

**U.S. Army Corps of Engineers - Charleston District  
Checklist for 2021 Nationwide Permit Review  
Nationwide Permit 39**

**Commercial and Institutional Developments  
(10/404)**

SAC #: \_\_\_\_\_

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

Waterway/Location: \_\_\_\_\_

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

**The purpose of this Nationwide Permit (NWP) checklist is to assist with determining if a proposed activity qualifies for use of this NWP. The checklist will also assist with determining when a Pre-Construction Notification (PCN) is be required and/or if other actions that may be required during a PCN review.**

**A PCN is required for all activities authorized by NWP 39. Each question in Section A and B of the checklist refers to a specific 2021 NWP Regional Condition (RC). The 2021 NWP Regional Conditions can be found at <https://www.sac.usace.army.mil/Missions/Regulatory>**

**Complete Sections A-C**

**A. Water Quality Certification (WQC) and/or Coastal Zone Consistency (CZC)**

1. For proposed activities that a) require the submittal of a PCN AND b) involve the discharge of dredged or fill material, an Individual 401 WQC or waiver from SCDHEC is required. Has the prospective permittee obtained an Individual 401 WQC or waiver? (RC D.17 & AND F.1)

- Yes (CZC may also be required, if applicable.**       **No (Must obtain Individual 401 WQC or waiver prior to Corps verification of NWP. CZC may be required, if applicable)**       **N/A**

2. For proposed activities that a) require the submittal of a PCN AND b) are located in the Coastal Plain of South Carolina, an Individual CZC determination or presumed

concurrence is required from SCDHEC. Has the prospective permittee obtained an Individual CZC determination or presumed concurrence? (RC D.17 & AND F.2)

- Yes (If WQC was issued or waived, if required, Corps can verify NWP)**       **No (If WQC was issued or waived, if required, Corps can issue provisional verification. The Individual CZC determination or presumed concurrence is required prior to commencement of work)**       **N/A**

3. For proposed activities that are located within the Critical Area of the Coastal Zone, a Critical Area Permit (CAP), which also serves as the CZC, from SCDHEC is required. Has the prospective permittee obtained a CAP? (RC D.17 & AND F.3)

- Yes (If WQC was issued or waived, if required, Corps can verify NWP).**       **No (If WQC was issued or waived, if required, Corps can issue a provisional verification. CZC presumed concurrence or CAP is required prior to commencement of work).**       **N/A**

**B. Regional Conditions:**

1. Does the prospective permittee understand that use of the nationwide permits does not preclude requirements to obtain all other applicable Federal, State, county, and local government authorizations? (RC C.1)

Yes

2. Would the proposed activity occur in areas known or suspected to have sediment contamination? (RC C.2)

**Yes (Activity cannot be authorized by a NWP)**       **No**

3. Would the proposed activity, both temporary and permanent, be located in a FEMA designated floodway? (RC C-3)

**Yes\* (PCN required)**       **No**

4. Would the proposed activity be located in or adjacent to an authorized USACE Civil Works project, including Federal Navigation projects, as listed below? (RC C.4)

- a. **USACE Civil Works projects:** Buck Creek in Horry County, Eagle Creek in Dorchester County, Kingstree Branch in Williamsburg County, Sawmill Branch in Berkeley and Dorchester Counties, Scotts Creek in Newberry County, Socastee Creek in Horry County and Turkey Creek in Sumter County, Wilson Branch in Chesterfield County, Edisto River in Orangeburg and Dorchester Counties, North Edisto River in Aitken and Orangeburg Counties, Folly Beach in Charleston County, Hunting Island Beach, waste water treatment plant and water line in Beaufort County, Myrtle Beach in Georgetown and Horry County, Pawleys Island Beach in Georgetown County, Edisto Island Beach in Charleston County, Crab Bank in Charleston County, Morris Island Lighthouse in Charleston County, Miller Corner Disposal area Phragmites Control in Georgetown County, Cape Marsh Management area (Santee Coastal Reserve) in Charleston County, Murphy Island in Charleston County, Pocotaligo River and Swamp in Clarendon and Sumter Counties, Pinopolis Dam in Berkeley County, Battery Pringle in Charleston County, Castle Pinckney in Charleston County, Pompion Hill Chapel along the Cooper River in Berkeley County, Drayton Hall in Charleston County, Indian Bluff in Orangeburg County, Singleton Swash at Shore Drive in Horry County, Turkey Creek Bridge at Pineview Drive in Lancaster, Big Dutchman Creek Bridge at West Oak Drive in Rock Hill, SC, Calabash Branch Bridge at Tom Joye Road in Clover, Blue Branch Bridge at Fortanberry Road in Gaffney, Glenn Creek Bridge at Sulphur Springs Road in Spartanburg County, Cow Castle Creek (Bowman) in Orangeburg County, Cowpen Swamp at Simpson Creek in Horry County, Crabtree Swamp in Horry County, Saluda River (North, South, and Middle Fork) in Greenville County, Shot Pouch Creek in Sumter County, Simpson Creek in Horry County, and Todd Swamp in Horry County.

**Yes (PCN required)**                       No

- b. **Defined Federal Navigation projects:** Ashley River (0.5 miles east of Hwy 7 bridge downstream to the Atlantic Intracoastal Waterway (AIWW)), Atlantic Intracoastal Waterway ((AIWW) GA/SC line to SC/NC line), Brookgreen Garden Canal, Calabash Creek, Charleston Harbor (including the Cooper River, Town Creek, Shem Creek to Coleman Blvd and Mount Pleasant Channel), Folly River, Georgetown Harbor (Winyah Bay, Sampit River and Bypass Channel), Jeremy Creek, Little River Inlet, Murrells Inlet (Main Creek), Port Royal Harbor, Shipyard River, Savannah River (Below Augusta) and Town Creek McClellanville (i.e., Five Fathoms Creek, AIWW to Bulls Bay).

Yes (PCN required)       No

- c. **Undefined Federal Navigation projects:** Adams Creek, Archers Creek (From intersection with Beaufort River for 2 miles), Edisto River (River mile 0.00 to 175.0), Great Pee Dee River (Waccamaw River via Bull Creek then to Smith Mills, then to Cheraw), Lynches River/Clark Creek (Clark Creek to Lynches River, River Mile 0.0 to 56.0), Mingo Creek (to Hemmingway Bridge), Salkehatchie River (5 miles above Toby's Bluff to Hickory Hill, River mile 20.4 to 62.3), Santee River (Closed to navigation at mile 87 (Santee Dam)), Waccamaw River (river mile 0.0 to 90 (state line)), Wateree River (Mouth to Camden), and Village Creek (Morgan River to Porpoise Fish Co., 2.2 miles).

Yes (PCN required)       No

5. If the proposed activity would be located in or adjacent to an authorized Federal Navigation project, as referenced in Regional Condition C.4.b, does the project drawings include the following information: (1) State Plane Coordinates (NAD 1983) for a minimum of two corners of each structure or fill where it is closest to the Federal channel; (2) the distance from watermost edge of the proposed structure or fill to the nearest edge of the Federal channel; AND (3) Mean Low Water line and the Mean High Water line? (RC C.5)

N/A       Yes (PCN required)       No (**Revise the drawings to include this information**)

6. For all NWP's requiring a PCN AND when the activity involves the discharge of dredged or fill material into waters of the U.S. associated with mechanized land clearing that results in the permanent conversion of forested or scrub-shrub wetlands to herbaceous wetlands, does the PCN include the following information: (1) a written description and/or drawings of the proposed conversion activity and (2) acreage of the permanent conversion? (RC C.6)

Yes       No (**The PCN should be revised to include this information**)       N/A

7. Does the activity comply with all of the NWP General Conditions?

Yes     **No (Activity does not qualify for use of a NWP)**

8. For NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, 52, 57 and 58, that would be located in the ACE Basin National Estuarine Research Reserve or the North Inlet Winyah Bay National Estuarine Research Reserve AND involve the discharge of dredged fill material, would the proposed activity occur within, or directly affecting, critical resource waters, including wetlands adjacent to such waters? (RC D.5)

**Yes (The discharge is not authorized and NWP cannot be used)**     No     N/A

9. For NWPs 12, 14, 29, 39, 46, 51, 52, 57 and 58 activities that involve crossings, are the culverts adequately sized to maintain flow? (RC D.8)

Yes     **No (The culverts should be adequately sized)**     N/A

10. For NWPs 12, 14, 29, 39, 46, 51, 52, 57 and 58 activities that involve crossings AND submittal of a PCN, does the PCN include the minimum size and number of the proposed culverts/pipes? (RC D.8)

Yes     **No (The PCN should include this Information. If not included, the information may be requested)**     N/A

Note 1: For below questions #11-12, as stated in the January 13, 2021, issue of the Federal Register (86 FR 2744), stream bed is defined as “The substrate of the stream channel between the ordinary high water marks. The substrate may be bedrock or inorganic particles that range in size from clay to boulders. Wetlands contiguous to the stream bed, but outside of the ordinary high water mark, are not considered part of the stream bed.”

Note 2: For below questions #11-12, the impacts to a stream bed should be calculated in acreage (width X length). As stated in the Preamble of the January 13, 2021, issue of the Federal Register (86 FR 2744) on page 2765, “Stream bed width should be measured from ordinary high water mark to ordinary high water mark, perpendicular to the longitudinal direction of the stream channel. That is consistent with the definition of ‘stream bed’ in Section F. of the NWPs”.

Note 3: For below questions #11-12, the term “stream bed” also includes features

determined to be a “tributary” or “relatively permanent water.”

11. For NWP's 12, 21, 29, 39, 40, 42, 43, 44, 50, 51, 52, 57 and 58, would the activity cause the loss of greater than 0.005 acre of stream bed? (RC D.10)

- Yes (Compensatory Mitigation will be Required and the PCN should include a compensatory mitigation plan)**       No       N/A

12. For NWP's 12, 21, 29, 39, 40, 42, 43, 44, 50, 51, 52, 57 and 58, would the activity cause the loss of greater than 0.05 acre of stream bed? (RC D.11)

- Yes (The activity does not meet RC D.11 and does not qualify for use of the NWP)**       No       N/A

13. For NWP's 29 and 39 that involve the construction of stormwater management facilities, would the stormwater management facilities be constructed in perennial streams? (RC D.12)

- Yes (The activity does not meet RC D.12 and does not qualify for use of the NWP)**       No       N/A

### **C. Nationwide Permit 39**

1. Does the proposed activity involve the discharge 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?

- Yes       **No (Activity does not qualify for use of NWP 39)**

2. Do the attendant features 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?

N/A       Yes       No

3. Does the proposed activity involve the construction of new golf courses and/or new ski areas?

N/A       **Yes (Activity does not qualify for use of NWP 39).**       No

4. Does the discharge associated with the proposed activity cause the loss of greater than ½- acre of non-tidal waters of the United States?

N/A       **Yes (Activity does not qualify for use of NWP 39).**       No

8. Does the discharge associated with the proposed activity occur within a non-tidal wetland adjacent to tidal waters?

N/A       **Yes (Activity does not qualify for use of NWP 39)**       No

9. If the discharge associated with the proposed activity involves impacts to stream bed, does the loss of stream bed plus any other losses of jurisdictional wetlands and waters caused by the NWP exceed ½- acre?

N/A       **Yes (Activity does not qualify for use of NWP 39)**       No

10. If the proposed activity involves the construction of wind energy generating structure, solar tower, overhead transmission line, will a copy of the PCN and NWP verification be provided to the Department of Defense Siting Clearinghouse, which will evaluate potential effects on military activities?

N/A       **Yes (A copy of the PCN and NWP verification will be provided by the Corps).**

Checklist Completed By: \_\_\_\_\_

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