



# COUNTY OF KENOSHA

## Department of Planning and Development

RECEIVED

DEC 06 2018


Kenosha County  
Planning and Development

### REZONING APPLICATION

(a) Property Owner's Name:

Badtke Holdings

Print Name: Jeff Badtke

Signature: 

Mailing Address: 1520 136th ave

City: Union Grove

State: WI

Zip: 53182

Phone Number: 262-206-4433

E-mail (optional): Jeff@grassmaninc.com

Note: Unless the property owner's signature can be obtained in the above space, a letter of agent status **signed** by the legal property owner **must** be submitted if you are a tenant, leaseholder, or authorized agent representing the legal owner, allowing you to act on their behalf.

(b) Agent's Name (if applicable):

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

Signature: \_\_\_\_\_

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

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

City: \_\_\_\_\_

State: \_\_\_\_\_

Zip: \_\_\_\_\_

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

E-mail (optional): \_\_\_\_\_

(c) Tax key number(s) of property to be rezoned:

Property was part of CSM #2884

recorded 11-30-18

Part of 45-4-221-173-0202

Lot 2 CSM# 2884 = 45-4-221-173-0242

Property Address of property to be rezoned:

No address yet , Burlington rd

(d) Proposed use (a statement of the type, extent, area, etc. of any development project):

Commercial structure will be used for Badger Diesel.

## REZONING APPLICATION

(e) Check the box next to any and all of the **existing** zoning district classifications present on the subject property:

<input type="checkbox"/> A-1 Agricultural Preservation District	<input type="checkbox"/> TCO Town Center Overlay District
<input type="checkbox"/> A-2 General Agricultural District	<input type="checkbox"/> B-1 Neighborhood Business District
<input type="checkbox"/> A-3 Agricultural Related Manufacturing, Warehousing and Marketing District	<input type="checkbox"/> B-2 Community Business District
<input type="checkbox"/> A-4 Agricultural Land Holding District	<input checked="" type="checkbox"/> B-3 Highway Business District
<input type="checkbox"/> AE-1 Agricultural Equestrian Cluster Single-Family District	<input type="checkbox"/> B-4 Planned Business District
<input type="checkbox"/> R-1 Rural Residential District	<input checked="" type="checkbox"/> B-5 Wholesale Trade and Warehousing District
<input type="checkbox"/> R-2 Suburban Single-Family Residential District	<input type="checkbox"/> BP-1 Business Park District
<input type="checkbox"/> R-3 Urban Single-Family Residential District	<input type="checkbox"/> B-94 Interstate Highway 94 Special Use Business District
<input type="checkbox"/> R-4 Urban Single-Family Residential District	<input type="checkbox"/> M-1 Limited Manufacturing District
<input type="checkbox"/> R-5 Urban Single-Family Residential District	<input type="checkbox"/> M-2 Heavy Manufacturing District
<input type="checkbox"/> R-6 Urban Single-Family Residential District	<input type="checkbox"/> M-3 Mineral Extraction District
<input type="checkbox"/> R-7 Suburban Two-Family and Three-Family Residential District	<input type="checkbox"/> M-4 Sanitary Landfill and Hazardous Waste Disposal District
<input type="checkbox"/> R-8 Urban Two-Family Residential District	<input type="checkbox"/> I-1 Institutional District
<input type="checkbox"/> R-9 Multiple-Family Residential District	<input type="checkbox"/> PR-1 Park-Recreational District
<input type="checkbox"/> R-10 Multiple-Family Residential District	<input checked="" type="checkbox"/> C-1 Lowland Resource Conservancy District
<input type="checkbox"/> R-11 Multiple-Family Residential District	<input type="checkbox"/> C-2 Upland Resource Conservancy District
<input type="checkbox"/> R-12 Mobile Home/Manufactured Home Park-Subdivision District	<input type="checkbox"/> FPO Floodplain Overlay District
<input type="checkbox"/> HO Historical Overlay District	<input type="checkbox"/> FWO Camp Lake/Center Lake Floodway Overlay District
<input type="checkbox"/> PUD Planned Unit Development Overlay District	<input type="checkbox"/> FFO Camp Lake/Center Lake Floodplain Fringe Overlay District
<input type="checkbox"/> AO Airport Overlay District	
<input type="checkbox"/> RC Rural Cluster Development Overlay District	

(f) Check the box next to any and all of the **proposed** zoning district classifications proposed for the subject property:

<input type="checkbox"/> A-1 Agricultural Preservation District	<input type="checkbox"/> TCO Town Center Overlay District
<input type="checkbox"/> A-2 General Agricultural District	<input type="checkbox"/> B-1 Neighborhood Business District
<input type="checkbox"/> A-3 Agricultural Related Manufacturing, Warehousing and Marketing District	<input type="checkbox"/> B-2 Community Business District
<input type="checkbox"/> A-4 Agricultural Land Holding District	<input type="checkbox"/> B-3 Highway Business District
<input type="checkbox"/> AE-1 Agricultural Equestrian Cluster Single-Family District	<input type="checkbox"/> B-4 Planned Business District
<input type="checkbox"/> R-1 Rural Residential District	<input checked="" type="checkbox"/> B-5 Wholesale Trade and Warehousing District
<input type="checkbox"/> R-2 Suburban Single-Family Residential District	<input type="checkbox"/> BP-1 Business Park District
<input type="checkbox"/> R-3 Urban Single-Family Residential District	<input type="checkbox"/> B-94 Interstate Highway 94 Special Use Business District
<input type="checkbox"/> R-4 Urban Single-Family Residential District	<input type="checkbox"/> M-1 Limited Manufacturing District
<input type="checkbox"/> R-5 Urban Single-Family Residential District	<input type="checkbox"/> M-2 Heavy Manufacturing District
<input type="checkbox"/> R-6 Urban Single-Family Residential District	<input type="checkbox"/> M-3 Mineral Extraction District
<input type="checkbox"/> R-7 Suburban Two-Family and Three-Family Residential District	<input type="checkbox"/> M-4 Sanitary Landfill and Hazardous Waste Disposal District
<input type="checkbox"/> R-8 Urban Two-Family Residential District	<input type="checkbox"/> I-1 Institutional District
<input type="checkbox"/> R-9 Multiple-Family Residential District	<input type="checkbox"/> PR-1 Park-Recreational District
<input type="checkbox"/> R-10 Multiple-Family Residential District	<input type="checkbox"/> C-1 Lowland Resource Conservancy District
<input type="checkbox"/> R-11 Multiple-Family Residential District	<input type="checkbox"/> C-2 Upland Resource Conservancy District
<input type="checkbox"/> R-12 Mobile Home/Manufactured Home Park-Subdivision District	<input type="checkbox"/> FPO Floodplain Overlay District
<input type="checkbox"/> HO Historical Overlay District	<input type="checkbox"/> FWO Camp Lake/Center Lake Floodway Overlay District
<input type="checkbox"/> PUD Planned Unit Development Overlay District	<input type="checkbox"/> FFO Camp Lake/Center Lake Floodplain Fringe Overlay District
<input type="checkbox"/> AO Airport Overlay District	
<input type="checkbox"/> RC Rural Cluster Development Overlay District	

## REZONING APPLICATION

(g) Your request must be consistent with the existing planned land use category as shown on Map 65 of the adopted "[Multi-Jurisdictional Comprehensive Plan for Kenosha County: 2035](#)".

The existing planned land use category for the subject property is:

<input type="checkbox"/> Farmland Protection	<input type="checkbox"/> Governmental and Institutional
<input type="checkbox"/> General Agricultural and Open Land	<input type="checkbox"/> Park and Recreational
<input type="checkbox"/> Rural-Density Residential	<input type="checkbox"/> Street and Highway Right-of-Way
<input type="checkbox"/> Agricultural and Rural Density Residential	<input type="checkbox"/> Other Transportation, Communication, and Utility
<input type="checkbox"/> Suburban-Density Residential	<input type="checkbox"/> Extractive
<input type="checkbox"/> Medium-Density Residential	<input type="checkbox"/> Landfill
<input type="checkbox"/> High-Density Residential	<input type="checkbox"/> Primary Environmental Corridor
<input checked="" type="checkbox"/> Mixed Use	<input type="checkbox"/> Secondary Environmental Corridor
<input type="checkbox"/> Commercial	<input type="checkbox"/> Isolated Natural Resource Area
<input type="checkbox"/> Office/Professional Services	<input type="checkbox"/> Other Conservancy Land to be Preserved
<input type="checkbox"/> Industrial	<input type="checkbox"/> Nonfarmed Wetland
<input type="checkbox"/> Business/Industrial Park	<input type="checkbox"/> Surface Water

(h) Attach a plot plan or survey plat of property to be rezoned (showing location, dimensions, zoning of adjacent properties, existing uses and buildings of adjacent properties, floodways and floodplains)—drawn to scale.

(i) The Kenosha County Department of Planning and Development may ask for additional information.

(1) Is this property located within the shoreland area?

Shoreland area is defined as the following: All land, water and air located within the following distances from the ordinary high water mark of navigable waters as defined in section 144.26(2)(d) of the Wisconsin Statutes: 1,000 feet from a lake, pond or flowage; 300 feet from a river or stream or to the landward side of the floodplain, whichever distance is greater. If the navigable water is a glacial pothole lake, the distance shall be measured from the high water mark thereof.

☐

Yes

☒

No

(2) Is this property located within the City of Kenosha Airport affected area as defined in s. 62.23 (6) (am) 1. b.?

☐

Yes

☒

No

(j) The name of the County Supervisor of the district wherein the property is located ([District Map](#)):

Supervisory District Number: 19 County Board Supervisor: Michael Skaltzky

(k) The fee specified in Section 12.05-8 of this ordinance.

Request for Rezoning Petition .....\$750.00

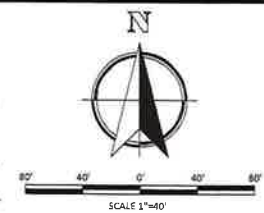
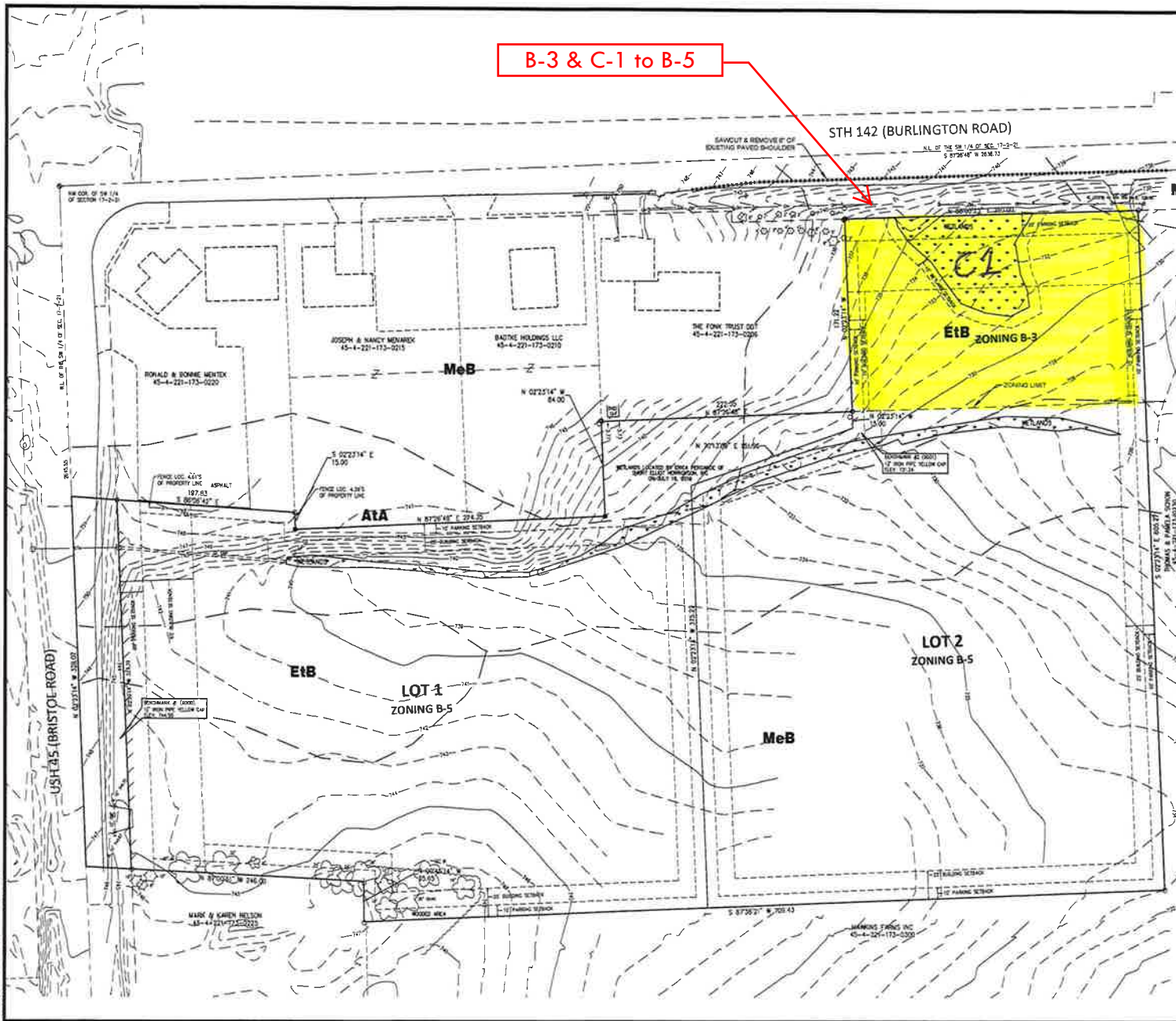
(For other fees see the [Fee Schedule](#))

### Note: Agricultural Use Conversion Charge

The use value assessment system values agricultural land based on the income that would be generated from its rental for agricultural use rather than its fair market value. When a person converts agricultural land to a non-agricultural use (e.g. residential or commercial development), that person may owe a conversion charge. To obtain more information about the use value law or conversion charge, contact the Wisconsin Department of Revenue's Equalization Section at 608-266-2149 or visit <http://www.revenue.wi.gov/faqs/slf/useassmt.html>.

Note that the act of rezoning property from an agricultural zoning district to a non-agricultural zoning district does not necessarily trigger the agricultural use conversion charge. It is when the use of the property changes from agricultural that the conversion charge is assessed.

Exempt, October 21, 2016 6:36:50 AM



### LEGAL DESCRIPTION

That part of the northwest 1/4 of the Southwest 1/4 of Section 17, Township 2 North, Range 21 East in the Town of Paris, Kenosha County, Wisconsin, bounded as follows: Begin at a point on the West line of the Southwest 1/4 of said Section 17 located 202'22"14" E 274.80 feet from the Southwest 1/4 corner of said Section 17; thence S62°22'14" E 197.43 feet; thence S62°22'14" E 15.00 feet; thence N67°29'40" E 274.35 feet; thence N62°22'14" W 84.00 feet; thence N67°29'40" E 220.35 feet; thence N62°22'14" W 171.22 feet to the South right-of-way of STH-142; thence N68°02'22" E 290.00 feet along said South right-of-way; thence S62°22'14" E 868.27 feet; thence S67°30'37" W 708.43 feet; thence S62°46'14" W 35.55 feet; thence N62°22'14" W 248.00 feet to the West line of said Section 17; thence N62°22'14" W 328.00 feet along said West line to the point of beginning. Containing 9.170 acres.

### UTILITY NOTE

EXISTING UTILITIES ARE SHOWN FOR INFORMATIONAL PURPOSES ONLY AND ARE NOT GUARANTEED TO BE ACCURATE OR ALL INCLUSIVE. CONTRACTOR IS RESPONSIBLE FOR VERIFYING THE TYPE, LOCATION, SIZE AND ELEVATION OF UNDERGROUND UTILITIES AS THEY DEEM NECESSARY FOR IMPROVED UTILITY CONNECTIONS AND / OR TO AVOID DAMAGE THERETO. CONTRACTOR SHALL CALL "DIGGERS HOTLINE" PRIOR TO ANY CONSTRUCTION.



BEARING BASE: GRID NORTH, WISCONSIN COORDINATE SYSTEM, SOUTH ZONE, BASED UPON NAD 83.

ALL ELEVATIONS REFER TO NATIONAL GEODESIC DATUM OF 1983.

- LEGEND:
- S — FENCE
  - CATCH BASIN
  - POWER POLE
  - R — ROUND IRON PIPE
  - IRON PIPE
  - CH — OVERHEAD WIRES
  - A1A — SOIL CLASSIFICATION

**mb**  
Nielsen Madsen + Barber  
CIVIL ENGINEERS AND LAND SURVEYORS  
1458 Horizon Blvd, Suite 200, Racine, WI 53406  
Tel: (262) 634-5588 Website: www.nmbac.net

**PARIS EQUIPMENT**  
EXISTING CONDITIONS SURVEY  
FOR  
**BADTKE HOLDINGS LLC**  
TOWN OF PARIS, KENOSHA COUNTY, WISCONSIN

NO.	REVISION	DATE	BY	DATE
1	RECEIVED PER WISCONSIN DEPT. OF NATURAL RESOURCES	10/21/2016	JAC	10/21/2016
2	ADDITIONAL WORK ON LOT 1 & 2	10/21/2016	JAC	10/21/2016
3	RECEIVED PER WISCONSIN DEPT. OF NATURAL RESOURCES	10/21/2016	JAC	10/21/2016

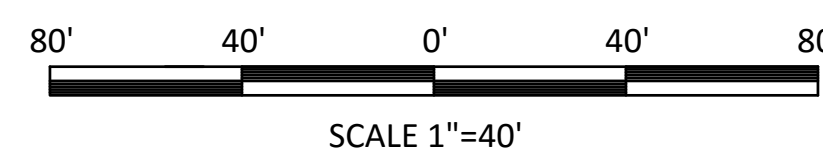
PROJ: MGR	_____
DRAWN: _____	JAC
DATE	8-28-2017
CHECKED: _____	JAC
DATE	8-28-2017

2016.0094.01

SHEET  
**C-2**

ISSUE FOR CONSTRUCTION - 9-15-2017





That part of the Northwest  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of Section 17, Township 2 North, Range 21 East in the Town of Paris, Kenosha County, Wisconsin, bounded as follows: Begin at a point on the West line of the Southwest  $\frac{1}{4}$  of said Section 17 located S02°23'14"E 274.80 feet from the Southwest  $\frac{1}{4}$  corner of said Section 17; thence S86°06'22"E 197.93 feet; thence S02°14'E 15.00 feet; thence N87°26'48"E 274.36 feet; thence S02°13'14"W 84.00 feet; thence N87°26'48"E 44.25 feet; thence N02°23'14"W 171.22 feet to the South right-of-way of ETH 142; thence N88°00'23"E 260.00 feet along said South right-of-way; thence S02°23'14"E 65.65 feet; thence S87°35'31"W 709.43 feet; thence N00°46'14"N 305.27 feet; thence N87°00'51"W 246.00 feet to the West line of said Section 17; thence N02°23'14"W 328.02 feet along said West line to the point of beginning.

Containing 9.170 acres.








EXISTING UTILITIES ARE SHOWN FOR INFORMATIONAL PURPOSES ONLY AND ARE NOT GUARANTEED TO BE ACCURATE OR ALL INCLUSIVE. CONTRACTOR IS RESPONSIBLE FOR VERIFYING THE TYPE, LOCATION, SIZE AND ELEVATION OF UNDERGROUND UTILITIES AS THEY DEEM NECESSARY FOR PROPOSED UTILITY CONNECTIONS AND / OR TO AVOID DAMAGE THERETO, CONTRACTOR SHALL CALL "DIGGER'S HOTLINE" PRIOR TO ANY CONSTRUCTION.



BEARING BASE: GRID NORTH, WISCONSIN  
COORDINATE SYSTEM, SOUTH ZONE.  
BASED UPON NAD 1927.

ALL ELEVATIONS REFER TO NATIONAL  
GEODETIC DATUM OF 1929.

LEGEND:

- |   |             |   |                     |
|---|-------------|---|---------------------|
|  | FENCE       |  | FOUND IRON PIPE     |
|  | CATCH BASIN |  | SET IRON PIPE       |
|  | POWER POLE  |  | OVERHEAD WIRES      |
|   |             |  | SOIL CLASSIFICATION |

Nielsen Madsen + Barber  
CIVIL ENGINEERS AND LAND SURVEYORS

1458 Horizon Blvd. Suite 200, Racine, WI. 53406  
Tele: (262)634-5588 Website: [www.nmbosc.net](http://www.nmbosc.net)

## FOR

FOR  
BADTKE HOLDINGS LLC

**DADLINE HOLDINGS LLC**  
TOWN OF PARIS, KENOSHA COUNTY, WISCONSIN

[illegible]

PROJ. MGR: \_\_\_\_\_ MDB  
DRAFTED: \_\_\_\_\_ NDB  
DATE: \_\_\_\_\_ 7-14-2017  
CHECKED: \_\_\_\_\_ JJC  
DATE: \_\_\_\_\_ 7-14-2017

2016.0094.01

SHEET  
C-2

#1032466

CERTIFIED SURVEY MAP NO. 2004

PART OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 17, TOWNSHIP 2 NORTH, RANGE 21 EAST, IN THE TOWN OF PARIS, KENOSHA COUNTY, WISCONSIN.

W 1/4 CORNER OF  
SECTION 17-2-21  
N 237,056.84  
E 2,524,274.75

STH 142  
(WIDTH VARIES)

E-W 1/4 LINE OF SECTION 17-2-21

S 87°26'48" W 2636.73

N 88°00'23" E 260.00

UNPLATTED LANDS

N 02°23'14" W  
ZONING B-3 84.00

S 02°23'14" E  
15.00

N 87°26'48" E 274.35

LOT 1  
184,530 S.F.  
4.236 Acres

LOT 2  
215,291 S.F.  
4.942 Acres

150' 0' 150'

SCALE 1"=150'



Cross Access Line Table

Line #	Length	Direction
L1	65.16	S02° 23' 14"E
L2	50.00	S88° 00' 23"W
L3	65.16	N02° 23' 14"W
L4	50.00	N88° 00' 23"E

Cross Access Line Table

Line #	Length	Direction
L5	25.15	S02° 23' 14"E
L6	182.74	S86° 06' 42"E
L7	12.97	N02° 23' 14"W
L8	25.00	S87° 26' 48"W

ACCESS NOTE:

ACCESS TO LOT 1 IS SUBJECT TO  
APPROVAL BY THE WISCONSIN DEPT.  
OF TRANSPORTATION (WisDOT)

GRADING NOTE:

THERE SHALL BE NO FILLING, EXCAVATING  
OR BUILDING WITHIN THE WETLAND AREAS.

WETLAND NOTE:

WETLANDS LOCATED BY ERICA PERGANDE  
OF SHORT ELLIOT HENDRICKSON, INC.  
ON JULY 19, 2016

NOTES:

ZONING OF PARCELS IS B-3, B-5 & C-1

OWNER/SUBDIVIDER: BADTKE HOLDINGS  
ADDRESS: 1520 136th AVENUE  
UNION GROVE, WI. 53182

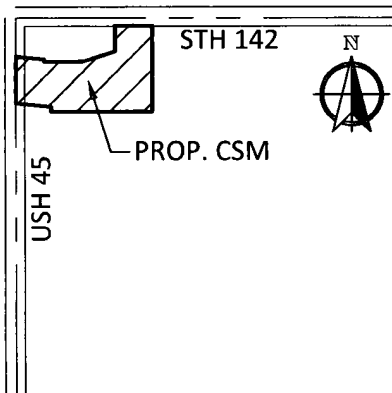
ALL ELEVATIONS REFER TO NATIONAL  
GEODETIC DATUM OF 1929.

BEARINGS BASE: GRID NORTH, WISCONSIN  
COORDINATE SYSTEM, SOUTH ZONE.  
BASED UPON NAD 1927. THE WEST LINE OF  
SECTION 17-2-21 IS ASSUMED TO BEAR  
S 02°23'14" E.

LEGEND:

- 1" O.D. IRON PIPE FOUND
- 5/8" O.D. REBAR - 1.68LBS/LIN FT. SET
- ⊕ 6" CONC MON. W/ BRASS CAP FOUND
- //// NO VEHICULAR ACCESS

LOCATION MAP



SW 1/4 SECTION 17-1-21



Nielsen Madsen + Barber

CIVIL ENGINEERS AND LAND SURVEYORS

1458 Horizon Blvd Suite 200, Racine, WI 53406

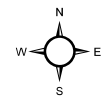
Tele (262)634-5588 Website www.nmbasc.net

This Instrument was drafted by Mark R. Madsen November 2, 2018

2016.0094.01.DWG  
SHEET 1 OF 4 SHEETS

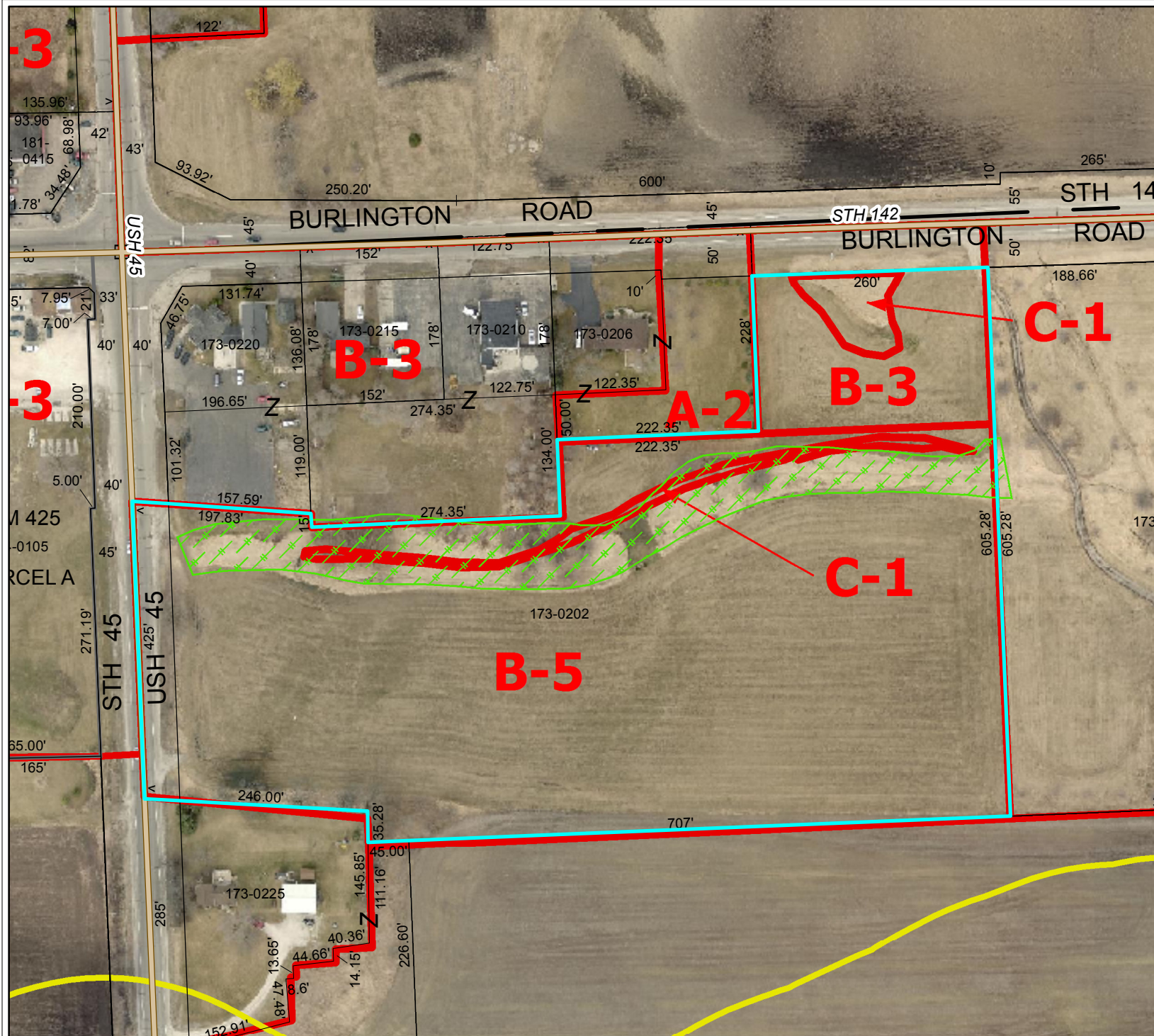


# Kenosha County



1 inch = 150 feet

THIS MAP IS NEITHER A LEGALLY RECORDED MAP NOR A SURVEY AND IS NOT INTENDED TO BE USED AS ONE. THIS DRAWING IS A COMPILATION OF RECORDS, DATA AND INFORMATION LOCATED IN VARIOUS STATE, COUNTY AND MUNICIPAL OFFICES AND OTHER SOURCES AFFECTING THE AREA SHOWN AND IS TO BE USED FOR REFERENCE PURPOSES ONLY. KENOSHA COUNTY IS NOT RESPONSIBLE FOR ANY INNACURACIES HEREIN CONTAINED. IF DISCREPANCIES ARE FOUND, PLEASE CONTACT KENOSHA COUNTY.





REPLY TO ATTENTION OF  
REGULATORY BRANCH

**DEPARTMENT OF THE ARMY**  
**ST. PAUL DISTRICT, CORPS OF ENGINEERS**  
**180 FIFTH STREET EAST, SUITE 700**  
**ST. PAUL, MN 55101-1678**

Regulatory File No. MVP-2017-02811-DJM

Badtke Holdings, LLC  
c/o Jeff Badtke  
1520 136<sup>th</sup> Street  
Union Grove, Wisconsin 53018

**DEC 06 2018**

Dear Mr. Badtke:

This correspondence is in regard to your pre-construction notification (PCN) requesting Department of the Army (DA) authorization to discharge fill material into 7,064 square feet of wetland for the purpose of constructing a 5,000 square-foot commercial building and an associated 17,400 square-foot parking lot. The project site is in the Northwest  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of Section 17, Township 2 North, Range 21 East, Kenosha County, Wisconsin.

Certain minor activities are eligible for authorization by general permits, which include Nationwide (NWP) and Regional General (RGP) permits. Your project as shown on the enclosed figures labeled MVP-2017-02811-DJM Pages 1 of 3 through 3 of 3 is authorized by NWP 39, Commercial and Institutional Developments.

In order for this verification to be valid, you must ensure the work is performed in accordance with the enclosed general permit terms, General Conditions, St. Paul District Regional Conditions, and the Wisconsin Department of Natural Resources' 401 Water Quality Certification Conditions.

You are also required to complete and return the enclosed Compliance Certification form within 30 days upon completion of your project in accordance with your permit conditions. Please mail the completed form to the Corps contact identified in the last paragraph.

This verification is valid until March 18, 2022, unless the general permit is modified, suspended, or revoked. If the work has not been completed by that time, you should contact this office to verify that the permit is still valid. Furthermore, if you commence or are under contract to commence this activity before the date of general permit expiration, modification, or revocation, you will have 12 months from the date of expiration, modification or revocation to complete the activity under the present terms and conditions of the general permit.

Our verification of this permit is based on the project description and construction methods provided in your PCN. You are cautioned that a change in the location or plans may invalidate this verification. Proposed changes should be coordinated with this office prior to construction. Failure to comply with all terms and conditions of this permit verification invalidates this verification and could result in a violation of Section 301 of the Clean Water Act or Section 10 of the Rivers and Harbors Act. You must also obtain all local, State, and other Federal permits that apply to this project.



No jurisdictional determination was requested or prepared for this project. While not required, you may request a jurisdictional determination from the Corps contact indicated below.

If you have any questions, please contact me in our St. Paul office at (651) 290-5191 or [daniel.j.munson@usace.army.mil](mailto:daniel.j.munson@usace.army.mil). In any correspondence or inquiries, please refer to the Regulatory file number shown above.

Sincerely,



Daniel J. Munson  
Project Manager

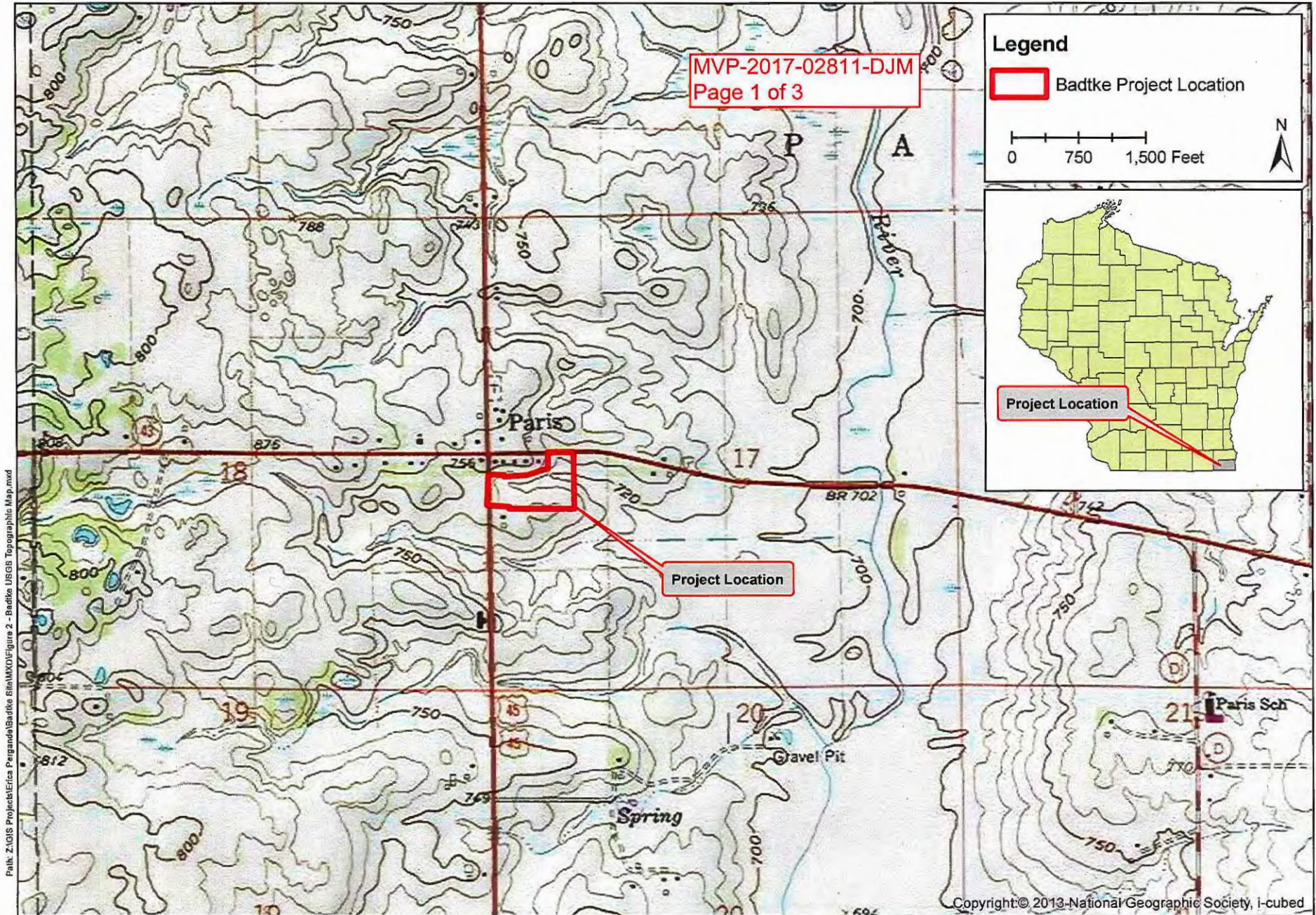
Enclosures:

Drawings – MVP-2017-02811-DJM Pages 1-2 of 2  
Compliance certification form  
NWP permit terms and conditions  
WDNR 401 Water Quality Certification Conditions

cc:

Michelle Scott – WDNR ([michelle.scott@wisconsin.gov](mailto:michelle.scott@wisconsin.gov))  
Karen Erickson – SEH, Inc. ([kerickson@sehinc.com](mailto:kerickson@sehinc.com))





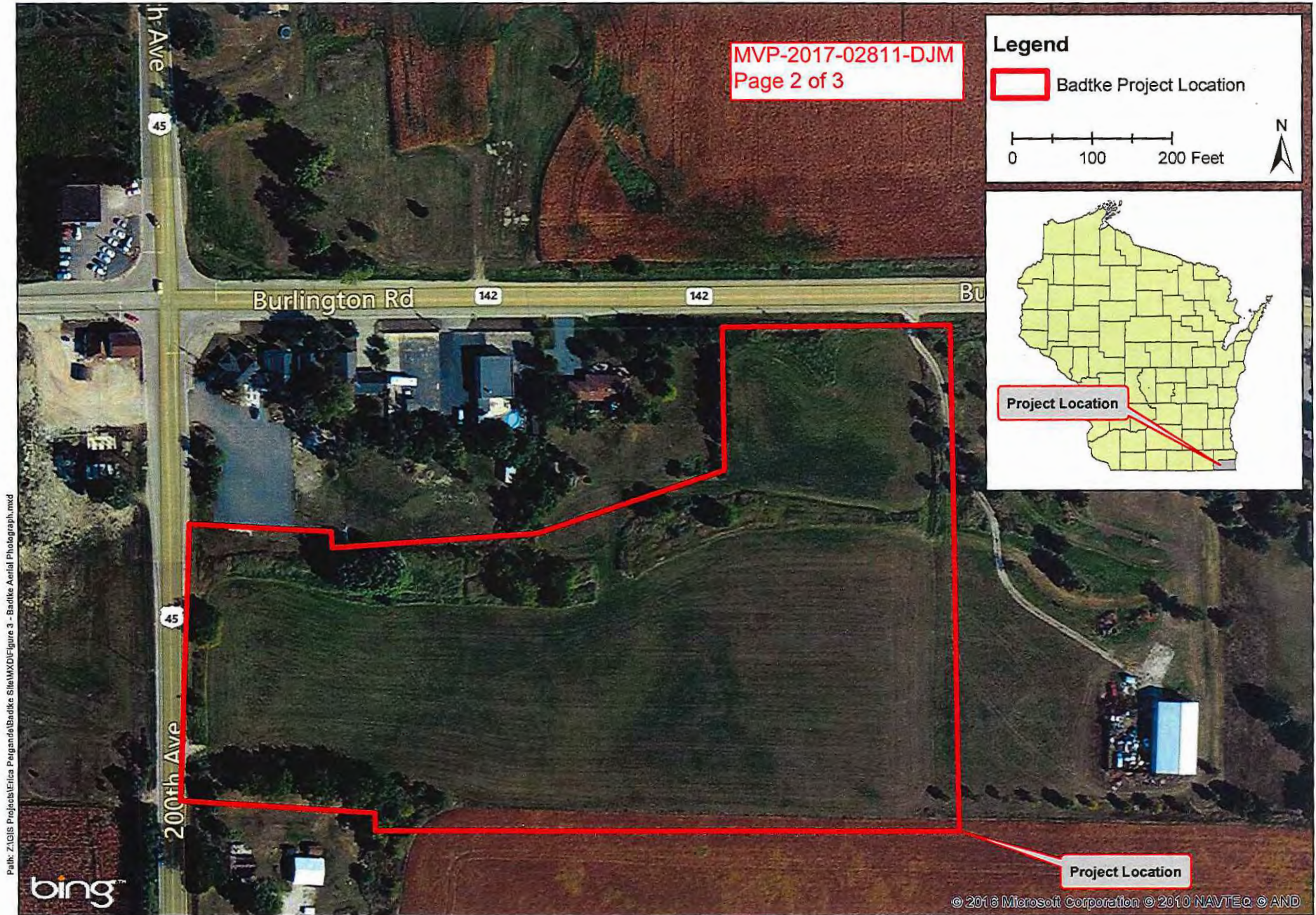
501 Maple Avenue  
Delafield, WI 53108  
(262) 646-6855

Project: BADTJ 137664  
Print Date: 8/22/2016  
Map by: smorrison  
Projection: WISCRS,  
Kenosha County

USGS Topographic Map  
Town of Paris, Kenosha County, Wisconsin

**Figure  
2**





501 Maple Avenue  
Delafield, WI 53108  
(262) 646-6855

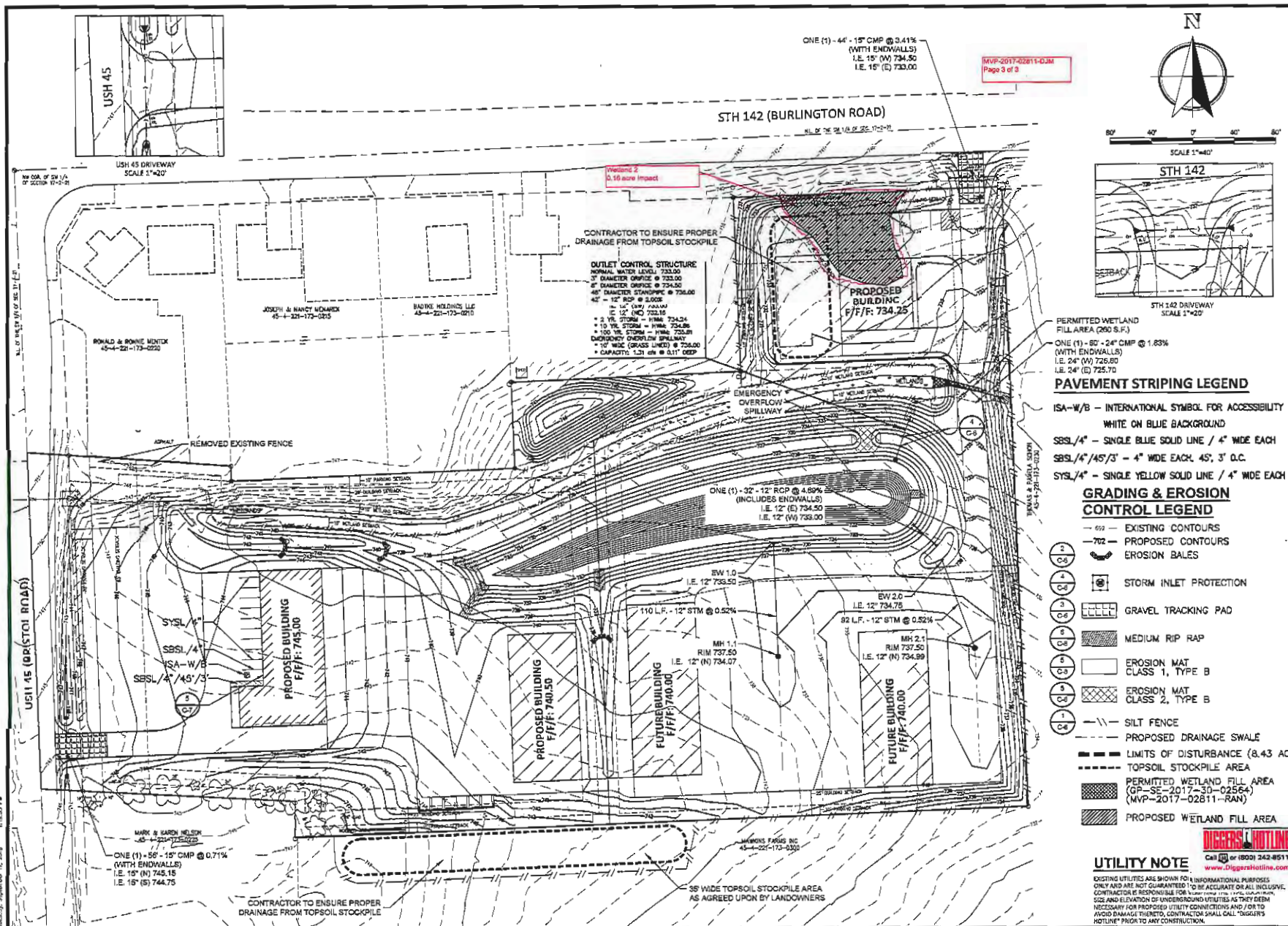
Project: BADTJ 137864  
Print Date: 8/22/2016

Map by: smorrison  
Projection: WISCRS,  
Kenosha County

2016 Aerial Photograph  
Town of Paris, Kenosha County, Wisconsin

Figure  
3







**US Army Corps  
of Engineers®**

St. Paul District

**COMPLIANCE CERTIFICATION**

Regulatory File Number: MVP-2017-02811-DJM  
Name of Permittee: Badtke Holdings, LLC  
County/State: Kenosha County, Wisconsin  
Date of Issuance: **DEC 06 2018**

Upon completion of the activity authorized by this permit and any mitigation required by the permit, sign this certification and return it to the Corps contact identified in your verification letter within 30 days.

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

By signing below, the permittee is certifying that the work authorized by the above referenced permit has been completed in accordance with the terms and conditions of the permit, and any required mitigation was completed in accordance with the permit conditions.

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

\_\_\_\_\_  
Date

39. Commercial and Institutional Developments. Discharges of dredged or fill material into non-tidal waters of the United States for the construction or expansion of commercial and institutional building foundations and building pads and attendant features that are necessary for the use and maintenance of the structures. Attendant features may include, but are not limited to, roads, parking lots, garages, yards, utility lines, storm water management facilities, wastewater treatment facilities, and recreation facilities such as playgrounds and playing fields. Examples of commercial developments include retail stores, industrial facilities, restaurants, business parks, and shopping centers. Examples of institutional developments include schools, fire stations, government office buildings, judicial buildings, public works buildings, libraries, hospitals, and places of worship. The construction of new golf courses and new ski areas is not authorized by this NWP.

The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. The discharge must not cause the loss of more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects. The loss of stream bed plus any other losses of jurisdictional wetlands and waters caused by the NWP activity cannot exceed 1/2-acre. This NWP does not authorize discharges into nontidal wetlands adjacent to tidal waters.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) (Authorities: Sections 10 and 404)

Note: For any activity that involves the construction of a wind energy generating structure, solar tower, or overhead transmission line, a copy of the PCN and NWP verification will be provided to the Department of Defense Siting Clearinghouse, which will evaluate potential effects on military activities.



## 2017 Nationwide Permits St. Paul District Regional and General Conditions

To qualify for NWP authorization, the prospective permittee must comply with the following regional and general conditions, as applicable, in addition to any regional or case specific conditions imposed by the division engineer or district engineer. 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.

### The following Regional Conditions are applicable to all NWPs:

#### Nationwide Permit (NWP) Limitations:

- A. **Discretionary authority:** As allowed under 33 CFR 330.1(d), the District retains discretionary authority to require an individual permit of any activity eligible for authorization by a NWP based on concern for the aquatic environment or for any other factor of the public interest.
- B. **Limit on Tributary Impacts:** Any regulated activity that would result in the loss of greater than 500 linear feet of a tributary in a single location is not authorized by a NWP with the exception of projects verified by NWPs 13, 27, 32, 37, 53 or 54 where the permanent alteration would have an overall beneficial effect on the aquatic ecosystem associated with discharges proposed. A waiver from the specifications in this Regional Condition may be requested in writing. The waiver will only be issued if it can be demonstrated that permanent alteration of the tributary would have an overall beneficial effect on the aquatic ecosystem associated with the discharges proposed. This regional condition does not expand the limitations of a specific NWP where that NWP is more restrictive.
- C. **Linear Projects:** No linear utility or linear transportation projects are eligible for authorization by NWPs. These projects will be reviewed for authorization under the St. Paul District's regional or programmatic general permits or an individual permit.
- D. **Great Lakes Compact:** No project or part of a project that would divert more than 10,000 gallons per day of surface or ground water into or out of the Great Lakes Basin is authorized by NWPs.
- E. **Tribal Rights:** As stated in General Condition 17 of the NWPs, no activity may impair tribal rights, including treaty rights, protected tribal resources or tribal lands.
- F. **Areas under a Special Area Management Plan:** Regulated activities located within an area eligible for authorization under a valid Special Area Management Plan with an associated programmatic general permit are ineligible for authorization by NWPs.
- G. **Designated Critical Resource Water:** The Lake Superior National Estuarine Research Reserve is a designated critical resource water and is subject to the NWP limitations and PCN requirements described in General Condition #22 of the NWPs.
- H. **Calcareous fens:**  
WISCONSIN: No work in a calcareous fen is authorized by a NWP unless the Wisconsin Department of Natural Resources (WI DNR) has approved an individual permit for the proposed regulated activity. Project proponents must provide evidence of an approved individual permit to the District.  
MINNESOTA: No work in a calcareous fen is authorized by a NWP unless the Minnesota Department of Natural Resources (MN DNR) has approved a calcareous fen management plan specific to a project that otherwise qualifies for authorization by a NWP. Project proponents must provide evidence of an approved fen management plan to the District. A list of known Minnesota calcareous fens can be found at: [http://files.dnr.state.mn.us/eco/wetlands/calcareous\\_fen\\_list.pdf](http://files.dnr.state.mn.us/eco/wetlands/calcareous_fen_list.pdf).

#### Pre-Construction Notification (PCN) Requirements for Specific Water/Places

- I. **PCNs for Special Aquatic Resources:** A project proponent must notify the District by submitting a PCN if a regulated activity would occur in any of the following aquatic resources. **Prior to beginning work in these waters, a District NWP verification letter must be received.**

##### PROJECTS IN WISCONSIN:

- (1) state-designated wild rice waters (<https://data.glifwc.org/manoomin.harvest.info>);
- (2) coastal plain marshes;
- (3) bog wetland plant communities;
- (4) interdunal wetlands;
- (5) Great Lakes ridge and swale complexes;

The complete Ramsar list is available at (<https://rsis Ramsar.org/>).

More information about plant community types 2-5 listed above, may be obtained from the Wisconsin Department of Natural Resources website at: <http://dnr.wi.gov/topic/EndangeredResources/Communities.asp?mode=group&Type=Wetland>.

Additional information on identifying bog and fen communities can be found at: <http://www.mvp.usace.army.mil/Missions/Regulatory.aspx>.

##### PROJECTS IN MINNESOTA:

- (1) wild rice waters listed in Appendix A of these conditions and identified in Minn. R. 7050.0470, subpart 1;

Additional information on identifying bog and fen communities can be found at: <http://www.mvp.usace.army.mil/Missions/Regulatory.aspx> and at the MN DNR's Native Plant Community Classification's website: <http://www.dnr.state.mn.us/npc/classification.html>.

- J. **PCNs for Bridges, Structures, and Vessels more than 50 years old:** A project proponent must notify the District by submitting a PCN if work or fill requiring District authorization would affect a bridge, structure or permanently moored or sunken vessels more than 50 years old.
- K. **PCNs for Suspected Sediment or Soil Contamination:** A project proponent must notify the District by submitting a PCN if any regulated activity would occur in areas of known or suspected sediment or soil contamination, including but not limited to Superfund sites. Superfund sites in Minnesota or Wisconsin can be located by searching the EPA's website: <https://www.epa.gov/superfund/search-superfund-sites-where-you-live>. This condition does not apply to NWP 20. Response Operations for Oil or Hazardous Substances.
- L. **PCNs for the Apostle Islands National Lakeshore and Madeline Island:** A project proponent must notify the District by submitting a PCN if the regulated activity would result in the work, fill or placement of a structure within the boundaries of the Apostle Islands National Lakeshore or Madeline Island in Wisconsin. **Prior to beginning regulated activities in these waters, a District NWP verification letter must be received.**
- M. **PCNs for Temporary Impacts:** A project proponent must notify the District by submitting a PCN if temporary impacts would remain in place for longer than 90 days between May 15 and November 15. The PCN must specify how long the temporary impact will remain and include a restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-project conditions. See also Regional Condition Q.

#### Mitigation Requirements

- N. **Compensatory Mitigation:** Proposed projects that require a PCN must include a statement describing how permanent *and* temporary impacts to waters of the U.S. would be avoided and minimized. The PCN must also include either: (a) a statement describing how impacts to waters of the U.S. would be compensated in accordance with the Federal Mitigation Rule (33 CFR Part 332) and the current St Paul District Policies for Compensatory Mitigation or (b) a statement explaining why compensatory mitigation should not be required for the proposed impacts.

## Site Protection

- O. Site Inspection:** The permittee shall allow representatives from the District to inspect the proposed project site and the authorized activity to ensure that it is being, or has been, constructed and maintained in accordance with the NWP authorization.
- P. Restoration for Temporary Impacts:** All temporary impacts in waters of the U.S., including wetlands, that occur as a result of the regulated activity must be fully contained with appropriate erosion control or containment methods, be restored to preconstruction contours and elevations, and revegetated with native, non-invasive vegetation. A project proponent may request, in writing, a waiver from this condition from the District. An acceptable reason for a waiver to this condition may include, but is not limited to, the District allowing natural restoration of the site when the resulting grade and existing seed bank are sufficient for the site to restore to pre-construction conditions.
- Q. Duration of Temporary Impacts:** Temporary impacts in waters of the U.S., including wetlands, must be avoided and limited to the smallest area and the shortest duration required to accomplish the project purpose.
- PART A, ACTIVITIES WITHOUT PCN REQUIREMENTS:**  
Temporary impacts may not remain in place longer than 90 days between May 15 and November 15. Before those 90 days have lapsed all temporary discharges must be removed in their entirety. If the temporary impacts would remain in place for longer than 90 days between May 15 and November 15, a PCN is required and the activity is subject to the requirements and limitations described in part B of this regional condition.
- PART B, ACTIVITIES WITH PCN REQUIREMENTS:**  
The PCN must specify how long the temporary impact will remain and include a restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-project conditions. Temporary impacts are allowed to stay in place as long as specified in the PCN unless otherwise conditioned in a Corps NWP verification. All temporary impacts must be removed in their entirety in accordance with the plan described in the PCN unless otherwise conditioned in a NWP verification provided by the District.
- R. Culverts and Crossings:** Unless a NWP verification authorizes otherwise, replacement and installation of culverts or crossings authorized by a NWP are to follow (or be restored to) the natural alignment and profile of the tributary. The culvert(s) or bridge(s) must adequately pass bedload, sediment load, and provide site-appropriate fish and wildlife passage. Example design elements include recessing single culverts to accommodate natural bankfull width and adjusting additional culvert inverts at an elevation higher than the bankfull elevation.
- S. Best Management Practices:** To minimize adverse effects from soil loss and/or sediment transport that may occur as a result of the authorized discharge and associated earth work, appropriate best management practices shall be maintained and remain in place until the affected area is stabilized with vegetation or ground cover.
- T. Riprap:** For all NWPs that allow for the use of riprap material for bank stabilization, only rock shall be used and it must be of a size sufficient to prevent its movement from the authorized alignment by natural forces under normal or high flows. A project proponent may request from the District, in writing, approval to use alternative riprap materials.
- U. Pollutant or Hazardous Waste Spills:** If a spill of any potential pollutant or hazardous waste occurs, it is the responsibility of the permittee to immediately notify the National Response Center at 1-800-424-8802 or [www.nrc.uscg.mil](http://www.nrc.uscg.mil) AND  
**IN WISCONSIN:** the Wisconsin Department of Natural Resources' Spills Team at 1-800-943-0003  
**IN MINNESOTA:** the Minnesota State Duty Officer at 1-800-422-0798.  
The permittee is responsible for removing such pollutants and hazardous materials and for minimizing any contamination resulting from a spill in accordance with state and federal laws.
- V. Clean Construction Equipment:** All construction equipment must be clean prior to entering and before leaving the work site in order to prevent the spread of invasive species.
- W. Compliance:** The permittee is responsible for ensuring that whoever performs, supervises or oversees any portion of the physical work associated with the construction of the project has a copy of and is familiar with all the terms and conditions of the NWP and any special conditions included in any written verification letter from the District. The permittee is ultimately responsible for ensuring that all the terms and conditions of the NWPs are complied with.

## The following General Conditions are applicable to all NWPs:

### 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 preconstruction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization, storm water management activities, and temporary and permanent road crossings, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or

high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

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

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

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

**13. Removal of Temporary Fills.** Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

**14. Proper Maintenance.** Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety 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. The permittee 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 NWP activity may cause more than minimal adverse effects on tribal rights (including treaty rights), protected tribal resources, or tribal lands.

**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 effects of the proposed activity has been completed. Direct effects are the immediate effects on listed species and critical habitat caused by the NWP activity. Indirect effects are those effects on listed species and critical habitat that are caused by the NWP activity and are later in time, but still are reasonably certain to occur.

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. 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 preconstruction notification. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the 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.

(d) 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.

(e) Authorization of an activity by an NWP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the FWS or the NMFS, the Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word "harm" in the definition of "take" means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

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

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

**19. Migratory Birds and Bald and Golden Eagles.** The permittee is responsible for ensuring their action complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting appropriate local office of the U.S. Fish and Wildlife Service to



determine applicable measures to reduce impacts to migratory birds or eagles, including whether "incidental take" permits are necessary and available under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for a particular activity.

## **20. Historic Properties.**

(a) In cases where the district engineer determines that the activity may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of section 106 of the National Historic Preservation Act. If pre-construction notification is required for the proposed NWP activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation is not submitted, then additional consultation under section 106 may be necessary. The respective federal agency is responsible for fulfilling its obligation to comply with section 106.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the NWP activity might have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties might have the potential to be affected by the proposed NWP activity or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of, or potential for, the presence of historic properties can be sought from the State Historic Preservation Officer, Tribal Historic Preservation Officer, or designated tribal representative, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and 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. Where the non-Federal applicant has identified historic properties on which the activity might have the potential to cause effects and so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects to historic properties or that NHPA section 106 consultation has been completed.

(d) 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.** If you discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by this permit, you must immediately notify the district engineer of what you 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, and 52 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 in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

**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) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation to ensure that the activity results in no more than 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. Restored riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns.

Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. 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 NWP, 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)).

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

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

**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)). 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 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 prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

**29. Transfer of Nationwide Permit Verifications.** If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature "When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below."

\_\_\_\_\_  
(Transferee)

\_\_\_\_\_  
(Date)

**30. Compliance Certification.** Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and implementation of any required compensatory mitigation. The success of any required permittee-responsible

mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include:

- (a) A statement that the authorized activity was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions;
- (b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(l)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and
- (c) The signature of the permittee certifying the completion of the activity and mitigation. The completed certification document must be submitted to the district engineer within 30 days of completion of the authorized activity or the implementation of any required compensatory mitigation, whichever occurs later.

**31. Activities Affecting Structures or Works Built by the United States.** If an NWP activity also requires 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 is not authorized by NWP until the appropriate Corps office issues the section 408 permission to alter, occupy, or use the USACE project, and the district engineer issues a written NWP verification.

**32. Pre-Construction Notification.**

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

- (1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or
- (2) 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or are in the vicinity of the activity, or to notify the Corps pursuant to general condition 20 that the activity might have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)) has been completed. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

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

- (1) Name, address and telephone numbers of the prospective permittee;
- (2) Location of the proposed activity;
- (3) Identify the specific NWP or NWP(s) the prospective permittee wants to use to authorize the proposed activity;
- (4) 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. For single and complete linear projects, 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. 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, intermittent, and ephemeral 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 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 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 PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed activity or utilize the designated critical habitat 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 activity that 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 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 the Corps office having jurisdiction over that USACE project.

**(c)** Form of Pre-Construction Notification: The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is an NWP PCN and must include all of the applicable information required in paragraphs (b)(1) through (10) of this general condition. 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 preconstruction notification and result in the loss of greater than 1/2-acre of waters of the United States;

**(ii)** NWP 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 activities that require pre-construction notification and will result in the loss of greater than 300 linear feet of stream bed;

**(iii)** 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

**(iv)** NWP 54 activities in excess of 500 linear feet, or that extend into the waterbody more than 30 feet from the mean low water line in tidal waters or the ordinary high water mark in the Great Lakes.

**(3)** When agency coordination is required, the district engineer will immediately provide (e.g., via e-mail, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (FWS, state natural resource or water quality agency, EPA, and, if appropriate, the NMFS). With the district engineer via telephone, facsimile transmission, or e-mail that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse environmental effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure 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.

## BEFORE THE WISCONSIN DEPARTMENT OF NATURAL RESOURCES

Application of the United States Department of the Army,)   
Corps of Engineers, for Water Quality Certification for the)   
Final Regulations Pertaining to the Issuance, Reissuance, )   
and Modification of Nationwide Permits )

On January 6, 2017, the United States Department of the Army, Corps of Engineers (COE), published its final notice regarding the Issuance of Nationwide Permits (NWP) in the Federal Register (agency docket number COE-2015-0017). The publication includes new, existing, and modified NWPs. Publication of these NWPs serves as the Corps' application to the State for water quality certification (WQC) under Section 401 of the Federal Clean Water Act (CWA).

The Wisconsin Department of Natural Resources (WDNR) has examined the final regulations pursuant to Section 401, CWA, and Chapter NR 299, Wisconsin Administrative Code (Wis. Adm. Code).

The WDNR has determined the following conditions for the NWPs are required to ensure compliance with state water quality standards enumerated in s. 299.04, Wis. Adm. Code. The certification contained herein shall expire on March 19, 2022.

Section 401 Certification does not release the permittee from obtaining all other necessary federal, state, and local permits, licenses, certificates, approvals, registrations, charters, or similar forms of permission required by law. It does not limit any other state permit, license, certificate, approval, registration, charter, or similar form of permission required by law that imposes more restrictive requirements. It does not eliminate, waive, or vary the permittee's obligation to comply with all other laws and state statutes and rules throughout the construction, installation, and operation of the project. This Certification does not release the permittee from any liability, penalty, or duty imposed by Wisconsin or federal statutes, regulations, rules, or local ordinances, and it does not convey a property right or an exclusive privilege.

This Certification does not replace or satisfy any environmental review requirements, including those under the Wisconsin Environmental Policy Act (WEPA) or the National Environmental Policy Act (NEPA).

**Note:** The specific language in the NWPs is not included in this document. Copies of complete nationwide permits published in the Federal Register on January 6, 2017, may be obtained from your local COE field office.

### STATE CONDITIONS AND LIMITATIONS OF CERTIFICATION

#### GENERAL CONDITIONS:

1. The permittee shall allow the WDNR reasonable entry and access to the discharge site to inspect the discharge for compliance with the certification and applicable laws.

2. If any of these §401 water quality certification conditions are found invalid or unenforceable, the water quality certification is denied for all activities to which that condition applies.

3. Water quality certification is denied without prejudice for activities involving the temporary stockpiling of dredged or fill material in waters of the state, including wetlands.

4. No discharges of dredged or fill material below the ordinary high water mark of a navigable stream as defined by s. 310.03(5), Wis. Adm. Code, may take place during fish spawning periods or times when nursery areas would be adversely impacted. These periods are:

- September 15<sup>th</sup> through May 15<sup>th</sup> for all trout streams and upstream to the first dam or barrier on the Root River (Racine County), the Kewaunee River (Kewaunee County), and Strawberry Creek (Door County). To determine if a waterway is a trout stream, you may use the WDNR website trout maps at <http://dnr.wi.gov/topic/fishing/trout/streammaps.html>.
- March 1<sup>st</sup> through June 15<sup>th</sup> for ALL OTHER waters.

5. Unless specifically exempt from state statute and federal Pre-Construction Notification (PCN) requirements, Applicants seeking authorization under these NWP's shall complete the Joint State/Federal Permit Application on the department e-permitting site at <http://dnr.wi.gov/Permits/Water/>.

Nationwide Permits Granted Water Quality Certification:

- NWP 3 – Maintenance
- NWP 4 – Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
- NWP 5 – Scientific Measurement Devices
- NWP 6 – Survey Activities
- NWP 13 – Bank Stabilization
- NWP 15 – U.S. Coast Guard Approved Bridges
- NWP 16 – Return Water From Upland Contained Disposal Areas
- NWP 18 – Minor Discharges
- NWP 20 – Response Operations for Oil or Hazardous Substances
- NWP 22 – Removal of Vessels
- NWP 25 – Structural Discharges
- NWP 27 – Aquatic Habitat Restoration, Enhancement, and Establishment Activities
- NWP 28 – Modifications of Existing Marinas
- NWP 30 – Moist Soil Management for Wildlife
- NWP 31 – Maintenance of Existing Flood Control Facilities
- NWP 35 – Maintenance Dredging of Existing Basins
- NWP 36 – Boat Ramps
- NWP 37 – Emergency Watershed Protection and Rehabilitation
- NWP 38 – Cleanup of Hazardous and Toxic Waste
- NWP 45 – Repair of Uplands Damaged by Discrete Events
- NWP 53 – Removal of Low-Head Dams
- NWP 54 – Living Shorelines



### Nationwide Permits for which Water Quality Certification is Partially Denied

WQC is certified or denied without prejudice as indicated below for the activities authorized by the following NWP. Certified activities are subject to WQC conditions 1-5 above. If activities are denied without prejudice, the applicant must apply to the WDNR for an individual 401 WQC.

- NWP 7 - Outfall Structures and Associated Intake Structures
  - WQC denied: Where the effluent from the outfall is not regulated under the WPDES permit program. WPDES permit information is available at:  
<http://dnr.wi.gov/topic/wastewater/PermitApplications.html>
  - WQC certified: All other NWP 7 activities.
- NWP 32 - Completed Enforcement Actions
  - WQC denied: If WDNR is not a party to the agreement or if WDNR has not concurred in writing with the settlement agreement.
  - WQC certified: All other NWP 32 activities.
- NWP 39 - Commercial and Institutional Developments
  - WQC denied: Discharges of dredged or fill material for the construction of the following attendant features: yards, recreation facilities, stormwater management facilities or wastewater management facilities.
  - WQC certified: All other NWP 39 activities.
- NWP 41 - Reshaping Existing Drainage Ditches
  - WQC denied: If any portion of the project will occur in or adjacent to a trout stream or any perennial tributaries to a trout stream. To determine if a waterway is a trout stream, you may use the WDNR website trout maps at  
<http://dnr.wi.gov/topic/fishing/trout/streammaps.html>.
  - WQC certified: All other NWP 41 activities.
- NWP 42 - Recreational Activities
  - WQC denied: If the project involves the placement of any dredged or fill material into Wisconsin navigable waters as defined in s. NR 310.03(5), Wis. Adm. Code.
  - WQC certified: All other NWP 42 activities.
- NWP 44 - Mining Activities
  - WQC denied: If the project involves the placement of any dredged or fill material into Wisconsin navigable waters as defined in s. NR 310.03(5), Wis. Adm. Code.
- NWP 46 - Discharges in Ditches
  - WQC denied: If the project involves the placement of any dredged or fill material into Wisconsin navigable waters as defined in s. NR 310.03(5), Wis. Adm. Code.
  - WQC certified: All other NWP 46 activities.
- NWP 51 - Land-Based Renewable Energy Generation Facilities
  - WQC denied: Discharges of dredged or fill material for the construction of the following attendant features: yards, recreation facilities, stormwater management facilities or wastewater management facilities.
  - WQC certified: All other NWP 51 activities.

Water Quality Certification Is Also Denied for the Nationwide Permits Revoked by the Corps of Engineers in Wisconsin and Listed Below:

- NWP 8 – Oils and Gas Structures on the Outer Continental Shelf
- NWP 12 – Utility Line Activities
- NWP 14 – Linear Transportation Projects
- NWP 15 – U.S. Coast Guard Approved Bridges
- NWP 21 – Surface Coal Mining Activities
- NWP 23 – Approved Categorical Exclusions
- NWP 24 – Indian Tribe or State Administered Section 404 Programs
- NWP 34 – Cranberry Production Activities
- NWP 49 – Coal Re-mining Activities
- NWP 50 – Underground Coal Mining Activities

Nationwide Permits Denied Water Quality Certification Without Prejudice At This Time:

The following NWP categories are denied Water Quality Certification (WQC) in their entirety and require an individual Section 401 WQC for all activities under these NWPs. In instances where a state has denied the 401 WQC for discharges under a particular NWP, permittees must furnish the District Engineer for the COE with an individual 401 WQC.

Each category was reviewed and it was determined that: potential water quality and beneficial use impacts would be beyond that considered minimal; the activity was not likely to occur in Wisconsin; the NWP doesn't align with state general permit standards required by statute (NWP 29, 40, 43); inadequate data was available for WDNR to fully evaluate potential water quality and beneficial use impacts; or the category was empty (Reserved).

- NWP 17 – Hydropower Projects
- NWP 19 – Minor Dredging
- NWP 26 – Reserved
- NWP 29 – Residential Developments
- NWP 33 – Temporary Construction, Access and Dewatering
- NWP 40 – Agricultural Activities
- NWP 43 – Stormwater Management Facilities
- NWP 47 – Reserved
- NWP 48 – Existing Commercial Shellfish Aquaculture Activities
- NWP 52 – Water-Based Renewable Energy Generation Pilot Projects

**Note:** State water quality certification is not required for the following Section 10 only NWPs: 1 – Aids to Navigation, 2 – Structures in Artificial Canals, 9 – Structures in Fleeting and Anchorage Areas, 10 – Mooring Buoys, 11 – Temporary Recreational Structures, 28 – Modifications of Existing Marinas, 35 – Maintenance Dredging of Existing Basins.

# NOTICE OF APPEAL RIGHTS

If you believe that you have a right to challenge this decision, you should know that Wisconsin Statutes and administrative rules establish time periods within which requests to review Department decisions must be filed.

To request a contested case hearing pursuant to section 227.42, Wisconsin Statutes, you have 30 days after the decision is mailed, or otherwise served by the Department, to serve a petition for hearing on the Secretary of the Department of Natural Resources.

This determination becomes final in accordance with the provisions of s. NR 299.05(7), Wisconsin Administrative Code, and is judicially reviewable when final. For judicial review of a decision pursuant to Sections 227.52 and 227.53, Wisconsin Statutes, you have 30 days after the decision becomes final to file your petition with the appropriate circuit court and to serve the petition on the Secretary of the Department of Natural Resources. The petition must name the Department of Natural Resources as the respondent.

Reasonable accommodation, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request.

This notice is provided pursuant to section 227.48(2), Wisconsin Statutes.

Dated at Madison, Wisconsin June 1, 2017

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By Ed Elwell  
for Cathy Stepp, Secretary





December 7, 2018

GP-SE-2018-30-03495

Badtke Holdings, LLC  
Jeff Badtke  
1520 136th Street  
Union Grove, WI 53018

RE: Coverage under the wetland statewide general permit for wetland fill or disturbance for residential, commercial, or industrial development, located in the Town of Paris, Kenosha County, also described as being in the NW1/4 of the SW1/4 of Section 17, Township 02 North, Range 21 East.

Dear Mr. Badtke:

Thank you for submitting an application for coverage under the wetland statewide general permit for wetland fill or disturbance for residential, commercial, or industrial development, s. 281.36, Wis. Stats.

You have certified that your project meets the eligibility criteria and conditions for this activity. Based upon your signed certification you may proceed with your project to fill 0.16 acres of wetlands. Please take this time to re-read the permit eligibility standards and conditions. The eligibility standards can be found on your application checklist or in the statewide general permit WDNR-GP1-2017 (found at <http://dnr.wi.gov/topic/waterways/construction/wetlands.html>). The permit conditions are attached to this letter. You are responsible for meeting all general permit eligibility standards and permit conditions. This includes notifying the Department before starting the project, and submitting photographs within one week of project completion. Please note your coverage is valid for 5 years from the date of the department's determination or until the activity is completed, whichever occurs first. This permit coverage constitutes the state of Wisconsin's wetland water quality certification under USCS s. 1341 (Clean Water Act s. 401).

The Department conducts routine and annual compliance monitoring inspections. Our staff may follow up and inspect your project to verify compliance with state statutes and codes. If you need to modify your project please contact your local Water Management Specialist, Joshua Wied at (262) 574-2132 or email [Joshua.Wied@wisconsin.gov](mailto:Joshua.Wied@wisconsin.gov) to discuss your proposed modifications.

The Department of Natural Resources appreciates your willingness to comply with wetland regulations, which help to protect the water quality, fish and wildlife habitat, natural scenic beauty and recreational value of Wisconsin's wetland resources for future generations. Please be sure to obtain any other local, state or federal permits that are required before starting your project.

If you have any questions, please call me at (262) 574-2132 or email [Joshua.Wied@wisconsin.gov](mailto:Joshua.Wied@wisconsin.gov).

Sincerely,

Joshua Wied  
Water Management Specialist  
cc: Rachel Nuetzel, U.S. Army Corps of Engineers  
Kenosha County

You agree to comply with the following conditions:

1. **Application.** You shall submit a complete application package to the Department as outlined in the application materials and section 2 of this permit. If requested, you shall furnish the Department, within a reasonable timeframe, any information the department needs to verify compliance with the terms and conditions of this permit.
2. **Certification.** Acceptance of general permit WDNR-GP1-2017 and efforts to begin work on the activities authorized by this general permit signifies that you have certified the project meets all eligibility standards outlined in Section 1 of this permit and that you have read, understood and have agreed to follow all terms and conditions of this general permit.
3. **Reliance on Applicant's Data.** The determination by this office that a confirmation of authorization is not contrary to wetland water quality standards will be based upon the information provided by the applicant and any other information required by the DNR.
4. **Project Plans.** This permit does not authorize any work other than what is specifically described in the notification package and plans submitted to the Department and you certified is in compliance with the terms and conditions of WDNR-GP1-2017
5. **Expiration.** This WDNR-GP1-2017 expires on October 31, 2022. The time limit for completing work authorized by the provisions of WDNR-GP1-2017 ends 5 years after the date on which the discharge is considered to be authorized under WDNR-GP1-2017 or until the discharge is completed, whichever occurs first.
6. **Other Permit Requirements.** You are responsible for obtaining any other permit or approval that may be required for your project by local zoning ordinances, other local authority, other state permits and by the U.S. Army Corps of Engineers before starting your project.
7. **Authorization Distribution.** You must supply a copy of the permit coverage authorization to every contractor working on the project.
8. **Project Start.** You shall notify the Department before starting construction.
9. **Permit Posting.** You must post a copy of this permit coverage letter at a conspicuous location on the project site prior to the execution of the permitted activity, and remaining at least five days after stabilization of the area of permitted activity. You must also have a copy of the permit coverage letter and approved plan available at the project site at all times until the project is complete.
10. **Permit Compliance.** The department may modify or revoke coverage of this permit if the project is not constructed in compliance with the terms and conditions of this permit, or if the Department determines the project will be detrimental to wetland water quality standards. Any act of noncompliance with this permit constitutes a permit violation and is grounds for enforcement action. Additionally, if any applicable conditions of this permit are found to be invalid or unenforceable, authorization for all activities to which that condition applies is denied.
11. **Construction Timing.** Once wetland work commences, all wetland construction activities must be continuous until the permitted activity is completed and the site is stabilized.
12. **Construction.** No other portion of the wetland may be disturbed beyond the area designated in the submitted plans.

13. **Project Completion.** Within one week of completion of the regulated activity, you shall submit to the Department a statement certifying the project is in compliance with all the terms and conditions of this permit, and photographs of the activities authorized by this permit. This statement must reference the Department-issued docket number, and be submitted to the Department staff member that authorized coverage.
14. **Proper Maintenance.** You must maintain the activity authorized by WDNR-GP1-2017 in good condition and in conformance with the terms and conditions of this permit utilizing best management practices. Any structure or fill authorized shall be properly maintained to ensure no additional impacts to the remaining wetlands.
15. **Site Access.** Upon reasonable notice, you shall allow access to the site to any Department employee who is investigating the project's construction, operation, maintenance or permit compliance with the terms and conditions of WDNR-GP1-2017 and applicable laws.
16. **Erosion and siltation controls.** The project site shall implement erosion and sediment control measures that adequately control or prevent erosion, and prevent damage to wetlands as outlined in NR 151.11(6m), Wis. Adm. Code.
17. **Equipment use.** The equipment used in the wetlands must be low ground weight equipment as specified by the manufacturer specifications.
18. **Invasive Species.** All project equipment shall be decontaminated for removal of invasive species prior to and after each use on the project site by utilizing other best management practices to avoid the spread of invasive species as outlined in NR 40, Wis. Adm. Code. For more information, refer to <http://dnr.wi.gov/topic/Invasives/bmp.html>.
19. **Federal and State Threatened and Endangered Species.** WDNR-GP1-2017 does not affect the DNR's responsibility to insure that all authorizations comply with Section 7 of the Federal Endangered Species Act, s. 29.604, Wis. Stats and applicable State Laws. No DNR authorization under this permit will be granted for projects found not to comply with these Acts/laws. No activity is authorized which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act and/or State law or which is likely to destroy or adversely modify the critical habitat of a species as identified under the Federal Endangered Species Act.
20. **Special Concern Species.** If the Wisconsin National Heritage Inventory lists a known special concern species to be present in the project area you will take reasonable action to prevent significant adverse impacts or to enhance the habitat for the species of concern.
21. **Historic Properties and Cultural Resources.** WDNR-GP1-2017 does not affect the DNR's responsibility to insure that all authorizations comply with Section 106 of the National Historic Preservation Act and s. 44.40, Wis. Stats. No DNR authorization under this permit will be granted for projects found not to comply with these Acts/laws. Information on the location and existence of historic resources can be obtained from the State Historic Preservation Office and the National Register of Historic Places. If cultural, archaeological, or historical resources are unearthed during activities authorized by this permit, work must be stopped immediately and the State Historic Preservation Officer must be contacted for further instruction.

22. **Preventive Measures.** Measures must be adopted to prevent potential pollutants from entering a wetland or waterbody. Construction materials and debris, including fuels, oil, and other liquid substances, will not be stored in the construction area in a manner that would allow them to enter a wetland or waterbody as a result of spillage, natural runoff, or flooding. If a spill of any potential pollutant should occur, it is the responsibility of the permittee to remove such material, to minimize any contamination resulting from this spill, and to immediately notify the State Duty Officer at **1-800-943-0003**.
23. **Suitable fill material.** All fill authorized under this permit must consist of clean suitable soil material, as defined by s. NR 500.03(214), Wis. Admin. Code, free from hazardous substances as defined by s. 289.01(11), Wis. Stats., and free from solid waste as defined by s. 289.01(11) and (33), Wis. Stats.
24. **Standard for Coverage.** Wetland impacts from the project will cause only minimal adverse environmental impacts as determined by the Department.
25. **Transfers.** Coverage under this permit is transferable to any person upon prior written approval of the transfer by the Department.
26. **Limits of State Liability.** In authorizing work, the State Government does not assume any liability, including for the following:
- a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
  - b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the State in the public interest.
  - c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
  - d. Design or construction deficiencies associated with the permitted work.
  - e. Damage claims associated with any future modification, suspension, or revocation of this WDNR-GP1-2017.
27. **Reevaluation of Decision.** The Department may suspend, modify or revoke authorization of any previously authorized activity and may take enforcement action if any of the following occur:
- a. The applicant fails to comply with the terms and conditions of WDNR-GP1-2017.
  - b. The information provided by the applicant in support of the permit application proves to have been false, incomplete, or inaccurate.
  - c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.