interagency Coordination For Projects Which Require Consultation Under the Endangered Species Act, Impact State Listed Species, and/or Modify Jurisdictional Waters 2016 Agreement Number: 19394” or subsequent amendments to this Ohio Department of Transportation memorandum of agreement.

**5. Waters of Special Concern:** PCN in accordance with NWP General Condition 32 and Regional General Condition 6 is required for regulated activities in the following resources:

- a. **Threatened and Endangered Species:** Due to the potential presence of federally threatened or endangered species or their habitats, PCN in accordance with NWP General Conditions 18 and 32 and Regional General Condition 6 is required for any regulated activity under the NWPs in Ohio that includes:
  - i. The removal of trees  $\geq$  three (3) inches diameter at breast height. These trees may provide suitable roosting, foraging, or traveling habitat for the federally listed endangered Indiana bat and the federally-listed threatened northern long-eared bat; and/or
  - ii. Regulated activities that impact a sand, gravel, and/or cobble beach (landform between the low and high water marks affected by waves) and/or mud flat (areas affected by natural seiche effect) on the Lake Erie shoreline; and/or
  - iii. Regulated activities in the waterway or township of the corresponding counties listed in Appendix 1.

**Note 1:** Applicants must ensure they are referencing the latest version of Appendix 1 by contacting their nearest U.S. Army Corps of Engineers district office and visiting the online resources identified in General Condition 18(f) of these NWPs, since federally listed species are continuously listed, proposed for listing, and/or de-listed.

**Note 2:** As mentioned in General Condition 18, federal applicants should follow their own procedures for complying with the requirements of the Endangered Species Act (ESA). Federal applicants, including applicants that have received federal funding, must provide the District Engineer with the appropriate documentation to demonstrate compliance with ESA requirements.

- b. **Critical Resource Waters:**



- i. In Ohio, two (2) areas have been designated critical habitat for the piping plover (*Charadrius melodus*) and are defined as lands 0.62 mile inland from normal high water line. Unit OH-1 extends from the mouth of Sawmill Creek to the western property boundary of Sheldon Marsh State Natural Area, Erie County, encompassing approximately two (2) miles. Unit OH-2 extends from the eastern boundary line of Headland Dunes Nature Preserve to the western boundary of the Nature Preserve and Headland Dunes State Park, Lake County, encompassing approximately 0.5 mile.
    - ii. In Ohio three (3) areas have been designated critical habitat for the rabbitsfoot mussel (*Quadrula cylindrica cylindrica*). Unit RF26 includes 17.5 river kilometers (rkm) (10.9 river miles [rimi]) of the Walhonding River from the convergence of the Kokosing and Mohican Rivers downstream to Ohio Highway 60 near Warsaw, Coshocton County, Ohio. Unit RF27 includes 33.3 rkm (20.7 rmi) of Little Darby Creek from Ohio Highway 161 near Chuckery, Union County, Ohio, downstream to U.S. Highway 40 near West Jefferson, Madison County, Ohio. Unit RF29 includes 7.7 rkm (4.8 rmi) of Fish Creek from the Indiana and Ohio State line northwest of Edgerton, Ohio, downstream to its confluence with the St. Joseph's River north of Edgerton, Williams County, Ohio.
    - iii. Old Woman Creek National Estuarine Research Preserve.
  - c. **Oak Openings:** Wetland activities conducted in the Oak Openings Region of Northwest Ohio located in Lucas, Henry and Fulton Counties. For a map of the Oak Openings Region, visit <https://www.google.com/maps/d/viewer?mid=1JADupaZXJzO6AUDvnUaV18GVjG7yfBim&usp=sharing>
  - d. **Category 3 Wetlands:** As determined through use of the latest approved version of the Ohio Environmental Protection Agency's Ohio Rapid Assessment Method wetland evaluation form.
  - e. **Ohio Stream Designations:** Exceptional Warmwater Habitat, Cold Water Habitat, Seasonal Salmonid, or any equivalent designation; or water bodies with an antidegradation category of Superior High Quality Water, Outstanding National Resource Water, or Outstanding State Waters as determined by the Ohio Environmental Protection Agency except for NWP 1, 2, 3, 9, 10, 11, 27, 28, 32, and 35 or maintenance activities covered under NWPs 7 and 12. The current list of these rivers and tributaries can be found on the Ohio Environmental Protection Agency web-site at: [http://www.epa.ohio.gov/dsw/rules/3745\\_1.aspx](http://www.epa.ohio.gov/dsw/rules/3745_1.aspx). These designations can be found under the aquatic life use of the rivers and tributaries within its basin and under the "Anti-deg Rule #05."
6. **PCN Submittals:** In addition to the information required under NWP General Condition 32, the following information must be provided with the PCN:

- a. **Threatened and Endangered Species:** Section 7(a)(2) of the Endangered Species Act (ESA) states that each federal agency shall, in consultation with the Secretary, insure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. Section 7 of the ESA, called "Interagency Cooperation," is the mechanism by which federal agencies ensure the actions they take, including those they fund or authorize, do not jeopardize the continued existence of any federally or proposed federally listed species. Consistent with NWP General Condition 18, information for federally threatened and endangered species must be provided in the PCN to determine the proposed activity's compliance with NWP General Condition 18 and to facilitate project-specific coordination with the USFWS. All relevant information obtained from the USFWS must be submitted with the PCN.
- b. **Cultural Resources:** Under the National Historic Preservation Act (NHPA), the Corps must ensure no federal undertaking, including a Corps permit action, which may affect historic resources, is commenced before the impacts of such action are considered and the Advisory Council on Historic Preservation and the State Historic Preservation Office (SHPO) are provided an opportunity to comment as required by the NHPA, 36 CFR 800, and 33 CFR 325, Appendix C. Consistent with NWP General Condition 20, historic properties information must be provided in the PCN if the proposed undertaking 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. All relevant information obtained from the SHPO must be submitted with the PCN.
- c. **National Wild and Scenic Rivers:** The following waterways are components of the National Wild and Scenic River System and require PCN to the Corps:

**Big and Little Darby Creeks**

- Big Darby Creek from Champaign-Union County line downstream to the Conrail railroad trestle and from the confluence with the Little Darby Creek downstream to the Scioto River;
- Little Darby Creek from the Lafayette-Plain City Road bridge downstream to within 0.8 mile from the confluence with Big Darby Creek; and
- Total designation is approximately 82 miles.

**Little Beaver Creek**

- Little Beaver Creek main stem, from the confluence of West Fork with Middle Fork near Williamsport to mouth;
- North Fork from confluence of Brush Run and North Fork to confluence of North Fork with main stem at Fredericktown;

- Middle Fork from vicinity of Co. Rd. 901 (Elkton Road) bridge crossing to confluence of Middle Fork with West Fork near Williamsport;
- West Fork from vicinity of Co. Rd. 914 (Y-Camp Road) bridge crossing east to confluence of West Fork with Middle Fork near Williamsport; and
- Total designation is 33 miles.

#### **Little Miami River**

- Little Miami River - St. Rt. 72 at Clifton to the Ohio River;
- Caesar Creek - lower two (2) miles of Caesars Creek; and
- Total designation is 94 miles.

- d. **Temporary Fills or Structures:** When a PCN is required for temporary fills or structures, the PCN must specify how long the temporary fills or structures will remain and include a restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-construction contours and elevations. Native, non-invasive vegetation must be used unless otherwise authorized by a Corps NWP verification.

7. **Invasive Species:** No area for which grading has been completed will be unseeded or unmulched for longer than 14 days. All disturbed areas will be seeded and/or revegetated with native species and approved seed mixes (where practicable) after completion of construction activities for stabilization and to help preclude the establishment of non-native invasive species.

<b>APPENDIX 1 TO REGIONAL GENERAL CONDITION 5 (a)</b>		
<b>County</b>	<b>Waterway</b>	<b>Township</b>
Adams	Ohio River, Scioto Brush Creek, South Fork Scioto Brush Creek	
Ashtabula	Grand River, Pymatuning Creek	Andover, Austinburg, Cherry Valley, Colebrook, Dorset, Hartsgrove, Harpersfield, Morgan, New Lyme, Orwell, Richmond, Rome, Trumbull, Wayne, Williamsfield, Windsor
Athens	Ohio River	
Brown	East Fork Little Miami River, Ohio River	
Butler	Great Miami River	Lemon, Liberty
Champaign		Mad River, Union, Urbana
Clark	Little Miami River	Bethel, Moorfield, Pleasant, Springfield
Clermont	East Fork Little Miami River, Little Miami River,	

**APPENDIX 1 TO REGIONAL GENERAL CONDITION 5 (a)**

<b>County</b>	<b>Waterway</b>	<b>Township</b>
	Ohio River	
Clinton		Chester, Richland, Wayne
Columbiana		Butler, Fairfield, Hanover, Knox, Unity
Coshocton	Killbuck Creek, Muskingum River, Walhonding River	
Crawford		Auburn, Bucyrus, Cranberry, Dallas, Holmes, Whetstone
Darke	Stillwater River	
Defiance	St. Joseph River	Milford
Delaware	Mill Creek, Olentangy River	
Erie		Margaretta
Fairfield		Walnut
Fayette		Concord, Green, Jasper, Union
Franklin	Big Darby Creek, Little Darby Creek, Scioto River	
Fulton	Swan Creek	
Gallia	Ohio River	
Greene	Little Miami River	Bath, Beaver Creek, Spring Valley, Sugar Creek
Hamilton	Great Miami River, Little Miami River, Ohio River	
Hancock	Blanchard River	
Hardin	Blanchard River	Blanchard, Dudley, Hale, Jackson, McDonald, Roundhead
Hocking		Benton, Laurel
Holmes		All townships
Huron		New Haven, Richmond
Lake	Grand River	Madison
Lawrence	Ohio River	
Licking		Licking, Union
Logan	Great Miami River	Perry, Richland, Stokes, Washington, Zane
Lucas	Swan Creek	All townships
Madison	Big Darby Creek, Little Darby Creek	
Mahoning		Beaver, Boardman, Canfield, Green, Poland, Springfield
Marion	Tymochtee Creek	Big Island, Bowling Green, Grand, Green Camp, Montgomery, Salt Rock

**APPENDIX 1 TO REGIONAL GENERAL CONDITION 5 (a)**

<b>County</b>	<b>Waterway</b>	<b>Township</b>
Meigs	Ohio River	
Miami	Great Miami River, Stillwater River	
Montgomery	Great Miami River, Stillwater River	Mad River, Wayne
Morgan	Muskingum River	
Muskingum	Muskingum River	
Ottawa		All townships
Perry		Thorn
Pickaway	Big Darby Creek, Scioto River	
Pike	Scioto River	
Portage		Aurora, Atwater, Charlestown, Deerfield, Edinburg, Franklin, Freedom, Mantua, Nelson, Palmyra, Paris, Randolph, Ravenna, Rootstown, Streetsboro
Preble		Dixon, Gasper, Israel, Jackson, Lanier, Monroe, Somers, Twin, Washington
Richland		Plymouth
Ross	Salt Creek, Scioto River	
Sandusky		All townships
Scioto	Ohio River, Scioto Brush Creek, Scioto River, South Fork Scioto Brush Creek	Nile, Rush, Union
Shelby	Great Miami River	
Stark		Lexington, Marlboro
Summit		Hudson, Tallmadge, Twinsburg
Trumbull	Pymatuning Creek	All townships
Union	Big Darby Creek, Little Darby Creek, Mill Creek, Treacle Creek	Allen, Darby, Washington
Warren	Great Miami River, Little Miami River	Clear Creek, Deerfield, Massie, Turtle Creek, Union, Washington, Wayne
Washington	Muskingum River, Ohio River	
Wayne		All townships
Williams	Fish Creek, St. Joseph River	Bridgewater, Center, Florence, Jefferson, Madison, Northwest, St. Joseph, Superior
Wyandot	Tymochtee Creek	Antrim, Marseilles, Mifflin, Pitt

## **HELPFUL INFORMATION FOR COMPLIANCE WITH THE NWP GENERAL CONDITIONS:**

DISCLAIMER: The below information is intended to provide helpful contact information and other submittal recommendations. Contact the appropriate local, state, or federal agency for the most updated links to ensure compliance with the NWP General Conditions.

### **General Condition 1 (Navigation)**

#### ***List of Section 10 Navigable Waters of the U.S.:***

Buffalo District –

[https://www.lrb.usace.army.mil/Portals/45/docs/regulatory/DistrictInfo/waterway\\_oh.pdf](https://www.lrb.usace.army.mil/Portals/45/docs/regulatory/DistrictInfo/waterway_oh.pdf)

Huntington District – <https://www.lrh.usace.army.mil/Missions/Regulatory/Section-10-Streams/>

Louisville District –

<https://www.lrl.usace.army.mil/Portals/64/docs/Regulatory/Public%20Notices/Limits%20of%20Jurisdiction%20Public%20Notice-revised.pdf?ver=2013-02-13-120705-203>

Pittsburgh District –

<https://www.lrp.usace.army.mil/Portals/72/docs/regulatory/RegulatoryBoundaries/PN12-2.pdf>

#### ***Navigation Charts:***

Buffalo District – <https://www.lrb.usace.army.mil/Library/Maps-and-Charts/>

Huntington District – <https://www.lrh.usace.army.mil/Missions/Regulatory/Section-10-Streams/>

Louisville District –

<https://www.lrl.usace.army.mil/Portals/64/docs/Ops/Navigation/Charts/Ohio/OhioRiverCharts102-122.pdf>

Pittsburgh District – <https://www.lrp.usace.army.mil/Missions/Navigation/Navigation-Charts/>

#### ***Locks and Dams:***

Buffalo District – <https://www.lrb.usace.army.mil/Library/Maps-and-Charts/>

Huntington District – <https://www.lrh.usace.army.mil/Missions/Civil-Works/Locks-and->

## Dams/

Louisville District – <https://www.lrl.usae.army.mil/Missions/Civil-Works/Navigation/Locks-and-Dams/>

Pittsburgh District –  
<https://www.lrp.usace.army.mil/Missions/Navigation/Locks-and-Dams/#:~:text=Locks%20and%20Dams%20%20%20Allegheny%20River%20,Locks%20%26%20Dam%20%205%20more%20rows%20>

### ***Notice to Navigation Interests Request Sheets:***

Huntington District –  
<https://www.lrh.usace.army.mil/Portals/38/docs/navigation/Notice%20Info%20sheet.pdf>

Louisville –  
<https://www.lrl.usace.army.mil/Portals/64/docs/Regulatory/Forms/Notice%20to%20Navigation%20Interests%20Data%20Form%202019.pdf?ver=2019-07-22-101251-297>

Pittsburgh District –  
<https://www.lrp.usace.army.mil/Portals/72/docs/regulatory/NavNoticeRequestForm.pdf>

### **General Condition 5 (Shellfish Beds)**

Shellfish beds in Ohio include concentrations of freshwater mussels. All native mussels are protected in the State of Ohio (Section 1533.324 of the Ohio Revised Code). In addition, 10 federally listed species occur in the state and are protected by the ESA (87 Stat. 884, as amended; 16 U.S.C. 1531 et seq.). All rivers and tributaries that contain mussels or potential mussel habitat must be surveyed prior to any proposed streambed disturbance. Currently accepted protocol and supporting materials can be found on the Ohio Department of Natural Resources' website:

<https://ohiodnr.gov/wps/portal/gov/odnr/buy-and-apply/special-use-permits/collecting-research/ohio-mussel-surveyor>

### **General Condition 7 (Water Supply Intakes)**

Locations of drinking water source protection areas associated with public water supply intakes, including the name of the public water supply, can be found at the following link:

<https://oepa.maps.arcgis.com/apps/webappviewer/index.html?id=3b39e11ba7fc43c3b41801e3580e6d21>

Contact information for public water suppliers can be obtained from Ohio EPA by contacting the Division of Drinking and Ground Waters at [whp@epa.ohio.gov](mailto:whp@epa.ohio.gov) or 614-644-2752.

### **General Condition 10 (Fills Within 100-year Floodplains)**

The following website provides a statewide listing of Floodplain Managers in Ohio:  
<https://ohiodnr.gov/wps/portal/gov/odnr/discover-and-learn/safety-conservation/about-ODNR/water-resources/floodplains/>

### **General Condition 16 (Wild and Scenic Rivers)**

Prior to submitting a PCN for work in a National Wild and Scenic River System, it is recommended that the applicant contact the National Park Service Regional Wild and Scenic Rivers Specialist, at the Midwest Regional Office, 601 Riverfront Drive, Omaha, Nebraska 68102, for assistance in complying with NWP General Condition 16. Any determination provided by the National Park Service should be submitted with the PCN. The following website provides information on National Wild and Scenic Rivers within Ohio:

<https://www.rivers.gov/ohio.php>

### **General Condition 18 (Endangered Species)**

To obtain the most up to date information on federally threatened and endangered species applicants are encouraged to utilize the USFWS's Information for Planning and Consultation System (IPaC) found at <https://ecos.fws.gov/ipac/>

Prior to the submittal of a PCN, applicants may also contact the USFWS, Ohio Ecological Services Field Office at:

Address: 4625 Morse Road, Suite 104  
Columbus, Ohio 43230

Email: [ohio@fws.gov](mailto:ohio@fws.gov)

Phone: (614) 416-8993

The Ohio Mussel Survey Protocol may be found at the following link:

<https://ohiodnr.gov/wps/portal/gov/odnr/buy-and-apply/special-use-permits/collecting-research/ohio-mussel-surveyor>

### **General Condition 4 (Migratory Bird Breeding Areas) and General Condition 19 (Migratory Birds and Bald and Golden Eagles)**

Prior to the submittal of a PCN, information to assist in complying with NWP General Conditions 4 and 19 may be obtained from the USFWS, Ohio Ecological Services Field Office at:



Address: 4625 Morse Road, Suite 104  
Columbus, Ohio 43230

Email: [ohio@fws.gov](mailto:ohio@fws.gov)

Phone: (614) 416-8993

The Ohio Division of Natural Resources Division of Wildlife may be contacted at (800) 945-3543.

### **General Condition 20 (Historic Properties)**

The Ohio National Register of Historic Places can be found at the following link:  
<https://www.ohiohistory.org/preserve/state-historic-preservation-office/nationalregister>

When reviewing a PCN, the Corps will scope appropriate historic property identification efforts and, if applicable, work with the applicant to take into account the effect of the proposed activity on historic properties. In these instances, information and coordination may include:

- Requesting comments directly from the Ohio History Connection SHPO on the effect the proposed regulated activity may have on historic properties. The Ohio History Connection SHPO may be contacted at:

Address: Ohio History Center  
800 E. 17th Ave., Columbus, Ohio 43211  
Phone: (614) 297-2300  
Email: [info@ohiohistory.org](mailto:info@ohiohistory.org)

- To identify potential historic properties that may be affected by a proposed project, the following information may be reviewed and/or provided with the PCN when applicable:
  - A detailed description of the project site in its current condition (i.e. prior to construction activities) including information on the terrain and topography of the site, the acreage of the site, the proximity of the site to major waterways, and any known disturbances within the site.
  - A detailed description of past land uses in the project site.
  - Photographs and mapping showing the site conditions and all buildings or structures within the project site and on adjacent parcels are useful. Photographs and maps supporting past land uses should be provided as available.
  - Information regarding any past cultural resource studies or coordination pertinent to the project area, if available.
  - U.S. Geological Survey (USGS) 7.5' series topographic maps;
  - Ohio History Connection SHPO files including:

- Ohio Archaeological Inventory (OAI) files;
  - Ohio Historic Inventory files (OHI);
  - Ohio SHPO Cultural Resources Management (CRM)/contract archaeology files;
  - NRHP files including Historic Districts; and
  - County atlases, histories and historic USGS 15' series topographic map(s).
- When needed to evaluate effects to historic properties, the applicant is encouraged to consult with professionals meeting the Professional Qualification Standards as set forth in the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (48 FR 44716) during this data gathering process. These professionals can assist with compiling the project information discussed above and should provide recommendations as to whether the proposal has the potential to affect historic properties and if further effort is needed to identify or assess potential effects to historic properties. These professionals can also compile preliminary review information to submit to the District Engineer as part of the PCN.

### **General Condition 23 (Mitigation)**

Information pertaining to mitigation can be found at the following link:  
<https://www.lrh.usace.army.mil/Missions/Regulatory/Mitigation.aspx>

### **General Condition 25 (Water Quality)**

The Ohio Environmental Protection Agency may be contacted at:

Address: Lazarus Government Center  
 50 W Town St. Suite 700  
 Columbus, Ohio 43215

Phone: (614) 644-2001

Information pertaining to the Ohio Environmental Protection Agency water quality certification (WQC) program, including the Section 401 Clean Water Act WQC application form, can be obtained at the following link:  
<https://www.epa.state.oh.us/dsw/#113292723-programs>

### **General Condition 32 (Pre-Construction Notification)**

The nationwide permit pre-construction notification form (Form ENG 6082) may be obtained at the following link:

[https://www.publications.usace.army.mil/Portals/76/Eng\\_Form\\_6082\\_2019Oct.pdf?ver=2019-10-22-081550-710/](https://www.publications.usace.army.mil/Portals/76/Eng_Form_6082_2019Oct.pdf?ver=2019-10-22-081550-710/)

A checklist of information that must be provided in a pre-construction notification can be obtained at the following link:

<https://www.lrh.usace.army.mil/Missions/Regulatory/How-to-Apply-for-a-Permit/Nationwide-Permits/>

### **Electronic Submittal:**

- PCNs should be saved as a PDF document, and then submitted as an attachment in an email to the appropriate Regulatory Office:

**Buffalo District** – LRB.Ohio.RegActions@usace.army.mil

**Huntington District** – [LRH.permits@usace.army.mil](mailto:LRH.permits@usace.army.mil)

**Louisville District** – CELRL.Door.To.The.Corps@usace.army.mil

**Pittsburgh District** – Regulatory.Permits@usace.army.mil

- Electronic documents must have sufficient resolution to show project details. The PCN and supporting documents submitted electronically must not exceed 10 megabytes (10MB) per email. Multiple emails may be required to transmit documents to ensure the 10MB limit is not exceeded. Alternatively, use of the Department of Defense Secure Access File Exchange (DoD SAFE) service to transfer large files may be requested in your email.
- For tracking and processing purposes, the email should include the following:
  - **Email Subject Line:** include the name of the applicant, type of PCN request, and location (County and State). Example: RE: Doe, John, PCN and Section 401 WQC Request, Summit County, Ohio;
  - **Email Body:** 1) Brief description of the proposed project, 2) contact information (phone number, mailing address, and email address) for the applicant and/or their agent, and 3) the project location: Address and Latitude/Longitude in decimal degrees (e.g. 42.92788° N, 88.36257° W).
- If you do not have internet access, information may be submitted through the U.S. Postal Service to the appropriate Regulatory Office:

U.S. Army Corps of Engineers, Buffalo District  
ATTN: Regulatory Branch  
1776 Niagara Street  
Buffalo, New York 14207  
Phone: (716) 879-4330  
Fax: (716) 879-4310

U.S. Army Corps of Engineers, Huntington District  
ATTN: Regulatory Division  
502 Eighth Street  
Huntington, West Virginia 25701-2070  
Phone: (304) 399-5210  
Fax: (304) 399-5805

U.S. Army Corps of Engineers, Pittsburgh District  
ATTN: Regulatory Division  
William S. Moorhead Federal Building  
1000 Liberty Avenue  
Pittsburgh, Pennsylvania 15222-4186  
Phone: (412) 395-7155  
Fax: (412) 644-4211

U.S. Army Corps of Engineers, Louisville District  
ATTN: CELRL-RD, Room 752  
600 Dr. Martin Luther King Jr. Place  
Louisville, Kentucky 40202-0059  
Phone: (502) 315-6733  
Fax: (502) 315-6677