

Memorandum

To: Dawn Tanner and Phil Belfiori
Vadnais Lake Area Water Management Organization (VLAWMO)

From: Donna Jacob PhD, PWS
Adam Nies, PE
Chris Otterness, PE
Houston Engineering, Inc.

Subject: Wilkinson Lake BMP Project
Summary of Permit Authorization

Date: March 17, 2023

Project: 7057-0014

INTRODUCTION

This memorandum describes the various agency authorizations for the work proposed.

AUTHORIZATIONS REQUESTED

VLAWMO requested regulatory authorization via the following permit types:

1. **WCA Minnesota Statute 8420.0415 No-Loss Criteria, Part D**
2. **USACE Nationwide Permit (NWP) No. 13: Bank Stabilization**
3. **USACE Nationwide Permit No. 33: Temporary Construction, Access, and Dewatering**
4. **City of North Oaks Grading Permit**

Note: VLAWMO and its contractor will also be required to obtain a Construction Stormwater General Permit from the MPCA prior to beginning construction operations.

AUTHORIZATIONS RECEIVED / ASSUMED

VLAWMO received notification from agencies indicating the project, as it is currently planned, falls within the criteria of NWP/Regional General Permits (RGPs). No application for notification to BWSR nor to the St. Paul District corps of Engineering is required for the project.

- **WCA Minnesota Statute 8420.0415 No-Loss Criteria, Part D, dated 2023-03-03** (addresses no. 1 above, Attachment A).

- **USACE NWP / RGP (specifically the Bank Stabilization and Habitat Improvement RPG, dated 2023-03-06** (no. MVP-2021-00635-SSC, address nos. 2 and 3 above, Attachment B).
 - This notification states the USACE may require reevaluation if the project changes.
 - This notification also states the project must have any necessary Water Quality Certification or waiver from the MPCA (see NWP and RGP below).
- **MPCA 2021 NWP Certification and 2023 RGP Certification** (addresses USACE permits above)
 - The project meets conditions of both the 2021 Nationwide Permit Certification and the 2023 Regional General Permit Certification, and therefore a certification from MPCA is not required (Attachment C).
 - The project must provide the following to any prime contractor responsible for completing the projects authorized activities: a) copies of the MPCA NWP/RGP documents (see links below); b) documentation of any required BMPs; and c) any written demarcation of waters.
 - Prior to commencing construction activities, a detailed Stormwater Pollution Prevention Plan (SWPPP) for the project. **A SWPPP will be included with the final construction plans (pending).**
 - Prior to commencing construction activities, contractors must obtain a NPDES/SDS Construction Stormwater General Permit (see below)

2021 Nationwide Permit Certification: <https://www.pca.state.mn.us/sites/default/files/wq-gen2-18d.pdf>

2023 Regional General Permit Certification: <https://www.pca.state.mn.us/sites/default/files/wq-gen2-18e.pdf>

AUTHORIZATIONS STILL TO BE OBTAINED

The following authorizations for the Wilkinson Lake BMP Project are still required:

- **Grading Permit from City of North Oaks:** Plans have been received, and City of North Oaks have provided preliminary comments dated 3/17/23
- **NPDES/SDS Construction Stormwater General Permit:** The contractor awarded the project will be required to apply for this permit at least 48 hours prior to beginning construction. VLAWMO will be a co-permittee.



APPENDIX A

WCA Minnesota Statute 8420.0415
No-Loss Criteria, Part D

Minnesota Wetland Conservation Act Notice of Decision

Local Government Unit:	Vadnais Lake Area WMO	County:	Ramsey
Applicant Name:	Vadnais Lake Area WMO	Applicant Representative:	Donna Jacob - HEI
Project Name:	Wilkinson Lake BMP Project	LGU Project No. (if any):	1.2023
Date Complete Application Received by LGU: 2/14/2023			
Date of LGU Decision:	3/3/2023		
Date this Notice was Sent:	3/3/2023		

WCA Decision Type - check all that apply

<input type="checkbox"/> Wetland Boundary/Type	<input type="checkbox"/> Sequencing	<input type="checkbox"/> Replacement Plan	<input type="checkbox"/> Bank Plan (not credit purchase)
<input checked="" type="checkbox"/> No-Loss (8420.0415)	<input type="checkbox"/> Exemption (8420.0420)		
Part: <input type="checkbox"/> A <input type="checkbox"/> B <input type="checkbox"/> C <input checked="" type="checkbox"/> D <input type="checkbox"/> E <input type="checkbox"/> F <input type="checkbox"/> G <input type="checkbox"/> H		Subpart: <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> 6 <input type="checkbox"/> 7 <input type="checkbox"/> 8 <input type="checkbox"/> 9	

Replacement Plan Impacts (replacement plan decisions only)

Total WCA Wetland Impact Area:
Wetland Replacement Type: <input type="checkbox"/> Project Specific Credits: <input type="checkbox"/> Bank Credits:
Bank Account Number(s):

Technical Evaluation Panel Findings and Recommendations (attach if any)

<input checked="" type="checkbox"/> Approve <input type="checkbox"/> Approve w/Conditions <input type="checkbox"/> Deny <input type="checkbox"/> No TEP Recommendation
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LGU Decision

<input type="checkbox"/> Approved with Conditions (specify below) ¹ List Conditions:	<input checked="" type="checkbox"/> Approved ¹ <input type="checkbox"/> Denied
Decision-Maker for this Application: <input checked="" type="checkbox"/> Staff <input type="checkbox"/> Governing Board/Council <input type="checkbox"/> Other:	
Decision is valid for: <input checked="" type="checkbox"/> 5 years (default) <input type="checkbox"/> Other (specify):	

¹ *Wetland Replacement Plan approval is not valid until BWSR confirms the withdrawal of any required wetland bank credits. For project-specific replacement a financial assurance per MN Rule 8420.0522, Subp. 9 and evidence that all required forms have been recorded on the title of the property on which the replacement wetland is located must be provided to the LGU for the approval to be valid.*

LGU Findings – Attach document(s) and/or insert narrative providing the basis for the LGU decision¹.

<input checked="" type="checkbox"/> Attachment(s) (specify): TEP Findings of Fact	<input checked="" type="checkbox"/> Summary: Approval of NO-Loss “wetland restoration” State Stat. 8420.0415 subpart D.
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¹ Findings must consider any TEP recommendations.

Attached Project Documents

<input checked="" type="checkbox"/> Site Location Map <input checked="" type="checkbox"/> Project Plan(s)/Descriptions/Reports (specify): Joint application, project plans, memo

Appeals of LGU Decisions

If you wish to appeal this decision, you must provide a written request within 30 calendar days of the date you received the notice. All appeals must be submitted to the Board of Water and Soil Resources Executive Director along with a check payable to BWSR for \$500 *unless* the LGU has adopted a local appeal process as identified below. The check must be sent by mail and the written request to appeal can be submitted by mail or e-mail. The appeal should include a copy of this notice, name and contact information of appellant(s) and their representatives (if applicable), a statement clarifying the intent to appeal and supporting information as to why the decision is in error. Send to:

Appeals & Regulatory Compliance Coordinator
Minnesota Board of Water & Soils Resources
520 Lafayette Road North
St. Paul, MN 55155
travis.germundson@state.mn.us

Does the LGU have a local appeal process applicable to this decision?

☐ Yes¹ ☒ No

¹If yes, all appeals must first be considered via the local appeals process.

Local Appeals Submittal Requirements (LGU must describe how to appeal, submittal requirements, fees, etc. as applicable)

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Notice Distribution (include name)

Required on all notices:

<input checked="" type="checkbox"/> SWCD TEP Member: Mike Goodnature	<input checked="" type="checkbox"/> BWSR TEP Member: Ben Meyer
<input type="checkbox"/> LGU TEP Member (if different than LGU contact):	
<input checked="" type="checkbox"/> DNR Representative: Jim Levitt	
<input type="checkbox"/> Watershed District or Watershed Mgmt. Org.:	
<input type="checkbox"/> Applicant:	<input checked="" type="checkbox"/> Agent/Consultant: Donna Jacob

Optional or As Applicable:

<input checked="" type="checkbox"/> Corps of Engineers: Samantha Coungeris	
<input type="checkbox"/> BWSR Wetland Mitigation Coordinator (required for bank plan applications only):	
<input type="checkbox"/> Members of the Public (notice only):	<input type="checkbox"/> Other:

Signature: 	Date: 3/3/2023
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This notice and accompanying application materials may be sent electronically or by mail. The LGU may opt to send a summary of the application to members of the public upon request per 8420.0255, Subp. 3.



APPENDIX B

USACE NWP / RGP



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, ST. PAUL DISTRICT
332 MINNESOTA STREET, SUITE E1500
ST. PAUL, MN 55101-1678

March 6, 2023

Regulatory File MVP-2021-00635-SSC

Vadnais Lake Area Water Management Organization
c/o Dawn Tanner
800 East County Road E
Vadnais Heights, Minnesota 55127

Dear Ms. Tanner:

We are responding to your request for authorization to construct the Wilkinson Lake BMP Project located in the City of North Oaks. The proposed work is located in Section 9, Township 30 North, Range 22 West, Ramsey County, Minnesota.

Bank Stabilization and Habitat Improvement work:

The regulated activity associated with the project described above includes the permanent discharge of fill material along 20 linear feet of Wilkinson Ditch for the placement of riprap to stabilize the ditch. Additionally, the project may include the temporary discharge of fill material within 0.02 acre of wetland for the placement of construction matting for equipment access. The work appears to be authorized by a Nationwide Permit (NWP) and/or a Regional General Permit (RGP), specifically, the Bank Stabilization & Habitat Improvement RGP. No application or notification to the St. Paul District Corps of Engineers is required for your project.

This letter does not verify permit eligibility, but indicates that your project may meet the requirements of this permit. It is your responsibility to ensure that the work is performed in accordance with the terms and general conditions of this permit before starting work. **It is also incumbent upon you to verify that your activity has received any necessary Water Quality Certification or waiver prior starting work in waters of the U.S.** If a Water Quality Certification has not been issued for your activity, you are responsible for contacting the certifying agency. A full list of applicable terms, conditions, issued Water Quality Certifications, and certifying agencies may be found by visiting our website at <http://www.mvp.usace.army.mil/Missions/Regulatory/>.

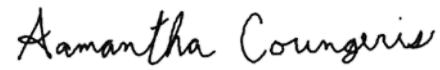
Excavation work:

The excavation work proposed at the location stated is not within the regulatory jurisdiction of the Corps of Engineers. Based on the description provided regarding how the work would be completed, the excavation would not result in a discharge of dredged or fill material. Therefore, a Department of the Army permit is not required to do the excavation work.

A change in location or project plans may require re-evaluation of your project. Proposed changes should be coordinated with this office prior to construction. Failure to comply with all terms and conditions of this permit invalidates this authorization and could result in a violation of Section 301 of the Clean Water Act or Section 10 of the Rivers and Harbors Act. You must also obtain all local, State, and other Federal permits that apply to this project.

If you have any questions, please contact me in our St. Paul office at (651) 290-5268 or by email at Samantha.S.Coungeris@usace.army.mil.

Sincerely,

A handwritten signature in black ink that reads "Samantha Coungeris". The script is cursive and fluid.

Samantha Coungeris
Project Manager

CC:

Donna Jacob, Houston Engineering
Brian Corcoran, VLAWMO
Ben Meyer, BWSR



US Army Corps
of Engineers®
St. Paul District

DEPARTMENT OF THE ARMY

BANK STABILIZATION AND HABITAT IMPROVEMENT REGIONAL GENERAL PERMIT

PERMIT: Bank Stabilization and Habitat Improvement Regional General Permit

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

EFFECTIVE DATE: February 20, 2023

EXPIRATION DATE: February 19, 2028

A. AUTHORIZATION AND APPLICABILITY

Regulated activities conducted in accordance with the terms and conditions of the Bank Stabilization and Habitat Improvement Regional General Permit (RGP or permit) are authorized in the States of Wisconsin and Minnesota and on Indian Reservations in Wisconsin and Minnesota, excluding Section 404 activities in the following 12-digit hydrologic unit codes (HUCs) in the Lake Superior Basin of Wisconsin: 040103011101, 040103011105, 040103020203, 040103020403, 040103020404, 040103020405, 040103020505, 040103020506, 040103020610, 040103020611, 040103020701, 040103020703, 040103020704, and 040203000300. The excluded HUCs are also shown in a map attached to the end of this permit. This exclusion does not apply to Section 404 activities proposed within the exterior boundaries of the Bad River Reservation, regardless of HUC. Certain regulated activities require an applicant to submit pre-construction notification (PCN) and receive written St. Paul District Corps of Engineers Regulatory Branch (Corps) verification prior to commencing work. Refer to the appropriate sections of this permit for a description of RGP procedures, eligible activities, conditions, exclusions, and application instructions.

1. **Regulatory Authorities:** Section 404 of the Clean Water Act (33 U.S.C. 1344, Section 404) for discharges of dredged and fill material into waters of the US, and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403, Section 10) for work and structures that are located in, under, or over any navigable water of the US. Activities subject to Section 404 and Section 10 regulatory requirements are hereafter referred to as regulated activities.
2. **Exclusion:** The following activities are **INELIGIBLE** for this RGP authorization:
 - a. Regulated activities that may cause more than minimal adverse effects on tribal rights (including treaty rights), protected tribal resources, or tribal lands.
 - b. Regulated activities eligible for authorization under a valid Corps Special Area Management Plan (SAMP) general permit, see <http://www.mvp.usace.army.mil/Missions/Regulatory/Permitting-Process-Procedures> for more information on SAMPs.
 - c. Regulated activities which would adversely affect public water supplies.
3. **Expiration:** Unless otherwise specified in the Corps letter verifying a project complies with the terms and conditions of this RGP, the time limit for completing work authorized by the permit ends upon the expiration date of the RGP. Activities authorized under this RGP that have commenced construction or are under contract to commence construction in reliance upon this RGP, will remain authorized provided the activity is completed within 12 months of the date of the RGP expiration, suspension, or revocation; whichever is sooner.
4. **Section 401 Water Quality Certification:** Where Section 404 activities are proposed, no RGP authorization is valid until a project proponent obtains a Clean Water Act Section 401 water quality certification (401 certification) or waiver from the appropriate water quality certifying agency; see general condition 24 in Section F below. In addition, some RGP authorizations may be subject to project-specific special conditions that will be specified in the Corps verification letter. This RGP does not obviate the need for other necessary federal, state, tribal, or local authorizations or permits.

CATEGORY 1: BIO-STABILIZATION AND HABITAT IMPROVEMENT PROJECTS

Eligible Activities: Regulated activities associated with bank bio-stabilization (See Definition) actions necessary for erosion control or prevention. Habitat improvement features (See Definition) associated with stabilization activities are also authorized by this RGP. Hard rock features, such as toe rock associated with integrated bank treatment, may be incorporated into the design provided it is a minor component of the design and is imperative to the integrity of the bio-stabilization activity. This RGP category also authorizes the maintenance of previously authorized structures or fills under this category that do not qualify for Clean Water Act Section 404 Exemptions. This RGP category also authorizes activities associated with temporary construction access provided restoration to pre-construction contours and elevations is completed. See General Condition 14 concerning temporary construction access restoration requirements.

Activity Restrictions:

- a. The activity may not result in the loss of more than 0.1 acre of regulated wetland.
- b. The activity may not result in the temporary impact to more than 0.5 acre of waters of the US.
- c. The activity may not result in reclamation of land lost due to erosive forces over time or as a result of specific natural events.
- d. No material may be placed in excess of the minimum needed for erosion protection.
- e. Native plants appropriate for current site conditions must be used for bio-stabilization and/or habitat features.
- f. The activity may not result in the conversion of the existing resource to another aquatic use/type (See Definition).
- g. No material is of a type, or is placed in any location, or in any manner, that will impair surface water flow into or out of any waters of the US.
- h. Un-suitable material cannot be used for any portion of the project (See Suitable Material Definition).

Note 1: An applicant can request a waiver, in writing, of these threshold restriction amounts (a.-b. above). The waiver may only be granted by the Corps, if a determination can be made that the discharge will result in no more than minimal adverse environmental effects. Waivers may also result in compensatory mitigation requirements.

An applicant must submit a Pre-Construction Notification (PCN) when:

- a. The length of bio-stabilization and/or habitat improvement activities for a single and complete project exceeds 1,500 linear feet in length below the Ordinary High Water Mark (OHWM) of a water of the US.
- b. Regulated wetland loss exceeds 400 square feet.
- c. The activity would trigger any of the other PCN requirements in Section D below.

CATEGORY 2: HARD ARMORING PROJECTS

Eligible Activities: Regulated activities associated with bank stabilization actions necessary for erosion control or prevention that utilize hard armoring features, which may include, but are not limited to: rip rap, revetment, gabion baskets, stream barbs, and bulkheads, seawalls, sheet piling and fabric formed concrete or combinations of hard armoring bank stabilization techniques. This RGP category also authorizes the maintenance of previously authorized structures or fills under this category that do not qualify for Clean Water Act Section 404 Exemptions. This RGP category also authorizes activities associated with temporary construction access provided restoration to pre-construction contours and elevations is completed. See General Condition 14 concerning temporary construction access restoration requirements.

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Activity Restrictions:

- a. Hard armoring activities along the bank for a single and complete project may not result in the loss of more than:
 1. 1,000 linear feet of tributary if placed along a continuous length of stream with no breaks in armoring.
 2. 2,000 linear feet of tributary if placed strategically along actively eroding sites at multiple locations within a single and complete project. No single hard armoring location can exceed 1,000 linear feet in length below OHWM. No vertical stabilization features (i.e. seawall, bulkhead, gabions, etc.) may be included within the design where there are multiple stabilization locations.
 3. 1,000 linear feet of lakeshore.
- b. The activity may not result in the loss of more than 0.1 acre of regulated wetland.
- c. The activity may not result in the temporary impact to more than 0.5 acre of waters of the US.
- d. The activity may not result in reclamation of land lost due to erosive forces over time or as a result of specific natural events.
- e. No material may be placed in excess of the minimum needed for erosion protection.
- f. No material is of a type, or is placed in any location, or in any manner, that will impair surface water flow into or out of any waters of the US.
- g. The activity cannot result in stream channelization (See Definition).
- h. The activities may not result in the conversion of the existing resource to another aquatic use/type (See Definition).
- i. Un-suitable material cannot be used for any portion of the project (See Suitable Material Definition).

Note 1: Project proponents may utilize bio-stabilization and/or habitat improvement features (Category 1, above) in combination with hard armoring practices. Bio-stabilization and/or habitat improvement features will not be counted towards activity restriction thresholds in this category. Linear foot lengths for the associated bio-stabilization and/or habitat improvement features will count towards activity PCN requirements (a., b.) below.

Note 2: An applicant can request a waiver, in writing, of these threshold restriction amounts (a.-c. above). The waiver may only be granted by the Corps, if a determination can be made that the discharge will result in no more than minimal adverse environmental effects. Waiver reviews may require application of available functional analysis tools. Waivers may also result in compensatory mitigation requirements.

An applicant must submit a Pre-Construction Notification (PCN) when:

- a. The length of hard armoring activities for a single and complete project exceeds:
 1. 500 linear feet in length below the OHWM of a water of the US at any single location.
 2. 1,000 linear feet in total project length below the OHWM (the sum of all individual hard armoring locations) of a water of the US.
- b. Regulated wetland loss exceeds 400 square feet.
- c. Hard armoring is proposed on opposite, parallel banks (along both banks) within the same length of stream.
- d. The activity would trigger any of the other PCN requirements in Section D below.

CATEGORY 3: FEDERAL AND STATE RESOURCE AGENCY SPONSORED BANK STABILIZATION AND HABITAT IMPROVEMENT PROJECTS

Eligible Activities: Regulated activities associated with bank stabilization actions necessary for erosion control or prevention as well as habitat improvement features (See Definition). This includes both hard armoring and bio-stabilization methods of bank stabilization. To be eligible for this category, the project must be designed, funded and/or approved by a government resource agency (See Definition). When Pre-Construction Notification (PCN) is required,

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applicants must provide documentation that the project has been designed and/or funded by, or with direct oversight, from a Federal or State Resource Agency. This RGP category also authorizes the maintenance of previously authorized structures or fills under this category that do not qualify for Clean Water Act Section 404 Exemptions. This RGP category also authorizes activities associated with temporary construction access provided restoration to pre-construction contours and elevations is completed. See General Condition 14 concerning temporary construction access restoration requirements.

Activity Restrictions:

- a. Hard armoring activities along the bank for a single and complete project may not result in the loss of more than:
 - 1. 1,500 linear feet of tributary if placed along a continuous length of stream with no breaks in armoring.
 - 2. 2,500 linear feet of tributary if placed strategically along highly eroding bends at multiple locations within a single and complete project. No single location can exceed 1,500 linear feet in length below the OHWM.
 - 3. 1,500 linear feet of lakeshore.
- b. The activity may not result in the loss of more than 0.1 acre of regulated wetland.
- c. The activity may not result in the temporary impact to more than 0.5 acre of waters of the US.
- d. The activity may not result in reclamation of land lost due to erosive forces over time or as a result of specific natural events.
- e. No material may be placed in excess of the minimum needed for erosion protection.
- f. No material is of a type, or is placed in any location, or in any manner, that will impair surface water flow into or out of any waters of the US.
- g. The activity cannot result in stream channelization.
- h. The activities may not result in the conversion of the existing resource to another aquatic use/type (See Definition).
- j. Un-suitable material cannot be used for any portion of the project (See Suitable Material Definition).

Note 1: Project proponents may utilize bio-stabilization and/or habitat improvement features (Category 1, above) in combination with hard armoring practices. Bio-stabilization and/or habitat improvement features will not be counted towards activity restriction thresholds in this category. Linear foot lengths for the associated bio-stabilization and/or habitat improvement features will count towards activity PCN requirements (a., b.) below.

Note 2: An applicant can request a waiver, in writing, of these threshold restriction amounts (a.-c. above). The waiver may only be granted by the Corps, if a determination can be made that the discharge will result in no more than minimal adverse environmental effects. Waiver reviews may require application of available functional analysis tools. Waivers may also result in compensatory mitigation requirements.

An applicant must submit a Pre-Construction Notification (PCN) when:

- a. The length of hard armoring activities for a single and complete project exceeds:
 - 1. 1,000 linear feet below the OHWM of a water of the US at any single location.
 - 2. 1,500 linear feet in total project length below the OHWM of a water of the US. (The sum of all individual hard armoring locations)
- b. Regulated wetland loss exceeds 400 square feet.
- c. Hard armoring is proposed on opposite, parallel banks (along both banks) within the same length of stream.
- d. The activity would trigger any of the other PCN requirements in Section D below.

B. USE OF MULTIPLE GENERAL PERMITS

Single and complete non-linear projects may not be “piecemealed” to avoid the limits in a general permit (nationwide, programmatic, or regional general permit) authorization. When general permit limits are exceeded, single and complete projects may be eligible for review and authorization by an individual permit.

Unless otherwise indicated by a specific general permit or general permit category, the use of more than one general permit (nationwide, programmatic, or regional general permit) for a single and complete project is prohibited, except when the acreage or linear foot loss of waters of the US authorized by the general permits does not exceed the loss limit of the general permit with the *highest* specified acreage limit.

C. CALCULATING IMPACTS TO WATERS OF THE UNITED STATES

1. **Waters of the US** may include waterbodies such as streams, rivers, lakes, ponds, and wetlands (see Definitions, Section G).
2. **Loss of waters of the US** is the sum of all permanently adversely affected jurisdictional waterbodies for a single and complete project. Temporary impacts to waters of the US, discussed below, are calculated separately from losses of waters of the US and do not contribute to loss thresholds. Permanent adverse effects include filling, flooding, excavation, or drainage in waters of the US as a result of the regulated activity. Permanent adverse effects to waters of the US include regulated activities that change a waterbody to dry land, increase the bottom elevation of a waterbody, decrease the bottom elevation of a waterbody (e.g., excavation of a sedge meadow wetland to shallow marsh), or change the use of a waterbody.
 - a) Losses of wetland must be reported in either acres or square feet, as appropriate.
 - b) Losses of tributaries, ponds, and lakes must be reported in acres or square feet and linear feet below the plane of the ordinary high water mark. If regulated activities are proposed along opposite banks or at multiple locations within the same property or proposed by the same applicant, they are added together to determine the overall amount of linear loss to waters of the US.
3. **Temporary impacts to waters of the US** include the sum of all regulated impacts to waters of the US for a single and complete project which are restored to pre-construction contours and elevations after construction. Examples of temporary impacts to waters of the US may include the placement of timber matting, installation of coffer dams, trenching and backfilling, and in many cases, mechanized land-clearing.
 - a) Temporary impacts to wetlands must be reported in either acres or square feet, as appropriate.
 - b) Temporary impacts to tributaries, ponds, and lakes must be reported in acres or square feet and linear feet below the plane of the ordinary high water mark. If regulated activities are proposed along opposite banks (e.g. which is parallel along both banks of a tributary) or at multiple locations within the same property or proposed by the same applicant, temporary impacts must be added together to determine the overall amount of temporary linear impact.
4. **Losses and temporary impacts to waters of the US do not include:**
 - a) 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.
 - b) Although they are a regulated activity, for the purposes of this RGP, bio-stabilization and habitat improvement features with a functional lift to the aquatic resource (see Definitions in Section G) are not included in loss calculations because they do not result in a permanent adverse effect to resources.
5. The measurements of loss and temporary impact to waters of the US are for determining whether a project may qualify for the RGP and are not reduced by compensatory mitigation.

D. PRE-CONSTRUCTION NOTIFICATION (PCN) INFORMATION

Projects that meet the terms and conditions of this RGP and do not require pre-construction notification (PCN), as outlined below, may commence work after project proponents have carefully confirmed that the activity will be conducted in compliance with all applicable terms and conditions of the RGP. See list below for additional PCN requirements.

For all activities which require PCN, project proponents must obtain written Corps verification of RGP coverage before starting regulated work. The PCN must include all other nationwide permits, programmatic general permits, RGPs, or individual permits used or intended to be used to authorize any part of the overall project, including regulated activities that require Corps authorization but do not require PCN.

If an activity does not specifically require a PCN (as described in each RGP category), reference the information below to determine if a PCN must be submitted and a written verification letter received prior to starting work.

PCN is required for regulated activities proposed in these Aquatic Resources:

1. State-designated wild rice waters^{1, 2};
2. Bogs and fens^{1, 3};
3. Apostle Islands National Lakeshore and Madeline Island (WI only);
4. Coastal plain marshes, interdunal wetlands, and Great Lakes ridge and swale complexes (WI only)¹;
5. Wetland sites designated by the Ramsar Convention (as of the date of publication, these include: the Horicon Marsh, Upper Mississippi River Floodplain wetlands, Kakagon and Bad River Sloughs, Door County Peninsula Coastal wetlands, Chiwaukee Illinois Beach Lake Plain, and Lower Wisconsin Riverway), see <https://rsis Ramsar.org/> (WI only).
6. State and Tribal waters identified as 1) Areas of Special Natural Resources Interest Outstanding and Exceptional Streams (WI), 2) Outstanding Resource Value Waters Prohibited and Restricted Streams (MN), 3) Exceptional Aquatic Life Use waters (MN), or 4) Bad River Outstanding Tribal Resource Waters, Outstanding Resource Waters, and Exceptional Resource Waters (WI)⁴

PCN is required for the following activities to comply with other federal laws:

1. Regulated activities which might affect any federally-listed threatened, endangered, or proposed threatened and endangered species, designated critical habitat, or proposed critical habitat unless ESA Section 7 consultation addressing the effects of the proposed activity has been completed by a federal applicant or lead federal agency.
2. Regulated activities which 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 unless the requirements of Section 106 of the NHPA have been satisfied by a federal applicant or lead federal agency.
3. Regulated activities which may result in disturbance or removal of human remains.

1 Information about Wisconsin plant community types may be obtained from at <http://dnr.wi.gov/topic/EndangeredResources/Communities.asp?mode=group&Type=Wetland>.

2 Information regarding wild rice waters and their extent may be obtained from at <https://www.dnr.state.mn.us/wildlife/shallowlakes/wildrice.html> and <https://gisdata.mn.gov/dataset/biotawild-rice-lakes-dnr-wld> in Minnesota, <https://dnr.wisconsin.gov/topic/wildlifehabitat/rice.html> in Wisconsin, and an interactive map is provided at: <http://maps.glifwc.org/> (under Treaty Resources – Gathering).

3 Additional information on bog and fen communities can be found at <http://www.mvp.usace.army.mil/missions/regulatory.aspx> and in Minnesota at <http://www.dnr.state.mn.us/npc/classification.html>.

4 Information about WI ASNRI waters can be found at <https://dnr.wisconsin.gov/topic/SurfaceWater/swdv>. Information about MN ORWW and Exceptional AQL waters can be found at <https://www.pca.state.mn.us/business-with-us/water-quality-standards> and <https://mpca.maps.arcgis.com/apps/webappviewer/index.html?id=4642533a988b40adb63a0138b5f1d439>. Information about Bad River waters can be found at <https://www.arcgis.com/apps/View/index.html?appid=6f44c371217e4ee8b5f1c2c705c7c7c5>.

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4. Regulated activities which require permission from the Corps pursuant to Section 408 because it will alter or temporarily or permanently occupy or use a Corps federally authorized civil works project.
5. Regulated activities in or which may affect the National Wild and Scenic River System, including designated portions of the St. Croix River in Minnesota and Wisconsin and the Wolf River in Wisconsin, 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.

Other activities which require PCN include:

1. Regulated activities in areas of suspected sediment or soil contamination, including but not limited to Superfund sites. Superfund sites in Minnesota or Wisconsin can be located by searching the EPA's website: <https://www.epa.gov/superfund/search-superfund-sites-where-you-live>.
2. Temporary impacts remaining in place for longer than 90 days between May 15 and November 15.
3. Temporary impacts to forest or shrub wetlands or conversion of forest or shrub wetlands to another wetland type.
4. All regulated activities which require a waiver to be eligible for authorization by the RGP.

Timing of PCN: Where required by the terms of this RGP, the prospective permittee must notify the Corps by submitting a PCN as early as possible. The Corps will 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. Generally, the Corps 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 Corps will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all requested information has been received by the Corps. The prospective permittee shall not begin the activity until they are notified in writing by the Corps that the activity may proceed under the RGP with any special conditions imposed by the Corps.

Form and Content of PCN: The PCN must be in writing and should utilize the Minnesota Joint Waters Wetlands Application, WI DNR application, or the Corps Application for Department of the Army Permit Form ENG 4345. A letter containing the required information may also be used. A complete PCN must include:

1. Contact information including the name, mailing address, email address, and telephone numbers of the prospective permittee and any third party agents.
2. Location of the proposed activity (i.e. section-township-range and latitude and longitude in decimal degrees);
3. A description of the proposed activity and its purpose; a description of any avoidance and minimization mitigation measures intended to reduce the adverse environmental effects caused by the proposed activity; and any and all other general or individual permits used or intended to be used to authorize any part of the overall proposed project including activities that require Corps authorization but do not require PCN.
4. A tabulation of all impacts to waters of the US, including the anticipated amount of loss of waters and temporary impacts expected to result from the proposed activity. Impacts to all waters of the US must be reported in acres or square feet. In addition, tributary, pond, and lake impacts must also be reported in linear feet. A table may be used to clearly and succinctly disclose this information (see Calculating Impacts to Waters of the United States, Section C).
5. Sketches, maps, drawings, and plans must be provided to show that the activity complies with the terms of the RGP. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity. Large and small-scale maps must be provided to show the project site location. Drawings and plans should be to scale, with scale included, and depict all identified aquatic resources and aquatic resource impact areas, including plan-view drawings on a recent aerial photograph, and cross-section and profile drawings where appropriate.
6. Identification of all aquatic resources on the project site and the acreage of each aquatic resource present.

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Aquatic resources must be identified by type (e.g. wetland, tributary, lake, man-made ditch, pond, etc.) and impacts must be identified by type (e.g. fill, excavation, etc.) and permanence (permanent or temporary). A wetland delineation may be required.

7. A statement describing how compensatory mitigation requirements will be satisfied, or an explanation why compensatory mitigation should not be required. See Mitigation, Section E for more information.
8. If the proposed project would impact a calcareous fen, the PCN must include a copy of the WI DNR authorization for the proposed regulated activity, or a copy of the approved MN DNR calcareous fen management plan specific to the project.
9. If any federally-listed threatened or endangered species (or species proposed for listing) or proposed or designated critical habitat might be affected or is in the vicinity of the regulated activity, 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 that utilize the designated critical habitat (or critical habitat proposed for such designation) that might be affected by the proposed activity. Federal applicants or applicants that have federal funding (or whose project otherwise involves a lead federal agency) must provide documentation demonstrating compliance with ESA Section 7.
10. If the activity might have the potential to cause effects to a historic property listed on, 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 and include a vicinity map indicating the location of the historic property. Federal applicants or applicants that have federal funding (or whose project otherwise involves a lead federal agency) must provide documentation demonstrating compliance with Section 106 of the NHPA.
11. If an activity is proposed in or may affect a component of the National Wild and Scenic River System (including designated portions of the St. Croix River in Minnesota and Wisconsin and the Wolf River in Wisconsin) 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.”
12. The PCN must specify how long temporary impacts and structures will remain in place and include a restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-project conditions (see general conditions 14 and 15).
13. If a waiver for a specific category or condition of the permit is proposed, the PCN must include an explanation of the need for a waiver and why the applicant believes the impacts would result in minimal individual and cumulative adverse environmental effects.
14. For an activity that requires permission from, or review by, the Corps pursuant to Section 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 PCN 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 the Corps civil works project.

Agency Coordination: Agency coordination is required for activities which require a waiver to be eligible for authorization by this RGP, except for a waiver of General Condition 15 for the duration of temporary impacts in waters of the US. When agency coordination is required, the district engineer will immediately provide a copy of the complete PCN to the appropriate Federal, state, and tribal offices (EPA, FWS, state and tribal natural resource or water quality agency). Agencies will have 10 calendar days from the date the material is transmitted to notify the district engineer 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 contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the PCN. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity, including the need for mitigation

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to ensure that the net adverse environmental effects of the proposed activity are no more than minimal. The district engineer will indicate in the administrative record associated with each PCN how the Corps considered the resource agencies' concerns.

Tribal Coordination: Tribal coordination is required for all activities which require PCN and are located within the exterior boundaries of federally recognized Indian reservations. When tribal coordination is required, the district engineer will immediately provide a copy of the complete PCN to the affected tribe. The tribe will have 10 calendar days from the date the material is transmitted to notify the district engineer that they intend to provide substantive, site-specific comments. If contacted by the affected tribe, the district engineer will wait an additional 15 calendar days before making a decision on the PCN. The district engineer will fully consider the tribe's comments received within the specified time frame concerning the proposed activity. The district engineer will indicate in the administrative record associated with each PCN that the tribe's concerns were considered.

E. MITIGATION

In accordance with the Federal Mitigation Rule (33 CFR part 332), the Section 404(b)(1) guidelines (40 CFR part 230), and current Corps policies, guidelines, and procedures for compensatory mitigation, regulated activities must be designed and constructed to avoid and minimize (mitigate) 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). Mitigation includes actions which may avoid, minimize, rectify, reduce, or compensate for adverse environmental effects or activities which may otherwise be contrary to the public interest. Regulated activities which the Corps believes do not mitigate adverse environmental effects or are contrary to the public interest are ineligible for authorization by this RGP and will be evaluated by the Corps using individual permit procedures.

After all practicable steps to avoid and minimize adverse effects to waters of the US have been considered, the Corps may require compensatory mitigation to ensure that the regulated activity results in no more than minimal adverse environmental effects or will not be contrary to the public interest. In reviewing the complete PCN for the proposed activity, the Corps will determine whether the activity authorized by the RGP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. The Corps will issue the RGP verification for that activity if it meets the terms and conditions of the RGP, unless the Corps determines, after considering compensatory 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. When this occurs, the Corps will exercise discretionary authority to require an individual permit evaluation for the proposed regulated activity.

Regulated activities eligible for this RGP must include a statement describing how compensatory mitigation requirements will be satisfied, or an explanation why compensatory mitigation should not be required for proposed impacts to waters of the US. Project proponents may propose the use of mitigation banks, in-lieu fee programs, or permittee-responsible mitigation. When developing a compensatory mitigation proposal, the project proponent must consider appropriate and practicable options consistent with the framework at 33 CFR 332.3(b). Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of the current Corps policies, guidelines, procedures, and 33 CFR 332 (the Mitigation Rule).

Information regarding current Corps policies and guidelines about compensatory mitigation in Minnesota and Wisconsin may be viewed online at www.mvp.usace.army.mil/Missions/Regulatory/Mitigation. Information regarding existing banks and in-lieu fee programs is available online at www.ribits.usace.army.mil. Nationally applicable information, including the Mitigation Rule, may be read online at http://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/mitig_info/.

F. GENERAL CONDITIONS

To qualify for this RGP authorization, the prospective permittee must comply with the following conditions, as applicable, in addition to any project-specific special conditions imposed by the Corps.

1. **Compliance:**
 - a. The permittee is responsible for ensuring that whoever performs, supervises or oversees any portion of the physical work associated with the construction of the project has a copy of and is familiar with all the terms and conditions of the RGP and any special (permit-specific) conditions included in any written verification letter from the Corps.
 - b. The activity must also comply with any special conditions added by the state, tribe, or U.S. EPA in its Section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination. The permittee is ultimately responsible for ensuring compliance with all the terms and conditions of the RGP.
 - c. Any authorized structure or fill must be properly maintained, including maintenance to ensure public safety and compliance with applicable RGP general conditions, as well as any activity-specific conditions added by the Corps to an RGP authorization.
2. **Compliance Certification:** Each permittee who receives an RGP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and implementation of any required compensatory mitigation. The Corps will provide the permittee the certification document with the RGP verification letter. The completed certification document must be submitted to the Corps within 30 days of completion of the authorized activity or the implementation of any required compensatory mitigation, whichever occurs later.
3. **Site Inspection:** The permittee shall allow representatives from the Corps to inspect the proposed project site and the authorized activity to ensure that it is being, or has been, constructed and maintained in accordance with the RGP authorization.
4. **Migratory Birds and Bald and Golden Eagles:** The permittee is responsible for ensuring their action complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting the appropriate local office of the U.S. Fish and Wildlife Service (FWS) to determine applicable measures to reduce impacts to migratory birds or eagles, including whether "incidental take" permits are necessary and available under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for a particular activity.
5. **Endangered Species:**
 - a. No activity is authorized under this RGP which is likely to directly or indirectly jeopardize the continued existence of a federally threatened or endangered species or a species proposed for such designation, as identified under the Endangered Species Act (ESA), 50 CFR 402, or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under the RGP which "may affect" a listed species or critical habitat, unless ESA Section 7 consultation addressing the effects of the proposed activity has been completed, and a Corps RGP verification letter is issued. Direct effects are the immediate effects on listed species and critical habitat caused by the RGP activity. Indirect effects are those effects on listed species and critical habitat that are caused by the RGP activity and are later in time, but still are reasonably certain to occur.
 - b. As a result of formal or informal consultation with the FWS, the Corps may add species-specific permit conditions to the RGP verification.
 - c. Information on the location of federally threatened and endangered species and their critical habitat can be obtained directly from the offices of the FWS on their web page at www.fws.gov/ipac.
6. **Calcareous Fens:** The permittee may not complete regulated activities in a calcareous fen, unless the Wisconsin Department of Natural Resources has authorized the proposed regulated activity, or the

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Minnesota Department of Natural Resources has approved a calcareous fen management plan specific to the project. A list of known Minnesota calcareous fens can be found at:

http://files.dnr.state.mn.us/eco/wetlands/calcareous_fen_list.pdf. Information about calcareous fens in Wisconsin can be found at

<http://dnr.wi.gov/topic/EndangeredResources/Communities.asp?mode=group&Type=Wetland>.

7. **Wild and Scenic Rivers:** The permittee may not complete regulated activities which may affect or are located in designated portions 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.
8. **Historic Properties, Cultural Resources:**
 - a. No activity which may affect historic properties listed or potentially eligible for listing on the National Register of Historic Places is authorized until the requirements of Section 106 of the National Historic Preservation Act (Section 106) have been satisfied. Federal project proponents should follow their own procedures for complying with the requirements of Section 106 and provide documentation of compliance with those requirements.
 - b. Information on the location and existence of historic and cultural resources can be obtained from the State Historic Preservation Office, Tribal Historic Preservation Offices, and the National Register of Historic Places.
 - c. Rock or fill material used for activities authorized by this permit must either be obtained from existing quarries or, if a new borrow site is excavated to obtain fill material, the Corps must be notified prior to the use of the new site to determine whether a cultural resources survey of the site is necessary.
9. **Discovery of Previously Unknown Remains and Artifacts:** If any previously unknown historic, cultural, or archeological remains and artifacts are discovered while accomplishing the activity authorized by this permit, the permittee must immediately notify the Corps 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 Corps will initiate the federal, tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
10. **Burial Sites:** Burial sites, marked or unmarked, are subject to state law (Wisconsin Statute 157.70 and Minnesota Statutes 306 and 307.08). Native American burial sites on federal or tribal land are subject to the provisions of Native American Graves Protection and Repatriation Act (NAGPRA). Regulated activities may not result in disturbance or removal of human remains until disposition of the remains has been determined by the appropriate authority under these laws, and the work is authorized by the Corps. Regulated activities which result in an inadvertent discovery of human remains must stop immediately, and the Corps, as well as the appropriate state and tribal authority, must be notified. Regulated work at inadvertent discovery sites requires compliance with state law and NAGPRA, as appropriate, prior to re-starting work.
11. **Federally Authorized Corps Civil Works projects:** A permittee is not authorized to begin any regulated activities described in this RGP if activities will alter or temporarily or permanently occupy or use a Corps federally authorized civil works project, unless the appropriate Corps office issues a Section 408 permission to alter, occupy, or use the Corps civil works project (pursuant to 33 U.S.C. 408) and the Corps issues written RGP verification. Examples of federal projects include, but are not limited to, works that were built by the Corps and are locally maintained (such as local flood control projects) or operated and maintained by the Corps (such as locks and dams).
12. **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

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engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

13. **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).
14. **Restoration of Temporary Impacts:** All temporary impacts in waters of the US, including discharges resulting from side casting material excavated from trenching, that occur as a result of the regulated activity must be fully contained with appropriate erosion control or containment methods, be restored to pre-construction contours and elevations, and, as appropriate, revegetated with native, non-invasive vegetation, unless otherwise conditioned in a Corps RGP verification. All temporary access roads constructed in waters of the US must be properly bridged or culverted to maintain surface flows. In temporarily excavated wetlands, the top 6 to 12 inches of the excavation should normally be backfilled with topsoil originating from the wetland. No temporary excavation area, including, but not limited to trenches, may be constructed or backfilled in such a manner as to drain waters of the United States (e.g., backfilling with extensive gravel layers, creating a French drain effect).
15. **Duration of Temporary Impacts:** Temporary impacts in waters of the U.S., including wetlands, must be avoided and limited to the smallest area and the shortest duration required to accomplish the project purpose.
 - a. Unless otherwise conditioned in a Corps RGP verification, temporary impacts may not remain in place longer than 90 days between May 15 and November 15. Before those 90 days have elapsed all temporary discharges must be removed in their entirety.
 - b. If the temporary impacts would remain in place for longer than 90 days between May 15 and November 15, the PCN must request a waiver from this condition and specify how long temporary impacts will remain and include a restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-project conditions. The permittee must remove the temporary impacts in their entirety in accordance with the activity authorized in their permit verification.
16. **Best Management Practices (BMPs):** To minimize adverse effects from soil loss and sediment transport that may occur as a result of the authorized work, appropriate BMPs must be implemented and maintained. For authorized work above an OHWM the BMPs must remain in place until the affected area is stabilized with vegetation or ground cover. For all authorized work below an OHWM, BMPs are required and must prevent or minimize adverse effects (e.g., total suspended solids or sedimentation) to the water column outside of the authorized work area. Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance. All BMPs must be inspected and properly maintained following storm events to ensure they are operational. All exposed slopes and stream banks must be stabilized within 24 hours after completion of all tributary crossings.
17. **Aquatic Life Movements:** No regulated 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.
18. **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 sedimentation) of a designated or known spawning area are not authorized.
19. **Hard Armoring:** For RGP categories that allow for the use of hard armoring for bank stabilization, only suitable material must be used and be of a size and configuration sufficient to prevent its movement from

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the authorized alignment by natural forces under normal or high flows.

20. **Pollutant or Hazardous Waste Spills:** The permittee is responsible for removing pollutants and hazardous materials and for minimizing any contamination resulting from a spill in accordance with all applicable state, tribal, and federal laws. In accordance with applicable state, tribal, and federal laws and regulations, if a spill of any potential pollutant or hazardous waste occurs, it is the responsibility of the permittee to immediately notify the National Response Center at 1-800-424-8802 or nrc.uscg.mil AND
IN WISCONSIN: the WI DNR Spills Team at 1-800-943-0003; or
IN MINNESOTA: the Minnesota State Duty Officer at 1-800-422-0798.
21. **Clean Construction Equipment:** To prevent the spread of invasive species, all construction equipment must be clean prior to entering and before leaving the work site.
22. **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 US.
 - c. For activities subject to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403), the permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps, 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.
23. **Fills Within 100-Year Floodplains:** The regulated activity must comply with applicable FEMA-approved state or local floodplain management requirements.
24. **Section 401 Clean Water Act Water Quality Certification:** All regulated activities authorized by this RGP pursuant to Section 404 of the Clean Water Act require Section 401 Clean Water Act certification or waiver to be considered valid.
25. **Maintenance:** The activity must be properly maintained, which may require repairs after severe storms or erosion events.
26. **Transfer of Regional General Permit Verifications:** If the permittee sells the property associated with a regional general permit verification, the permittee may transfer the regional general permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the regional general 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 regional general permit are still in existence at the time the property is transferred, the terms and conditions of this regional general permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this regional general permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below."

(Transferee)

(Date)

G. DEFINITIONS

Bank Stabilization: A vegetative, structural, or combination of bank treatment designed to stabilize stream and shoreline and to reduce erosion. Methods include bio stabilization and hard armoring.

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.

Bio-Stabilization: Native material revetments that combine live and/or dead plant materials such as engineered log jams, large woody debris, rootwads, and boulder clusters. Other structural engineering techniques to stabilize slopes and stream banks can be incorporated to key in slopes or stabilize organic material. Examples of bio-stabilization or biotechnical practices include but are not limited to, A-jack structures keyed in the toe of the slope with native plantings on the banks above, vegetated geo-grids, coconut fiber, live vegetated cuttings, brush layering and soil lifts or toe rock associated with integrated bank treatment.

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.

Conversion of Aquatic Resources: A change of the existing aquatic resource to a different resource or wetland type. Example: The conversion of a stream to a wetland, a bog to a lake or forested wetland to shallow marsh wetland, etc.

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

Discharge: The term discharge of dredged material is defined at 33 CFR 323.2(d) and the term discharge of fill material is defined at 33 CFR 323.2(f).

Functional Lift: An improvement from the base-line functional value to the post restoration value. There must be a measurable increase in at least one of the five following categories for a lift to be evident: biological, physicochemical, geomorphological, hydraulic and/or hydrological aspects.

Government Resource Agency: Government agencies delegated to manage and conserve natural resources. Government agencies can include federal, tribal, and state agencies. Designated agencies which design projects with direct approval oversight and/or funding from a Federal or State Resource Agency may also be considered a Government Resource Agency.

Habitat Improvement Features: For the purposes of this permit, construction techniques and structures that provide a measurable functional lift to the aquatic resource. Activities include (but are not limited to) the removal of accumulated sediments; releases of sediment from reservoirs to maintain sediment transport continuity to restore downstream habitats; the installation, removal, and maintenance of small water control structures, dikes, and berms, as well as discharges of dredged or fill material to restore appropriate stream channel configurations after small water control structures, dikes, and berms are removed; the installation of current deflectors; the enhancement, rehabilitation, or reestablishment of riffle and pool stream structure; the placement of in-stream habitat structures; modifications of the stream bed and/or banks to enhance, rehabilitate, or reestablish stream meanders; the removal of stream barriers, such as undersized culverts, fords, and grade control structures; the backfilling of artificial channels; the removal of existing drainage structures, such as drain tiles, and the filling, blocking, or reshaping of drainage ditches to restore wetland hydrology; the installation of structures or fills necessary to restore or enhance wetland or stream hydrology; the construction of small nesting islands; the construction of open water areas; the construction of oyster habitat over unvegetated bottom in tidal waters; coral restoration or relocation activities; shellfish seeding; activities needed to reestablish vegetation, including plowing or disking for seed bed preparation and the planting of appropriate wetland species; reestablishment of submerged aquatic vegetation in areas where those plant communities previously existed; reestablishment of tidal wetlands in tidal waters where those wetlands previously existed; mechanized land clearing to remove non-native invasive, exotic, or nuisance vegetation; and other related activities. Only native plant species should be planted at the site.

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Hard Armoring: A layer of stone or other suitable material placed in the stream to protect the banks from erosion. Examples of hard armoring can include, but is not limited to: rip rap, revetment, gabion baskets, stream barbs, and bulkheads, seawalls, sheet piling, limestone slabs, and fabric formed concrete.

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 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 regulated activity and are later in time or farther removed in distance but are still reasonably foreseeable.

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

Ordinary High Water Mark: An ordinary high water mark is a line on the shore established by the fluctuations of water and indicated by physical characteristics, or by other appropriate means that consider the characteristics of the surrounding areas.

Overall Project: The aggregate of all single and complete projects related to the same purpose, including both linear and non-linear activities with regulated losses and temporary impacts to waters of the US.

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 (PCN): A request submitted by the project proponent to the Corps for confirmation that a particular activity is verified by a general permit. The request may be a permit application, letter, or similar document that includes information about the proposed work and its anticipated environmental effects. PCN may be required by the terms and conditions of this regional general permit.

Protected Tribal Resources: Those natural resources and properties of traditional or customary religious or cultural importance, either on or off Indian lands, retained by, or reserved by or for, Indian tribes through treaties, statutes, judicial decisions, or executive orders, including tribal trust resources.

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 overall 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. Single and complete non-linear projects may not be “piecemealed” to avoid the limits in an RGP authorization. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend 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.

Stream Channelization: The manipulation of a stream’s course, condition, capacity, or location that causes more than minimal interruption of normal stream processes. A channelized stream remains a water of the US. Activities that result in stream channelization include but are not limited to the process of straightening, redirecting natural stream course, or bank stabilization that reduces channel complexity and diversity.

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, bulkhead, revetment, rip rap, jetty, permanent mooring structure, permanently moored floating vessel, piling, aid to navigation, or any other manmade obstacle or obstruction.

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Suitable Material: Materials designed to resist erosive forces that are free of toxic pollutants and other materials inappropriate for stabilization activities. Examples of materials not suitable for use include, but are not limited to: trash, tires, debris, car bodies, asphalt, scrap lumber, roofing materials, etc.

Tribal Lands: Any lands which are 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.

Tributary: For the purposes of this permit, a water that contributes flow, either directly or through another water to a traditionally navigable water or interstate water (including wetlands) and that is characterized by the presence of the physical indicators of bed and banks and ordinary high water mark. A tributary can be a natural, man-altered, or man-made water and includes waters such as rivers, streams, canals, and ditches.

Waiver: An approval from the Corps which allows an applicant to exceed the activity restrictions or conditions described in an RGP. Waivers may only be considered when expressly indicated as available in an RGP and will only be granted once the Corps has made a written determination that the RGP activity will result in only minimal individual and cumulative adverse environmental effects. When a waiver is required, an applicant cannot start work until they have received a RGP verification letter with waiver approval.

Waterbody: For purposes of this RGP, a waterbody is a jurisdictional water of the US. Examples of “waterbodies” include streams, rivers, lakes, ponds, and wetlands.

H. FURTHER INFORMATION

1. Congressional authorities: The permittee has been authorized to undertake the activity described above pursuant to Section 404 of the Clean Water Act (33 U.S.C 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).
2. The Corps retains discretionary authority to require an individual permit for any activity eligible for authorization by an RGP based on concern for the aquatic environment or for any other factor of the public interest.
3. Limits of this authorization:
 - a. This RGP does not obviate the need to obtain other federal, state, or local authorizations required by law;
 - b. This RGP does not grant any property rights or exclusive privileges;
 - c. This RGP does not authorize any injury to the property or rights of others; and
 - d. This RGP does not authorize interference with any existing or proposed federal project.
4. Limits of federal liability: In issuing this permit, the Federal Government does not assume any liability for the following:
 - a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes;
 - b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest;
 - c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit;
 - d. Design or construction deficiencies associated with the permitted work; or
 - e. Damage claims associated with any future modification, suspension, or revocation of this permit.
5. Reliance on permittee’s data: The determination of this office that an activity is not contrary to the public interest will be made in reliance on the information provided by the project proponent.

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6. Re-evaluation of decision: This office may reevaluate its decision for an individual verification under this general permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:
 - a. The permittee fails to comply with the terms and conditions of this permit;
 - b. The information provided by the permittee in support of the pre-construction notification proves to have been false, incomplete, or inaccurate (See 5 above); or
 - c. Significant new information surfaces which this office did not consider in reaching the original decision. Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring the permittee to comply with the terms and conditions of their permit and for the initiation of legal action where appropriate. The permittee will be required to pay for any corrective measures ordered by this office, and if the permittee fails to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill the permittee for the cost.
7. This office may also reevaluate its decision to issue this RGP at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, significant new information surfaces which this office did not consider in reaching the original public interest decision. Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.

I. CORPS DECISION

In reviewing the PCN for the proposed activity, the Corps will determine whether the activity authorized by the RGP 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 RGP, the Corps should issue the RGP verification for that activity if it meets the terms and conditions of that RGP, unless the Corps 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 individual crossings of waters of the US to determine whether they individually satisfy the terms and conditions of the RGPs, as well as the cumulative effects caused by all the crossings authorized by RGP. If an applicant requests a waiver for any limit where waivers are indicated as available, the Corps will only grant the waiver upon a written determination that the RGP activity will result in only minimal individual and cumulative adverse environmental effects.

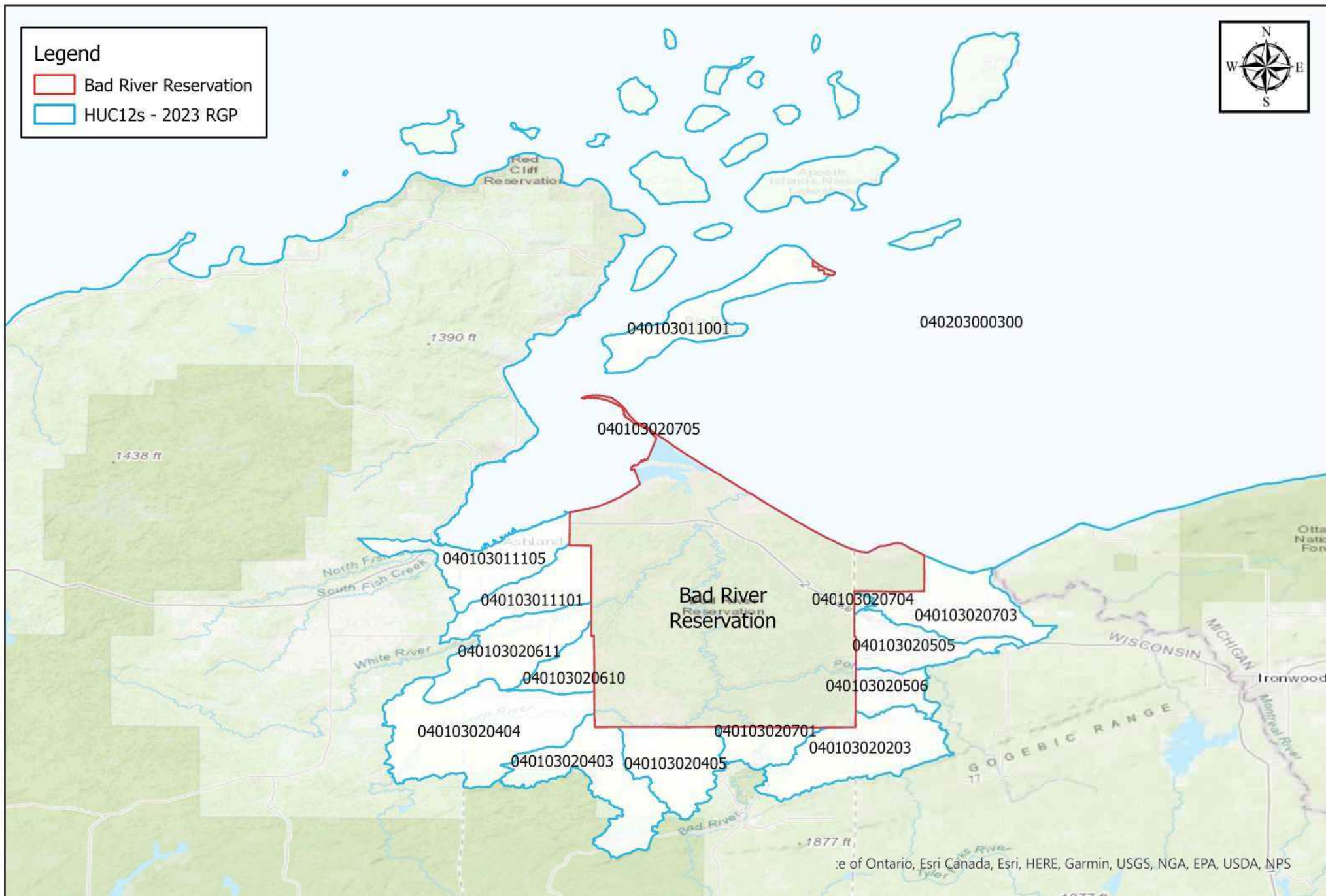
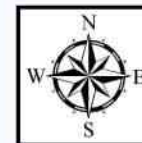
When making minimal adverse environmental effects determinations the Corps will consider the direct and indirect effects caused by the RGP activity. The Corps will also consider the cumulative adverse environmental effects caused by activities authorized by the RGP and whether those cumulative adverse environmental effects are no more than minimal. The Corps will consider site-specific factors, such as the environmental setting in the vicinity of the RGP activity, the type of resource that will be affected by the RGP activity, the functions provided by the aquatic resources that will be affected by the RGP 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 RGP 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 Corps. The Corps may add case-specific special conditions to the RGP authorization to address site-specific environmental concerns.

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The Corps will consider any proposed compensatory mitigation or other mitigation measures the applicant has included in the proposal to inform decisions regarding 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 Corps determines that the activity complies with the terms and conditions of the RGP and that the adverse environmental effects are no more than minimal, after considering mitigation, the Corps will notify the permittee and include any activity-specific conditions in the RGP verification the Corps deems necessary. Conditions for compensatory mitigation requirements must comply with the appropriate provisions at 33 CFR 332.3(k). When compensatory mitigation is required, the Corps must approve the final mitigation plan before the permittee commences work in waters of the US, unless the Corps 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 Corps determines that the adverse environmental effects of the proposed activity are more than minimal, then the Corps will notify the applicant of next steps as described in 33 CFR 325.2.

Legend

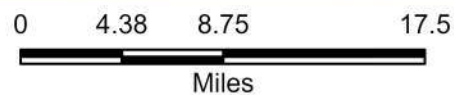
- Bad River Reservation
- HUC12s - 2023 RGP



Map of Ontario, Esri Canada, Esri, HERE, Garmin, USGS, NGA, EPA, USDA, NPS



HUC12s excluded in 2023 RGPs



Map Center: 80.148784°W 35.690807°N

MVP Regulatory

Date: 2/15/2023

Coordinate System: GCS WGS 1984
Datum: WGS 1984



APPENDIX C

**MPCA Letter re:
2021 NWP Certification and
2023 RGP Certification**

Donna Jacob

From: Barta, Kirsten (MPCA) <Kirsten.Barta@state.mn.us>
Sent: Wednesday, March 8, 2023 1:56 PM
To: Donna Jacob
Subject: RE: Wilkinson Lake BMP - BSHlc (2021-00635-SSC)

[External Email]

Hi Donna –

This makes way more sense than our conversation the other day. The information provided in the email from USACE is correct but you will need to read the certification and affirm/determine that your project can meet all of the general conditions. We don't do that for you but below are both of the documents for your reference:

[2023 Regional General Permit Certification](#)

[2021 Nationwide Permit Certification](#)

If you read them and your project will meet those conditions then you are good to go and do not need an individual certification from MPCA.

Hope that helps,
Kirsten

Kirsten Barta (*she/her/hers*)

401 Certification Program Coordinator

Minnesota Pollution Control Agency (MPCA) | Resource Management & Assistance Division

520 Lafayette Road North | St. Paul, MN | 55155-4194

kirsten.barta@state.mn.us | www.pca.state.mn.us

651-757-2827



Our mission is to protect and improve the environment and human health

From: Donna Jacob <djacob@houstoneng.com>
Sent: Wednesday, March 8, 2023 11:14 AM
To: Barta, Kirsten (MPCA) <Kirsten.Barta@state.mn.us>
Subject: FW: Wilkinson Lake BMP - BSHlc (2021-00635-SSC)

This message may be from an external email source.

Do not select links or open attachments unless verified. Report all suspicious emails to Minnesota IT Services Security Operations Center.

Hi Kirsten

I'm hoping you have a moment to give me some guidance.

I asked Samantha Coungeris about the USACE determination (attached) and she sent the email below. Wilkinson Lake (rated 2Bg) and the wetland area upstream are not designated as exceptional aquatic life use water or an outstanding

resource value water. If she is correct and the project is covered by the blanket certification, what is the method for getting confirmation that this is the case?

Kind regards
Donna

Donna Jacob, PhD, PWS, CMWP

Senior Scientist

Houston Engineering, Inc.

O 701.237.5065 | D 701.499.9452 | C 701.212.9781

From: Coungeris, Samantha S CIV USARMY CEMVP (USA) <Samantha.S.Coungeris@usace.army.mil>

Sent: Wednesday, March 8, 2023 11:00 AM

To: Donna Jacob <djacob@houstoneng.com>

Subject: RE: Wilkinson Lake BMP - BSHlc (2021-00635-SSC)

[External Email]

Hi Donna,

Your project is likely covered by the blanket certification. The blanket cert doesn't apply if your project 1) physically alters 300 feet or more of a stream 2) physical alteration of any linear amount of a class 2a water 3) is located with an exceptional aquatic life use water or 4) is located within an outstanding resource value water. I don't believe any of these apply to your project so you should be okay. If you got to the MPCA website they have interactive maps for # 3 and 4 above to see if your project is in one of those areas.

Samantha Coungeris

Project Manager

Army Corps of Engineers

332 Minnesota Street

St. Paul, MN 55101

Office: 651-290-5268

Mobile: 651-724-1999

Information on Corps of Engineers Regulatory Program status during the COVID-19 pandemic can be found at: <https://www.mvp.usace.army.mil/missions/regulatory>

We are pleased to introduce our new paperless communication procedures in Minnesota & Wisconsin. Requests for action (pre-application consultations, permit applications, requests for delineation concurrences, requests for jurisdictional determinations, and mitigation bank proposals) should be sent directly to the following email: (in MN) usace_requests_mn@usace.army.mil (in WI) usace_requests_wi@usace.army.mil. Please include the county name in the subject line of the email (e.g. Washington County). These changes will improve efficiency, reduce costs and reduce the environmental footprint. Additional information can be found in our public notice located here: <http://www.mvp.usace.army.mil/Missions/Regulatory.aspx>

From: Donna Jacob <djacob@houstoneng.com>

Sent: Wednesday, March 8, 2023 10:41 AM

To: Coungeris, Samantha S CIV USARMY CEMVP (USA) <Samantha.S.Coungeris@usace.army.mil>

Subject: [URL Verdict: Neutral][Non-DoD Source] RE: Wilkinson Lake BMP - BSHlc (2021-00635-SSC)

Hi Samantha

I hope you can help me with a question I have about the 401 certification. Does the project need to submit a separate antidegradation form or will you/USACE communicate with MPCA about the project and then they will send us a waiver decision? I guess I'm not totally clear on the process.

Thanks

Donna

Donna Jacob, PhD, PWS, CMWP

Senior Scientist

📞 701.237.5065 | 📠 701.499.9452 | 📠 701.212.9781



This message shall not be construed as official project information or direction except as expressly provided in the contract documents. This entire message (including all forwards and replies) and any attachments are for the sole use of the intended recipient(s) and may contain proprietary, confidential, trade secret, work-product, attorney-client or privileged information. Any unauthorized review, use, disclosure or distribution is prohibited and may be a violation of law. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message.

From: Coungeris, Samantha S CIV USARMY CEMVP (USA) <Samantha.S.Coungeris@usace.army.mil>

Sent: Monday, March 6, 2023 11:54 AM

To: Dawn Tanner <dawn.tanner@vlawmo.org>

Cc: Donna Jacob <djacob@houstoneng.com>; Brian Corcoran <brian.corcoran@vlawmo.org>; Meyer, Ben (BWSR) <Ben.Meyer@state.mn.us> <ben.meyer@state.mn.us>

Subject: Wilkinson Lake BMP - BSHlc (2021-00635-SSC)

[External Email]

Good Morning,

Please see the attached Regional General Permit - Bank Stabilization & Habitat Improvement confirmation letter for the project referenced above. Thank you.

Samantha Coungeris
Project Manager
Army Corps of Engineers
332 Minnesota Street
St. Paul, MN 55101
Office: 651-290-5268
Mobile: 651-724-1999

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