



DEPARTMENT OF THE ARMY  
CORPS OF ENGINEERS, JACKSONVILLE DISTRICT  
701 SAN MARCO BOULEVARD  
JACKSONVILLE, FLORIDA 32207-8175

November 21, 2023

Regulatory Division  
West Permits Branch  
Tampa Section  
SAJ-2023-02417 (NWP-CPC)

Justin McBride  
200 E Miami Ave.  
Venice, FL 34285  
Sent via email: justin@wcind.net

Dear Mr. McBride:

The U.S. Army Corps of Engineers (Corps) has completed the review of your application for a Department of the Army permit received on October 6, 2023. Your application was assigned file number SAJ-2023-02417. A review of the information and drawings provided indicates that the proposed work would result in maintenance dredge of 240,250 square feet (SF). Removing an estimated volume of 1,732 cubic yards (CY) of accumulated sediment. Maintenance dredging will be a maximum depth of 9.0 feet below mean low water (MLW). The activities subject to this permit are authorized pursuant to authorities under Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 403). The project is located in Gulf Intracoastal Waterway behind 2350 Scenic Drive, in Section 20 and 29, Township 39 South, Range 19 East, Venice, Sarasota County, Florida.

Your project, as depicted on the enclosed drawings, is authorized by Nationwide Permit (NWP) 35 (Maintenance Dredging of Existing Basins). **This verification is valid until March 14, 2026.** In order for this NWP authorization to be valid, you must ensure that the work is performed in accordance with the Nationwide Permit General Conditions, the Jacksonville District Regional Conditions, and the General and Project-Specific Special Conditions listed below. Furthermore, if you commence or are under contract to commence this activity before the date that the relevant NWP is modified or revoked, you will have 12 months from the date of the modification or revocation of the NWP to complete the activity under the present terms and conditions of this NWP. You can access the U.S. Army Corps of Engineers' (Corps) Jacksonville District's Regulatory Source Book webpage for links to view NWP information at: <https://www.saj.usace.army.mil/Missions/Regulatory/Source-Book/>. Please be aware this Internet address is case sensitive and should be entered as it appears above. Once there, you will need to select "Nationwide Permits." Among other things, this part of the Source Book contains links to the federal register containing the text of the pertinent

NWP authorization and the associated NWP general conditions, as well as separate links to the regional conditions applicable to the pertinent NWP verification.

You must comply with all of the special and general conditions for NWP-35, including any project-specific conditions included in this letter and all conditions incorporated by reference as described above.

**General Conditions:**

1. The time limit for completing the work authorized ends on **March 14, 2026**.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity, or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
4. If you sell the property associated with this permit you must obtain the signature of the new owner on the attached transfer form (ENCLOSURE 1) and forward a copy to this office to validate the transfer of this authorization.
5. You must allow a representative from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

**Project Specific Special Conditions:**

The following project specific special conditions are included with this verification:

Special Condition 1: **Reporting Address:** The Permittee shall submit all reports, notifications, documentation, and correspondence required by the general and special conditions of this permit to either (not both) of the following addresses:

a. For electronic mail (preferred): SAJ-RD-Enforcement@usace.army.mil (not to exceed 15 MB).

b. For standard mail: U.S. Army Corps of Engineers, Regulatory Division, Enforcement Section, P.O. Box 4970, Jacksonville, FL 32232-0019. The Permittee shall reference this permit number, SAJ-2023-02417 (NW –CPC), on all submittals.

Special Condition 2: **Commencement Notification:** Within 10 days from the date of initiating the work authorized by this permit, the Permittee shall submit a completed “Commencement Notification” form (ENCLOSURE 4).

Special Condition 3: **As-Built Certification:** Within 60 days of completion of the work authorized by this permit, the Permittee shall submit as-built drawings of the authorized work and a completed “As-Built Certification by Professional Engineer or Surveyor” form (ENCLOSURE 5) to the Corps. The as-built drawings shall be signed and sealed by a registered professional engineer or surveyor and include the following:

- a. A plan view drawing of the location of the authorized work footprint, as shown on the permit drawings, with an overlay of the work as constructed. The plan view drawing should show all existing water management structures and the completed structures, dredge/fill activities, and wetland impacts.
- b. A list of any deviations between the work authorized by this permit and the work as constructed. In the event that the completed work deviates, in any manner, from the authorized work, describe on the attached “As-Built Certification by Professional Engineer” form the deviations between the work authorized by this permit and the work as constructed. Clearly indicate on the as-built drawings any deviations that have been listed. Please note that the depiction and/or description of any deviations on the drawings and/or “As-Built Certification by Professional Engineer” form does not constitute approval of any deviations by the Corps.
- c. The Department of the Army permit number on all sheets submitted.

Special Condition 4: **Cultural Resources/Historic Properties:**

- a. No structure or work shall adversely affect, impact, or disturb properties listed in the National Register of Historic Places (NRHP), or those eligible for inclusion in the NRHP.
- b. If, during permitted activities, items that may have historic or archaeological origin are observed the Permittee shall immediately cease all activities

- adjacent to the discovery that may result in the destruction of these resources and shall prevent his/her employees from further removing, or otherwise damaging, such resources. The applicant shall notify both the Florida Department of State, Division of Historical Resources, Compliance Review Section at (850)-245-6333 and the Corps, of the observations within the same business day (8 hours). Examples of submerged historical, archaeological or cultural resources include shipwrecks, shipwreck debris fields (such as steam engine parts, or wood planks and beams), anchors, ballast rock, concreted iron objects, concentrations of coal, prehistoric watercraft (such as log "dugouts"), and other evidence of human activity. The materials may be deeply buried in sediment, resting in shallow sediments or above them, or protruding into water. The Corps shall coordinate with the Florida State Historic Preservation Officer (SHPO) to assess the significance of the discovery and devise appropriate actions. Project activities shall not resume without verbal and/or written authorization from the Corps.
- c. Additional cultural resources assessments may be required of the permit area in the case of unanticipated discoveries as referenced in accordance with the above Special Condition and, if deemed necessary by the SHPO or Corps, in accordance with 36 CFR 800 or 33 CFR 325, Appendix C (5). Based on the circumstances of the discovery, equity to all parties, and considerations of the public interest, the Corps may modify, suspend, or revoke the permit in accordance with 33 CFR Part 325.7. Such activity shall not resume on non-federal lands without written authorization from the SHPO for finds under his or her jurisdiction, and from the Corps.
  - d. In the unlikely event that unmarked human remains are identified on non-federal lands; they will be treated in accordance with Section 872.05 Florida Statutes. All work and ground disturbing activities within a 100-meter diameter of the unmarked human remains shall immediately cease and the Permittee shall immediately notify the medical examiner, Corps, and State Archaeologist within the same business day (8-hours). The Corps shall then notify the appropriate SHPO. Based on the circumstances of the discovery, equity to all parties, and considerations of the public interest, the Corps may modify, suspend, or revoke the permit in accordance with 33 CFR Part 325.7. Such activity shall not resume without written authorization from the SHPO and from the Corps.

**Special Condition 5: Assurance of Navigation and Maintenance:** The Permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structures 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 U.S. Army 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.

**Special Condition 6: Jacksonville District Programmatic Biological Opinion**

**(JAXBO):** Structures and activities authorized under this permit will be constructed and operated in accordance with all applicable PDCs contained in the JAXBO, based on the permitted activity. Failure to comply with applicable PDCs will constitute noncompliance with this permit. In addition, failure to comply with the applicable PDCs, where a take of listed species occurs, would constitute an unauthorized take. The NMFS is the appropriate authority to determine compliance with the Endangered Species Act. The most current version of JAXBO can be accessed at the Jacksonville District Regulatory Division website in the Endangered Species section of the Sourcebook located at: <http://www.saj.usace.army.mil/Missions/Regulatory/SourceBook.aspx>

**Note** - JAXBO may be subject to revision at any time. The most recent version of these JAXBO must be utilized during the design and construction of the permitted work.

**Special Condition 7: Manatee Conditions:** The Permittee shall comply with the "Standard Manatee Conditions for In-Water Work – 2011" (ENCLOSURE 6). The most recent version of the Manatee Conditions must be utilized.

**Special Condition 8: Dredged Material Disposal:** The Permittee shall place all dredged material in a self-contained, upland disposal site as detailed in Project Plans, Exhibit 4 of 7. The Permittee shall maintain the upland disposal site to prevent the discharge of dredged material and associated effluent into waters of the United States.

**Special Condition 9: Consent to Easement:** A portion of the authorized work may be located within the Federal right-of-way and therefore, may require a Department of the Army Consent to Easement. The Permittee shall complete the "Application for Consent to Cross U.S. Government Easement" (ENCLOSURE 7) and submit to the Corps Real Estate Division [SAJ-RE-Consent@usace.army.mil](mailto:SAJ-RE-Consent@usace.army.mil) or Post Office Box 4970, Jacksonville, Florida 32232-0019 or by telephone at 904-570-4514. The application should include a boundary survey map along with the authorized construction plans and specifications for the project. Prior to commencement of construction, the Permittee shall provide a copy of the Corps

approved Consent to Easement, or correspondence from the Real Estate Division indicating that a Consent to Easement is not required, to the address identified in the **Reporting Address Special Condition**.

This letter of authorization does not include conditions that would prevent the 'take' of a state-listed fish or wildlife species. These species are protected under sec. 379.411, Florida Statutes, and listed under Rule 68A-27, Florida Administrative Code. With regard to fish and wildlife species designated as species of special concern or threatened by the State of Florida, you are responsible for coordinating directly with the Florida Fish and Wildlife Conservation Commission (FWC). You can visit the FWC license and permitting webpage (<http://www.myfwc.com/license/wildlife/>) for more information, including a list of those fish and wildlife species designated as species of special concern or threatened. The Florida Natural Areas Inventory (<http://www.fnai.org/>) also maintains updated lists, by county, of documented occurrences of those species.

This letter of authorization does not give absolute Federal authority to perform the work as specified on your application. The proposed work may be subject to local building restrictions mandated by the National Flood Insurance Program. You should contact your local office that issues building permits to determine if your site is located in a flood-prone area, and if you must comply with the local building requirements mandated by the National Flood Insurance Program.

This letter of authorization does not preclude the necessity to obtain any other Federal, State, or local permits, which may be required.

Thank you for your cooperation with our permit program. The Corps' Jacksonville District Regulatory Division is committed to improving service to our customers. We strive to perform our duty in a friendly and timely manner while working to preserve our environment. We invite you to complete our automated Customer Service Survey at <https://regulatory.ops.usace.army.mil/customer-service-survey/>. Please be aware this Internet address is case sensitive and you will need to enter it exactly as it appears above. Your input is appreciated – favorable or otherwise.

Should you have any questions related to this NWP verification or have issues accessing the documents referenced in this letter, please contact Carissa Curlee at the Tampa Permits Section at 10117 Princess Palm Ave., Suite 120, Tampa, FL 33610, by telephone at 813-769-7076, or by email at [carissa.p.curlee@usace.army.mil](mailto:carissa.p.curlee@usace.army.mil).

Sincerely,

Carissa Curlee  
Project Manager

Enclosures:

Transfere Request (1 page)  
Project Plans (5 pages)  
NWP- 35 (29 pages)  
Commencement Notification (1 page)  
As-Built Certification (2 page)  
Manatee Conditions (2 pages)  
Consent to Easement (1 page)

Cc:

Hans Wilson with Hans Wilson & Associates < [johanna@hanswilson.com](mailto:johanna@hanswilson.com) >

**DEPARTMENT OF THE ARMY PERMIT TRANSFER REQUEST****DA PERMIT NUMBER: SAJ-2023-02417 (NWP-CPC)**

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. Although the construction period for works authorized by Department of the Army permits is finite, the permit itself, with its limitations, does not expire.

To validate the transfer of this permit and the associated responsibilities associated with compliance with its terms and conditions, have the transferee sign and date below and mail to the U.S. Army Corps of Engineers, Enforcement Section, Post Office Box 4970, Jacksonville, FL 32232-0019 or submit via electronic mail to:

[SAJ-RD-Enforcement@usace.army.mil](mailto:SAJ-RD-Enforcement@usace.army.mil) (not to exceed 15 MB).

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**(TRANSFEREE-SIGNATURE)**

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**(SUBDIVISION)**

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**(DATE)**

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**(LOT)**

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**(BLOCK)**

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**(NAME-PRINTED)**

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**(STREET ADDRESS)**

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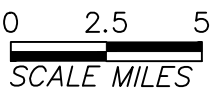
**(MAILING ADDRESS)**

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**(CITY, STATE, ZIP CODE)**



SECTION: 20, 29, & 30  
TOWNSHIP: 39 S  
RANGE: 19 E



***Vicinity Map***

SCALE: 1" = 5 mi.



***Location Map***

SCALE: 1" = 2,500'

PERMIT PLANS, NOT FOR CONSTRUCTION

October 06, 2023 9:27:34 a.m.  
Drawing: WCIND4MASTER.DWG



1938 Hill Avenue, Fort Myers, Florida 33901  
Office: 239-334-6870 Fax: 239-334-7810  
MARINE and ENVIRONMENTAL CONSULTANTS

JWA  
10-6-23

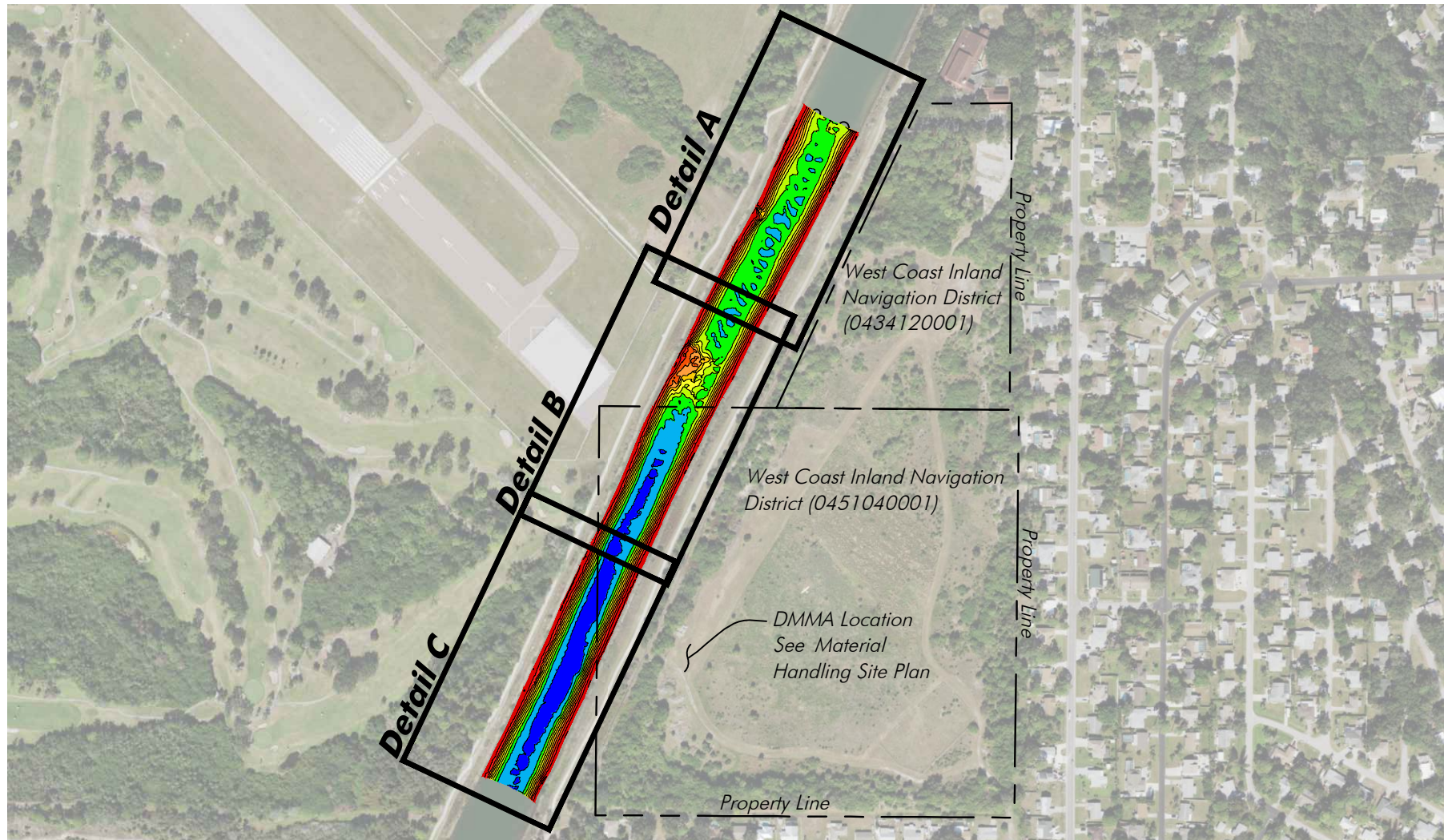
***West Coast Navigation District***

SHEET  
**1/10**

SECTION: 20, 29, & 30  
TOWNSHIP: 39 S  
RANGE: 19 E

Sarasota County Aerial 2020

0 250 500  
SCALE FEET



## Overall Aerial

SCALE: 1" = 500'

PERMIT PLANS, NOT FOR CONSTRUCTION

October 06, 2023 9:27:34 a.m.  
Drawing: WCIND4MASTER.DWG



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10-6-23

**West Coast Navigation District**

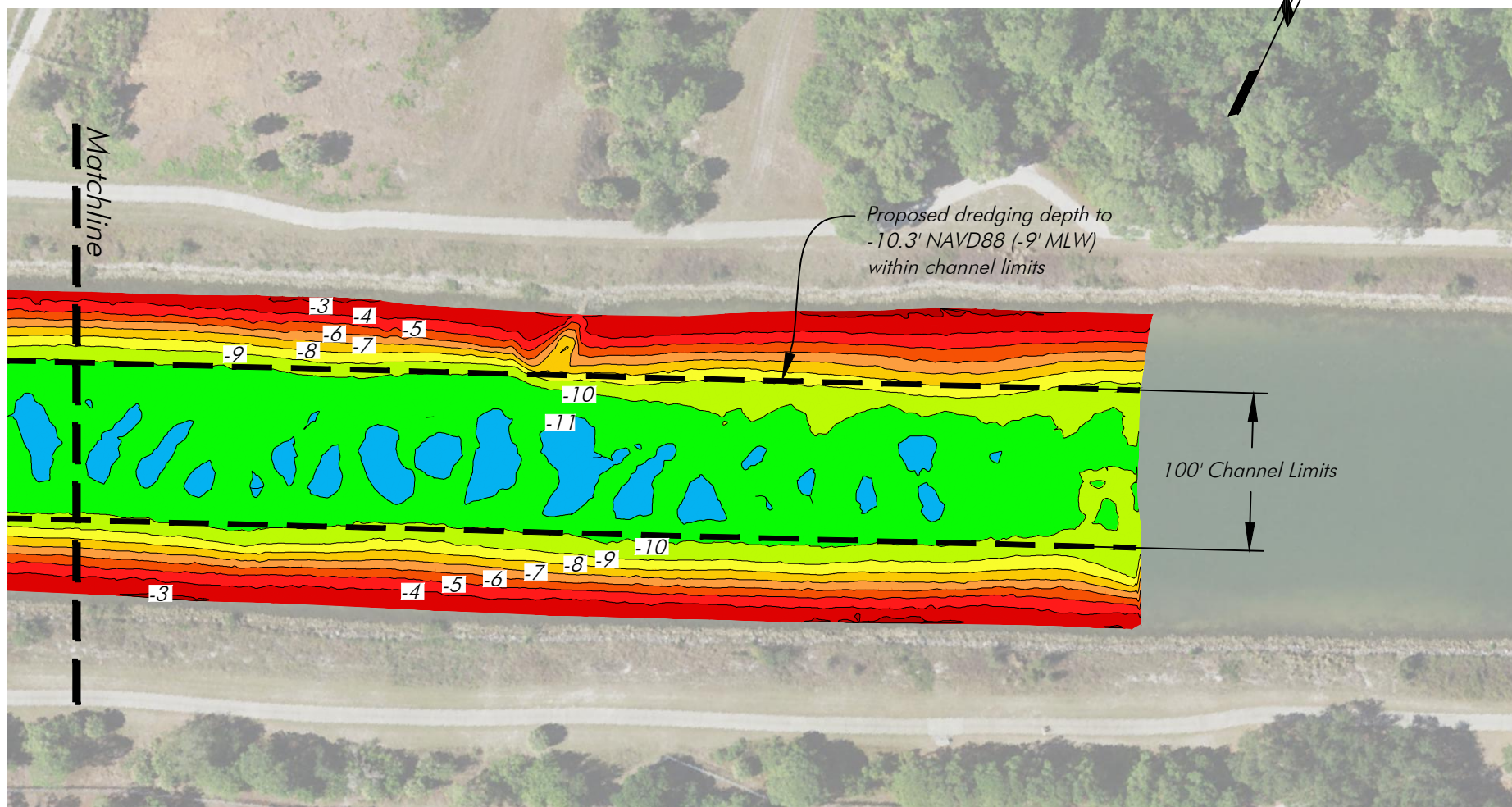
SHEET  
**2/10**



SECTION: 20, 29, & 30  
TOWNSHIP: 39 S  
RANGE: 19 E

Sarasota County Aerial 2020

0 50 100  
SCALE FEET



Note: Bathymetric survey completed by AIM  
Engineering & Surveying on 5-24-23. All  
depths reference NAVD88. Benthic survey  
completed 8-4-23 by HWA, Inc.

## Detail A

SCALE: 1" = 100'

PERMIT PLANS, NOT FOR CONSTRUCTION

October 06, 2023 9:27:34 a.m.  
Drawing: WCIND4MASTER.DWG



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10-6-23

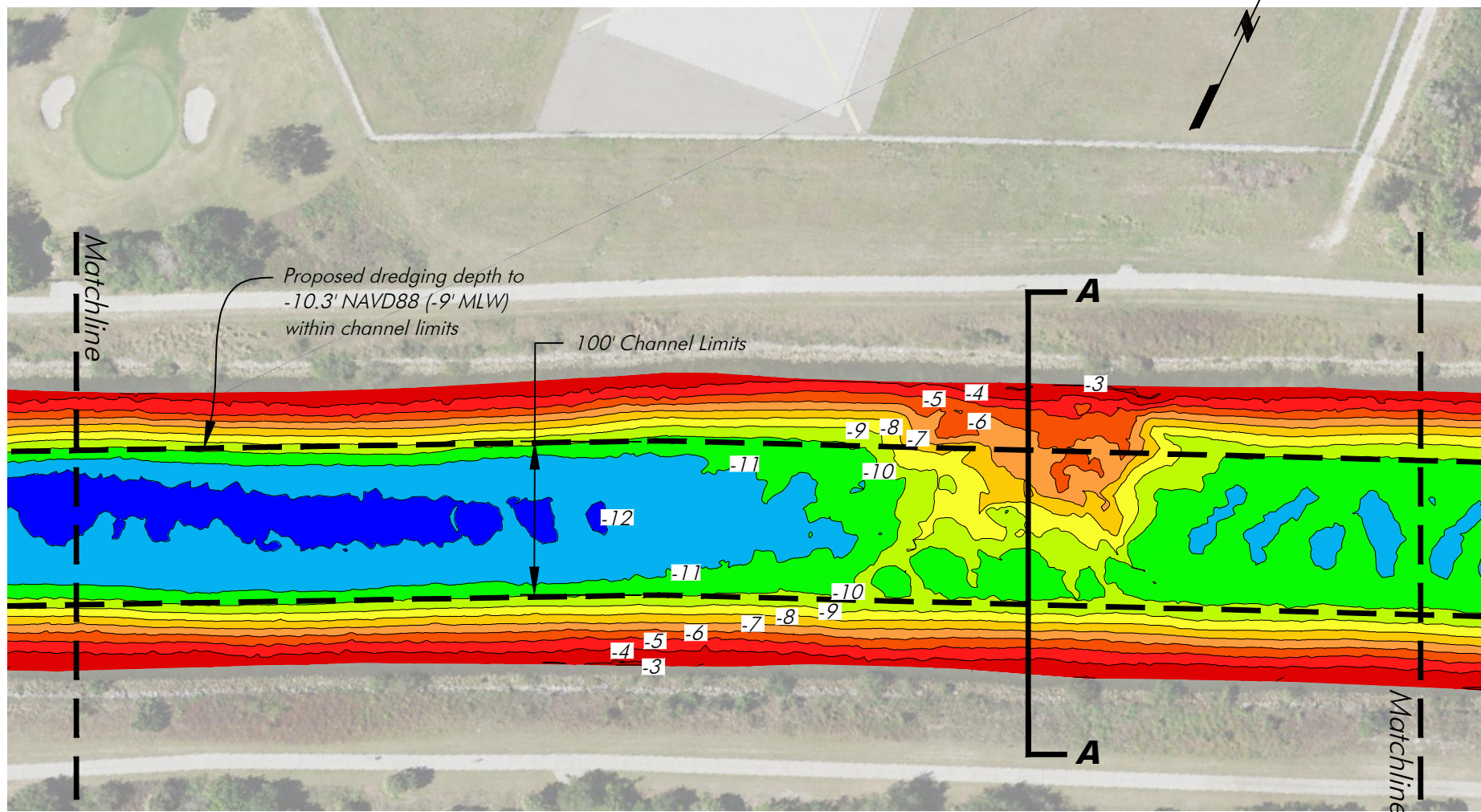
**West Coast Navigation District**

SHEET  
**3/10**

SECTION: 20, 29, & 30  
TOWNSHIP: 39 S  
RANGE: 19 E

Sarasota County Aerial 2020

0 50 100  
SCALE FEET



Note: Bathymetric survey completed by AIM Engineering & Surveying on 5-24-23. All depths reference NAVD88. Benthic survey completed 8-4-23 by HWA, Inc.

## Detail B

SCALE: 1" = 100'

PERMIT PLANS, NOT FOR CONSTRUCTION

October 06, 2023 9:27:34 a.m.  
Drawing: WCIND4MASTER.DWG



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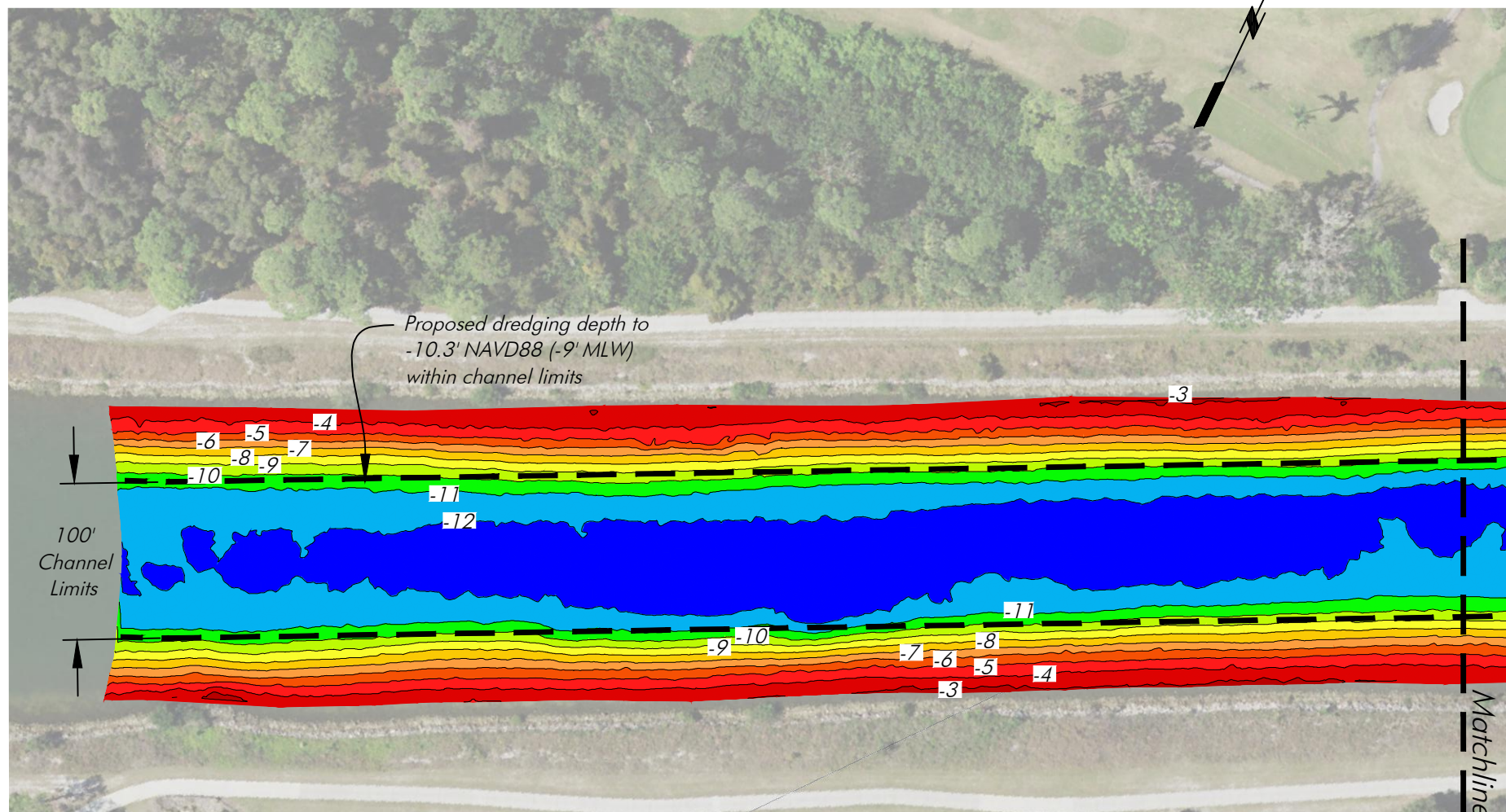
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**4/10**



SECTION: 20, 29, & 30  
TOWNSHIP: 39 S  
RANGE: 19 E

Sarasota County Aerial 2020

0 50 100  
SCALE FEET



Note: Bathymetric survey completed by AIM  
Engineering & Surveying on 5-24-23. All  
depths reference NAVD88. Benthic survey  
completed 8-4-23 by HWA, Inc.

## Detail C

SCALE: 1" = 100'

PERMIT PLANS, NOT FOR CONSTRUCTION

October 06, 2023 9:27:34 a.m.  
Drawing: WCIND4MASTER.DWG



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10-6-23

**West Coast Navigation District**

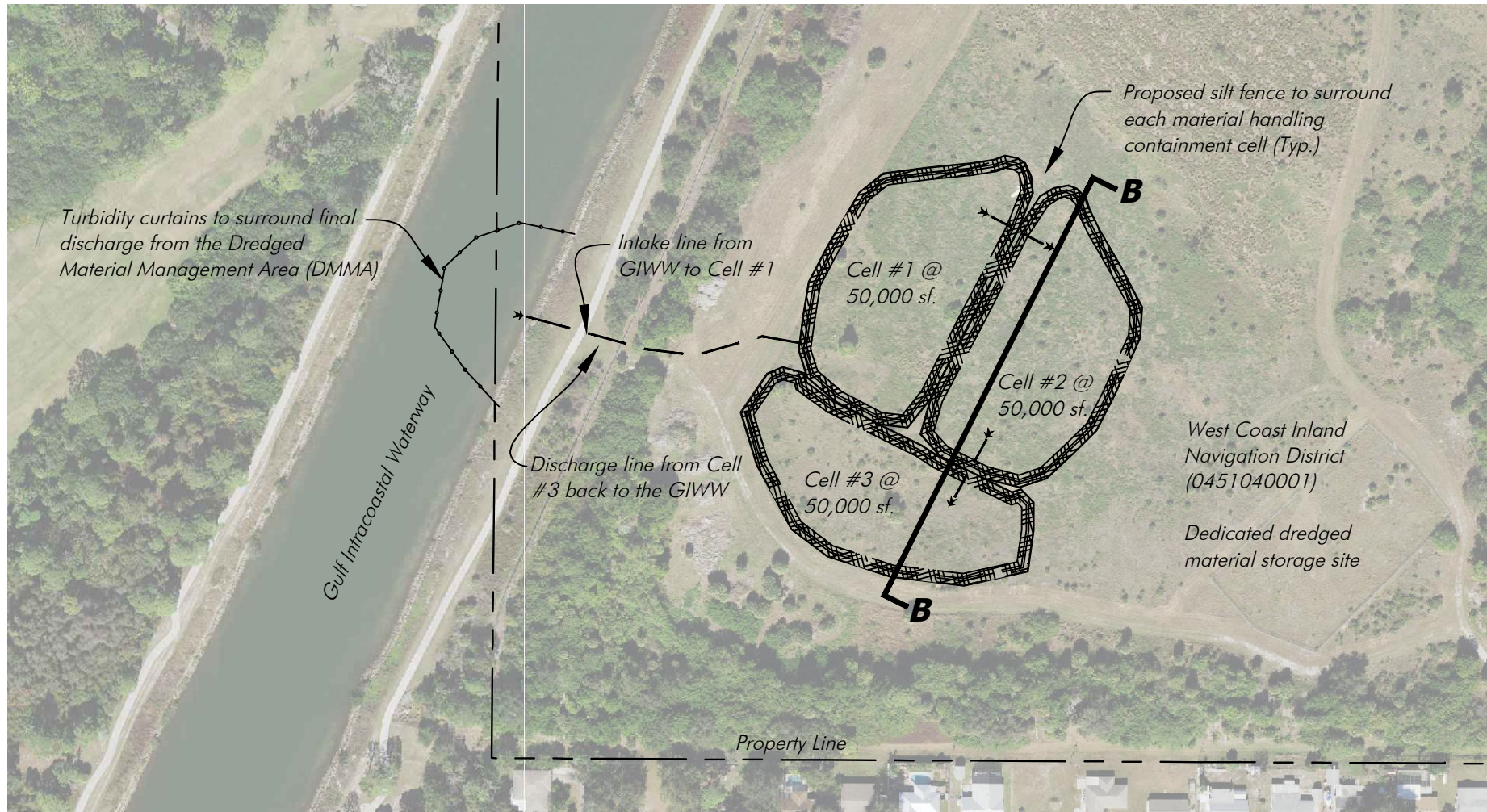
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**5/10**



SECTION: 20, 29, & 30  
TOWNSHIP: 39 S  
RANGE: 19 E

Sarasota County Aerial 2020

0 100 200  
SCALE FEET



## Hydraulic Dredging Site Plan

SCALE: 1" = 200'

PERMIT PLANS, NOT FOR CONSTRUCTION

October 06, 2023 9:27:34 a.m.  
Drawing: WCIND4MASTER.DWG



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10-6-23

**West Coast Navigation District**

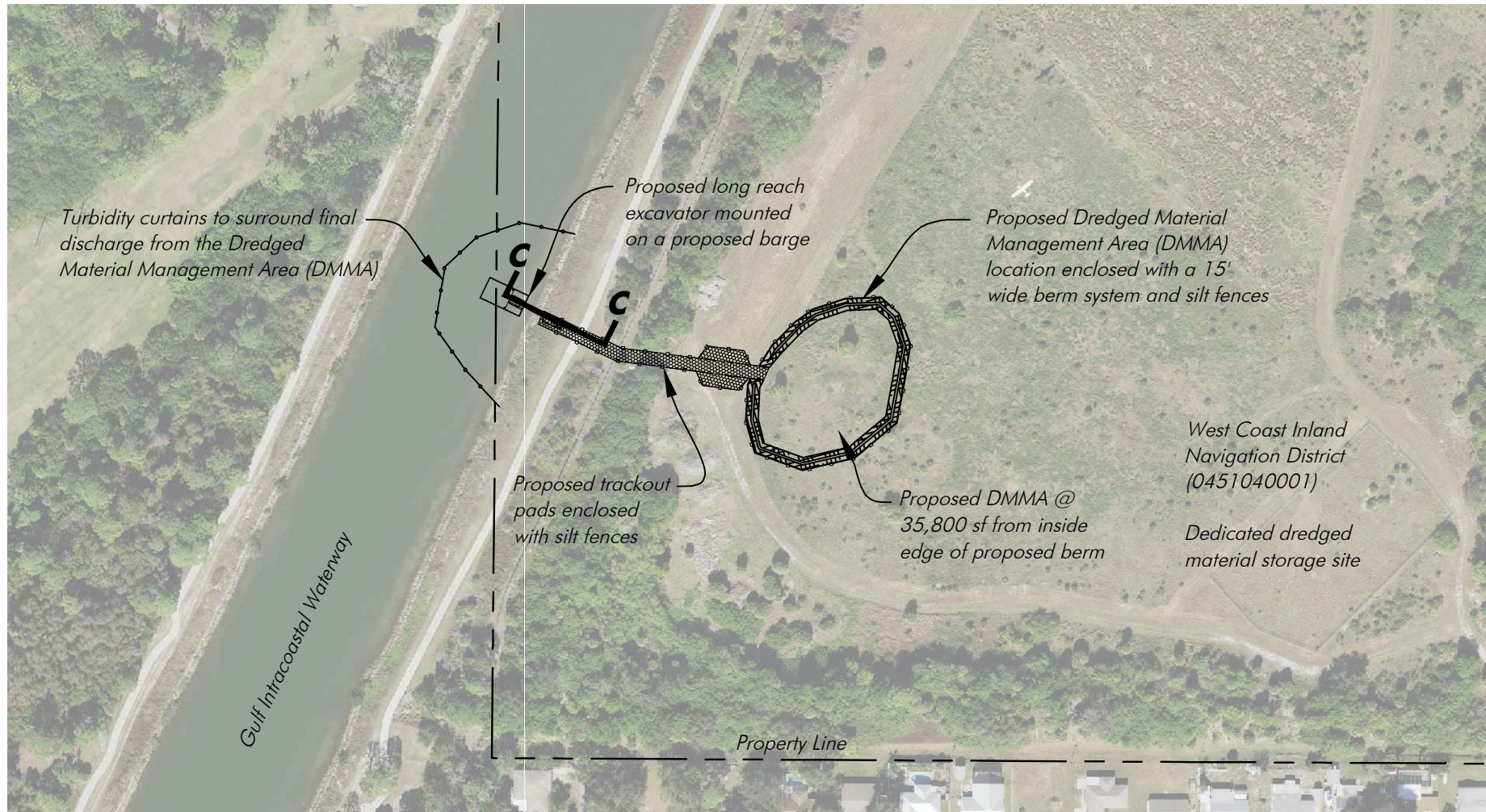
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**6/10**



SECTION: 20, 29, & 30  
TOWNSHIP: 39 S  
RANGE: 19 E

Sarasota County Aerial 2020

0 100 200  
SCALE FEET



## **Mechanical Dredging Site Plan**

SCALE: 1" = 200'

**PERMIT PLANS, NOT FOR CONSTRUCTION**

October 06, 2023 9:27:34 a.m.  
Drawing: WCIND4MASTER.DWG



1938 Hill Avenue, Fort Myers, Florida 33901  
Office: 239-334-6870 Fax: 239-334-7810  
MARINE and ENVIRONMENTAL CONSULTANTS

JWA

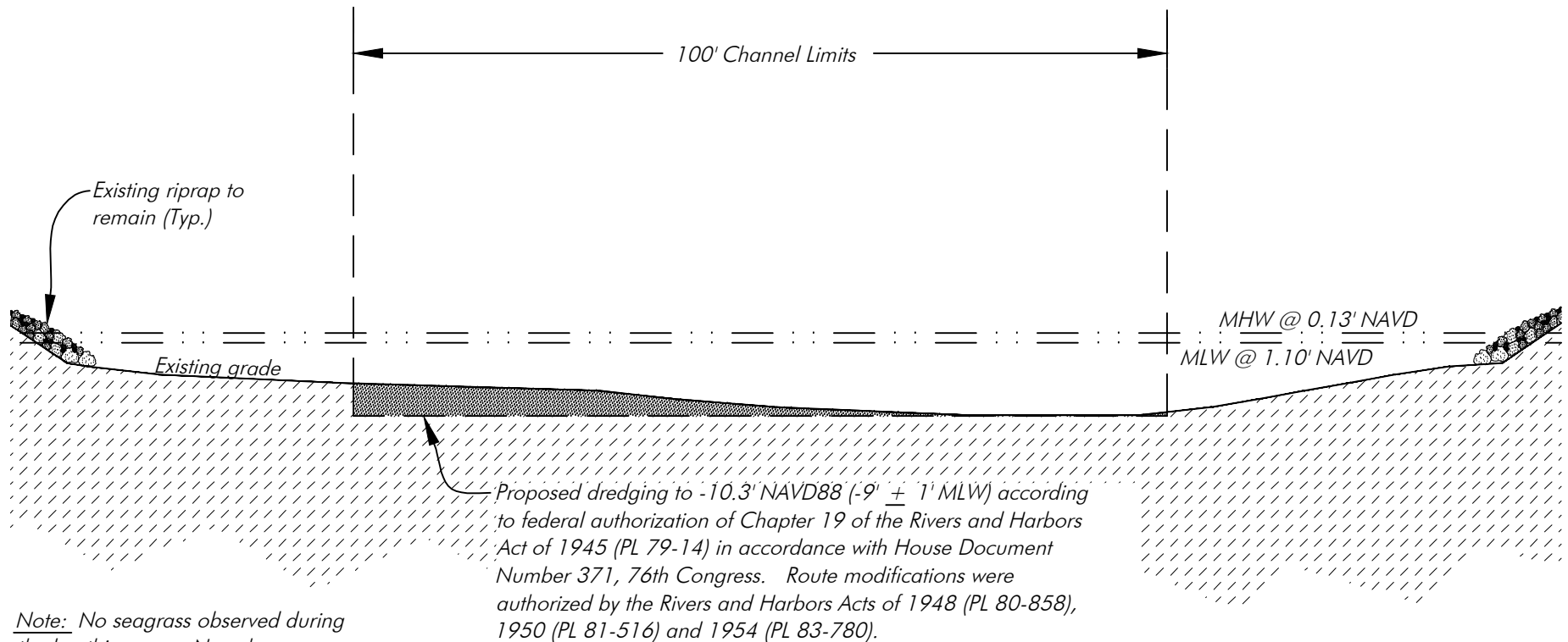
10-6-23

**West Coast Navigation District**

SHEET  
**7/10**

SECTION: 20, 29, & 30  
TOWNSHIP: 39 S  
RANGE: 19 E

0 10 20  
SCALE FEET



Note: No seagrass observed during the benthic survey. Nearshore areas are sand and riprap.

Note: Bathymetric survey completed by AIM Engineering & Surveying on 5-24-23. All depths reference NAVD88.  
Benthic survey completed 8-4-23 by HWA, Inc. MHW and MLW depths reference DEP MHW Survey File No. 1339.

## Cross Section A-A

SCALE: 1" = 20'

**PERMIT PLANS, NOT FOR CONSTRUCTION**

October 06, 2023 9:27:34 a.m.  
Drawing: WCIND4MASTER.DWG



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10-6-23

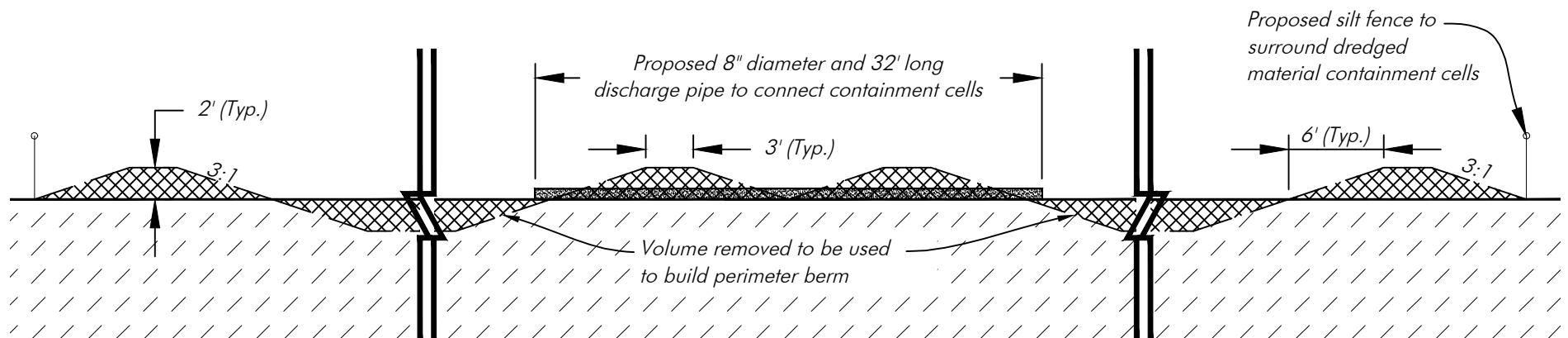
**West Coast Navigation District**

SHEET  
**8/10**



SECTION: 20, 29, & 30  
TOWNSHIP: 39 S  
RANGE: 19 E

0 5 10  
SCALE FEET



## ***Cross Section B-B***

SCALE: 1" = 10'

**PERMIT PLANS, NOT FOR CONSTRUCTION**

October 06, 2023 9:27:34 a.m.  
Drawing: WCIND4MASTER.DWG



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MARINE and ENVIRONMENTAL CONSULTANTS

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10-6-23

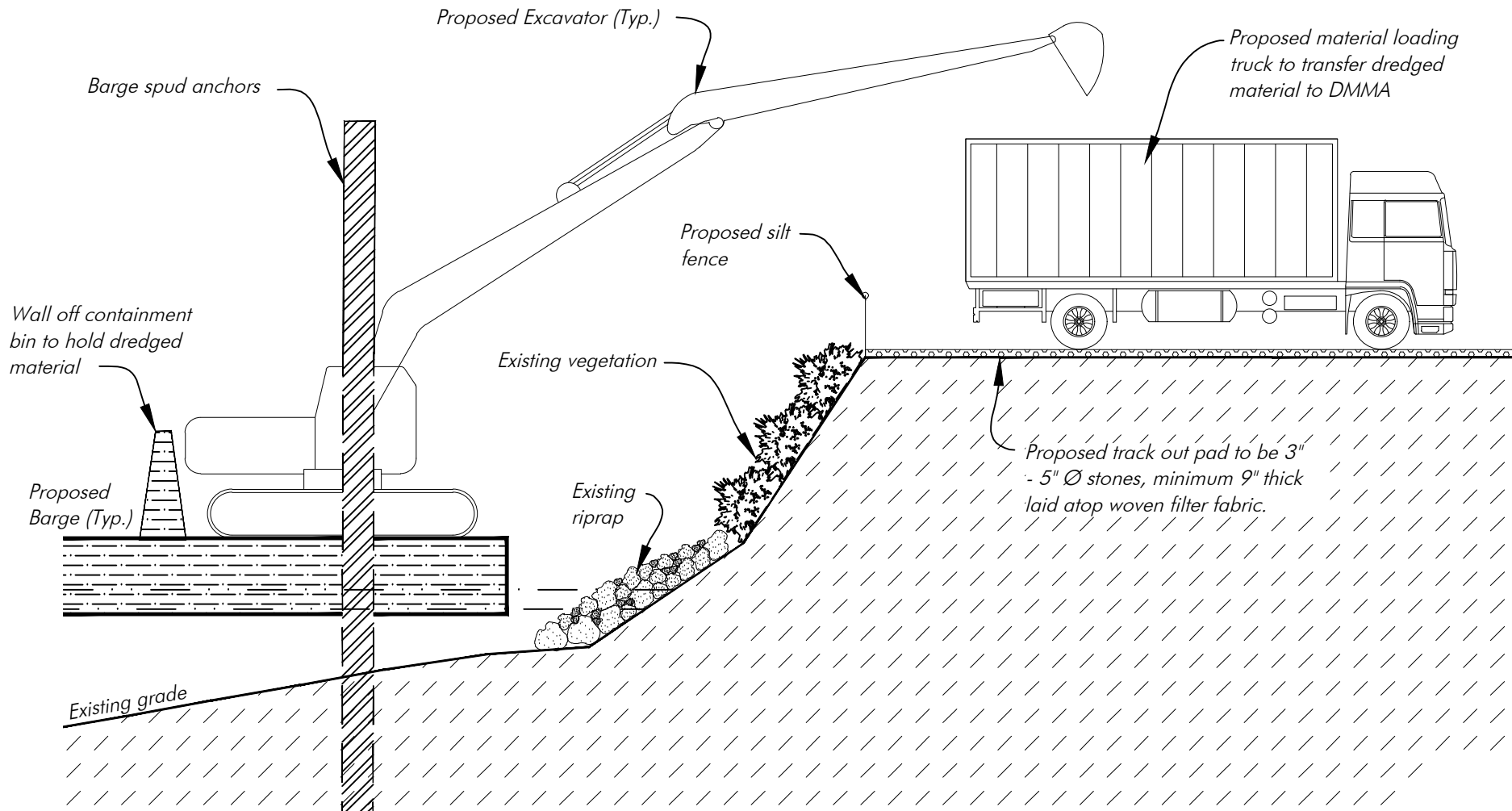
***West Coast Navigation District***

SHEET

**9/10**

SECTION: 20, 29, & 30  
TOWNSHIP: 39 S  
RANGE: 19 E

0 5 10  
SCALE FEET



## Cross Section C-C

SCALE: 1" = 10'

PERMIT PLANS, NOT FOR CONSTRUCTION

October 06, 2023 9:27:34 a.m.  
Drawing: WCIND4MASTER.DWG



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10-6-23

**West Coast Navigation District**

SHEET

**10/10**

**Nationwide Permit 35 – *Maintenance Dredging of Existing Basins***  
**Effective Date: February 25, 2022 / Expiration Date: March 14, 2026**  
**Authority: Section 10**

The removal of accumulated sediment for maintenance of existing marina basins, access channels to marinas or boat slips, and boat slips to previously authorized depths or controlling depths for ingress/egress, whichever is less. All dredged material must be deposited and retained in an area that has no waters of the United States unless otherwise specifically approved by the district engineer under separate authorization. Proper sediment controls must be used for the disposal site.

**REGIONAL CONDITIONS:**

For applicable Regional Conditions, Water Quality Certification (WQC) determination or requirements, and Coastal Zone Management Act (CZMA) consistency determinations or requirements see the *Final Regional Conditions for 2021 Nationwide Permits in Jacksonville District (SAJ)* affixed to the end of this document. Alternatively, a copy of the final Regional Conditions are also available on the SAJ District webpage Regulatory Source Book at: <https://www.saj.usace.army.mil/Missions/Regulatory/Source-Book/> under the heading "Permitting", then "Nationwide Permits".

**GENERAL CONDITIONS:**

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

**1. *Navigation.***

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

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

- 3. *Spawning Areas.*** Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.
- 4. *Migratory Bird Breeding Areas.*** Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.
- 5. *Shellfish Beds.*** No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWPs 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.
- 6. *Suitable Material.*** No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see section 307 of the Clean Water Act).
- 7. *Water Supply Intakes.*** No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.
- 8. *Adverse Effects from Impoundments.*** If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.
- 9. *Management of Water Flows.*** To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization, storm water management activities, and temporary and permanent road crossings, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g. stream restoration or relocation activities).
- 10. *Fills Within 100-Year Floodplains.*** The activity must comply with applicable FEMA-approved state or local floodplain management requirements.
- 11. *Equipment.*** Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.
- 12. *Soil Erosion and Sediment Controls.*** Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow, or during low tides.
- 13. *Removal of Structures and Fills.*** Temporary structures must be removed, to the maximum extent practicable, after their use has been discontinued. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.
- 14. *Proper Maintenance.*** Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.

15. *Single and Complete Project.* The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.
16. *Wild and Scenic Rivers.*
  - (a) No NWP activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status.
  - (b) If a proposed NWP activity will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, the permittee must submit a pre-construction notification (see general condition 32). The district engineer will coordinate the PCN with the Federal agency with direct management responsibility for that river. Permittees shall not begin the NWP activity until notified by the district engineer that the Federal agency with direct management responsibility for that river has determined in writing that the proposed NWP activity will not adversely affect the Wild and Scenic River designation or study status.
  - (c) Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service). Information on these rivers is also available at: <http://www.rivers.gov/>.
17. *Tribal Rights.* No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.
18. *Endangered Species.*
  - (a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which "may affect" a listed species or critical habitat unless ESA section 7 consultation addressing the consequences of the proposed activity on listed species or critical habitat has been completed. See 50 CFR 402.02 for the definition of "effects of the action" for the purposes of ESA section 7 consultation, as well as 50 CFR 402.17, which provides further explanation under ESA section 7 regarding "activities that are reasonably certain to occur" and "consequences caused by the proposed action."
  - (b) Federal agencies should follow their own procedures for complying with the requirements of the ESA (see 33 CFR 330.4(f)(1)). If pre-construction notification is required for the proposed activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation has not been submitted, additional ESA section 7 consultation may be necessary for the activity and the respective federal agency would be responsible for fulfilling its obligation under section 7 of the ESA.
  - (c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that might be affected by the proposed activity or that utilize the designated critical habitat 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 critical habitat 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 critical habitat, or until ESA section 7 consultation 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.
19. *Migratory Birds and Bald and Golden Eagles.* The permittee is responsible for ensuring that an action authorized by NWP complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting the appropriate local office of the U.S. Fish and Wildlife Service to determine what measures, if any, are necessary or appropriate to reduce adverse effects to migratory birds or eagles, including whether "incidental take" permits are necessary and available under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for a particular activity.
20. *Historic Properties.*
  - (a) No activity is authorized under any NWP which may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.
  - (b) Federal permittees should follow their own procedures for complying with the requirements of section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)(1)). If pre-construction notification is required for the proposed NWP activity, the Federal permittee must provide the district engineer with the appropriate documentation to
21. *As a result of formal or informal consultation with the FWS or NMFS the district engineer may add species specific permit conditions to the NWPs.*
22. *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.*
23. *If the non-federal permittee has a valid ESA section 10(a)(1)(B) incidental take permit with an approved Habitat Conservation Plan for a project or a group of projects that includes the proposed NWP activity, the non-federal applicant should provide a copy of that ESA section 10(a)(1)(B) permit with the PCN required by paragraph (c) of this general condition. The district engineer will coordinate with the agency that issued the ESA section 10(a)(1)(B) permit to determine whether the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation conducted for the ESA section 10(a)(1)(B) permit. If that coordination results in concurrence from the agency that the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation for the ESA section 10(a)(1)(B) permit, the district engineer does not need to conduct a separate ESA section 7 consultation for the proposed NWP activity. The district engineer will notify the non-federal applicant within 45 days of receipt of a complete pre-construction notification whether the ESA section 10(a)(1)(B) permit covers the proposed NWP activity or whether additional ESA section 7 consultation is required.*
24. *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 worldwide Web pages at <http://www.fws.gov/> or <http://www.fws.gov/ipac> and <http://www.nmfs.noaa.gov/pr/species/esa/> respectively.*

- demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation is not submitted, then additional consultation under section 106 may be necessary. The respective federal agency is responsible for fulfilling its obligation to comply with section 106.
- (c) Non-federal permittees must submit a pre-construction notification to the district engineer if the NWP activity might have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties might have the potential to be affected by the proposed NWP activity or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of, or potential for, the presence of historic properties can be sought from the State Historic Preservation Officer, Tribal Historic Preservation Officer, or designated tribal representative, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts commensurate with potential impacts, which may include background research, consultation, oral history interviews, sample field investigation, and/or field survey. Based on the information submitted in the PCN and these identification efforts, the district engineer shall determine whether the proposed NWP activity has the potential to cause effects on the historic properties. Section 106 consultation is not required when the district engineer determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). Section 106 consultation is required when the district engineer determines that the activity has the potential to cause effects on historic properties. The district engineer will conduct consultation with consulting parties identified under 36 CFR 800.2(c) when he or she makes any of the following effect determinations for the purposes of section 106 of the NHPA: no historic properties affected, no adverse effect, or adverse effect.
  - (d) Where the non-Federal applicant has identified historic properties on which the proposed NWP activity might have the potential to cause effects and has so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects to historic properties or that NHPA section 106 consultation has been completed. For non-federal permittees, the district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA section 106 consultation is required. If NHPA section 106 consultation is required, the district engineer will notify the non-Federal applicant that he or she cannot begin the activity until section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.
  - (e) Prospective permittees should be aware that section 110k of the NHPA (54 U.S.C. 306113) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.
- 21. *Discovery of Previously Unknown Remains and Artifacts.* Permittees that discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by 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 5258 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.
    - (b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, 38, and 54, notification is required in accordance with general condition 32, for any activity proposed by permittees in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after she or he determines that the impacts to the critical resource waters will be no more than minimal.
  - 23. *Mitigation.* The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal:
    - (a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (*i.e.*, on site).
    - (b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal.
    - (c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects.
    - (d) Compensatory mitigation at a minimum one-for-one ratio will be required for all losses of stream bed that exceed 1/103/100-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. This compensatory mitigation requirement may be satisfied through the restoration or enhancement of riparian areas next to streams in accordance with paragraph (e) of this general condition. For losses of stream bed of 1/103/100-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects. Compensatory mitigation for losses of streams should be provided, if practicable, through stream rehabilitation, enhancement, or preservation since streams are difficult-to-replace resources (see 33 CFR 332.3(e)(3)).

- (e) Compensatory mitigation plans for NWP activities in or near streams or other open waters will normally include a requirement for the restoration or enhancement, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, the restoration or maintenance/protection of riparian areas may be the only compensatory mitigation required. If restoring riparian areas involves planting vegetation, only native species should be planted. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to restore or maintain/protect a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or maintaining/protecting a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of minimization or compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.
  - (f) Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.
    - (1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in no more than minimal adverse environmental effects. For the NWPs, the preferred mechanism for providing compensatory mitigation is mitigation bank credits or in-lieu fee program credits (see 33 CFR 332.3(b)(2) and (3)). However, if an appropriate number and type of mitigation bank or in-lieu credits are not available at the time the PCN is submitted to the district engineer, the district engineer may approve the use of permittee-responsible mitigation.
    - (2) The amount of compensatory mitigation required by the district engineer must be sufficient to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see 33 CFR 330.1(e)(3)). (See also 33 CFR 332.3(f)).
    - (3) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, aquatic resource restoration should be the first compensatory mitigation option considered for permittee-responsible mitigation.
    - (4) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) through (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)). If permittee-responsible mitigation is the proposed option, and the proposed compensatory mitigation site is located on land in which another federal agency holds an easement, the district engineer will coordinate with that federal agency to determine if proposed compensatory mitigation project is compatible with the terms of the easement.
    - (5) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan needs to address only the baseline conditions at the impact site and the number of credits to be provided (see 33 CFR 332.4(c)(1)(ii)).
    - (6) Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan (see 33 CFR 332.4(c)(1)(ii)).
  - (g) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any NWP activity resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that an NWP activity already meeting the established acreage limits also satisfies the no more than minimal impact requirement for the NWPs.
  - (h) Permittees may propose the use of mitigation banks, in-lieu fee programs, or permittee-responsible mitigation. When developing a compensatory mitigation proposal, the permittee must consider appropriate and practicable options consistent with the framework at 33 CFR 332.3(b). For activities resulting in the loss of marine or estuarine resources, permittee-responsible mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.
  - (i) Where certain functions and services of waters of the United States are permanently adversely affected by a regulated activity, such as discharges of dredged or fill material into waters of the United States that will convert a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse environmental effects of the activity to the no more than minimal level.
24. *Safety of Impoundment Structures.* To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with established state or federal, dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.
25. *Water Quality.*
- (a) Where the certifying authority (state, authorized tribe, or EPA, as appropriate) has not previously certified compliance of an NWP with CWA section 401, a CWA section 401 water quality certification for the proposed discharge must be obtained or waived (see 33 CFR 330.4(c)). If the permittee cannot comply with all of the conditions of a water quality certification previously issued by certifying authority for the issuance of the NWP, then the permittee must obtain a water quality certification or waiver for the proposed discharge in order for the activity to be authorized by an NWP.
  - (b) If the NWP activity requires pre-construction notification and the certifying authority has not previously certified compliance of an NWP with CWA section 401, the proposed discharge is not authorized by an NWP until water quality certification is obtained or waived. If the certifying authority issues a water quality certification for the proposed discharge, the permittee must submit a copy of the certification to the district engineer. The discharge is not authorized by an NWP until the district engineer has notified the permittee that the water quality certification requirement has been satisfied by the issuance of a water quality certification or a waiver.
  - (c) The district engineer or certifying authority may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.
26. *Coastal Zone Management.* In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). If the permittee cannot comply with all of the conditions of a coastal zone management consistency concurrence previously issued by the state, then the permittee must obtain an individual coastal zone management consistency concurrence or presumption of concurrence in order for the activity to be authorized by an NWP. The district engineer or a state may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.



27. *Regional and Case-By-Case Conditions.* The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its CWA section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.
28. *Use of Multiple Nationwide Permits.* The use of more than one NWP for a single and complete project is authorized, subject to the following restrictions:
- 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.
  - 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 statement that the authorized activity was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions;
  - 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
  - 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 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.*
- Timing.* Where required by the terms of the NWP, the 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:
    - 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
    - 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 pr set forth in 33 CFR 330.5(d)(2).
  - Contents of Pre-Construction Notification:* The PCN must be in writing and include the following information:
    - Name, address and telephone numbers of the prospective permittee;
    - Location of the proposed activity;
    - Identify the specific NWP or NWP(s) the prospective permittee wants to use to authorize the proposed activity;
  - A description of the proposed activity; the activity's purpose; direct and indirect adverse environmental effects the activity would cause, including the anticipated amount of loss of wetlands, other special aquatic sites, and other waters expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; a description of any proposed mitigation measures intended to reduce the

- adverse environmental effects caused by the proposed activity; and any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings for linear projects that require Department of the Army authorization but do not require pre-construction notification. The description of the proposed activity and any proposed mitigation measures should be sufficiently detailed to allow the district engineer to determine that the adverse environmental effects of the activity will be no more than minimal and to determine the need for compensatory mitigation or other mitigation measures.
- (ii) For linear projects where one or more single and complete crossings require pre-construction notification, the PCN must include the quantity of anticipated losses of wetlands, other special aquatic sites, and other waters for each single and complete crossing of those wetlands, other special aquatic sites, and other waters (including those single and complete crossings authorized by an NWP but do not require PCNs). This information will be used by the district engineer to evaluate the cumulative adverse environmental effects of the proposed linear project and does not change those non-PCN NWP activities into NWP PCNs.
  - (iii) Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the activity and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans).
- (5) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial and intermittent streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many wetlands, other special aquatic sites, and other waters. Furthermore, the 45-day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate.
  - (6) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands or 3/100-acre of stream bed and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse environmental effects are no more than minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.
  - (7) For non-federal permittees, if any listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat (or critical habitat proposed for such designation), the PCN must include the name(s) of those endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or utilize the designated critical habitat (or critical habitat proposed for such designation) that might be affected by the proposed activity. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with the Endangered Species Act.
  - (8) For non-federal permittees, if the NWP activity might have the potential to cause effects to a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, the PCN must state which historic property might have the potential to be affected by the proposed activity or include a vicinity map indicating the location of the historic property. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with section 106 of the National Historic Preservation Act.
  - (9) For an activity that will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, the PCN must identify the Wild and Scenic River or the "study river" (see general condition 16); and
- (10) For an NWP activity that requires permission from, or review by, the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers federally authorized civil works project, the pre-construction notification must include a statement confirming that the project proponent has submitted a written request for section 408 permission from, or review by, the Corps office having jurisdiction over that USACE project.
- (c) *Form of Pre-Construction Notification:* The nationwide permit pre-construction notification form (Form ENG 6082) should be used for NWP PCNs. A letter containing the required information may also be used. Applicants may provide electronic files of PCNs and supporting materials if the district engineer has established tools and procedures for electronic submittals.
  - (d) *Agency Coordination:*
    - (1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the activity's adverse environmental effects so that they are no more than minimal.
    - (2) Agency coordination is required for:
      - (i) All NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States;
      - (ii) NWP 13 activities in excess of 500 linear feet, fills greater than one cubic yard per running foot, or involve discharges of dredged or fill material into special aquatic sites; and
      - (iii) NWP 54 activities in excess of 500 linear feet, or that extend into the waterbody more than 30 feet from the mean low water line in tidal waters or the ordinary high water mark in the Great Lakes.
    - (3) When agency coordination is required, the district engineer will immediately provide (e.g., via 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 pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure that the net adverse environmental effects of the proposed activity are no more than minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.
    - (4) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.
    - (5) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of pre-construction notifications to expedite agency coordination.

**DISTRICT ENGINEER'S DECISION:**



1. In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If a project proponent requests authorization by a specific NWP, the district engineer should issue the NWP verification for that activity if it meets the terms and conditions of that NWP, unless he or she determines, after considering mitigation, that the proposed activity will result in more than minimal individual and cumulative adverse effects on the aquatic environment and other aspects of the public interest and exercises discretionary authority to require an individual permit for the proposed activity. For a linear project, this determination will include an evaluation of the single and complete crossings of waters of the United States that require PCNs to determine whether they individually satisfy the terms and conditions of the NWP(s), as well as the cumulative effects caused by all of the crossings of waters of the United States authorized by an NWP. If an applicant requests a waiver of an applicable limit, as provided for in NWPs 13, 36, or 54, the district engineer will only grant the waiver upon a written determination that the NWP activity will result in only minimal individual and cumulative adverse environmental effects.
2. When making minimal adverse environmental effects determinations the district engineer will consider the direct and indirect effects caused by the NWP activity. He or she will also consider the cumulative adverse environmental effects caused by activities authorized by an NWP and whether those cumulative adverse environmental effects are no more than minimal. The district engineer will also consider site specific factors, such as the environmental setting in the vicinity of the NWP activity, the type of resource that will be affected by the NWP activity, the functions provided by the aquatic resources that will be affected by the NWP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the NWP activity (e.g., partial or complete loss), the duration of the adverse effects (temporary or permanent), the importance of the aquatic resource functions to the region (e.g., watershed or ecoregion), and mitigation required by the district engineer. If an appropriate functional or condition assessment method is available and practicable to use, that assessment method may be used by the district engineer to assist in the minimal adverse environmental effects determination. The district engineer may add case-specific special conditions to the NWP authorization to address site-specific environmental concerns.
3. If the proposed activity requires a PCN and will result in a loss of greater than 1/10-acre of wetlands or 3/100-acre of stream bed, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for NWP activities with smaller impacts, or for impacts to other types of waters. The district engineer will consider any proposed compensatory mitigation or other mitigation measures the applicant has included in the proposal in determining whether the net adverse environmental effects of the proposed activity are no more than minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse environmental effects are no more than minimal, after considering mitigation, the district engineer will notify the permittee and include any activity-specific conditions in the NWP verification the district engineer deems necessary. Conditions for compensatory mitigation requirements must comply with the appropriate provisions at 33 CFR 332.3(k). The district engineer must approve the final mitigation plan before the permittee commences work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the proposed compensatory mitigation plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure that the NWP activity results in no more than minimal adverse environmental effects. If the net adverse environmental effects of the NWP activity (after consideration of the mitigation proposal) are determined by the district engineer to be no more than minimal, the district engineer will provide a timely written response to the applicant. The response will state that the NWP activity can proceed under

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

#### **FURTHER INFORMATION:**

1. District engineers have authority to determine if an activity complies with the terms and conditions of an NWP.
2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.
3. NWPs do not grant any property rights or exclusive privileges.
4. NWPs do not authorize any injury to the property or rights of others.
5. NWPs do not authorize interference with any existing or proposed Federal project (see general condition 31).

#### **DEFINITIONS:**

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

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

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

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

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

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

*Enhancement:* The manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a

decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Riffle and pool complex:** Riffle and pool complexes are special aquatic sites under the 404(b)(1) Guidelines. Riffle and pool complexes sometimes characterize steep gradient sections of streams. Such stream sections are recognizable by their hydraulic characteristics. The rapid movement of water over a 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.

## Nationwide Permit 35 - Activities, Regional Conditions, General Conditions, and Definitions

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

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

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

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

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

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

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

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

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

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

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



DEPARTMENT OF THE ARMY  
CORPS OF ENGINEERS, JACKSONVILLE DISTRICT  
701 SAN MARCO BOULEVARD  
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**FINAL REGIONAL CONDITIONS FOR THE 2021 NATIONWIDE PERMITS  
IN JACKSONVILLE DISTRICT (SAJ)**

Effective Date for Regional Conditions for 16 NWP: March 15, 2021  
Effective Date for Modified Regional Conditions for 16 NWP: February 25, 2022  
Effective Date for Regional Conditions for 41 NWP: February 25, 2022  
Expiration Date for Regional Conditions for All NWP: March 14, 2026

**This Regional Condition document supersedes all prior Regional Condition documents for the Jacksonville District.**

**A. BACKGROUND/APPLICABILITY.**

1. The following regional conditions have been approved by the Division Engineer for the South Atlantic Division (SAD) for use in the Jacksonville District (SAJ) for the following Nationwide Permits (NWP):

a. The NWP published in the January 13, 2021 Federal Register (86 FR 2744) announcing the reissuance of twelve (12) existing NWP (that is, NWP 12, 21, 29, 39, 40, 42, 43, 44, 48, 50, 51, and 52) and issuance of four (4) new NWP (that is, NWP 55, 56, 57, and 58), as well as the reissuance of NWP general conditions and definitions with some modifications. These 16 NWP were effective on March 15, 2021 and will expire on March 14, 2026; and

b. The NWP published in the December 27, 2021 Federal Register (86 FR 73522) announcing the reissuance of the remaining unmodified forty (40) existing NWP (that is, NWP 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, 27, 28, 30, 31, 32, 33, 34, 35, 36, 37, 38, 41, 45, 46, 49, 53, and 54) and issuance of one (1) new NWP (that is, NWP 59). At this time, NWP 26 and 47 are reserved. These 41 NWP will be effective as of February 25, 2022 and will expire on March 14, 2026.

2. Status of Activities Under Prior NWP and/or Regional Conditions.

a. 16 NWP: The regional conditions that were effective on March 15, 2021 have been modified and are incorporated in this document. (There are three changes to the previous regional conditions. First, Regional Condition 45 (Tribal Rights and Authorities) has been added. Second, Regional Condition 2.b. has been modified to specify that the description of a project location shall include the latitude and longitude. Third, Regional Condition 36 has been modified by adding a superscript that refers to new text at F.3., which clarifies NWP 43's pre-construction notification requirements.) These modified regional conditions must

## 2021 NWP REGIONAL CONDITIONS FOR JACKSONVILLE DISTRICT (SAJ)

be applied on and after February 25, 2022, for the 16 NWPs **except** for the following scenarios:

- (i) NWP verification letters for one or more of the 16 NWPs that were issued **prior** to February 25, 2022; or
  - (ii) NWP activities that did not require a pre-construction notification (PCN), are covered by one or more of the 16 NWPs, and have either commenced, are under contract to commence, or have been completed **prior** to February 25, 2022.
- b. 40 NWPs: For information about whether an activity can continue under the 2017 versions of the 40 existing NWPs (for example, the status of prior permit verifications and pre-construction notifications) and, accordingly, the 2017 Regional Conditions, see the discussion in the Reissuance and Modification of Nationwide Permits at 86 FR 73522 in Section I.D. on page 73525 or contact the Jacksonville District Regulatory Office directly.
3. The following regional conditions will provide additional protection for the aquatic environment that is necessary to ensure that the NWPs authorize only those activities with no more than minimal adverse environmental effects.
4. As specified under NWP General Condition 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 C.F.R. 330.4(e)) and with any case-specific conditions added by the Corps, or by Florida, Puerto Rico, U.S. Virgin Islands, Miccosukee Tribe of Indians of Florida or Seminole Tribe of Florida in their Section 401 Water Quality Certification, and by Florida, Puerto Rico or the U.S. Virgin Islands in their concurrence with the Corps' Coastal Zone Management Act consistency determination.
5. Superscripts refer to the corresponding number in Section F, Definitions and Acronyms.
6. The acronym "PCN" used throughout this document refers to Pre-Construction Notification as further defined in NWP General Condition 32.
- a. In Florida, the *Nationwide Permit Pre-Construction Notification (PCN)* form (ENG Form 6082) should be used for NWP PCNs.
  - b. PCN for activities in the Antilles<sup>4</sup> shall be made through the Joint Permit Process using the most recent and valid *Application for Department of the Army Permit* (ENG Form 4345), and the form must indicate it is an NWP Pre-Construction Notification (PCN). The application must also contain the information described in General Condition 32. If the joint process changes before the expiration of these Regional Conditions, then follow the instructions in the announcement for such change.

### **B. EXCLUDED WATERS AND/OR AREAS.**

1. NWPs cannot be used in an exclusion area designated by Regional Condition 4.

## 2021 NWP REGIONAL CONDITIONS FOR JACKSONVILLE DISTRICT (SAJ)

### 2. Designated Critical Resource Waters.

- a. Synopsis of NWP General Condition 22. Critical resource waters include NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may identify additional critical resource waters after notice and opportunity for public comment. 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, 50, 51, 52, 57 and 58 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters. For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, 38, and 54, a PCN is required for any activity proposed by permittees in the designated critical resource waters, including wetlands adjacent to those waters.
- b. In accordance with General Condition 22, designated critical resource waters in Florida are:
  - (i) Wetlands and other surface waters in National Estuarine Research Reserves, NOAA-managed National Marine Sanctuaries and marine monuments, Biscayne National Park and Everglades National Park;
  - (ii) State natural heritage sites, and the Marjorie Harris Carr Cross Florida Greenway State Recreation and Conservation Area; and
  - (iii) Wetlands and other surface waters in active designated State of Florida Areas of Critical State Concern, including the Green Swamp Area, the Big Cypress Area, and the Apalachicola Bay Area. See, for example, Fla. Stat. §§ 380.055, 380.0551 and 380.0555.

### C. REGIONAL CONDITIONS APPLICABLE TO ALL NWPs.

1. Endangered Species. In accordance with General Condition 18, a PCN must be submitted if any listed species or designated critical habitat might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat. The following information is provided to assist prospective Permittees to fulfill their obligations under General Condition 18.
  - a. NMFS Species. There are numerous listed species throughout the estuarine and marine waters in Florida, Puerto Rico, and the U.S. Virgin Islands. Therefore, there is a high potential that one or more of these species or designated critical habitat will be in the vicinity of or affected by the activity. For species for which the NMFS has jurisdiction, web pages for each of the species describing their range, how they can be affected, and other information can be accessed at [https://www.fisheries.noaa.gov/species-directory/threatened-endangered?title=&species\\_category=any&species\\_status=any&regions=1000001121&items\\_per\\_page=25&sort=](https://www.fisheries.noaa.gov/species-directory/threatened-endangered?title=&species_category=any&species_status=any&regions=1000001121&items_per_page=25&sort=). That information can be used, along with project and site-specific information, to determine whether a PCN is required by General Condition 18. NMFS species include, but are not limited to, the following:

## 2021 NWP REGIONAL CONDITIONS FOR JACKSONVILLE DISTRICT (SAJ)

sea turtles, smalltooth sawfish, Gulf sturgeon, shortnose sturgeon, and certain corals.

b. USFWS Species. The West Indian manatee, for which the USFWS has jurisdiction, is found in most estuarine and marine waters (as well as some inland freshwaters) in Florida, Puerto Rico and the U.S. Virgin Islands. The USFWS Information for Planning and Consultation (IPaC) web page (<https://ecos.fws.gov/ipac/>) should be used to identify the potential for the presence of and effect on listed species under the jurisdiction of the USFWS. Other tools for effect determination on federally listed species and designated critical habitat are available on ECOS at [ecos.fws.gov](https://ecos.fws.gov). For Puerto Rico and the U.S. Virgin Islands, prospective Permittees are encouraged to review the local office's website at <https://www.fws.gov/southeast/caribbean/> for any changes in species lists, status, additions or latest conservation measures that have not yet been incorporated into IPaC. The information from these various sources can be used, along with project and site-specific information, to determine whether a PCN is required by General Condition 18.

### 2. Historic Properties.

a. Florida. In addition to General Condition 20 (Historic Properties), in Florida, if a PCN is not required (or not voluntarily submitted), the prospective Permittee shall contact the Florida Master Site File (FMSF) to conduct an historic properties search. The prospective Permittee shall provide the FMSF with the project area and Section/Township/Range information by email to [sitefile@dos.myflorida.com](mailto:sitefile@dos.myflorida.com) or contact the FMSF office at (850) 245-6440. If the FMSF identifies any historic property within 50 meters of the project area that is listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, the prospective Permittee shall submit a PCN to the Corps, including the information exchanged with the FMSF office, for further review and consultation. Submittal of a PCN is not required when the FMSF report for the property (or all properties if more than one) shows the Florida Department of State, Division of Historical Resources Compliance and Review Section (SHPO) Evaluation ('SHPO Eval' column) to be "Not Eligible" and also shows the property(ies) is/are not listed or proposed for listing on the National Register of Historic Places ('NR Status' column). However, in accordance with General Condition 20, a PCN is required if the prospective Permittee has knowledge of a historic property that is listed on, determined to be eligible for listing on, or potentially eligible for listing on the NRHP, including previously unidentified properties.

b. Seminole Tribe of Florida. In addition to General Condition 20 (Historic Properties), in Florida, for applications that do not require a PCN, the prospective Permittee shall contact the Seminole Tribe's Historic Preservation Compliance Office (THPO) to conduct an historic and cultural resources properties search. The prospective Permittee shall provide the THPO with the project area, to include the latitude and longitude of the project and Section/Township/Range information, to [THPOCompliance@semtribe.com](mailto:THPOCompliance@semtribe.com) (include the uppercase letters

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of the email address). If the THPO's search identifies any historic property or cultural resource within 50 meters of the project area that is listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, the prospective Permittee shall submit a PCN to the Corps, including the information exchanged with the THPO, for further review. Submittal of a PCN is not required when the THPO report for the property(ies) shows "Not Eligible" or "None" and also shows the property(ies) is/are not listed or proposed for listing on the National Register of Historic Places ("NR Status" column). However, in accordance with General Condition 20, a PCN is required if the prospective Permittee has knowledge of a historic property that is 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.

3. Florida Prehistoric or Historic Artifacts. In addition to General Condition 21 (Discovery of Previously Unknown Remains and Artifacts), in Florida, if prehistoric or historic artifacts, such as pottery or ceramics, projectile points, dugout canoes, metal implements, historic building materials, or any other physical remains that could be associated with Native American, early European, or American settlement are encountered at any time within the project site area, the Permittee shall cease all activities involving subsurface or ground disturbance within a 100 meter diameter of the discovery. The Permittee shall contact the Corps immediately and not later than within the same business day (eight hours). The Corps will contact the SHPO at (850)-245-6333 and the appropriate THPO(s) to assess the significance of the discovery. The Corps shall also follow the *Agreement Between the Jacksonville District, U.S. Army Corps of Engineers, and the Seminole Tribe of Florida Regarding Proposed Actions that may Adversely Affect American Indian Burial Resources*. This agreement emphasizes that the resolution of effects to Native American burial resources will be accomplished whereby avoidance is the first priority and minimization or mitigation is only considered as a last resort. Appropriate actions for the resolution of the adverse effects will be determined following initiation of these steps and under consultation with the SHPO and THPO(s). In addition, in the event that unmarked human remains are encountered during permitted activities, all work shall stop immediately and the Permittee shall notify the medical examiner, in accordance with Section 872.05, Florida Statutes ("Unmarked human burials"), as well as the Corps and SHPO. On federal or tribal lands, or situations where the Archaeological Resources Protection Act of 1979 or Native American Graves Protection and Repatriation Act of 1990 applies, the Permittee shall notify the Corps who will notify the SHPO and THPO(s). Once activities have ceased as a result of any of the situations identified in this Regional Condition, they shall not resume without written authorization from the Corps.

(Note: Regional Condition 45 applies to all NWPs. It is located for administrative reasons (that is, numbering consistency) at the end of Section D.)



**D. REGIONAL CONDITIONS APPLICABLE TO SPECIFIC ACTIVITIES AND/OR SPECIFIC NWPs.**

(Note: The numbering in this section starts at 4 because it is a continuation of conditions based on numbering in Section C above).

4. In the Antilles, Marine Reserves, Marine Protected Areas or Parks.

NWPs 1, 11 and 52. Excluded within the boundaries of Marine Reserves, Marine Protected Areas,<sup>8</sup> and Parks in the Antilles,<sup>4</sup> except when used within those areas by the local or federal agency responsible for the management of those areas.

5. Coral assemblages.<sup>5</sup>

a. NWP 1. In the Jacksonville District placement of aids to navigation cannot cause adverse impacts to coral assemblages.<sup>5</sup>

b. NWPs 7, 10, 11, 19, 22 and 28 in Antilles. Activities cannot cause adverse impacts to coral assemblages.<sup>5</sup>

c. <reserved>.

d. <reserved>.

e. NWPs 4, 6, 9 and 23. PCN is required if within coral assemblages in depths less than 250 feet.

f. NWPs 7, 14, 15, 16, 18, 52 and 54 in the Antilles. PCN is required for any activity within coral assemblages.<sup>5</sup>

g. NWPs 3, 10, 28, 35, 48, 55 and 56. PCN is required for any activity within coral assemblages.<sup>5</sup>

h. <reserved>.

6. PCN is required for several NWPs in the Antilles.

NWPs 2, 13, 19, 25, 36. PCN is required for all activities under these NWPs in the Antilles.<sup>4</sup>

7. Activities affecting structures or works built by the United States. In accordance with General Condition 31, a PCN is required when the proposed activity will alter or temporarily or permanently occupy or use a Corps federally authorized Civil Works project.

a. Synopsis of General Condition 31. A PCN is required when the proposed “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 Corps federally authorized Civil Works project (a ‘USACE project’).”

b. Additional Information on 33 U.S.C. § 408 requirements and procedures are at <https://www.usace.army.mil/Missions/Civil-Works/Section408/>. Descriptions of

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activities that may require Corps review or permission under 33 U.S.C. § 408 are found in paragraph 9 of *Engineer Circular (EC) 1165-2-220*, which is available via that web page. Some examples are those: (1) within the right-of-way for a federal navigation project; (2) that do not meet the Setback Guidance for a federal navigation project; and (3) that cross (above or below) a USACE project levee, dike, dam or other water-retaining structure.

c. Corps project real estate. Any activity within Federal project lands, including within rights-of-way, may require the prospective Permittee to enter into a Consent to Easement or other real estate instrument with the Real Estate Division, U.S. Army Corps of Engineers, Jacksonville or Mobile District, as appropriate, prior to the commencement of any construction activity.

d. For NWP 3. For projects adjacent to a federal channel, if the previously authorized and serviceable structure was destroyed by an act of nature or other event, the project will be reviewed pursuant to the setback guidance in effect at the time of the PCN. It is possible that any authorized reconstruction will not be authorized to be rebuilt with the same dimensions or design as the original structure.

8. Florida Keys. PCN is required for all projects in the Florida Keys. Prospective Permittees must submit to the Jacksonville District a certification from NOAA Florida Keys National Marine Sanctuary (FKNMS), pursuant to 33 C.F.R. § 320.4(i), prior to verification by the Corps for any activities within the marine sanctuary.

9. Adjacent to Tribal lands.

a. NWPs 3, 18, 27, 40, 41 and 46. PCN is required when the property on which the proposed activity is occurring is adjacent to Tribal lands.

b. NWP 3, 18, 27, 40, 41 and 46. PCN is required for projects located in these waters. In vicinity of Brighton Reservation: Lake Istokpoga; Istokpoga Creek; Istokpoga Canal; Kissimmee River (C-38) from Istokpoga Creek to Lake Okeechobee. In vicinity of Big Cypress Reservation: Miami Canal from G373 south to S8. In vicinity of Hollywood Reservation: North New River Canal from West Hollywood Canal (C-42) east to South New River Canal (C-11); Dania Cutoff canal from South New River Canal (C-11) east to I-95. In vicinity of Fort Pierce Reservation: Ten Mile Creek from Okeechobee Road east to the I-95. In vicinity of Tampa Reservation: Palm River.

10. Culverts in the Antilles.

NWPs 3 and 14. For projects in the Antilles,<sup>4</sup> if bottomless culverts or single-span bridges are not feasible, culvert construction must comply with the *Guidance for Repair, Replacement, and Clean-up of structures in Streams and Waterways of Puerto Rico and US Virgin Islands*, which was provided by the USFWS and is available at

<https://usace.contentdm.oclc.org/utis/getfile/collection/p16021coll7/id/19722>. If compliance is not practical for a particular location, the PCN must include the

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reason(s) it was not practicable and describe how the activity will maintain necessary life cycle movements of aquatic life indigenous to the water body.

### 11. Gabions, sediment removal and heavy equipment.

NWPs 3 and 13. Projects in the Antilles must meet specific design criteria to address gabions, removal of accumulated sediments around bridges, and use of heavy equipment.<sup>9</sup>

### 12. Projects that capture and store water.

NWPs 3, 18, 27, 40, 41 and 46. Projects that capture and store water, such as Dispersed Water Management Projects, are excluded from this NWP.

### 13. Live Rock culture.

NWPs 4 and 48. Placement of materials for live rock culture and the harvesting of live rock are not activities authorized by these NWPs.

### 14. Submerged aquatic vegetation.<sup>7,10</sup>

a. NWPs 7, 14, 15, 16, 18, 19, 52 and 54 in the Antilles.<sup>4</sup> PCN is required for any activity occurring within submerged aquatic vegetation.<sup>7,10</sup>

b. NWPs 3, 10, 12, 22, 28, 35, 48, 55, 56, 57, and 58. PCN is required for any activity occurring within submerged aquatic vegetation.<sup>7,10</sup>

### 15. Tidal wetlands.

NWPs 3, 10, 12, 22, 28, 35, 48, 55, 56, 57, and 58. PCN is required for any activity occurring within tidal wetlands.

### 16. Hardbottom benthic habitat.

NWPs 52 and 54 in the Antilles.<sup>4</sup> PCN is required for any activity occurring within hardbottom benthic habitat.

### 17. Salt flats.

NWPs 7, 14, 15, 16, 18 and 19 in the Antilles. PCN is required in salt flats.

### 18. Forested wetlands.

a. NWPs 7, 14, 15, 16, 18, 19, 29, 39, 40, 42, 51 and 59 in the Antilles. PCN is required for any activity occurring within forested wetlands.

b. NWP 22. PCN is required in forested wetlands.

### 19. In the Florida Keys, any activity which will result in the discharge of greater than 0.25 acre of dredged or fill material.

NWPs 29, 39 and 59. For projects in the Florida Keys with discharges of dredged or fill material greater than 0.25 acre, the Corps will request comments from U.S. EPA Region 4.

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### 20. Hopper dredging.

NWPs 19 and 35. Hopper dredging is not allowed under this NWP.

### 21. In the Antilles, any activity which will result in the discharge of greater than 0.25 acre of dredged or fill material.

NWPs 40, 51 and 59. In the Antilles, for projects that propose the discharge of greater than 0.25 acre of dredged or fill material, the Corps will request comments from the USFWS.

### 22. Sediment and erosion control plan.

NWPs 41, 44, 45, 46 and 53. The PCN shall include a sediment and erosion control plan.

### 23. Wind Energy Guidelines.

NWPs 51 and 52. The Corps will consider the information in the USFWS *Land-Based Wind Energy Guidelines* (at [https://www.fws.gov/ecological-services/es-library/pdfs/WEG\\_final.pdf](https://www.fws.gov/ecological-services/es-library/pdfs/WEG_final.pdf)) when reviewing a proposed project for compliance with General Condition 18 (Endangered Species).

### 24. NWP 2. In Florida, this NWP is limited to the installation and removal of individual, single family docks/piers/swim and observation platforms and/or mooring pilings, davits, and boat lifts at single-family residences.

25. NWP 2. All dock or pier construction over submerged aquatic vegetation,<sup>7</sup> marsh and/or mangroves shall comply with the joint U.S. Army Corps of Engineers'/National Marine Fisheries Service's *Construction Guidelines in Florida for Minor Piling-Supported Structures Constructed in or over Submerged Aquatic Vegetation (SAV), Marsh or Mangrove Habitat*, dated November 2017, available in the USACE Digital Library at <https://usace.contentdm.oclc.org/digital/collection/p16021coll11/id/1930/> or subsequent updates available at <https://www.saj.usace.army.mil/Missions/Regulatory/Source-Book/>.

26. NWP 2. Structures constructed on canals or channels shall not exceed more than 25% of the canal/channel width, excluding dense areas of shoreline vegetation, such as mangrove, as measured from the project location to the opposite shoreline (in order to maintain no less than 50% of the open-water portion of the waterbody for public use).

27. NWP 3. PCN is required for any work located in the coastal zone of the Antilles,<sup>4</sup> including the areas specified in F.1. and F.2. below for Puerto Rico<sup>1</sup> and U.S. Virgin Islands,<sup>2</sup> respectively. For Puerto Rico, the geographic area comprising its coastal zone is the area described in the Puerto Rico Coastal Zone Management Program.

28. NWP 3. PCN is required for all work within the La Parguera Natural Reserve and Culebra Island in Puerto Rico. Reconstruction of structures within the La Parguera Natural Reserve will not be allowed under this nationwide permit.

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29. NWP 10. PCN is required for all activities in the Antilles.<sup>4</sup>
30. NWP 11. PCN is required for any structure proposed in or over submerged aquatic vegetation<sup>7,10</sup> and/or mangroves.
31. NWP 58. For water intake projects in Puerto Rico, the prospective Permittee must submit a PCN to the District Engineer prior to commencing the activity, in accordance with General Condition 32. The PCN must contain plans and drawings, a description of all waters of the U.S. impacted by the project, the maximum amount of water to be withdrawn in millions of gallons a day (MGDs), and the minimum in-stream flows on any given day in MGDs after water extraction.
32. NWPs 12, 57 and 58. Where the proposed subaqueous utility or transmission line is to be installed in, under, or over navigable waters of the United States, as defined in 33 C.F.R. § 329.4, at least two weeks prior to the start of the authorized work, the Permittee must notify the National Oceanic Atmospheric Administration (NOAA) and the Corps office in writing that the work is commencing, and again upon completion of the work. For pre-construction and post-construction notifications, the Permittee shall notify the District Engineer at the above letterhead address, attention Regulatory Division, and NOAA, at Department of Commerce, NOAA, Nautical Data Branch, N/CS26, Station 7317, 1315 East-West Highway, Silver Spring, MD 20910-3282. The post-construction notification shall be submitted within 60 days of completion of construction and shall include "as-built plans," signed and sealed by a registered surveyor/engineer licensed in the State of Florida, Puerto Rico, or U.S. Virgin Islands, as appropriate, that certify the project is constructed as authorized, and must include an accurate (within plus or minus one (1) foot) depiction of the location and configuration of the completed activity in relation to the mean high water of the navigable water.
33. NWP 18. In the Antilles<sup>4</sup> PCN is required for all activities proposed in the areas defined in Section F below for Puerto Rico<sup>1</sup> and U.S. Virgin Islands.<sup>2</sup>
34. NWP 27. PCN is required for lake restoration projects proposing any type of in-lake disposal of dredged or fill material.
35. NWP 36. PCN is required in areas without existing access to navigation channels where the minimum water depth for ingress to or egress from the navigation channels is less than -3 feet at mean or ordinary low water.
36. NWP 43.<sup>3</sup> PCN is required prior to the start of all work in wetlands adjacent to Deer Point Lake and its tributaries in Bay County, Florida.
37. NWP 51. In Puerto Rico, prospective Permittees are encouraged to consider the USFWS Caribbean Ecological Services Field Office document *Wildlife and Habitat Risk Map for Utility-Scale Land-Based Wind Energy Projects*. The current version is at [https://www.fws.gov/caribbean/es/documents/PR\\_Habitat\\_Risk\\_for\\_Wind\\_Energy\\_Version\\_4\\_22\\_15.pdf](https://www.fws.gov/caribbean/es/documents/PR_Habitat_Risk_for_Wind_Energy_Version_4_22_15.pdf).

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38. NWP 52. In the Antilles,<sup>4</sup> PCN must include a benthic survey,<sup>10</sup> which includes documentation on observed habitat types.
39. NWP 54. For projects that affect aquatic resources.
- a. The completed project should result in a net gain in aquatic resource function;
  - b. The structure(s) shall be maintained as necessary in perpetuity in order to maintain the lift in function and value; and
  - c. In Florida, meet the applicable requirements established by the Florida Fish and Wildlife Conservation Commission if and as included in the State of Florida authorization.
40. NWP 54. Materials authorized for use under this NWP must consist mostly of natural material. Biodegradable breakwater stabilization materials, such as coir, may be used in place of plastic materials. However, in certain cases, plastic bags (Naltex) and plastic mats (UV stabilized) may be used. Concrete products (e.g., sprinkler weights) may be allowed to add to the "sufficient weight." Large-scale use of concrete as breakwater or substrate for oyster recruitment is prohibited. Certain metals (e.g., wire mesh) may be used for enclosing stone in gabions for breakwaters. Oyster mats should be used only in special cases (e.g., restoring dead margins of reefs, shoreward of and in association with bags in some cases, and held with cable ties and weights at all mat corners).
41. NWP 54. Sills may be constructed in a non-linear manner to mimic natural reefs.
42. NWP 54. Spacing or gaps between sill material shall be no greater than eight (8) inches to prevent entrapment of marine mammals or marine turtles.
43. NWP 54. Breaks in structures shall be placed at least every 75 feet and shall be five feet in width.
44. NWP 54. The PCN must include a benthic survey.<sup>10</sup>
45. Tribal Rights and Authorities. In accordance with General Condition 17, any activity authorized by any NWP cannot impact tribal rights. Furthermore, there may be requirements that are applicable to activities that are proposed to occur on Tribal lands. Permittees should consider the following information to facilitate their compliance with this General Condition and applicable requirements.
- a. General Condition 17 (*Tribal Rights*) states, "No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights." The term "tribal rights" is defined as "[t]hose 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." 86 FR at 2877 (definition of *Tribal rights* in section *F. Definitions* of the *Reissuance and Modification of Nationwide Permits*; Final Rule, 86 FR 2744 (January 13, 2021)).

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b. 33 C.F.R. § 330.4(b)(2) states, “NWPs do not obviate the need to obtain other Federal, state, or local permits, approvals, or authorizations required by law.” This principle applies equally to any other permits, approvals or authorizations required by law from the Miccosukee Tribe of Indians of Florida and Seminole Tribe of Florida.

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

#### 1. State of Florida.

a. WQCs for NWPs 12, 29, 39, 40, 42, 43, 44, 48, 51, 55, 56, 57, and 58 were deemed invalid and were not accepted. The Corps has declined to rely on these WQCs. Therefore, in accordance with NWP General Condition 25, the prospective Permittee must obtain an individual WQC or a waiver for a proposed discharge into waters of the U.S. in order for activities to be authorized by these NWPs. To obtain state certification, prospective Permittees must follow applicable rules in 40 C.F.R. Part 121, *State Certification of Activities Requiring a Federal License or Permit*.

b. The Florida Department of Environmental Protection states:

WQC is granted for NWPs 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, 27, 28, 30, 31, 32, 33, 34, 35, 36, 37, 38, 41, 45, 46, 49, 53, 54 and 59 provided the federal agency requires the following condition with any federal license or permit.

CONDITION: To receive a grant or waiver of water quality certification pursuant 33 U.S.C. 1341, the project proponent must follow the applicable procedures in Rule 62-330.062, Florida Administrative Code.

Therefore, prior to undertaking any individual activity authorized by these NWPs that propose a discharge into waters of the U.S., prospective Permittees must successfully follow the procedures at 62-330.062, Florida Administrative Code, and have one of the following three scenarios apply: (a) an individual or conceptual approval permit is issued for the activity; (b) the activity meets all terms and conditions of a general permit (see 62-330.062(1)(b), Florida Administrative Code); or (c) state water quality certification is waived because the activity falls within one of the five scenarios set forth in 62-330.062(c), Florida Administrative Code.

c. WQC for NWP 8 is denied. Therefore, in accordance with NWP General Condition 25, the prospective Permittee must obtain an individual WQC or a waiver for activities authorized by this NWP that propose a discharge into waters of the U.S.

d. WQCs for NWPs 21, 50, and 52 are waived. Therefore, there is no requirement for the prospective Permittee to obtain and submit to the Corps an individual WQC or waiver for their activity.

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e. CZMA consistency concurrence was received for NWPs 1, 2, 5, 7, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 22, 25, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 51, 57 and 58 with the following condition included:

Activities qualifying for this NWP must receive applicable Coastal Zone Management Act (CZM) consistency concurrence (CZCC) or waiver/exemption from the appropriate delegated authority. In Florida, under 33 C.F.R. § 325.2(b)(2), the Corps may presume CZCC concurrence for the exempted activities by operation of s. 380.23(7), F.S., and the rules of the F.A.C. adopted thereunder.

Therefore, the prospective Permittee must comply with this condition in order for the activity to be authorized by NWP 1, 2, 5, 7, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 22, 25, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 48, 51, 57 or 58.

f. For NWPs 3, 4, 6, 9, 10, 23, 27, 28, 48, 55 and 56, CZMA consistency concurrence was not received. Therefore, in accordance with NWP General Condition 26, “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.”

g. CZMA consistency concurrence was not received for NWPs 21, 49 and 50 since these activities (related to coal mining) are unlikely to occur in Florida. In accordance with NWP General Condition 26, “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.”

h. A CZMA consistency concurrence response has not been received for NWPs 24, 52, 53, 54, and 59. In accordance with NWP General Condition 26, “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.”

i. A CZMA consistency concurrence was denied for NWP 8. In accordance with NWP General Condition 26, “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.”

### 2. Miccosukee Tribe of Indians of Florida.

a. WQC for NWP 12 is granted with conditions but the conditions are waived. Therefore, there is no requirement for the prospective Permittee to obtain and submit to the Corps an individual WQC or waiver for an activity under NWP 12.

b. WQCs for NWPs 3, 4, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 48, 49, 50, 51, 52, 53, 55, 56, 57, 58 and 59 are waived. Therefore, there is no requirement for the prospective Permittee to obtain and submit to the Corps an individual WQC or waiver for their activity.



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- c. WQC for is granted with conditions for NWP 1. The condition is:

Aids to navigation may not be placed on Tribal lands or waters without prior written permission from the Miccosukee Tribe.

Therefore, Permittees performing activities under the authority of NWP 1 must comply with this condition.

- d. WQC is granted with conditions for NWP 2. The condition is:

A structure may not be located on Tribal lands or in Tribal waters without prior written approval from the Miccosukee Tribe.

Therefore, Permittees performing activities under the authority of NWP 2 must comply with these conditions.

- e. WQC is granted with conditions for NWP 5. The condition is:

Scientific measurement devices may not be located on Tribal lands or waters without prior written approval from the Miccosukee Tribe.

Therefore, Permittees performing activities under the authority of NWP 5 must comply with this condition.

- f. WQC is granted with conditions for NWP 6. The condition is:

Seismic exploratory devices or exploratory activities may not be located on Tribal lands or waters without prior written approval of the Miccosukee Tribe. Additionally, the use of ground penetrating radar or isotope technology are not authorized on Tribal lands or waters without the prior written approval of the Miccosukee Tribe.

Therefore, Permittees performing activities under the authority of NWP 6 must comply with these conditions.

- g. WQC is granted with conditions for NWP 46. The condition is:

No discharges are authorized on Tribal lands or into Tribal waters without the prior written approval of the Miccosukee Tribe.

Therefore, Permittees performing activities under the authority of NWP 46 must comply with this condition.

- h. WQC is granted with conditions for NWP 54. The condition is:

Structures may not be located on Tribal lands or waters without prior written approval of the Miccosukee Tribe. Discharge material must be in accordance with the written approval of the Miccosukee Tribe.

Therefore, Permittees performing activities under the authority of NWP 54 must comply with these conditions.

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### 3. Seminole Tribe of Florida.

a. WQCs for NWPs 4, 5, 6, 15, 16, 18, 19, 20, 22, 23, 25, 27, 30, 31, 32, 36, 37, 38, 40, 41, 42, 43, 44, 45, 48 and 53 are granted without conditions. Therefore, there is no requirement for the prospective Permittee to obtain and submit to the Corps an individual WQC or waiver for their activity.

b. WQC is granted with conditions for NWPs 3, 7, 13, 14, 17, 33, 46, and 59. The conditions are:

1. Applicants for this NWP shall utilize Best Management Practices, including but not limited to, proper installation of temporary erosion and sediment control measures (for example secured hay bales, silt and turbidity screens) to reduce turbidity and maintain transparency; and
2. Applicants for this NWP shall ensure that any fill placed in Tribal waters be clean fill that is free of solid waste, toxic, or hazardous contaminants.

Therefore, Permittees performing activities under the authority of these NWPs must comply with these conditions.

c. WQCs for NWPs 12, 29, 39, 51, 52, 57 and 58 have been granted with conditions but the conditions are waived. Therefore, there is no requirement for the prospective Permittee to obtain and submit to the Corps an individual WQC or waiver for their activity.

d. WQCs for NWPs 21, 50, 55, and 56 are waived. Therefore, there is no requirement for the prospective Permittee to obtain and submit to the Corps an individual WQC or waiver for their activity.

e. WQCs for NWPs 34, 49 and 54 are waived. Therefore, there is no requirement for the prospective Permittee to obtain and submit to the Corps an individual WQC or waiver for their activity.

f. WQCs for NWPs 1, 2, 8, 9, 10, 11 and 24 are waived. Therefore, there is no requirement for the prospective Permittee to obtain and submit to the Corps an individual WQC or waiver for their activity.

g. WQC is granted with conditions for NWP 28. The condition is:

Prior written approval from the Seminole Tribe is required before commencing an activity under this NWP.

Therefore, Permittees performing activities under the authority of NWP 28 must comply with this condition.

h. WQC is granted with conditions for NWP 35. The conditions are:

1. Maintenance dredging is authorized to a depth that is within ½ foot of the adjacent access or outlet channel bottom depth or the originally excavated depth, whichever is greater;

## 2021 NWP REGIONAL CONDITIONS FOR JACKSONVILLE DISTRICT (SAJ)

2. This permit does not authorize the removal of plugs or connections of any canal to navigable waters of the U.S.;
3. Documentation shall be provided showing the originally authorized depth or showing the current depth of the adjacent access or outlet channel bottom; and
4. Prior written approval from the Seminole Tribe is required before commencing an activity under this NWP.

Therefore, Permittees performing activities under the authority of NWP 35 must comply with these conditions.

### 4. Puerto Rico.

- a. WQCs for NWPs 12, 21, 29, 39, 40, 42, 43, 44, 48, 50, 51, 52, 55, 56, 57, and 58 are waived. Therefore, there is no requirement for a prospective Permittee to obtain and submit to the Corps an individual WQC or waiver for the activity.
- b. NWPs 1, 2, 8, 9, 10, 11, 24, 28 and 35 do not require a WQC. Therefore, there is no requirement for the prospective Permittee to obtain and submit to the Corps an individual WQC or waiver for the activity.
- c. WQCs for NWPs 4, 5, 6, 20, 27, 30, 32, 37 and 38 are waived. Therefore, there is no requirement for the prospective Permittee to obtain and submit to the Corps an individual WQC or waiver for the activity.
- d. WQCs are granted with conditions for activities under NWPs 3, 7, 13, 14, 15, 16, 17, 18, 19, 22, 23, 25, 31, 33, 34, 36, 41, 45, 46, 49, 53, 54 and 59 **except for activities conducted in Outstanding National Resources Waters** as defined in Part 11.C of the Puerto Rico Department of Natural and Environmental Resources' (DNER's) *Anti-degradation Policy Implementation Procedure* (Attachment A of the *Puerto Rico Water Quality Standards Regulation* (PRWQSR)) (see paragraph 4.e. below). Prospective permittees must comply with the special conditions established in the attached General Water Quality Certificate (GWQC) that DNER issued for these NWPs for activities that are **not in Outstanding National Resources Waters**. Permittees performing activities under the authority of these NWPs must comply with the special conditions in the GWQC.
- e. WQCs are denied for all activities under NWPs 3, 7, 13, 14, 15, 16, 17, 18, 19, 22, 23, 25, 31, 33, 34, 36, 41, 45, 46, 49, 53, 54 and 59 **if the activities are conducted in Outstanding National Resources Waters**. Therefore, in accordance with NWP General Condition 25, the prospective Permittee must obtain an individual WQC or a waiver for activities authorized by these NWPs if there will be a discharge into an Outstanding National Resources Water. Prospective Permittees must follow applicable rules in 40 C.F.R. Part 121, *State Certification of Activities Requiring a Federal License or Permit*.

## 2021 NWP REGIONAL CONDITIONS FOR JACKSONVILLE DISTRICT (SAJ)

f. CZMA consistency concurrence was not received for NWPs 29, 39, 40, 42, 44, 46 and 51. In accordance with NWP General Condition 26, “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 Puerto Rico Planning Board states the following:

Applicants of projects that qualify for USACE authorization through these NWPs must fill a Joint Permit Application to obtain a Federal Consistency Certificate with the PRCZCMP [Puerto Rico Coastal Zone Management Program]. The PR Planning Board will conduct a regular Federal Consistency review process in these cases and the submitted projects must demonstrate compliance with the state requirements. This Federal Consistency Certification does not exempt the project to comply with other federal or state requirements.

g. CZMA consistency concurrence was granted for NWPs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, 30, 31, 32, 33, 34, 35, 36, 37, 38, 41, 43, 45, 48, 49, 50, 52, 53, 54, 55, 56, 57, 58, and 59. Therefore, there is no requirement for the prospective Permittee to obtain and submit to the Corps an individual CZMA consistency determination for an activity under these NWPs.

### 5. U.S. Virgin Islands.

a. WQCs for NWPs 12, 21, 29, 39, 40, 42, 43, 44, 48, 50, 51, 52, 55, 56, 57, and 58 are waived. Therefore, there is no requirement for the prospective Permittee to obtain and submit to the Corps an individual WQC or waiver for an activity under these NWPs.

b. WQCs are denied for NWPs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, 27, 28, 30, 31, 32, 33, 34, 35, 36, 37, 38, 41, 45, 46, 49, 53, 54 and 59. Therefore, in accordance with NWP General Condition 25, the prospective Permittee must obtain an individual WQC or a waiver for activities authorized by these NWPs that propose a discharge into waters of the U.S. by following applicable rules in 40 C.F.R. Part 121, *State Certification of Activities Requiring a Federal License or Permit*.

c. CZMA consistency concurrence was presumed to be granted for NWPs 12, 21, 29, 39, 40, 42, 43, 44, 48, 50, 51, 52, 55, 56, 57, and 58. Therefore, there is no requirement for the prospective Permittee to obtain and submit to the Corps an individual CZMA consistency determination for an activity under these NWPs.

d. CZMA consistency concurrence was denied for NWPs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, 27, 28, 30, 31, 32, 33, 34, 35, 36, 37, 38, 41, 45, 46, 49, 53, 54 and 59. In accordance with NWP General Condition 26, “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.”

**F. DEFINITIONS AND ACRONYMS.**

1. Puerto Rico: Culebra Island; the coastal zone of La Parguera from Punta Jorobado for a distance of approximately twenty kilometers west to Cabo Rojo; Cartagena Lagoon; Tortuguero Lagoons; Mona Island; Forest Reserve Area at Piñones and Torrecilla; Las Cabezas; El Yunque; Jobos Bay; Mar Negro; Río Mameyes; Las Cucharillas Marsh; Caño Tiburones; Río Herrera/Miñi-Miñi/Mediania area; entire Municipality of Cabo Rojo; Caño Boquillas west of PR-2; Cayures Marsh in Aguada and its contiguous wetlands; the basin wetlands of Bajuras at Isabela, Camuy, and Carrizales in Arecibo; Prieta wetlands at Vega Alta; San Pedro wetlands in Dorado and Toa Alta; Cienaga Baja in Río Grande; wetlands associated with Herrera and Espiritu Santo Rivers; coastal wetlands of Santa Isabel; and all Commonwealth designated Natural Reserve areas. Also, areas along Martín Peña Channel and associated wetlands; Piñones State Forest wetlands; Torrecilla Alta Pterocarpus Forest, Loiza; El Faro (Cabezas de San Juan), Fajardo; wetlands in the Guanica State Forest; Humacao Swamp and Pterocarpus Forest; Caja de Muertos, Ponce; Jobos Bay, Salinas; Mar Negro, Salinas; Boqueron State Forest, Cabo Rojo; Dorado Pterocarpus Forest; Vieques Bioluminescent Bay; Laguna Tortuguero; Caño Tiburones; Espinar Swamp (Aguada-Aguadilla); Laguna Joyuda mangroves, Cabo Rojo; Pandura and Guardarraya Special Planning Area; and Ceiba State Forest.
2. U.S. Virgin Islands. St. Croix: Annally; Green Cay; Isaac Bay; Cramer's Park and East Point; Sandy Point; Salt River; Teague Bay Reef; Vagthus Point; Altonna Lagoon. St. John: all cays; Lagoon Point Newfound Bay; Chocolate Hole; Fish Bay. St. Thomas: Botany Bay and Sandy Bay; Coki Cliffs; Mangrove Lagoon (in its entirety); Bovoni wetland area; all cays; Cane Bay; Magens Bay; Mandahl Bay; Neltjeberg Bay and Stumpy Bay.
3. For NWP 43, for activities other than in wetlands adjacent to Deer Point Lake and its tributaries in Bay County, Florida, the notification requirements in NWP 43 apply with the clarification in the Notification section that maintenance activities do not require pre-construction notification if they are limited to restoring the original design capacities.
4. Antilles: For purposes of these regional conditions, the term "Antilles" means the geographic extents of both the Commonwealth of Puerto Rico and the Territory of the U.S. Virgin Islands.
5. The term "coral assemblage" includes coral reefs and hardbottom communities, which host species of corals listed under the Endangered Species Act, as well as other hard and soft coral communities.
6. <reserved>.
7. The term "submerged aquatic vegetation" means the occurrence of one or more species of seagrass, including, but not limited to, the following: turtle grass (*Thalassia testudinum*), manatee grass (*Syringodium filiforme*), shoal grass (*Halodule wrightii*), and dwarf seagrass (*Halophila spp.*).

## 2021 NWP REGIONAL CONDITIONS FOR JACKSONVILLE DISTRICT (SAJ)

8. Marine Protected Area (MPA): In accordance with Executive Order 13158 (May 26, 2000), a marine protected area is defined as “any area of the marine environment that has been reserved by Federal, State, territorial, tribal, or local laws or regulations to provide lasting protection for part or all of the natural and cultural resources therein.”

9. Use of gabions for flood control, river channelization or bank stabilization shall not provide a permanent or long-term solution (DNER 2009, Guía Para el Manejo de Ríos en Puerto Rico). Gabions are subject to mesh failure, scour or undercutting, collapse and hydraulic impacts of the water itself. The use of gabions or reno mattress should not be used in coastal areas or large river systems. The removal of accumulated sediments and debris near bridges is limited to 50 feet upstream and downstream of the bridge. Heavy equipment shall work from existing upland areas (i.e., bridges, upland banks) whenever possible. If heavy equipment must be used within a channel, the removal of riparian vegetation is limited to the access and egress point. The elimination of riverine features, such as point bars and pools, is not authorized pursuant to these NWPs. Post construction, all temporary fords or crossings shall be removed; banks and channel shall be returned to pre-existing contours and depths. The stream banks shall be fully stabilized using stream bank restoration treatments.

10. The optimal window for benthic survey of submerged aquatic vegetation is during the period June 1 through September 30. The Jacksonville District's Source Book should be accessed for guidance and information on benthic survey protocol, such as the NMFS *Submerged Aquatic Vegetation Survey Guidelines* (May 7, 2018).

11. More information on Living Shorelines can be obtained from the following website: [http://www.dep.state.fl.us/northwest/ecosys/section/living\\_shorelines.htm](http://www.dep.state.fl.us/northwest/ecosys/section/living_shorelines.htm). This website link is provided for information only and does not imply support for, or opposition to, living shorelines.

12. <reserved>.

13. Acronyms Used in Regional Conditions:

Corps: U.S. Army Corps of Engineers  
EPA: U.S. Environmental Protection Agency  
FDEP: Florida Department of Environmental Protection  
NMFS: National Marine Fisheries Service  
NOAA: National Oceanic and Atmospheric Administration  
PCN: Pre-construction notification  
USFWS: U.S. Fish and Wildlife Service

### G. DISTRICT POINT OF CONTACT.

Regulatory Division  
Jacksonville District, U.S. Army Corps of Engineers  
U.S. Mail: PO Box 4970, Jacksonville, FL 32232-0019

## 2021 NWP REGIONAL CONDITIONS FOR JACKSONVILLE DISTRICT (SAJ)

Physical: 701 San Marco Blvd, Jacksonville, FL 32207

General inquiry phone (904) 232-1177

General inquiry email: [SAJ-RD@usace.army.mil](mailto:SAJ-RD@usace.army.mil)

Inquiries will be routed to the current Project Manager for response.

### **H. ATTACHMENT.**

Puerto Rico General Water Quality Certificate

**COMMENCEMENT NOTIFICATION**

*Within ten (10) days of initiating the authorized work, submit this form to via electronic mail to [saj-rd-enforcement@usace.army.mil](mailto:saj-rd-enforcement@usace.army.mil) (preferred, not to exceed 15 MB) **or** by standard mail to U.S. Army Corps of Engineers, Enforcement Section, P.O. Box 4970, Jacksonville, FL 32232-0019.*

**1. Department of the Army Permit Number:** SAJ-2023-02417 (NWP-CPC)

**2. Permittee Information:**

Name: \_\_\_\_\_

Email: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

**3. Construction Start Date:** \_\_\_\_\_

**4. Contact to Schedule Inspection:**

Name: \_\_\_\_\_

Email: \_\_\_\_\_

Phone: \_\_\_\_\_

\_\_\_\_\_  
Signature of Permittee

\_\_\_\_\_  
Printed Name of Permittee

\_\_\_\_\_  
Date



**AS-BUILT CERTIFICATION BY PROFESSIONAL ENGINEER**

*Submit this form and one set of as-built engineering drawings to the U.S. Army Corps of Engineers, Enforcement Section, P.O. Box 4970, Jacksonville, FL 32232-0019. For electronic mail saj-rd-enforcement@usace.army.mil (not to exceed 15 MB).*

1. Department of the Army Permit Number: SAJ-2023-02417 (NWP-CPC)

2. Permittee Information:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

3. Project Site Identification (physical location/address):

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

4. As-Built Certification: I hereby certify that the authorized work, including any mitigation required by Special Conditions to the permit, has been accomplished in accordance with the Department of the Army permit with any deviations noted below. This determination is based upon on-site observation, scheduled, and conducted by me or by a project representative under my direct supervision. I have enclosed one set of as-built engineering drawings.

\_\_\_\_\_  
Signature of Engineer

\_\_\_\_\_  
Name (*Please type*)

\_\_\_\_\_  
(FL, PR, or VI) Reg. Number

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
ZIP

(Affix Seal)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Telephone Number

Date Work Started:\_\_\_\_\_ Date Work Completed:\_\_\_\_\_

Identify any deviations from the approved permit drawings and/or special conditions (attach additional pages if necessary):

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## STANDARD MANATEE CONDITIONS FOR IN-WATER WORK

2011

The permittee shall comply with the following conditions intended to protect manatees from direct project effects:

- a. All personnel associated with the project shall be instructed about the presence of manatees and manatee speed zones, and the need to avoid collisions with and injury to manatees. The permittee shall advise all construction personnel that there are civil and criminal penalties for harming, harassing, or killing manatees which are protected under the Marine Mammal Protection Act, the Endangered Species Act, and the Florida Manatee Sanctuary Act.
- b. All vessels associated with the construction project shall operate at "Idle Speed/No Wake" at all times while in the immediate area and while in water where the draft of the vessel provides less than a four-foot clearance from the bottom. All vessels will follow routes of deep water whenever possible.
- c. Siltation or turbidity barriers shall be made of material in which manatees cannot become entangled, shall be properly secured, and shall be regularly monitored to avoid manatee entanglement or entrapment. Barriers must not impede manatee movement.
- d. All on-site project personnel are responsible for observing water-related activities for the presence of manatee(s). All in-water operations, including vessels, must be shutdown if a manatee(s) comes within 50 feet of the operation. Activities will not resume until the manatee(s) has moved beyond the 50-foot radius of the project operation, or until 30 minutes elapses if the manatee(s) has not reappeared within 50 feet of the operation. Animals must not be herded away or harassed into leaving.
- e. Any collision with or injury to a manatee shall be reported immediately to the Florida Fish and Wildlife Conservation Commission (FWC) Hotline at 1-888-404-3922. Collision and/or injury should also be reported to the U.S. Fish and Wildlife Service in Jacksonville (1-904-731-3336) for north Florida or Vero Beach (1-772-562-3909) for south Florida, and to FWC at [ImperiledSpecies@myFWC.com](mailto:ImperiledSpecies@myFWC.com)
- f. Temporary signs concerning manatees shall be posted prior to and during all in-water project activities. All signs are to be removed by the permittee upon completion of the project. Temporary signs that have already been approved for this use by the FWC must be used. One sign which reads *Caution: Boaters* must be posted. A second sign measuring at least 8 ½" by 11" explaining the requirements for "Idle Speed/No Wake" and the shut down of in-water operations must be posted in a location prominently visible to all personnel engaged in water-related activities. These signs can be viewed at [MyFWC.com/manatee](http://MyFWC.com/manatee). Questions concerning these signs can be sent to the email address listed above.

# CAUTION: MANATEE HABITAT

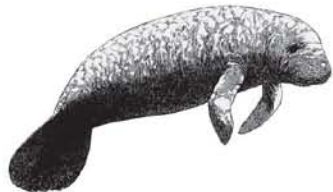
**All project vessels**

**IDLE SPEED / NO WAKE**

When a manatee is within 50 feet of work  
all in-water activities must

**SHUT DOWN**

Report any collision with or injury to a manatee:



**Wildlife Alert:**

**1-888-404-FWCC(3922)**

cell \*FWC or #FWC

**APPLICATION FOR CONSENT TO CROSS U.S. GOVERNMENT EASEMENT**

APPLICATION IS MADE for a Department of the Army Consent to Easement to construct, maintain, control, operate and repair a (state type of structure) \_\_\_\_\_

\_\_\_\_\_ over, under, across, in, or upon the Easement vested in the United States of America as shown on the attached [include boundary survey map with legal description/construction plans and specifications of project], and situated in Section\_\_\_\_, Township\_\_\_\_ South, Range\_\_\_\_ East, County of\_\_\_\_\_, Florida.

Names and Mailing Addresses of Record Owners: \_\_\_\_\_

\_\_\_\_\_

Physical Address (location of project work): \_\_\_\_\_

\_\_\_\_\_

Email Address \_\_\_\_\_

Applicant understands that permanent structures affixed to the land or otherwise constructed or situated in a manner lasting or meant to last indefinitely and not expected to change in status, condition, or place are not permitted within the U.S. Easement. Unauthorized structures include, but are not limited to, residential and commercial buildings, swimming pools, patios, outbuildings, fences, gazebos, satellite dishes, oil and gas wells, boat ramps and seawall enclosures of docking areas or other structures as defined in CFR Title 36, Section 327.20. Noncompliance may subject the Applicant to possible removal and enforcement action.

The undersigned agrees that construction of the facility or structure involved in this application shall not begin until the Consent to Cross U.S. Government Easement, herein applied for, shall have been granted and appropriate rights shall have been acquired from the record owners and encumbrances of the underlying fee in the land involved.

\_\_\_\_\_  
Property Owner(s) Name (Print)

\_\_\_\_\_  
Property Owner(s) Name (Print)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

DATE: \_\_\_\_\_

**RETURN TO:** US Army Corps of Engineers, Jacksonville District  
ATTN: Real Estate Division  
P.O. Box 4970  
Jacksonville, FL 32232-0019