



## City of Duluth

DEPARTMENT OF PUBLIC WORKS/UTILITIES  
Engineering Division  
211 City Hall • Duluth MN 55802  
(218) 730-5200 Fax: (218) 730-5907

February 5, 2010

City of Duluth Bid #10-03DS  
Sheet Pile Retaining Wall Rehabilitation  
SP 118-080-040, Minn. Proj. No. ES 10ES(069), City Project No. 0868TR

### *Addendum #1*

#### **Bid Form:**

1. **Bid Submittal Clarification:** According to Federal requirements, when submitting a bid you must complete the bid forms which are bound in the specification book itself and return the completed bound specification book when submitting your bid. You may discard and do not need to return the smaller bid form and related materials document which accompanied the bound specification book.

#### **Specifications:**

1. **Add the following to Special Provisions, Division A:** The attached State of Minnesota-Affirmative Action Certification requirement/ form is hereby incorporated as a binding part of the Contract documents.
2. **Add** the attached MNDNR Public Waters Work Permit 2010-0118.
3. **Add** the attached Department of the Army, Army Corps of Engineers Permit.
4. **Add the following after the second paragraph in Special Provision Section SP-15 (1702) Permits Licenses and Taxes:** The Contractor shall abide with all applicable regulatory rules and requirements in performance of all phases of the work. A copy of the Minnesota Department of Natural Resources and United States Army Corps of Engineers permits obtained by the Owner for the project are attached. The requirements of these permits are a binding part of the Contract.
5. **Add the following to Special Provision Section SW-6 (2433) Cement Grout:** The Contractor shall meet all applicable regulatory requirements with regard to all work including but not limited to sheet pile infill grout pumping work. Note that such work may require protective measures such as the use of flotation silt curtain, containment booms or other collection/containment measures. Any required protective measures shall be included incidental to their respective work items with no direct payment to be made therefore.

**Plan sheets:**

1. **Add the attached sheet ADD1 of 1.**

**Other:**

1. As information to all bidders the pre-bid meeting attendance sign in sheet and bidders list has been posted to the City of Duluth website. It can be accessed from the City Purchasing web page at:

[http://www.duluthmn.gov/purchasing/bid\\_information.cfm](http://www.duluthmn.gov/purchasing/bid_information.cfm)

All other items remain the same. Please acknowledge receipt of this addendum in the space provided on the bid form.

Sincerely,



Caroline Pedersen, P.E.  
Project Manager

## State Of Minnesota – Affirmative Action Certification

If your response to this solicitation is or could be in excess of \$100,000, complete the information requested below to determine whether you are subject to the Minnesota Human Rights Act (Minnesota Statutes 363A.36) certification requirement, and to provide documentation of compliance if necessary. **It is your sole responsibility to provide this information and—if required—to apply for Human Rights certification prior to the due date and time of the bid or proposal and to obtain Human Rights certification prior to the execution of the contract. The State of Minnesota is under no obligation to delay proceeding with a contract until a company receives Human Rights certification**

**BOX A – For companies which have employed more than 40 full-time employees within Minnesota on any single working day during the previous 12 months. All other companies proceed to BOX B.**

Your response will be rejected unless your business:

has a current Certificate of Compliance issued by the Minnesota Department of Human Rights (MDHR)

–or–

has submitted an affirmative action plan to the MDHR, which the Department received prior to the date and time the responses are due.

Check one of the following statements if you have employed more than 40 full-time employees in Minnesota on any single working day during the previous 12 months:

- We have a current Certificate of Compliance issued by the MDHR. **Proceed to BOX C. Include a copy of your certificate with your response.**
- We do not have a current Certificate of Compliance. However, we submitted an Affirmative Action Plan to the MDHR for approval, which the Department received on \_\_\_\_\_ (date). [If the date is the same as the response due date, indicate the time your plan was received: \_\_\_\_\_ (time). **Proceed to BOX C.**
- We do not have a Certificate of Compliance, nor has the MDHR received an Affirmative Action Plan from our company. **We acknowledge that our response will be rejected. Proceed to BOX C. Contact the Minnesota Department of Human Rights for assistance.** (See below for contact information.)

**Please note:** Certificates of Compliance must be issued by the Minnesota Department of Human Rights. Affirmative Action Plans approved by the Federal government, a county, or a municipality must still be received, reviewed, and approved by the Minnesota Department of Human Rights before a certificate can be issued.

**BOX B – For those companies not described in BOX A**

Check below.

- We have not employed more than 40 full-time employees on any single working day in Minnesota within the previous 12 months. **Proceed to BOX C.**

**BOX C – For all companies**

By signing this statement, you certify that the information provided is accurate and that you are authorized to sign on behalf of the responder. You also certify that you are in compliance with federal affirmative action requirements that may apply to your company. (These requirements are generally triggered only by participating as a prime or subcontractor on federal projects or contracts. Contractors are alerted to these requirements by the federal government.)

Name of Company: \_\_\_\_\_ Date \_\_\_\_\_

Authorized Signature: \_\_\_\_\_ Telephone number: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_

**For assistance with this form, contact:**

Minnesota Department of Human Rights, Compliance Services Section

Mail: 190 East 5<sup>th</sup> St., Suite 700 St. Paul, MN 55101

TC Metro: (651) 296-5663

Toll Free: 800-657-3704

Web: [www.humanrights.state.mn.us](http://www.humanrights.state.mn.us)

Fax: (651) 296-9042

TTY: (651) 296-1283

# Minnesota Department of Natural Resources



1201 East Highway 2, Grand Rapids, MN 55744  
218-327-4417

October 20, 2009

Chad Scott  
AMI Consulting Engineering  
1 East First Street  
Duluth, MN 55802

Dear Mr. Scott:

## **Permit No. 2010-0118, Dock Wall Repair, St. Louis River Estuary, St. Louis County**

Enclosed is permit 2010-0118 authorizing the installation of steel plates along approximately 6,026 lineal feet of the existing dock wall at the Duluth Seaway Port Authority Terminal. The steel plates will be bolted to the existing dock face in order to repair the existing structure.

Please note all conditions of this permit, and especially condition number seventeen, which requires all equipment used in operations be inspected for prohibitive invasive species and aquatic plants.

If you have any questions, or need any further assistance, please call Patty Fowler, MN DNR Area Hydrologist at 218-834-1442 or you can contact her through email at [patricia.fowler@state.mn.us](mailto:patricia.fowler@state.mn.us).

Sincerely,

DNR WATERS

A handwritten signature in black ink that reads "Michael L. Peloquin".

Michael L. Peloquin  
Regional Hydrologist

Enc.

cc: Cindy Petkac, City of Duluth Planning & Zoning  
Patty Fowler, Area Hydrologist  
R.C. Boehm, South St. Louis County SWCD  
Daryl Wiezkbinski, USCOE  
Randy Hanzal, DNR Conservation Officer  
Rian Reed, DNR Ecological Services  
James Sharrow, P.E., Duluth Seaway Port Authority  
Deserae Hendrickson, DNR Fisheries  
Rich Staffon, DNR Wildlife  
John Fax, Central Office Permits  
Ted Smith, AMI Consulting Engineers

[www.dnr.state.mn.us](http://www.dnr.state.mn.us)

AN EQUAL OPPORTUNITY EMPLOYER



PRINTED ON RECYCLED PAPER CONTAINING A MINIMUM OF 10% POST-CONSUMER WASTE



# PUBLIC WATERS WORK PERMIT

**Permit Number**  
  
2010-0118

Pursuant to Minnesota Statutes, Chapter 103G, and on the basis of statements and information contained in the permit application, letters, maps, and plans submitted by the applicant and other supporting data, all of which are made a part hereof by reference, **PERMISSION IS HEREBY GRANTED** to the applicant to perform the work as authorized below:

<b>Public Water</b> St. Louis River Estuary	<b>County</b> St. Louis (69)
<b>Name of Permittee</b> Duluth Seaway Port Authority	<b>Telephone Number (Include Area Code)</b> 218-727-8525
<b>Address (No. &amp; Street, RFD, Box No., City, State, Zip Code)</b> c/o, Chad Scott, AMI Consulting Engineers, 1 East 1 <sup>st</sup> Street, Suite 403, Duluth MN 55802	
<b>Authorized Work:</b> Installation of steel plates along approximately 6,026 lineal feet of existing dock wall. All work shall be in accordance with the plans (dated 3/12/2009) and supporting materials on file and the conditions that follow.	
<b>Purpose of Permit:</b> Dock Wall Repair	<b>Expiration Date of Permit</b> November 30, 2012
<b>Property Described As:</b> Section 3, T49N, R14W	UTM: ← 568,862 ↓ 5,178,441

This permit is granted **subject to** the following **CONDITIONS**:

1. The **permittee** is not released from any rules, regulations, requirements, or standards of any applicable federal, state, or local agencies; including, but not limited to, the U.S. Army Corps of Engineers, Board of Water and Soil Resources, MN Pollution Control Agency, watershed districts, water management organizations, county, city and township zoning. This permit does not release the **permittee** of any permit requirement of the St. Paul district, U.S. Army Corps of Engineers, Army Corps of Engineers Centre, 190 Fifth Street East, St. Paul, MN 55101-1638.
2. This permit is not assignable by the **permittee** except with the written consent of the Commissioner of Natural Resources.
3. The **permittee** shall notify the Area Hydrologist at least five days in advance of the commencement of the work authorized hereunder and notify him/her of its completion within five days. The Notice of Permit issued by the Commissioner shall be kept securely posted in a conspicuous place at the site of operations.
4. The **permittee** shall make no changes, without written permission previously obtained from the Commissioner of Natural Resources, in the dimensions, capacity or location of any items of work authorized hereunder.
5. The **permittee** shall grant access to the site at all reasonable times during and after construction to authorized representatives of the Commissioner of Natural Resources for inspection of the work authorized hereunder.
6. This permit may be terminated by the Commissioner of Natural Resources at any time deemed necessary for the conservation of water resources of the state, or in the interest of public health and welfare, or for violation of any of the conditions or applicable laws, unless otherwise provided in the permit.
7. Construction work authorized under this permit shall be completed on or before the date specified above. The **permittee** may request an extension of the time to complete the project, stating the reason thereof, upon written request to the Commissioner of Natural Resources.

8. In all cases where the **permittee** by performing the work authorized by this permit shall involve the taking, using, or damaging of any property rights or interests of any other person or persons, or of any publicly owned lands or improvements thereon or interests therein, the **permittee**, before proceeding, shall obtain the written consent of all persons, agencies, or authorities concerned, and shall acquire all property, rights, and interests needed for the work.
9. This permit is permissive only. No liability shall be imposed by the State of Minnesota or any of its officers, agents or employees, officially or personally, on account of the granting hereof or on account of any damage to any person or property resulting from any act or omission of the **permittee** or any of its agents, employees, or contractors. This permit shall not be construed as estopping or limiting any legal claims or right of action of any person other than the state against the **permittee**, its agents, employees, or contractors, for any damage or injury resulting from any such act or omission, or as estopping or limiting any legal claim or right of action of the state against the **permittee**, its agents, employees, or contractors for violation of or failure to comply with the permit or applicable conditions.
10. Any extension of the surface of public waters from work authorized by this permit shall become public waters and left open and unobstructed for use by the public.
11. Where the work authorized by this permit involves the draining or filling of wetlands not subject to DNR regulations, the **permittee** shall not initiate any work under this permit until the **permittee** has obtained official approval from the responsible local government unit as required by the Minnesota Wetland Conservation Act.
12. Permittee shall ensure that the contractor has received and thoroughly understands all conditions of this permit.
13. Any dewatering not incidental to construction which exceeds 10,000 gallons per day or 1 million gallons per year shall be authorized by a temporary appropriations permit from the MNDNR Division of Waters.
14. Future maintenance of this project shall not exceed the dimensions herein authorized. Prior to commencing any maintenance work, permittee shall advise the MNDNR Hydrologist of the type of materials, equipment, and procedures to be used. Maintenance work shall not be commenced until permittee's receipt of the Department's approval.
15. The permittee shall comply with all rules, regulations, requirements or standards of the Minnesota Pollution Control Agency and other applicable federal, state or local agencies.
16. Through this permit, the state of Minnesota is not relinquishing ownership interest in the bed of Lake Superior-Duluth Harbor occupied by the existing wharf facility.
17. All equipment intended for use at a project site must be free of prohibited invasive species and aquatic plants prior to being transported into or within the state and placed into state waters. All equipment, used in state waters known to contain aquatic invasive species that are designated as infested waters, shall be inspected and adequately decontaminated **prior** to being transported. A list of designated infested waters can be found at <http://files.dnr.state.mn.us/eco/invasives/infestedwaters.pdf>.

c. Cindy Petkac, City of Duluth Planning & Zoning  
 Patty Fowler, Area Hydrologist  
 R.C. Boheim, South St. Louis County SWCD  
 Daryl Wiezkbinski, USCOE  
 Randy Hanzal, DNR Conservation Officer  
 Rian Reed, DNR Ecological Services

James Sharrow, P.E., Duluth Seaway Port Authority  
 Deserae Hendrickson, DNR Fisheries  
 Rich Staffon, DNR Wildlife  
 John Fax, Central Office Permits  
 Ted Smith, AMI Consulting Engineers

Authorized Signature	Title	Date
 Michael L. Peloquin	Regional Hydrologist	10/20/2009

RECEIVED SEP 21 2009



DEPARTMENT OF THE ARMY  
ST. PAUL DISTRICT, CORPS OF ENGINEERS  
190 FIFTH STREET EAST  
ST. PAUL, MN 55101-1638

September 18, 2009

REPLY TO  
ATTENTION OF  
Operations  
Regulatory (2009-02433-DWW)

Mr. James D. Sharrow  
Duluth Seaway Port Authority  
1200 Port Terminal Drive  
Duluth, Minnesota 55802

Dear Mr. Sharrow:

We have reviewed information about a permit application of the Duluth Seaway Port Authority to repair 6,026 linear feet of existing Port Terminal dock wall (enclosure) located within Superior Bay. The project site is in SE ¼, Sec. 3, T.49N., R. 14W., St. Louis County, Minnesota.

We have determined that this work is authorized by Department of the Army Nationwide Permit (3) referenced below and described in the enclosures, provided the attached Standard Conditions are followed.

This determination covers only the project as described above. If the design, location, or purpose of the project is changed, our office should be contacted to make sure the work would not result in a violation of Federal law.

This Nationwide Permit is valid for two years from the date of this letter unless the nationwide permit is modified, reissued, or revoked. It is your responsibility to remain informed of changes to the Nationwide Permit program. A public notice announcing any changes will be issued if and when they occur. If these activities are not undertaken within the stated period, or the project specifications have changed, you must immediately notify this office to determine the need for further approval or re-verification.

It is the permittee's responsibility to ensure that the work complies with the terms of this letter and any enclosures, AND THAT ALL REQUIRED STATE AND LOCAL PERMITS AND APPROVALS ARE OBTAINED BEFORE WORK PROCEEDS.

This letter contains an approved jurisdictional determination and a proffered permit for your proposed project. If you object to this determination or proffered permit, you may request an administrative appeal under Corps regulations at 33 CFR Part 331. Enclosed you will find a Notification of Appeal Process (NAP) fact sheet and Request for Appeal (RFA) form. If you

request to appeal this determination or proffered permit, you must submit a completed RFA form to the Mississippi Valley Division Office at the following address:

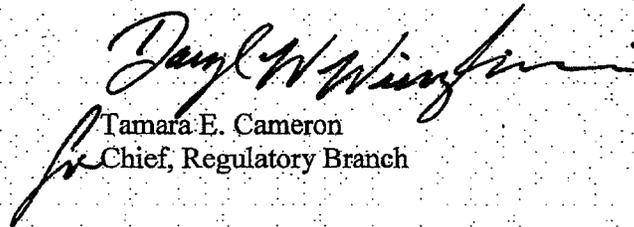
James B. Wiseman, Jr.  
Administrative Appeals Review Officer  
Mississippi Valley Division  
P.O. Box 80 (1400 Walnut Street)  
Vicksburg, MS 39181-0080  
(601) 634-5820  
(601) 634-5816 (fax)

In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 C.F.R. part 331.5, and that it has been received by the Division Office within 60 days of the date of the NAP. Should you decide to submit an RFA form, it must be received at the above address by November 18, 2009.

It is not necessary to submit an RFA form to the division office if you do not object to the determination or proffered permit in this letter.

If you have any questions, contact Daryl W. Wierzbinski in our Two Harbors office at (218) 834-6630. In any correspondence or inquiries, please refer to the Regulatory number shown above.

Sincerely,



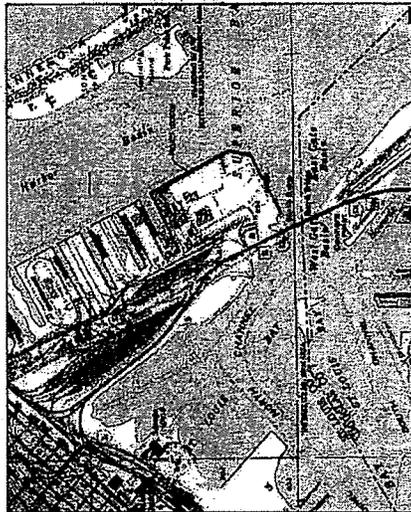
Tamara E. Cameron  
for Chief, Regulatory Branch

Enclosures  
Drawings 2009-02433-DWW, 1 through 7  
Nationwide permit conditions  
Determination: Nationwide Permit(s) (3)

Copy Furnished:  
Ted Smith AMI, Consulting Engineers  
Patricia Fowler, MNDNR  
John E. Judd, City of Duluth

# DULUTH SEAWAY PORT AUTHORITY SHEET PILE DOCK REHABILITATION RO-RO DOCK & BERTH 1-7

DULUTH, MINNESOTA



A AERIAL MAP



B SITE PHOTO

DRAWING No.	TITLE
001	COVER SHEET
010	GENERAL PLAN - CORNER DETAILS
020	INSTALLATION PROCEDURES & NOTES
030	GENERAL PLAN
040	CLEARANCE SECTIONS & DETAILS
050	CORNER DETAILS
060	SHOW SCOUR OUTLETS DETAILS

2009-02433-DWW  
Drawing 1 of 7



DATE	DESCRIPTION	BY	APP'D

DATE	DESCRIPTION	BY	APP'D

DSPA Sheet Pile Dock Rehabilitation  
Ro-Ro Dock & Berth 1-7  
1200 Per Forward Drive  
Duluth, Minnesota

DATE: 01/13/09  
DRAWN BY: NAB  
CHECKED BY: MARY  
SCALE: AS SHOWN  
PROJECT NO: 2009-02433-DWW

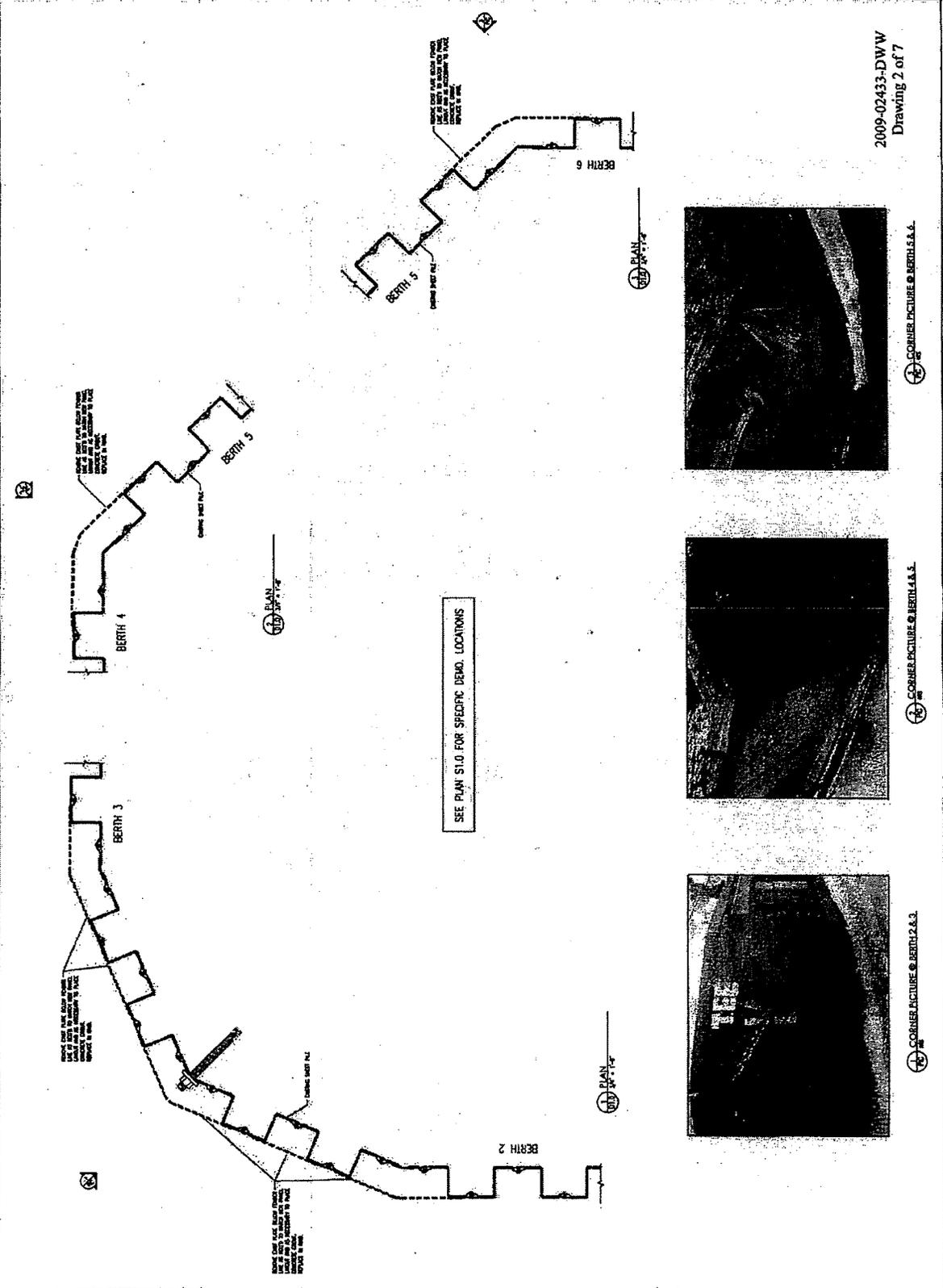
COVER SHEET

NO.	DATE	DESCRIPTION

DATE	REV	DESCRIPTION

DSPA Short Pier Dock Rehabilitation  
 1500 West Riverside Drive  
 Denver, Colorado  
 Demolition Plan  
 Corner Details

DATE: 08/13/09  
 DRAWN: JRM  
 CHECKED: JRM  
 PROJECT: DSPA  
 SHEET: D1.0



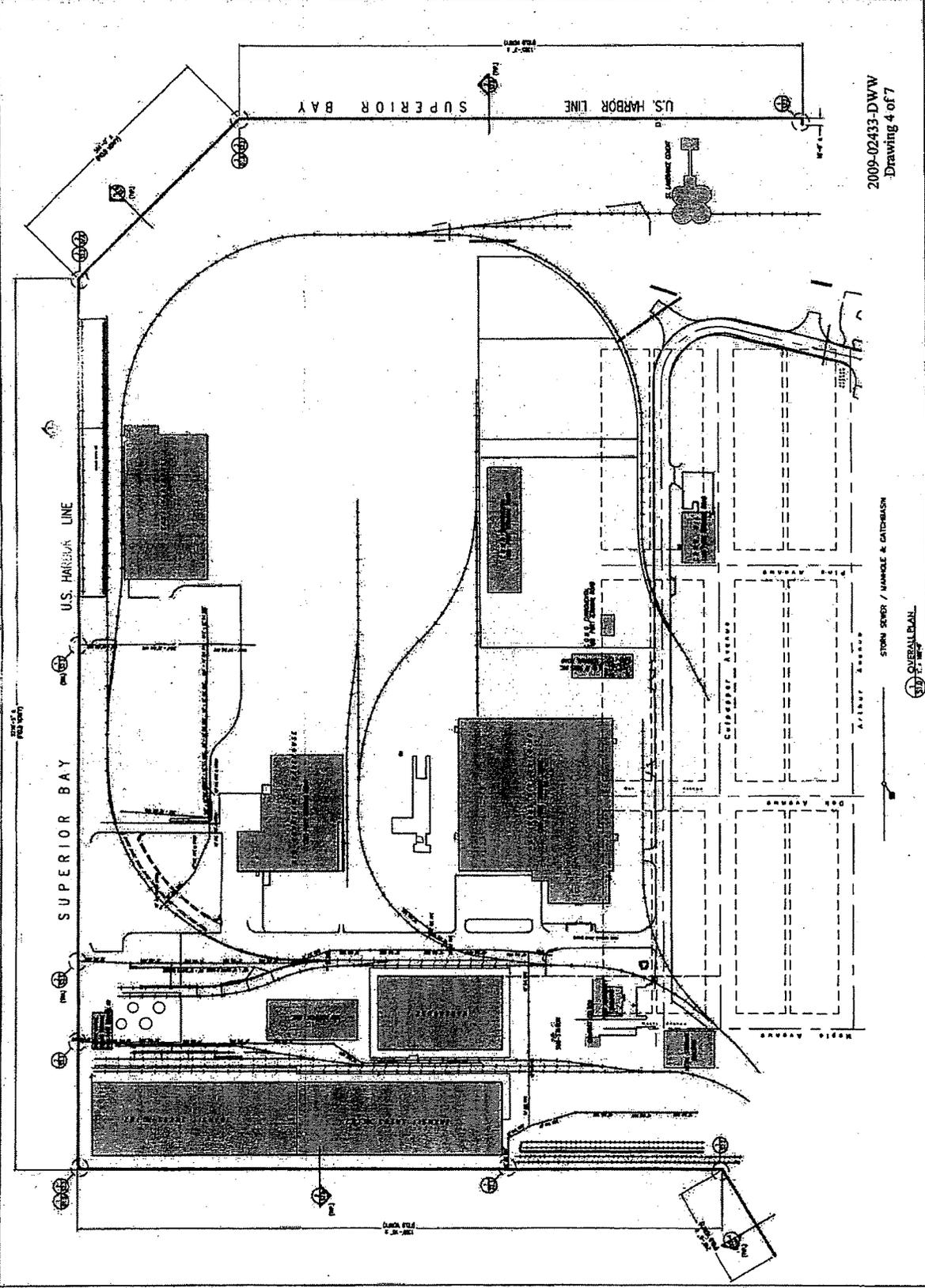
2009-02433-DWW  
 Drawing 2 of 7



NO.	DATE	DESCRIPTION

**DS/PA Sheet Pile Dock Rehabilitation**  
Ro-Ro Dock & Berth 1-7  
1300 Port Forward Drive  
DUBLIN, MARYLAND  
DATE: 08/20/09  
DRAWN: J. J. [unclear]  
CHECKED: [unclear]

**S1.0**  
OVERALL PLAN  
2009-02433-D/W/W  
Drawing 4 of 7



2009-02433-D/W/W  
Drawing 4 of 7

STORM SEWER / MANHOLE & CATCH BASIN

30' OVERALL DIAM.  
30' DIAM.



**NOTIFICATION OF ADMINISTRATIVE APPEAL, OPTIONS AND PROCESS AND  
PROFFER FOR APPEAL**

Applicant: Duluth Seaway Port Authority		File Number: 2009-02433-DWW	Date: September 18, 2009
Attached is:		See Section below	
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of Permission)	A	
	PROFFERED PERMIT (Standard Permit or Letter of Permission)	B	
	PERMIT DENIAL	C	
X	APPROVED JURISDICTIONAL DETERMINATION	D	
	PRELIMINARY JURISDICTIONAL DETERMINATION	E	

**SECTION I -** The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <http://usace.army.mil/inet/functions/cw/cecwo/reg> or Corps regulations at 33 CFR Part 331.

**A. INITIAL PROFFERED PERMIT:** You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approve jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

**B. PROFFERED PERMIT:** You may accept or appeal the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

**C. PERMIT DENIAL:** You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

**D. APPROVED JURISDICTIONAL DETERMINATION:** You may accept or appeal the approved JD or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

**E. PRELIMINARY JURISDICTIONAL DETERMINATION:** You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

**SECTION II - REQUEST FOR APPEAL OR OBJECTIONS TO AN INITIAL PROFFERED PERMIT**

**REASONS FOR APPEAL OR OBJECTIONS:** (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

**ADDITIONAL INFORMATION:** The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

**POINT OF CONTACT FOR QUESTION OR INFORMATION**

If you have questions regarding this decision and/or the appeal process you may contact:

Daryl W. Wierzbinski  
U. S. Army Corps of Engineers, Regulatory Branch  
Two Harbors  
1554 Highway 2, Suite 2  
Two Harbors, Minnesota 55616

Telephone (218) 834-6630

If you only have questions regarding the appeal process you may also contact:

Division Engineer  
Appeal Review Office  
CEMVD  
P. O. Box 80  
Vicksburg, MS 39181-0080

Telephone (601) 634-5821

**RIGHT OF ENTRY:** Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

Signature of appellant or agent.	Date:	Telephone number:
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**GENERAL CONDITIONS APPLICABLE TO ALL  
NATIONWIDE PERMITS IN THE SAINT PAUL DISTRICT**

March 2007

**General Conditions**

**Note:** To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as appropriate, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer. Prospective permittees should contact the appropriate Corps district office to determine if regional conditions have been imposed on an NWP. Prospective permittees should also contact the appropriate Corps district office to determine the status of Clean Water Act Section 401 water quality certification and/or Coastal Zone Management Act consistency for an NWP.

**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. Culverts placed in streams must be installed to maintain low flow conditions.

**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.

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

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

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

**9. Management of Water Flows.** To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization and storm water management activities, 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.

**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.

**15. Wild and Scenic Rivers.** No 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. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).

## Regulatory – Operations (2009-02433-DWW) (Conditions, cont.)

**16. Tribal Rights.** No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

**17. Endangered Species.** (a) No activity is authorized under any NWP 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 (ESA), or which will 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 Section 7 consultation addressing the effects of the proposed activity has been completed.

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements.

(c) Non-federal permittees shall notify the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project 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 may be affected by the proposed work or that utilize the designated critical habitat that may be affected by the proposed work. The district engineer will determine whether the proposed activity "may affect" or will have "no effect" to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps' determination within 45 days of receipt of a complete pre-construction notification. 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 project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed activities will have "no effect" on listed species or critical habitat, or

until Section 7 consultation has been completed.

(d) As a result of formal or informal consultation with the FWS or NMFS the district engineer may add species-specific regional endangered species conditions to the NWPs.

(e) Authorization of an activity by a 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 U.S. FWS or the NMFS, both lethal and non-lethal "takes" of protected species are in violation of the ESA. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. FWS and NMFS or their world wide Web pages at <http://www.fws.gov/> and <http://www.noaa.gov/fisheries.html> respectively.

**18. Historic Properties.** (a) In cases where the district engineer determines that the activity may affect 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. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the authorized activity may have the potential to cause effects to any historic properties listed, 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 may be affected by the proposed work 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 resources can be sought from the State Historic

Preservation Officer or Tribal Historic Preservation Officer, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). 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 and these efforts, the district engineer shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where the non-Federal applicant has identified historic properties which the activity may 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 or that consultation under Section 106 of the NHPA has been completed.

(d) 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. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR §800.3(a)). If NHPA section 106 consultation is required and will occur, the district engineer will notify the non-Federal applicant that he or she cannot begin work until Section 106 consultation is completed.

(e) Prospective permittees should be aware that section 110k of the NHPA (16 U.S.C. 470h-2(k)) 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, explaining the degree of damage to the integrity of any

## Regulatory – Operations (2009-02433-DWW) (Conditions, cont.)

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.

**19. Designated Critical Resource Waters.** Critical resource waters include, NOAA-designated marine sanctuaries, National Estuarine Research Reserves, state natural heritage sites, and outstanding national resource waters or other waters officially designated by a state as having particular environmental or ecological significance and identified by the district engineer after notice and opportunity for public comment. The district engineer may also designate additional critical resource waters after notice and opportunity for comment.

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWP's 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, and 50 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWP's 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38, notification is required in accordance with general condition 27, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWP's only after it is determined that the impacts to the critical resource waters will be no more than minimal.

**20. Mitigation.** The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are 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) will be required to the extent necessary to

ensure that the adverse effects to the aquatic environment are 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 some other form of mitigation would be more environmentally appropriate and provides a project-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 minimal adverse effects on the aquatic environment. Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, wetland restoration should be the first compensatory mitigation option considered.

(d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation, such as stream restoration, to ensure that the activity results in minimal adverse effects on the aquatic environment.

(e) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWP's. For example, if an NWP has an acreage limit of 1/2 acre, it cannot be used to authorize any project 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 a project already meeting the established acreage limits also satisfies the minimal impact requirement associated with the NWP's.

(f) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the establishment, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, riparian areas may be the only compensatory mitigation required. 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. 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 compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(g) Permittees may propose the use of mitigation banks, in-lieu fee arrangements or separate activity-specific compensatory mitigation. In all cases, the mitigation provisions will specify the party responsible for accomplishing and/or complying with the mitigation plan.

(h) Where certain functions and services of waters of the United States are permanently adversely affected, such as the conversion of 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 effects of the project to the minimal level.

**21. 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.

**22. 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.

## Regulatory – Operations (2009-02433-DWW) (Conditions, cont.)

**23. 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.

**24. 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.

**25. 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)

**26. Compliance Certification.** Each permittee who received an NWP verification from the Corps must submit a signed certification regarding

the completed work and any required mitigation. The certification form must be forwarded by the Corps with the NWP verification letter and will include:

- (a) A statement that the authorized work was done in accordance with the NWP authorization, including any general or specific conditions;
- (b) A statement that any required mitigation was completed in accordance with the permit conditions; and
- (c) The signature of the permittee certifying the completion of the work and mitigation.

### **27. Pre-Construction Notification.**

(a) **Timing.** Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, as a general rule, 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:

- (1) Until 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) If 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 17 that listed species or critical habitat might be affected or in the vicinity of the project, or to notify the Corps pursuant to general condition 18 that the activity may have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that 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 (see 33 CFR 330.4(g)) is 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 cannot 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 project;
- (3) A description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause; 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. The description should be sufficiently detailed to allow the district engineer to determine that the adverse effects of the project will be minimal and to determine the need for compensatory mitigation. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the project and when provided result in a quicker decision.);
- (4) The PCN must include a delineation of special aquatic sites and other waters of the United States 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 of the United States, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many waters of the United States. Furthermore, the 45 day period will not start until the delineation has been

## Regulatory – Operations (2009-02433-DWW) (Conditions, cont.)

submitted to or completed by the Corps, where appropriate;

(5) 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. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(6) If any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, for non-Federal applicants the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work. Federal applicants must provide documentation demonstrating compliance with the Endangered Species Act; and

(7) For an activity that may affect a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, for non-Federal applicants the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property. Federal applicants must provide documentation demonstrating compliance with Section 106 of the National Historic Preservation Act.

### (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 a PCN and must include all of the information required in paragraphs (b)(1) through (7) of this general condition. A letter containing the required information may also be used.

(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 NWP and the need for mitigation to reduce the project's adverse environmental effects to a minimal level.

(2) For all NWP 48 activities requiring pre-construction notification and for other NWP activities requiring pre-construction notification to the district engineer that result in the loss of greater than 1/2-acre of waters of the United States, the district engineer will immediately provide (e.g., via

facsimile transmission, overnight mail, or other expeditious manner) a copy of the PCN to the appropriate Federal or state offices (U.S. FWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Office (THPO), and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will then have 10 calendar days from the date the material is transmitted to telephone or fax the district engineer notice that they intend to provide substantive, site-specific comments. 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, but 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.

(3) 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.

(4) Applicants are encouraged to provide the Corps multiple copies of pre-construction notifications to expedite agency coordination.

(5) For NWP 48 activities that require reporting, the district engineer will provide a copy of each report within 10 calendar days of receipt to the appropriate regional office of the NMFS.

(e) District Engineer's Decision: In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in

more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If the proposed activity requires a PCN and will result in a loss of greater than 1/10 acre of wetlands, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for projects with smaller impacts. The district engineer will consider any proposed compensatory mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects to the aquatic environment of the proposed work are minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse effects on the aquatic environment are minimal, after considering mitigation, the district engineer will notify the permittee and include any conditions the district engineer deems necessary. The district engineer must approve any compensatory mitigation proposal before the permittee commences work. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure no more than minimal adverse effects on the aquatic environment. If the net adverse effects of the project on the aquatic environment (after consideration of the compensatory mitigation proposal) are determined by the district engineer to be minimal, the district engineer will provide a timely written response to the applicant. The response will state that the project can proceed under the terms and conditions of the NWP. If the district engineer determines that the adverse effects of the proposed work are more than minimal, then the district engineer will notify the applicant either: (1) That the project does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (2) that the project is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse effects on the aquatic

**Regulatory – Operations (2009-02433-DWW) (Conditions, cont.)**

environment to the minimal level; or  
(3) that the project is authorized under the NWP with specific modifications or conditions. Where the district engineer determines that mitigation is required to ensure no more than minimal adverse effects occur to the aquatic environment, the activity will be authorized within the 45-day PCN period. The authorization will include the necessary conceptual or specific mitigation or a requirement that the applicant submit a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level. When mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan.

**28. 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.

2009-02433-DWW  
Nationwide (3), Maintenance

(3). Maintenance. (a) The repair, rehabilitation, or replacement of any previously authorized, currently serviceable, structure, or fill, or of any currently serviceable structure or fill authorized by 33 CFR 330.3, provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit or the most recently authorized modification. Minor deviations in the structure's configuration or filled area, including those due to changes in materials, construction techniques, or current construction codes or safety standards that are necessary to make the repair, rehabilitation, or replacement are authorized. This NWP authorizes the repair, rehabilitation, or replacement of those structures or fills destroyed or damaged by storms, floods, fire or other discrete events, provided the repair, rehabilitation, or replacement is commenced, or is under contract to commence, within two years of the date of their destruction or damage. In cases of catastrophic events, such as hurricanes or tornadoes, this two-year limit may be waived by the district engineer, provided the permittee can demonstrate funding, contract, or other similar delays.

(b) This NWP also authorizes the removal of accumulated sediments and debris in the vicinity of and within existing structures (e.g., bridges, culverted road crossings, water intake structures, etc.) and the placement of new or additional riprap to protect the structure. The removal of sediment is limited to the minimum necessary to restore the waterway in the immediate vicinity of the structure to the approximate dimensions that existed when the structure was built, but cannot extend further than 200 feet in any direction from the structure. This 200 foot limit does not apply to maintenance dredging to remove accumulated sediments blocking or restricting outfall and intake structures or to maintenance dredging to remove accumulated sediments from canals associated with outfall and intake structures. All dredged or excavated materials must be deposited and retained in an upland area unless otherwise specifically approved by the district engineer under separate authorization. The placement of riprap must be the minimum necessary to protect the structure or to ensure the safety of the structure. Any bank stabilization measures not directly associated with the structure will require a separate authorization from the district engineer.

(c) This NWP also authorizes temporary structures, fills, and work necessary to conduct the maintenance activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

(d) This NWP does not authorize maintenance dredging for the primary purpose of

navigation or beach restoration. This NWP does not authorize new stream channelization or stream relocation projects. Notification: For activities authorized by paragraph (b) of this NWP, the permittee must submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 27). Where maintenance dredging is proposed, the pre-construction notification must include information regarding the original design capacities and configurations of the outfalls, intakes, small impoundments, and canals. (Sections 10 and 404)

Note: This NWP authorizes the repair, rehabilitation, or replacement of any previously authorized structure or fill that does not qualify for the Clean Water Act Section 404(f) exemption for maintenance.

**APPROVED JURISDICTIONAL DETERMINATION FORM**  
**U.S. Army Corps of Engineers**

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

**SECTION I: BACKGROUND INFORMATION**

**A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD):** September 18, 2009

**B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER:** Duluth Seaway Port Authority; Dock Maintenance 2009-02433-DWW

**C. PROJECT LOCATION AND BACKGROUND INFORMATION:**

State: Minnesota County/parish/borough: St. Louis City: Duluth  
Center coordinates of site (lat/long in degree decimal format): Lat. 46.7589213340339° , Long. -92.1034586610852°   
Universal Transverse Mercator:

Name of nearest waterbody: Lake Superior

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Lake Superior

Name of watershed or Hydrologic Unit Code (HUC): Lake Superior, Minnesota 7020300

Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.

Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form.

**D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):**

Office (Desk) Determination. Date: September 18, 2009

Field Determination. Date(s):

**SECTION II: SUMMARY OF FINDINGS**

**A. RHA SECTION 10 DETERMINATION OF JURISDICTION.**

There  "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [Required]

Waters subject to the ebb and flow of the tide.

Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.  
Explain: Lake Superior is a Section 10 water of the United States.

**B. CWA SECTION 404 DETERMINATION OF JURISDICTION.**

There  "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

**1. Waters of the U.S.**

**a. Indicate presence of waters of U.S. in review area (check all that apply):** <sup>1</sup>

- TNWs, including territorial seas
- Wetlands adjacent to TNWs
- Relatively permanent waters<sup>2</sup> (RPWs) that flow directly or indirectly into TNWs
- Non-RPWs that flow directly or indirectly into TNWs
- Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
- Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
- Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
- Impoundments of jurisdictional waters
- Isolated (interstate or intrastate) waters, including isolated wetlands

**b. Identify (estimate) size of waters of the U.S. in the review area:**

Non-wetland waters: Length of project abutting waterway 6,024 linear feet: width (ft) and/or acres.  
Wetlands: acres.

**c. Limits (boundaries) of jurisdiction based on:**  Elevation of established OHWM (if known):

Elevation of established OHWM (if known):

**2. Non-regulated waters/wetlands (check if applicable):** <sup>3</sup>

Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.  
Explain:

<sup>1</sup> Boxes checked below shall be supported by completing the appropriate sections in Section III below.

<sup>2</sup> For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

<sup>3</sup> Supporting documentation is presented in Section III.F.

### SECTION III: CWA ANALYSIS

#### A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: Lake Superior.

Summarize rationale supporting determination:

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent":

#### B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody<sup>4</sup> is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed size: [redacted]  
Drainage area: [redacted]  
Average annual rainfall: inches  
Average annual snowfall: inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

- Tributary flows directly into TNW.  
 Tributary flows through [redacted] tributaries before entering TNW.

Project waters are [redacted] river miles from TNW.  
Project waters are [redacted] river miles from RPW.  
Project waters are [redacted] aerial (straight) miles from TNW.  
Project waters are [redacted] aerial (straight) miles from RPW.  
Project waters cross or serve as state boundaries. Explain:

Identify flow route to TNW<sup>5</sup>:  
Tributary stream order, if known:

<sup>4</sup> Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

<sup>5</sup> Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

(b) **General Tributary Characteristics (check all that apply):**

- Tributary is:  Natural  
 Artificial (man-made). Explain:  
 Manipulated (man-altered). Explain:

**Tributary properties with respect to top of bank (estimate):**

Average width:           feet  
Average depth:           feet  
Average side slopes: **1:1.25**.

**Primary tributary substrate composition (check all that apply):**

- |  |  |                                   |
|--|--|-----------------------------------|
| <input type="checkbox"/> Silts           | <input type="checkbox"/> Sands                     | <input type="checkbox"/> Concrete |
| <input type="checkbox"/> Cobbles         | <input type="checkbox"/> Gravel                    | <input type="checkbox"/> Muck     |
| <input type="checkbox"/> Bedrock         | <input type="checkbox"/> Vegetation. Type/% cover: |                                   |
| <input type="checkbox"/> Other. Explain: |  |                                   |

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain:

Presence of run/riffle/pool complexes. Explain:

Tributary geometry: **1:1.25**

Tributary gradient (approximate average slope):           %

(c) **Flow:**

Tributary provides for: **1:1.25**

Estimate average number of flow events in review area/year: **1:1.25**

Describe flow regime:

Other information on duration and volume:

Surface flow is: **1:1.25**. Characteristics:

Subsurface flow: **1:1.25**. Explain findings:

- Dye (or other) test performed:

**Tributary has (check all that apply):**

- |   |   |
|---|---|
| <input type="checkbox"/> Bed and banks  |   |
| <input type="checkbox"/> OHWM <sup>6</sup> (check all indicators that apply): |   |
| <input type="checkbox"/> clear, natural line impressed on the bank            | <input type="checkbox"/> the presence of litter and debris          |
| <input type="checkbox"/> changes in the character of soil                     | <input type="checkbox"/> destruction of terrestrial vegetation      |
| <input type="checkbox"/> shelving   | <input type="checkbox"/> the presence of wrack line                 |
| <input type="checkbox"/> vegetation matted down, bent, or absent              | <input type="checkbox"/> sediment sorting                           |
| <input type="checkbox"/> leaf litter disturbed or washed away                 | <input type="checkbox"/> scour                                      |
| <input type="checkbox"/> sediment deposition                                  | <input type="checkbox"/> multiple observed or predicted flow events |
| <input type="checkbox"/> water staining                                       | <input type="checkbox"/> abrupt change in plant community           |
| <input type="checkbox"/> other (list):  |   |
| <input type="checkbox"/> Discontinuous OHWM. <sup>7</sup> Explain:            |   |

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

- |  |  |
|--|--|
| <input checked="" type="checkbox"/> High Tide Line indicated by:   | <input checked="" type="checkbox"/> Mean High Water Mark indicated by: |
| <input type="checkbox"/> oil or scum line along shore objects      | <input type="checkbox"/> survey to available datum;                    |
| <input type="checkbox"/> fine shell or debris deposits (foreshore) | <input type="checkbox"/> physical markings;                            |
| <input type="checkbox"/> physical markings/characteristics         | <input type="checkbox"/> vegetation lines/changes in vegetation types. |
| <input type="checkbox"/> tidal gauges                              |  |
| <input type="checkbox"/> other (list):                             |  |

(iii) **Chemical Characteristics:**

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Explain:

Identify specific pollutants, if known:

<sup>6</sup>A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

<sup>7</sup>Ibid.

(iv) **Biological Characteristics. Channel supports (check all that apply):**

- Riparian corridor. Characteristics (type, average width):
- Wetland fringe. Characteristics:
- Habitat for:
  - Federally Listed species. Explain findings:
  - Fish/spawn areas. Explain findings:
  - Other environmentally-sensitive species. Explain findings:
  - Aquatic/wildlife diversity. Explain findings:

2. **Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW**

(i) **Physical Characteristics:**

(a) General Wetland Characteristics:

Properties:

Wetland size: \_\_\_\_\_ acres

Wetland type. Explain:

Wetland quality. Explain:

Project wetlands cross or serve as state boundaries. Explain:

(b) General Flow Relationship with Non-TNW:

Flow is: \_\_\_\_\_. Explain:

Surface flow is: \_\_\_\_\_

Characteristics:

Subsurface flow: \_\_\_\_\_. Explain findings:

Dye (or other) test performed:

(c) Wetland Adjacency Determination with Non-TNW:

Directly abutting

Not directly abutting

Discrete wetland hydrologic connection. Explain:

Ecological connection. Explain:

Separated by berm/barrier. Explain:

(d) Proximity (Relationship) to TNW

Project wetlands are \_\_\_\_\_ river miles from TNW.

Project waters are \_\_\_\_\_ aerial (straight) miles from TNW.

Flow is from: \_\_\_\_\_.

Estimate approximate location of wetland as within the \_\_\_\_\_ floodplain.

(ii) **Chemical Characteristics:**

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain:

Identify specific pollutants, if known:

(iii) **Biological Characteristics. Wetland supports (check all that apply):**

- Riparian buffer. Characteristics (type, average width):
- Vegetation type/percent cover. Explain:
- Habitat for:
  - Federally Listed species. Explain findings:
  - Fish/spawn areas. Explain findings:
  - Other environmentally-sensitive species. Explain findings:
  - Aquatic/wildlife diversity. Explain findings:

3. **Characteristics of all wetlands adjacent to the tributary (if any)**

All wetland(s) being considered in the cumulative analysis: \_\_\_\_\_

Approximately ( ) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)      Size (in acres)      Directly abuts? (Y/N)      Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

### C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

### D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:  
 TNWs: Project length abutting waterway is 6,024 linear feet      width (ft), Or, acres.  
 Wetlands adjacent to TNWs:      acres.
2. **RPWs that flow directly or indirectly into TNWs.**  
 Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial:  
 Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

Provide estimates for jurisdictional waters in the review area (check all that apply):

- Tributary waters: linear feet width (ft).  
 Other non-wetland waters: acres.  
Identify type(s) of waters:

3. **Non-RPWs<sup>8</sup> that flow directly or indirectly into TNWs.**

- Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional waters within the review area (check all that apply):

- Tributary waters: linear feet width (ft).  
 Other non-wetland waters: acres.  
Identify type(s) of waters:

4. **Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.**

- Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.  
 Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:

- Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**

- Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

6. **Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**

- Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area: acres.

7. **Impoundments of jurisdictional waters.<sup>9</sup>**

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.

- Demonstrate that impoundment was created from "waters of the U.S.," or  
 Demonstrate that water meets the criteria for one of the categories presented above (1-6), or  
 Demonstrate that water is isolated with a nexus to commerce (see E below).

E. **ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):<sup>10</sup>**

- which are or could be used by interstate or foreign travelers for recreational or other purposes.  
 from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.  
 which are or could be used for industrial purposes by industries in interstate commerce.  
 Interstate isolated waters. Explain:  
 Other factors. Explain:

Identify water body and summarize rationale supporting determination:

<sup>8</sup>See Footnote # 3.

<sup>9</sup>To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

<sup>10</sup>Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

Provide estimates for jurisdictional waters in the review area (check all that apply):

Tributary waters: linear feet width (ft).

Other non-wetland waters: acres.

Identify type(s) of waters:

Wetlands: acres.

**F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):**

If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.

Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.

Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).

Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain:

Other: (explain, if not covered above):

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

Non-wetland waters (i.e., rivers, streams): linear feet width (ft).

Lakes/ponds: acres.

Other non-wetland waters: acres. List type of aquatic resource:

Wetlands: acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):

Non-wetland waters (i.e., rivers, streams): linear feet width (ft).

Lakes/ponds: acres.

Other non-wetland waters: acres. List type of aquatic resource:

Wetlands: acres.

**SECTION IV: DATA SOURCES.**

**A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):**

Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: AMI Consulting Engineers.

Data sheets prepared/submitted by or on behalf of the applicant/consultant.

Office concurs with data sheets/delineation report.

Office does not concur with data sheets/delineation report.

Data sheets prepared by the Corps:

Corps navigable waters' study:

U.S. Geological Survey Hydrologic Atlas:

USGS NHD data.

USGS 8 and 12 digit HUC maps.

U.S. Geological Survey map(s). Cite scale & quad name:

USDA Natural Resources Conservation Service Soil Survey. Citation:

National wetlands inventory map(s). Cite name:

State/Local wetland inventory map(s):MNDNR maps.

FEMA/FIRM maps:

100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)

Photographs:  Aerial (Name & Date):Corps of Engineers GIS.

or  Other (Name & Date):AMI aerial maps.

Previous determination(s). File no. and date of response letter:

Applicable/supporting case law:

Applicable/supporting scientific literature:

Other information (please specify):Applicant will need MNDNR approval.

**B. ADDITIONAL COMMENTS TO SUPPORT JD: Superior Bay is connected to Lake Superior.**

# Minnesota Local/State/Federal Application Forms for Water/Wetland Projects

## USE THIS APPLICATION FOR ANY PROJECT AFFECTING A LAKE, RIVER, STREAM OR WETLAND, INCLUDING:

Local Government Unit Approval Pursuant to Minnesota Wetlands Conservation Act (WCA)  
Minnesota Department of Natural Resources (DNR) Permit to Work in Public Waters  
Department of the Army Permit (33 CFR 325)

Note: The U.S. Army Corps of Engineers (COE) will forward application forms to the Minnesota Pollution Control Agency (MPCA) for processing if state water quality certification is required from the MPCA. You do not need to send this application to the MPCA.

This application packet includes :

**Part I:** The **BASIC APPLICATION** and the **COE APPLICATION** to be filled out by all applicants (see Instructions).

**PART II:** The **REPLACEMENT PLAN SUPPLEMENT** to be completed *only for* projects that impact wetlands and require a replacement plan for wetland mitigation. **If you're not sure** whether your project requires a replacement plan, call your Local Government Unit (LGU) or Soil and Water Conservation District (SWCD) office for guidance.

**Do not proceed with your project** until you have received all required approvals from your LGU, the DNR and the COE. If you wish to confirm the status of your application at any time, contact the agencies directly (see Instructions, page 2). **Proceeding with work before all required authorizations are obtained may result in fines or other penalties, and may include a requirement to restore the project site to original condition.**

**If you have questions or need assistance** with filling out these forms, contact your local SWCD office, your LGU, your Area DNR Waters office, or your COE field office (see Instructions, page 2).

**If you believe that your project may be subject to watershed district, local zoning, or any other local regulations besides those of your LGU,** contact those office(s) directly. **If you are a Federal Farm Program participant** and your project affects a wetland or water body on agricultural land, your eligibility for USDA benefits may be affected. Contact a Natural Resources Conservation Service office for further information.

## A QUICK LOOK AT THE PROJECT APPLICATION PROCESS

**Electronic files:** Forms can be downloaded and filled out using Microsoft Word. Your input will be restricted to fill-in fields where users can enter text or check boxes. These areas appear gray on the screen, but not on the printed document.

Send copies of these completed application forms to your LGU, your Area DNR Waters office, and your COE regulatory office.

Any of the agencies may make initial contact with you to: a) inform you that it has no jurisdiction over your project; b) request additional information needed; or c) inform you of applicable fees.

When your application is considered complete and appropriate fees have been received (if requested) it will be distributed for appropriate review.

Following agencies' reviews, you will be informed if it has been approved, approved with changes or conditions, withdrawn, or denied.

For information about state laws, rules and regulations that direct this process go to the web site [www.revisor.leg.state.mn.us](http://www.revisor.leg.state.mn.us). For information on U.S. Army Corps of Engineers regulations go to the web site [www.mvp.usace.army.mil](http://www.mvp.usace.army.mil).

## Instructions for Part I

**HELP 1: Every applicant must fill out Section 1.** The applicant is the person, agency, company, corporation, or other organization that owns, leases, or holds other legal rights to the land where the project is located. Indicate names of multiple applicants on a separate sheet.

**HELP 1A: Fill out Section 1A only if you have designated an authorized agent.** An authorized agent may be an attorney, builder, consultant, contractor, engineer, or any other person or organization designated by the applicant to represent him/her in this process. An agent is not required.

**HELP 5: Purpose, description and dimensions of project:** State briefly (in a sentence or two) what you propose to do and why it is needed. Also, describe whether your project will involve any of the following:

- Construction of structures, filling, draining, dewatering, removing, excavating or repair.
- Construction of an access path, bridge, culvert, dam, ditch, dock, driveway, riprap, road, sand blanket, shore protection, or tile line.
- Construction of any structures on fill, piles or a float-supported platform. If so, describe.
- Dredging or discharging (placing fill material) into a wetland or other water body (including the temporary placement of material). If so, explain the specific purpose of the placement of the material (such as erosion control) and indicate how it will be done (such as with a backhoe or dragline). If dredged material is to be discharged on an upland site, identify the location of the site.

**Include an overhead view drawing showing the work to be undertaken and its relative location on the property.** Show items such as property boundaries or lot dimensions; location and extent of shoreline, wetlands and water; location and dimensions and footprint of the proposed project, structure or activity (include length, width, elevation and other measurements as appropriate); points of reference such as existing homes, structures, docks or landscape features; indication of north; and location of spoil and disposal sites (if applicable). Hand drawn, computer generated or professionally prepared drawings are acceptable, as long as they contain all necessary information clearly, accurately, and in adequate detail. Please include specific dimensions whenever possible. You may also include photos, if you wish. Paper copies should be limited to maximum dimensions of 11" by 17". Computer files should be viewable in a PDF format; contact the agency for other usable formats.

**HELP 7: For information regarding adjacent landowners, contact the tax assessor where the project is to be developed.**

**HELP 8: If any part of the work has already been completed, describe the area already developed.** Include a description of structures completed; any dredged or fill material already discharged (including type of material and volume in cubic yards); acres or square feet filled (if a wetland or other water body); and whether the work was done under an existing permit (if so identify the authorization, if possible).

**HELP 9: Other permits, reviews or approval related to the project may include the following:** conditional use permit; plat approval; zoning variance; National Pollutant Discharge Elimination System permit; state disposal system permit (includes dredged material disposal); watershed district/watershed management organization permit (stormwater, erosion, floodplain); environmental assessment worksheet/environmental impact statement; hazardous waste site; feedlot permit; groundwater appropriation permit; or county/township driveway/road permit. Are you aware of any archeological or cultural resource determinations or surveys completed concerning the project or replacement site by the State Historic Preservation Office (SHPO) or others? If yes, please explain on a separate sheet or attach a copy of any determinations or surveys.

### Final Checklists (Part I)

- Have you completed all of Part I (Page 1), plus the Federal application (Page 2)?
- Did you (and your agent, if applicable) sign Section 10 on page 1?
- Have you signed the Application for the Department of the Army Permit (Page 2) to seek Federal authorization of your project?
- Have you included the necessary attachments for Part I?

**Attachments must include:**

- Site Locator Map (Section 3)
- Type of Project (Section 4) (if additional space was needed)
- Overhead View of Project (Section 5 and HELP 5)
- Project Purpose, Description and Dimensions (Section 5) (if additional space was needed)

**Attachments may also include:**

- Applicant Contact Information (HELP 1) (if additional space was needed)
- Project Location (Section 3) (if additional space was needed)
- Project Alternatives (Section 6) (if additional space was needed)
- Photographs
- Adjoining Property Owners (Section 7) (if additional space was needed)
- Work Already Completed Section (Section 8) (if you answered YES)
- State Historic Preservation Office determination or survey

### Submitting Your Application

**Make three copies of the entire application and all attachments.** Keep the original, and mail a complete copy of your application to each of the local, state, and Federal entities listed below. Be sure to include Part I and all attachments with each application.

**LOCAL:** Send to the appropriate Local Government Unit (LGU). If necessary, contact your county Soil and Water Conservation District (SWCD) office or visit the Board of Water and Soil Resources (BWSR) web site ([www.bwsr.state.mn.us](http://www.bwsr.state.mn.us)) to determine the appropriate LGU.

**STATE:** Send to your Area DNR Waters office, attention Area Hydrologist. If necessary, contact your county Soil and Water Conservation District (SWCD) office or visit the DNR website ([www.dnr.state.mn.us](http://www.dnr.state.mn.us)) to locate the Area Hydrologist for your location, or contact a Regional DNR office:

<b>NW Region:</b> 2115 Birchmont Beach Road N.E. Bemidji, MN 56601 Phone: 218-755-3973	<b>NE Region:</b> 1201 East Highway 2 Grand Rapids, MN 55744 Phone: 218-327-4416	<b>Central Region:</b> 1200 Warner Road St. Paul, MN 55106 Phone: 651-772-7910	<b>Southern Region:</b> 261 Highway 15 South New Ulm, MN 56073 Phone: 507 359-6053
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**FEDERAL:** Send to the appropriate U.S. Army Corps of Engineers regulatory field office:

<b>Brainerd:</b> U.S. COE, Regulatory Branch 10867 E. Gull Lake Drive N.W. Brainerd, MN 56401-9051 Phone: 218-829-8402	<b>St. Paul:</b> U.S. COE, Regulatory Branch Army Corps of Engineers Centre 190 5 <sup>th</sup> Street East St. Paul, MN 55101-9051 Phone: 651-290-5375	<b>La Crescent:</b> U.S. COE, Regulatory Branch 1114 South Oak Street La Crescent, MN 55947-1338 Phone: 507-895-8059	<b>Two Harbors:</b> U.S. COE, Regulatory Branch 1554 Highway 2, Suite 2 Two Harbors, MN 55616 Phone: 218-834-6630
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**WEB SITES:** BWSR: [www.bwsr.state.mn.us](http://www.bwsr.state.mn.us) U.S. ACOE: [www.mvp.usace.army.mil](http://www.mvp.usace.army.mil) DNR: [www.dnr.state.mn.us](http://www.dnr.state.mn.us) MPCA: [www.pca.state.mn.us](http://www.pca.state.mn.us)

# Minnesota Local/State/Federal Application Form for Water/Wetland Projects

For Internal Use Only			
Application No.	Field Office Code	Date Initial Application Received	Date initial Application Deemed Complete

## PART I: BASIC APPLICATION

“See **HELP**” directs you to important additional information and assistance in Instructions, Page 1.

### 1. LANDOWNER/APPLICANT CONTACT INFORMATION (See Help 1)

Name: Duluth Seaway Port Authority Phone: 218-727-8525 E-mail:  
 Complete mailing address: 1200 Port Terminal Drive, Duluth, MN 55802

### 1A. AUTHORIZED AGENT (See Help 1A) (Only if applicable; an agent is not required)

Name: AMI Consulting Engineers Phone: 218-727-1206 E-mail: chad.scott@amiengineers.com  
 Complete mailing address: 1 East First Street, Suite 403, Duluth, MN 55802

### 2. NAME, TYPE AND SIZE OF PUBLIC WATERS or WETLANDS IMPACTED (Attach Additional Project Area sheets if needed)

Name or I.D. # of Waters Impacted (if applicable; if known): St. Louis River

(Check all that apply):  Lake  River  Circular 39 Wetland type:  1,  1L,  2,  3,  4,  5,  6,  7,  8

Wetland plant community type<sup>1</sup>:  shallow open water,  deep marsh,  shallow marsh,  sedge meadow,  fresh meadow,  
 wet to wet-mesic prairie,  calcareous fen,  open bog or coniferous bog,  shrub-carr/alder thicket,  
 hardwood swamp or coniferous swamp,  floodplain forest,  seasonally flooded basin

Indicate size of entire lake or wetland (check one):  Less than 10 acres (indicate size: )  10 to 40 acres  Greater than 40 acres

### 3. PROJECT LOCATION (Information can be found on property tax statement, property title or title insurance):

Project street address: 1200 Port Terminal Drive Fire #: City (if applicable): Duluth

¼ Section: Section: Township #: Range #: County: St. Louis  
 Lot #: Block: Subdivision: Watershed (name or #) UTM location: N 46-45-15 E 92-5-50

Attach a simple site locator map. If needed, include on the map written directions to the site from a known location or landmark, and provide distances from known locations. Label the sheet *SITE LOCATOR MAP*.

4. **TYPE OF PROJECT:** Describe the type of proposed work. Attach *TYPE OF PROJECT* sheet if needed.  
Dock wall repair.

5. **PROJECT PURPOSE, DESCRIPTION AND DIMENSIONS:** Describe what you plan to do and why it is needed, how you plan to construct the project with dimensions (length, width, depth), area of impact, and when you propose to construct the project. **This is the most important part of your application.** See **HELP 5** before completing this section; see **What To Include on Plans** (Instructions, page 1). Attach *PROJECT DESCRIPTION* sheet.

See attached PROJECT DESCRIPTION

Footprint of project: 6026 lineal feet acres or square feet drained, filled or excavated.

6. **PROJECT ALTERNATIVES:** What alternatives to this proposed project have you considered that would avoid or minimize impacts to wetlands or waters? List at least **TWO** additional alternatives to your project in Section 5 that avoid wetlands (one of which may be “no build” or “do nothing”), and explain why you chose to pursue the option described in this application over these alternatives. Attach *PROJECT ALTERNATIVES* sheet if needed.

1. Do nothing - The dock wall would eventually fail. 2. Replace the dock wall - This alternative would result in much greater economic and environmental costs. The selected alternative will have minimal impact on waters and no impact on wetlands.

7. **ADJOINING PROPERTY OWNERS:** For projects that impact more than 10,000 square feet of water or wetlands, list the complete mailing addresses of adjacent property owners on an attached separate sheet. (See **HELP 7**)

8. **PORTION OF WORK COMPLETED:** Is any portion of the work in wetland or water areas already completed?  Yes  No. If yes, describe the completed work on a separate sheet of paper labeled **WORK ALREADY COMPLETED**. (See **HELP 8**)

9. **STATUS OF OTHER APPROVALS:** List any other permits, reviews or approvals related to this proposed project that are either **pending** or **have already been approved or denied on a separate attached sheet**. See **HELP 9**.

10. **I am applying for state and local authorization** to conduct the work described in this application. I am familiar with the information contained in this application. To the best of my knowledge and belief, all information in Part I is true, complete, and accurate. I possess the authority to undertake the work described, or I am acting as the duly authorized agent of the applicant.

\_\_\_\_\_  
 Signature of applicant (Landowner) Date Signature of agent (if applicable) Date

This block must be signed by the person who desires to undertake the proposed activity and has the necessary property rights to do so. If only the Agent has signed, please attach a separate sheet signed by the landowner, giving necessary authorization to the Agent.

<sup>1</sup>See *Wetland Plants and Plant Communities of Minnesota and Wisconsin (Eggers and Reed, 1997)* as modified by the Board of Water and Soil Resources, United States Army Corps of Engineers.

