

**1. General comments regarding all DTE responses to USACE RAIs:**

- a. US Army Corps of Engineers, Detroit District (USACE) acceptance of DTE's response to RAI USACE-1 and -2 in part or whole is not an indication of USACE agreement/acceptance of conclusions stated in the response, including those regarding: status of proposed project relative to the least environmentally damaging practicable alternative; compliance of proposed regulated activities with 404(b)(1) Guidelines; public interest review; and acceptability of proposed mitigation to compensate for unavoidable loss of waters of the US and adjacent wetlands.
- b. USACE Jurisdiction: See Reference 2.a. for USACE jurisdictional determination:

During our site inspections of the Fermi property, we determined that there are several non-wetland open water features that are physically separated from the ordinary high waters of Lake Erie, a navigable water of the US, by patches of upland ground. In addition, our review of potential transmission line corridors indicates that there may be non-wetland open water areas that are upstream and/or isolated from the ordinary high waters of the nearest navigable waters of the US. The USACE does not have Section 10 or Section 404 jurisdiction over such water features. The State of Michigan (Michigan Department of Natural Resources and Environment-MDNRE) assumed Federal permit authority for non-navigable/non-wetland waters per Section 404(g) of the Clean Water Act (CWA) and 40 Code of Federal Regulations (CFR), Part 233 (see General Comment 1.c.).

During our site inspections of the Fermi property, we also determined that several wetland areas identified in the Ducks Unlimited (DU) wetland delineation report for the Fermi property are not adjacent to Lake Erie. In addition, our review of the potential transmission line corridors also indicates that there may be wetlands within the corridors that are not adjacent to navigable waters of the US. The State of Michigan has assumed Federal permit authority for such wetlands per Section 404(g) of the CWA and 40 CFR, Part 233(see General Comment 1.c.). In the event that the Environmental Protection Agency, per 40 CFR, Part 233.50, directs us to conduct a permit evaluation for discharges in any of the non-navigable/non-wetland waters or non-adjacent wetlands at the Fermi property or within the transmission line corridors, the Detroit District USACE will make the final determination on Section 404 jurisdiction.

The discharge of dredged material/fill into wetlands adjacent to navigable waters of the US and non-adjacent wetlands requires compliance with the Section 404(b)(1) Guidelines regardless of whether there is joint USACE-MDNRE jurisdiction or just MDNRE jurisdiction. In this regard, we recommend that Section 404 compliance be addressed in holistic manner to facilitate a comprehensive understanding of DTE's site alternative analysis, project description, impacts, on-site alternative analysis, subsequent avoidance and minimization analysis and ultimately, compliance with the 404(b)(1) Guidelines.

c. State of Michigan assumption of Section 404 program:

In 1984, Michigan received authorization from the federal government to administer Section 404 of the CWA in most areas of the state. A state administered 404 program must be consistent with the requirements of the CWA and associated regulations set forth in the Section 404(b)(1) guidelines. Whereas in other states, where an applicant must apply to the USACE and a state agency separately for wetland permits, applicants in Michigan generally submit only one wetland permit application using a joint application form that directs submission to the MDNRE. State and federal authorities overlap in coastal and certain other waters according to Section 10 of the Federal Rivers and Harbors Act, and both federal and state permits are required. In accordance with Section 404(g) of the CWA, the USACE retains federal jurisdiction over traditionally navigable waters including the Great Lakes, connecting channels, other waters connected to the Great Lakes where navigational conditions are maintained, and wetlands adjacent to these waters. Activities in these waters require a joint permit application.

Federal oversight of state-administered 404 programs is the responsibility of the U.S. Environmental Protection Agency (USEPA). The MDNRE1983 Memorandum of Agreement with USEPA Region 5 outlines the procedures to be followed in program administration. This agreement waives federal review of the vast majority of applications in areas under Michigan's 404 jurisdiction. However, federal agencies must review projects which impact critical environmental areas, or which involve large quantities of fill. At the present time, USEPA review about one percent of all applications received. If the MDNRE determines that an application under Michigan's 404 program is subject to federal review, copies of the public notice are sent to USEPA Region 5, Detroit District USACE, and the U.S. Fish and Wildlife Service. The USEPA is responsible for compiling all federal comments, and submitting comments on the federal position to the MDNRE.

The MDNRE may not issue a permit which carries Section 404 authority if the USEPA objects to the project. This is true even if the applicant successfully appeals the state's denial of a permit at the administrative level or through a state court. Section 404 provides for a reversion to USACE processing if a state and USEPA reach an impasse on a project (that is, if the state is prepared to issue a permit, but USEPA continues to object)

d. Many of the figures/tables provided in support of DTE's RAI responses are not legible in 8-1/2" x 11" format and/or not legible if printed in black and white, then copied/reproduced in black and white. This is required for all figures, tables, maps, etc. submitted with a permit application. Reductions of engineering drawings are usually not acceptable as they may be cluttered and illegible when reduced. Further, the figures/drawings/maps should not identify activities that are outside of the regulatory scope of analysis unless identified as state-regulated per General Comments 1.b. & 1.c. above.

## 2. References:

- a. USACE 9 Nov 2010 letter to DTE, USACE jurisdictional determination for Fermi property
- b. Alternative Site Analysis, Calvert Cliffs Nuclear Power Plant Unit
- c. Pages J-2 to J-7, Appendix J, Draft EIS for COL for Calvert Cliffs Nuclear Power Plant, Unit 3
- d. 40 CFR Part 230-Section 404(b)(1) Guidelines for Specification of Disposal Sites for Dredged or fill Material, available at [http://www.usace.army.mil/CECW/Pages/reg\\_materials.aspx](http://www.usace.army.mil/CECW/Pages/reg_materials.aspx)
- e. Calvert Cliffs Nuclear Power Plant Figures
- f. Appendix B, Sample Drawings, of MDNRE-USACE Joint Permit Application available at: [http://www.michigan.gov/deq/0,1607,7-135-3307\\_29692\\_24403-67371--,00.html](http://www.michigan.gov/deq/0,1607,7-135-3307_29692_24403-67371--,00.html)
- g. On-site Alternative Analysis (Calvert Cliffs Nuclear Power Plant, Unit 3)
- h. Page J-9, Appendix J, Draft EIS for the COL for Calvert Cliffs Nuclear Power Plant, Unit 3
- i. Ducks Unlimited (DU) document, dated July 2008, prepared for DTE: DTE Fermi Site, Monroe County Wetland Investigation Report
- j. Michigan's Natural Communities: <http://web4.msue.msu.edu/mnfi/communities/index.cfm>
- k. MiRAM Version 2.1 User's Manual available at: [http://www.michigan.gov/deq/0,1607,7-135-3313\\_3687-240071--,00.html](http://www.michigan.gov/deq/0,1607,7-135-3313_3687-240071--,00.html) . The Michigan Rapid Assessment Method for Wetlands (MiRAM) provides a standardized method to evaluate and document a wetland's functional value which includes its ecological condition (integrity) and its potential to provide ecological and societal services (functions and values).
- l. Detroit District Corps of Engineers permit evaluation document template (attachment to initial RAIs)
- m. 33 CFR Parts 320-332: Regulatory Programs of the Corps of Engineers, available at: [http://www.usace.army.mil/CECW/Pages/reg\\_materials.aspx](http://www.usace.army.mil/CECW/Pages/reg_materials.aspx)
- n. Part 332 of reference 1.m (also known as Department of the Army, USACE of Engineers 33 CFR Parts 325 as amended and 332, and Environmental Protection Agency 40 CFR Part 230, Final Rule: Compensatory Mitigation for Losses of Aquatic Resources, available at : [http://www.epa.gov/owow\\_keep/wetlands/wetlandsmitigation/index.html#regs](http://www.epa.gov/owow_keep/wetlands/wetlandsmitigation/index.html#regs))
- o. Shape file submittal format (attachment 1)

### 3. USACE Response to DTE Response to USACE RAIs 1 & 2:

#### a. RAI USACE-2a: Project description/purpose & need

**DTE Response:** Project description/purpose & need, Subsection 1.2.2 and Section 1.3

**USACE Response:** Complete

#### b. RAI USACE-2b: Alternative Site Analysis, wetland fill avoidance emphasis

**DTE Response:** Avoidance-site selection emphasis, Subsection 2.1.1.

**USACE Response:** Incomplete. Chapter 5 Conclusion not supported. Eight candidate sites were identified as reasonable locations for construction of a project to accomplish the project purpose (add baseload electric generating capacity to address current and future peak electricity demand in the DTE service area). However, the analysis of alternative sites conducted to reach DTE's preferred site alludes to, but does not identify specifics as to why the other sites are either not practicable or why a project at the Fermi site would be the environmentally preferable site. Table C-1, as is, does not support the site alternative analysis. The Appendix C figures do not provide useful supportive information for the site alternative analysis. The figures provided in support are not legible. To complete this RAI, the following is required:

Provide Corps/MDNRE-focused alternative site analysis narrative that includes specific, supported reasoning, within the context of the 404 (b)(1) Guidelines, as to why candidate sites have been discarded from further consideration using first, the practicability test (Reference 2.d: Paragraph 230.10(a)(2)). An alternative is only practicable where it is available and capable of being done taking into account cost, existing technology and logistics in light of overall project purpose.

If more than a single site remains following application of the practicability test, apply the "less environmentally damaging" test by conducting a reconnaissance level assessment of the impacts of the project footprint, at each practicable site, on waters of the US and adjacent wetlands, and on relevant public interest factors followed by an analysis that leads to the selection of an environmentally preferable location.

Include a text description of the practicability outcome, and if more than a single site remains, the impact analysis outcome for the practicable sites. Provide a statement indicating which site location would be the environmentally preferable site.

For the analysis of practicable alternative sites, provide legible figures illustrating impact of the project footprint on waters of the US and adjacent wetlands, as well as tabular presentation of the information. Note that Table C-1 could be used to illustrate impacts to waters of the US and

wetlands after removing alternatives that are not practicable and adding the Fermi site to the table. Provide additional supporting figures and/or tables to illustrate other relevant impacts, level of impacts, etc. to support the analysis and conclusion.

It is not acceptable to support the analysis by reference to a RAI response or ER section, table, figure, etc. All such information should be directly incorporated into the narrative. All supportive figures and tables should be submitted in the format described in General Comment 1. d.

Reference 2.b. is provided as an example of a supported alternative site analysis, with the final summary of the selection of the preferred alternative documented in Reference 2.c. In total, such documentation provides a complete alternative site analysis.

Assuming the alternative site analysis outcome results in an environmentally preferred site that is either the least environmentally damaging site (relative to wetland impacts), or selection of a different site is justified, the presumption of “avoidance” is overcome for site locations. Then the analysis of alternatives at the environmentally preferred site, for the purpose of demonstrating that wetland fill impacts to the selected site have been avoided to the extent possible and the proposed project is the least environmentally damaging practicable alternative (LEDPA), can proceed.

**c. RAI USACE-1g.** Project (proposed, USACE/DNRE-regulated activities) description

**DTE Response:** Project Descriptions and Figures, Subsection 1.2.2.

**USACE Response:** Incomplete. The response provided is too broad. In addition, the supporting figures provided are not legible in 8-1/2 x 11” format and not reproducible in black and white.

For the alternative site analysis, provide a narrative description of project elements and construction activities, for each practicable alternative, that would affect waters and wetlands of the US, and a figure (s) showing the footprint of the project that clearly illustrates the siting of each proposed plan element/construction activity in relation to waters of the US and adjacent wetlands. If necessary for legibility, figures can be referenced to an index sheet. Provide additional project description narrative and figures, as necessary, to support the analysis and conclusions.

On completion of the alternative site analysis and selection of a preferred site and to provide a basis for the on-site alternative analysis, provide a narrative of the proposed project plan that describes the regulated activity (dredging, wetland fill, pier construction, etc) and purpose for (navigation, grading for structure, fill discharge for construction road, toe protection, temporary laydown area, etc), and the location of the activity on environmentally preferable site and in relation to the waters of the US and adjacent wetlands. Provide a similar narrative for

features/construction activities of each alternative site layout that differ from the proposed project, as well as locations and descriptions of off-site areas considered. For each alternative layout, provide figures that show the footprint of each project alternative feature/construction activity in relation to waters of the US and adjacent wetlands and the location of off-site areas considered. If necessary for legibility, figures can be referenced to an index sheet.

On completion of the on-site alternative analysis, as the proposed plan may change, provide a narrative description of the final proposed plan and descriptive figures as discussed above.

Supportive figures should be legible, succinct, specific representations of existing and proposed (as a result of regulated activities) site conditions. It is not acceptable to support the analysis by reference to a RAI response or ER section, table, figure, etc. All such information should be directly incorporated into the narrative. All supportive figures and tables should be submitted in the format described in General Comment 1. d.

References 2.e. is provided as an example of final project plan figures. Reference 2.f. provides samples project figures depicting various regulated structures and fills.

- d. RAI USACE-2c: On-Site Alternative Analysis (Minimization).** Note: In determining which proposed project alternative is the least environmentally damaging, the USACE uses a sequential approach of first analyzing project modifications to avoid wetland impacts, including use of non wetland sites whether on or off the environmentally preferable site, then analyzing project modifications to minimize wetland impacts. Since there are no activities associated with a power plant that require siting in wetlands, we presume there are practicable alternatives available that do not have a discharge into wetlands and such alternatives will have less environmental impact and therefore be environmentally preferable unless the applicant demonstrates otherwise. Unless DTE can rebut this presumption, a permit cannot be issued.

**DTE Response:** Minimization of wetland impacts. Minimization must be shown for each of the alternative sites in the analysis of avoidance, Subsection 2.2.1

**USACE Response:** Incomplete. Subsection 2.2.1 is part of the alternative site analysis and does not address the on-site alternative analysis. Section 2.3 of DTE's response provides a limited and incomplete, for the purposes of the Section 404(b)(1) Guidelines, analysis of on-site alternatives. Chapter 5 conclusions are not supported. Completion of this response requires:

A USACE/MDNRE-focused analysis of alternatives to the proposed plan (see 1.c.), presented as a narrative. The alternative analysis will require some degree of baseline condition and impact analysis. The analysis must include:

Description (see 1.c.) of the proposed project plan and alternatives with each description supported by figures depicting, at a minimum, plan-view of the alternative features relative to the aquatic resource impacts, and a detailed analysis of the steps taken to avoid and minimize wetland fill and reduce other environmental impacts (public interest factors).

Consideration of project modifications involving reconfiguration of project elements, movement of project features upland (off site or on site), reduction in project scope or size to avoid wetland and waterway impacts to the minimum necessary to meet applicable requirements (e.g., access, safety, erosion control, etc.), changes in construction methods/equipment, construction sequence, implementation of special operating procedures (e.g., monitoring, protection of critical areas, adherence to environmental windows, etc.) or the use of other methods that reflect sensitivity to the environment. Examples include:

Relocation or redesign of the proposed construction laydown areas to uplands. Include off-site areas;

Modification of the construction schedule so that the areas proposed for permanent impacts could be used as construction laydown areas;

Relocation or redesign of the proposed roads/warehouse areas to uplands;

Reduction in the length and width of the impact area for the discharge pipe and fish return to the minimum necessary to meet the purpose of these project aspects;

Reduction in the width of the proposed dredge channel necessary to the minimum necessary for barge ingress and egress and to ensure dredge barge access for the proposed method of dredging;

Reduction of the footprint of any in-water structure to the minimum necessary to meet the purpose of the project aspect;

Relocation or redesign of cooling tower fill to avoid/minimize impact to south canal.

Quantification of all impacts to waters of the US (both temporary and permanent), including jurisdictional wetlands, for each on-site alternative. For waterways, include both linear feet of waterway impacts and square feet of impact; for permanent wetlands impacts, include both square foot and acreage impacts; and for temporary wetland impacts, include both square foot and acreage, and temporal impact (length of time necessary to return the affected wetland to pre-project condition and function) in years.

Consideration of the general functions and value of the wetlands (reference 2.k, and natural community status (reference 2. j and per discussions during October 7, 2010 Fermi on-site meeting/site inspection).

Reasons for amending the project as changes developed from the initial proposal through the current proposal and ultimately to a project that would further minimize the currently proposed impacts, including a complete description of the criteria used to identify, evaluate, and screen the alternatives.

Provide a statement that identifies the least environmentally damaging practicable alternative (LEDPA) configuration and summarize the final selection and identify the quantity of unavoidable losses, including temporal losses. Provide a final description and depiction of the preferred alternative as described in 1.c.

Reference 2.g. is provided as an example of an on-site alternative analysis, with the final summary of the selection of the preferred alternative documented in Reference 2.h.

Provide supportive figures that are legible, succinct, specific representations of existing and proposed (as a result of regulated activities) site conditions. It is not acceptable to support the analysis by reference to a RAI response or ER section, table, figure, etc. All such information should be directly incorporated into the narrative. All supportive figures and tables should be submitted in the format described in General Comment 1. d.

e. **RAI USACE-1a:** Public interest factor baseline condition description for proposed plan

**DTE Response:** Public Interest Factor Baseline Condition Description, Chapter 3 of RAI response per Table 1-1

**USACE Response:** Incomplete. For the proposed Fermi 3 revised layout, DTE provided the baseline information on the environmental setting for the region and the entire Fermi 3 project area. However, the USACE/MDNRE regulatory decisions are based on a subset of the Fermi 3 project, specifically that portion of the project which involves USACE/MDNRE- regulated activities. In addition, the supporting figures provided/referenced in the response were, in part, not legible in 8-1/2" x 11" format and some were not legible when printed/copied in black and white format. Completion of this RAI requires:

For the proposed DTE preferred alternative, as determined by the on-site analysis, provide a succinct description of the baseline condition of each site for each proposed regulated activity (temporary and permanent) (e.g., dredge/fill discharge, structure, construction/stockpile activity, operation, etc. in water of US or adjacent wetlands) including specific relevant figures, tables, etc. and summaries of pertinent issues presented by federal and state agencies, mined from the information provided in the RAI response (including references) for the following factors: Conservation and Overall Ecology (project area overview), Wetlands, Fish & Wildlife, Historic Properties and Archaeological Resources.

Regarding navigation, provide vessel information, including the ship/barge navigation needs to access the site; maximum draft when full; length and width of ships/barge.

Identification of the specific functions and values of each individual wetland impact area. The general discussion provided in reference 1.i. is not specific enough to determine impacts and subsequent compensatory mitigation. If specific information is not already available for impacted wetland areas, USACE/MDNRE suggests the use of the Michigan Rapid Assessment

Method (MiRAM) (reference 1.k) for documenting the functions and values of impact areas (unavoidable, including temporary loss areas). For non-wetland aquatic site areas, describe the functions and values of the resource and basis for the decision. The documentation can be supported by studies/reports, but relevant support information must be summarized & included as narrative, figures, tables, etc. This discussion will serve as the basis for determining compensatory mitigation.

Work at the meteorological tower(s) sites may be regulated. Include baseline conditions for the construction, operation, and maintenance impact area(s) in waters of US or adjacent wetlands.

Section II D of Reference 1.l can be used as a guide (or format) for narrowing the discussion to the baseline information of interest to the USACE/MDNRE review. This section of the referenced document provides the groundwork for the environmental impact analysis which includes the USACE-required NEPA, public interest and 404 reviews.

It is not acceptable to support the analysis by reference to a RAI response or ER section, table, figure, etc. All such information should be directly incorporated into the narrative. All supportive figures and tables should be submitted in the format described in General Comment 1. d.

f. **RAI USACE-1b:** Aquatic resource context/importance

**DTE Response:** Coastal Wetlands, Subsection 3.6.1 of RAI response per Table 1-1

**USACE Response:** Incomplete. The discussion is too general for impact evaluation purposes. Completion of this RAI requires:

Further refinement in identification of natural community types and status (reference 1. h and per discussions during October 7, 2010 Fermi on-site meeting/site inspection) in the USACE/MDNRE-regulated work areas.

Natural community identification for each on-site alternative determined to be practicable or less damaging than the preferred alternative.

Identification and location of the same community types along western Lake Erie and current status (federal/state protected, reasonably foreseeable development, loss, fragmentation, etc.) of the resource. This could be incorporated into baseline conditions.

Provide supportive figures that are legible, succinct, specific representations of existing and proposed (as a result of regulated activities) site conditions. It is not acceptable to support the analysis by reference to a RAI response or ER section, table, figure, etc. All such information should be directly incorporated into the narrative. All supportive figures and tables should be submitted in the format described in General Comment 1. d.

**g. RAI USACE-1c:** Public Interest Impact assessment

**DTE Response:** Impact Evaluation, Chapter 4 of RAI response per Table 1-1.

**USACE Response:** Incomplete. For the proposed Fermi 3 preferred alternative (revised layout), DTE provided the impact assessment for the region and the entire Fermi 3 project area. However, the USACE/MDNRE regulatory decisions are based on a subset of the Fermi 3 project, specifically that portion of the project which involves USACE/MDNRE- regulated activities. In addition, the supporting figures provided/referenced in the response were, in part, not legible in 8-1/2" x 11" format and some were not legible when printed/copied in black and white format. Completion of this RAI, requires prior completion of the alternative site analysis and on-site analysis and identification of the LEDPA plan:

For the proposed DTE preferred plan, provide a succinct description of the short term (temporary) and long term (permanent) direct, indirect and cumulative impacts per each proposed regulated activity (temporary and permanent) (e.g., dredge/fill discharge, structure, construction/stockpile activity, operation, etc. in water of US or adjacent wetlands) including specific relevant figures, tables, etc. and summaries of pertinent issues presented by federal and state agencies, mined from the information provided in the RAI response (including references) for the following factors: Conservation and Overall Ecology (project area overview), Wetlands, Fish & Wildlife, Historic Properties and Archaeological Resources.

The impact assessment must address permanent and temporal impacts to the functions and values of the aquatic resources to be impacted. The general discussion provided is not specific enough to determine impacts and subsequent compensatory mitigation.

It is not acceptable to support the analysis by reference to a RAI response or ER section, table, figure, etc. All such information should be directly incorporated into the narrative. All supportive figures and tables should be submitted in the format described in General Comment 1. d.

**h. RAI USACE-1d.** Function and value identification/impact assessment of affected waters of US and adjacent wetlands.

**DTE Response:** Water-related and wetland impact discussion, Section 4.5 & Subsection 4.18 of RAI Response per Table 1-1

**USACE Response:** Incomplete. Note that a small regional reduction in wetland quantity is not necessarily considered a minor impact, given the cumulative loss and national "no net loss of wetlands" policy, unless the "Avoidance" test has been met and unavoidable losses are mitigated.

The regulated activities are a subset of the entire Fermi 3 project. To complete this RAI, the following is required:

See USACE responses: 1a, 1b, 1c.

**i. RAI USACE-1f.** Proposed special conditions to minimize project impacts

**DTE Response:** Minimization of Detrimental Project Effects, Subsection 2.4.2

**USACE Response:** Incomplete. In accordance with the 404(b)(1) Guidelines, because mitigation will be required for any potential adverse impacts on the aquatic environment, even when the LEDPA is selected, the LEDPA will be determined first and then appropriate and practicable steps to minimize then mitigate any impacts that the LEDPA may cause on the aquatic environment (unavoidable losses) will be determined. These are the last steps in the sequence of avoiding impacts, then minimizing impacts, then compensating for any aquatic sites that have been destroyed

The public interest determination involves more than an evaluation of impacts to the aquatic environment. Once the project has been determined to comply with the 404(b)(1) guidelines, the project must also be evaluated to ensure it is not contrary to the public interest through a review of 20 public interest factors (listed in 33 CFR 320.4(a)(1)). A project may have an adverse effect, a beneficial effect, a negligible effect or no effect on any or all these factors. The project must be evaluated in light of these factors, other relevant public interest factors, and the interest of the applicant to determine the overall balance of the project with respect to the public interest.

Per 33 CFR Section 325.4 USACE is authorized to include special conditions in a permit to insure the proposal will not be contrary to the public interest. Any special practices or conditions proposed minimize impacts would be limited to those necessary to comply with Federal law (relative to USACE authorities; see 33 CFR Parts 320.1, 320.2, and 320.3) while affording the appropriate environmental protection, including the offsetting of aquatic impacts with compensatory mitigation. The special conditions must be sufficiently justified and substantially related to impact issues raised in the public interest review process.

In response to this RAI, DTE did not adequately identify appropriate and practicable steps to minimize impacts raised in the public interest review process (3.e.-3.h.). While a conceptual mitigation plan was provided to address compensation for unavoidable wetland losses and ensure project activities are not contrary to the public interest, review of the plan at this time would be premature since the LEDPA plan was not adequately identified as previously discussed.

Completion of this RAI requires completion of 3.b. and 3.c. then, as part of the public review impact analysis (3.e.-3.h) process, identify and provide, in narrative form, specific measures proposed (relative to USACE/MDNRE regulated activities and associated sites) to minimize

impacts raised in the public interest review. This narrative can be incorporated with the impact analysis (see reference 2.1.as a guide to incorporation). At a minimum, include the following:

Measures proposed (or status of coordination) to mitigate Federal and/or state endangered/threatened species, bald eagle, historic properties/cultural resource impacts

Methods to avoid and minimize impacts to waters of the US, including:

Methods to minimize dredging and construction related turbidity;

Methods to minimize project effects (erosion, chemical releases, stormwater, etc) to water quality;

A plan to manage potential impacts to aquatic species during dredging, pipe installation, and other in- water construction, including the use of silt curtains or containment structures, dredging/work windows, etc;

Measures proposed to minimize the fishery impacts by the elimination of the south channel year-round fishery access to wetland C;

Discussion of the reduction in impact level due to implementation of the methods, measures, mitigation.

Notwithstanding the lack of a LEDPA, the USACE notes the following conceptual level deficiencies in the plan: Table in Appendix A figure illegible in 8-1/2" x 11" format ; lack of the following information: Focused function and value basis for the compensatory mitigation (see USACE response 3.h); description/summary of expected temporal function loss; description/summary of existing functions at mitigation site; comparison of permanent and temporary functional loss at impact sites to the expected gain (above existing functions) at the mitigation site(s); and identification of sustainability issues/risks related to the mitigation plan. Completion of this portion of the RAI requires revision, as necessary of the concept mitigation plan based on a completed LEDPA analysis and correction of the deficiencies. Note that USACE approval of the final plan will be in accordance with 33 CFR part 332 (reference 1.n). Provide supportive figures that are legible, succinct, specific representations of existing and proposed (as a result of regulated activities) site conditions. It is not acceptable to support the analysis by reference to a RAI response or ER section, table, figure, etc. All such information should be directly incorporated into the narrative. All supportive figures and tables should be submitted in the format described in General Comment 1. d.

- j. RAI USACE-1e.** Appropriate and practicable steps taken to minimize potential adverse impacts of the proposed discharge(s) on the aquatic ecosystem

**DTE Response:** Minimization of Discharges & Mitigation, Chapter 2 of RAI response per Table 1-1

**USACE Response:** Incomplete. See USACE response 3.i. of this document.

- k. RAI USACE-1h.** Consideration of general criteria

**DTE Response:** Consideration of General Criteria within Evaluation, Chapter 4

**USACE Response:** Incomplete. Completion of this RAI requires:

Receipt of acceptable responses to 3.b – 3.j.

An additional narrative summarizing:

The unresolved conflicts relative to resource use involving the preferred site plan

The practicability of using reasonable alternative locations and methods to accomplish the objectives of such project feature(s)

The public interest factors considered relevant and evaluated;

The project (USACE/MDNE regulatory focus) benefits and detriments, including extent and permanence (see RAI USACE-1i question summary and supporting information) associated with the relevant public interest factors;

The conditions and/or mitigation proposed and/or required to offset detrimental impacts

Other public interest factors considered but determined to have little or no impact applicable to the public interest review.

- l. RAI USACE-1i.** Impact significance levels

**DTE Response:** Impact Significant Levels, Chapter 4

**USACE Response:** Apply to future USACE RAI responses

**m. RAI USACE-1j.** Public interest/NEPA review supportive documentation

**DTE Response:** Supporting materials, throughout

**USACE Response:** Incomplete. Many of the figures provided were in excess of the information necessary, were provided as references and not included in the document and were not legible. To complete this RAI, the following is required:

Provide supporting documentation per general comment 1.d. It is not acceptable to provide supporting documentation by reference to a RAI response or ER section, table, figure, etc. All such information should be directly incorporated into the narrative. All supportive figures and tables should be submitted in the format described in General Comment 1. d.

Provide shape files in the format provided in Attachment 1 (reference 2.o) for the following:

Delineated areas (A through ZZ) as presented in the DU wetland investigation report (reference 2.i) and revised by the USACE JD (reference 2.a), and other areas on site referenced in the report but not assigned a letter designation;

Proposed mitigation area(s)

**n. RAI USACE-2d.** 404(b)(1) Analysis supportive documentation

**DTE Response:** Supporting records and drawings, throughout Appendix C

**USACE Response:** Incomplete. See USACE response 3.m.