

November 9, 2020

**ADDENDUM 2 – JOB 3**

TO: All prospective bidders on Project IM-8-029(135)088, Job No. 3 scheduled for the November 13, 2020 bid opening.

The following request for proposal revision shall be made:

Request for Proposal Revisions:

**Remove and replace Special Provision PSP 2 PERMITS AND ENVIRONMENTAL CONSIDERATIONS with the updated version PSP 2(20) PERMITS AND ENVIRONMENTAL CONSIDERATIONS.**

This addendum is to be incorporated into the bidder's proposal for this project.



PHILLIP MURDOFF, P.E. – CONSTRUCTION SERVICES ENGINEER

80: jwj

Enclosure

### PLAN ADDENDUM SUMMARY AND APPROVAL

PROJECT INFORMATION		
<b>Project:</b>	IM-8-029(135)088	<b>PCN:</b> 18988
<b>Location:</b>	I-29 Hunter Separation to North of Blanchard Interchange	
<b>Date:</b>	11/9/2020	<b>Lead Designer:</b> Sam Welch
<b>Bid Opening Date:</b>	11/13/2020	<b>JOB#:</b> 3 <b>Addendum#:</b> 2

PROPOSAL PACKAGE CHANGES
Replaced SP# PSP 2 with SP# PSP 2(20) Permits and Environmental Considerations.

PLAN SHEET CHANGES		
Section	Sheet	Description
		none

CHANGES MADE TO BID ITEMS FOR JOB					
Spec	Code	Description	Unit	Previous Quantity	Revised Quantity
		none			

### APPROVAL

Should the revisions described above be processed as a plan addendum?

  X   Yes                             No

Kirk J. Hoff /s/  
Kirk J. Hoff, P.E. – Design Engineer      or

11/9/2020  
Date

**NORTH DAKOTA DEPARTMENT OF TRANSPORTATION**

Job # 03, IM-8-029(135)088

Grading, PCC Pavement, Mill & HMA Overlay, Slope Protection  
Structure Replacement, Culverts, Fencing, Guardrail  
Rest Area Repairs

**INDEX OF PROVISIONS**

Road Restriction Permits

Hot Line Notice

Price Schedule for Miscellaneous Items dated October 1, 2014 (PS-1)

SP DBE Program - Race Neutral dated February 1, 2018

E.E.O. Affirmative Action Requirements dated March 15, 2014

Appendix A of the Title VI Assurances dated September 8, 2020

Appendix E of the Title VI Assurances dated September 8, 2020

SP Cargo Preference Act

Required Contract Provisions Federal Aid Construction Contracts  
(Form FHWA 1273 Rev. May 1, 2012)

SP Certified Payrolls, dated 9-6-17

SP DBE Project Payment Reporting, dated 10-3-17

Labor Rates from U.S. Department of Labor dated August 28, 2020 (Mod. No. 5)

On-The-Job Training Program dated October 1, 2016

SSP 1 Temporary Erosion & Sediment Best Management Practices

SSP 2 Federal Migratory Bird Treaty Act

SSP 4 Longitudinal Joint Density

SSP 5 Limitations of Operations

Revised 11-9-20

## **INDEX OF PROVISIONS**

Page 2 of 2

SSP 7 Bitumen Testing Price Adjustments

SSP 8 Federal Prohibition on Certain Technological Hardware

SSP 9 HMA Acceptance

SP 15(20) Concrete Thickness Determination

SP 18(20) Temporary Water Diversion

SP 19(20) Concrete Ride Tolerance

PSP 2(20) Permits and Environmental Considerations

SP Fuel Cost Adjustment Clause dated September 8, 2006

**NORTH DAKOTA DEPARTMENT OF TRANSPORTATION**

**SPECIAL PROVISION**

**PERMITS AND ENVIRONMENTAL CONSIDERATIONS**

**PROJECT NUMBER: IM-8-029(135)088 - PCN 18988**

This Special Provision incorporates the US Army Corps of Engineers (USACE) Section 404 Permit and the Non-Building Floodplain Permits obtained by the North Dakota Department of Transportation (NDDOT) into the bidder's proposal.

The Contractor is responsible for complying with all the terms and conditions as contained in the permit(s) attached hereto. Bidders will become familiar with all standard conditions and special conditions of the permit(s) and submit their bid for the construction of this project based on the following:

- **Section 404 Permit**

A Section 404 Permit authorizes fill within USACE jurisdictional waters. The Section 404 Permit number NWO-2017-01711-BIS authorizes 0.717 acre of permanent and 6.629 acres of temporary impacts to jurisdictional waters. The Section 404 Permit is attached.

The contractor is not responsible for Special Conditions 2, 3, 4, and 7 listed in the Section 404 Permit. NDDOT will be responsible for these conditions.

See the Section 75 sheets of the design plans for the permitted impact areas and onsite mitigation locations.

- **Floodplain Permit**

The Non-Building Floodplain Permits from Kelso Township and Traill County authorize work within the FEMA mapped 100-yr floodplains. The Floodplain Permits and the Flood Insurance Rate Maps are attached.

The Contractor is responsible for preparing and submitting for Permit(s) for any additional impacts not authorized by the attached Permit(s) obtained by the NDDOT. The Contractor is responsible for any delays associated with obtaining any additional Permit(s).

# FLOODPLAIN DEVELOPMENT PERMIT APPLICATION NON-BUILDING SITUATION

## GENERAL INFORMATION

PERMIT APPLICATION # \_\_\_\_\_ DATE: \_\_\_\_\_

Applicant/Contact: NDDOT/Steve Kessler Telephone # (701) 328-3736

Address: *North Dakota Department of Transportation  
Attn: Engineering and Environmental Services  
608 East Boulevard Avenue  
Bismarck, ND 58505-0700*

Brief project description - location of proposed development - legal description:  
*Section 33, T144N, R50W  
The project is located on I-29 from the Hunter Separation to north of the Blanchard Interchange. Work will be within the Zone A 100 yr floodplain of the South Branch Elm River located at RP 92.672, located approximately between station 4889+25 and 4896+50. Work within the floodplain will include removing and replacing bridge approach slabs, bridge deck spall repairs, repair bridge curb, bridge rail retrofit, guardrail replacement, and roadway reconstruction on either side of the bridge.*

Contractor: *Contract Not Yet Awarded*

Telephone #

Address:

Estimated Cost of project: \$ \_

## FLOODPLAIN DETERMINATION :

(Complete the appropriate information)

Project is located: 100-year floodplain? (Flood Fringe) *Yes*  
Regulatory Floodway: *No*

Map information: FIRM Date: *4/16/2009*  
FIRM Zone: *Zone A*  
BFE at Development Site: (MSL)  
Development will be elevated to: (MSL)

## DEVELOPMENT ACTIVITIES: (check all that apply and explain the activity)

  x   Fill placement (fill brought in from outside the floodplain)

- ☐ Excavation (where subgrade fill is removed from the floodplain)  
☒ Landscaping (cut and fill, fill borrow and placement)  
☐ Construction or maintenance of a dike/levee/floodwall  
☐ Removal of fill, embankment, or dikes  
☐ Watercourse alterations (river, stream, lake - channel modifications, rip-rap)  
☒ Road, street or bridge construction (new, repair or replacement, realignment)  
☐ Drainage improvements (including culvert work)  
☐ Mining (removal of gravel, rock, fill or other natural materials)  
☐ Installation of utilities (water, sewer, pipeline, gas, electric, communications)  
☐ Well drilling (water, oil, natural gas etc.)  
☐ Subdivision (new or expansion)  
☐ Other (please specify and describe)

**ADDITIONAL INFORMATION REQUIRED** (attach additional information):

-Wetlands - will the activity impact identified wetlands? *The project will have wetland impacts*

-Will the development aggravate flooding elsewhere? *Unknown*

**OTHER NOTIFICATION OR PERMITS NECESSARY:**

U.S. Army Corps of Engineers? *Yes - 404 Permit is pending*

ND State Water Commission? *No*

**ELEVATION INFORMATION:**

Attach information about the completed project elevations(s) with registered professional engineer or registered land surveyor certifications if part of the project:

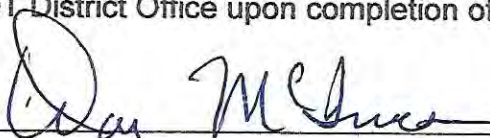
**ACTION / APPROVAL:**

The proposed development is in conformance with applicable community floodplain standards subject to the following conditions with this approval.

**PERMIT APPLICATION IS APPROVED**

(Conditioned on the description provided. As-built information/certification will be available at the NDDOT District Office upon completion of construction.)

Signature (Floodplain Administrator):



Date:

7-10-20



**DEPARTMENT OF THE ARMY**  
**CORPS OF ENGINEERS, OMAHA DISTRICT**  
**NORTH DAKOTA REGULATORY OFFICE**  
**3319 UNIVERSITY DRIVE**  
**BISMARCK, NORTH DAKOTA 58504-7565**

September 18, 2020

NWO-2017-01711-BIS

North Dakota Department of Transportation  
Attn: Mr. Matt Gangness  
608 East Boulevard Avenue  
Bismarck, North Dakota 58505

Dear Mr. Gangness:

We are responding to your September 2, 2020 request for a Department of the Army permit for the I-29 Improvements; IM-8-029(135)088, PCN 18988; IM-8-029(173)088, PCN 21855; SIM-8-029(141)088, PCN 19017; Cass & Traill Counties project. The project site is located in the Red River of the North Watershed, approximately 3 miles north of Gardner, Latitude 47.2739°, Longitude -97.0186°, Traill County, North Dakota.

Based on the information you provided to this office, the I-29 Improvements; IM-8-029(135)088, PCN 18988; IM-8-029(173)088, PCN 21855; SIM-8-029(141)088, PCN 19017; Cass & Traill Counties project involves the reconstruction of approximately 13 miles of Interstate northbound, to include grading, filling, culvert replacements, bridge replaced with a box, addition of guardrail, vertical alignment to allow a minimum 16' 6" clearance under overhead crossroads, horizontal curve super elevations updated to meet current AASHTO standards, and install temporary ramp connections and cross overs to allow for traffic control to be routed to the southbound roadway during construction. The construction equipment utilized for the project would be a combination of road graders, backhoes, belly scrapers, and bulldozers. It is anticipated that the project would begin in April 2021 and conclude by October 2021. The existing typical roadway section consists of two 12-foot driving lanes with 3-foot to 4-foot median shoulders and 10-foot outside lane shoulders with 6:1 in-slopes. The roadway reconstruction would remove a series of overlays and restore the roadway to original widths and provide a proposed typical section of two 12-foot driving lanes with 4-foot median shoulders and 10-foot outside lane shoulder. The typical section would be surfaced with concrete (driving lanes and a portion of the shoulder) and hot bituminous pavement (shoulders) with 6:1 in-slopes. Excavation within the backslopes would only occur in various locations to produce ditch-shift areas where permanent created ditch wetland impacts occur from the guardrail embankment impact. The project would also include a number of culvert replacements that would be upsized where applicable, to meet current hydraulic standards. Both bridges over the North Branch Elm River would be replaced with a box culvert spanning both I-29 north and southbound lanes. This verification is based on the plan sheets submitted with the application entitled "Job #3 NDDOT – IM-8-029(135)088" dated August 21, 2020. These activities will result in the



permanent loss of approximately 0.717-acres and temporary impacts to 6.629-acres of palustrine emergent wetlands. In addition, there would be 127-linear feet of permanent and 95-lf temporary impacts to the North Branch Elm River.

We have determined activities in waters of the U.S. associated with the project are authorized by Nationwide Permit Number (NWP) NWP 23 Approved Categorical Exclusions, found in the January 6, 2017 Federal Register (82 FR 1860), Reissuance of Nationwide Permits. Enclosed is a fact sheet that fully describes this Nationwide Permit and lists the General, Regional and Water Quality Conditions that must be adhered to for this authorization to remain valid. **Please note that deviations from the original plans and specifications of your project could require additional authorization from this office.**

This determination is applicable only to the permit program administered by the Corps of Engineers. It does not eliminate the need to obtain other Federal, state, tribal and local approvals before beginning work.

You are responsible for all work accomplished in accordance with the terms and conditions of the Nationwide Permit, **including the Regional Conditions specific to projects undertaken in North Dakota.** Information about the NWP and regional conditions are available on our website at <http://www.nwo.usace.army.mil/Missions/Regulatory-Program/North-Dakota/>. If a contractor or other authorized representative will be accomplishing the work authorized by the Nationwide Permit on your behalf, it is strongly recommended that they be provided a copy of this letter and the attached conditions so that they are aware of the limitations of the applicable Nationwide Permit. Any activity that fails to comply with all of the terms and conditions of the Nationwide Permit will be considered unauthorized and subject to appropriate enforcement action.

In addition, your work must comply with the following special conditions:

Special conditions:

1. This permit verification is based on the plan sheets submitted with the application entitled "Job #3 NDDOT – IM-8-029(135)088" dated August 21, 2020. Any deviations from these preliminary plan sheets shall be submitted to the North Dakota Regulatory Office prior to construction and approved in writing.
2. Following completion of the authorized work or at the expiration of the construction window of this permit, you shall submit as-built drawings or stamped final construction plans showing any changes that occurred during construction and a description of the work changed during construction on the project site AND/OR avoidance areas to this office for review. The drawings shall include the following:

- a. The Department of the Army Permit number

b. A plan view drawing of the location of the authorized work footprint (as shown on the permit drawings) with an overlay of the work as constructed in the same scale as the attached permit drawings. The drawing should show all "earth disturbance," wetland impacts, structures, and avoidance areas. The drawings shall contain, at a minimum, scaled cross-sections or 1-foot topographic contours of the entire site.

c. Ground photographs of the completed work. The camera positions and view-angles of the ground photographs shall be identified on a map, aerial photograph, or project drawing.

d. A description and list of all minor deviations between the work as authorized by this permit and the work as constructed. Clearly indicate on the as-built drawings or change orders the location of any deviations that have been listed.

**3.** Prior to initiation of construction activities in waters of the United States authorized by this permit/verification, you shall submit to this office pre-construction site and aerial photographs of the project site, which have been taken no more than one year or previously provided for the purposes of a delineation and jurisdictional determination, prior to initiation of construction activities in waters of the U.S. authorized by this permit/verification.

**4.** Following completion of construction activities in waters of the U.S. authorized by this permit/verification, you shall submit post-construction site ground photographs or post construction aerial photographs/satellite imagery of the project site, showing the work conducted, to this office. The post construction site and aerial photography may be obtained with the initial mitigation monitoring normally submitted by December 31 following the first growing season or at the expiration of the construction window.

The camera positions and view angles of post-construction photographs shall be identified on a map, aerial photo, or project drawing. Construction locations shall include all major project features and waters of the U.S. including avoidance and compensatory mitigation areas.

**5.** You and your authorized contractor shall allow representatives from this office to inspect the activity authorized by this verification at any time deemed necessary to ensure that work is being or has been accomplished in accordance with the terms and conditions of this verification.

**6.** You are responsible for all work authorized herein and ensuring that all contractors and workers are made aware and adhere to the terms and conditions of this verification. You shall ensure that a copy of the verification and associated drawings are available for quick reference at the project site until all construction activities in waters of the U.S. authorized by this verification are completed.

7. To compensate for the loss of 0.717 acres of palustrine emergent wetlands, you shall fully comply with the September 3, 2020, "Compensatory Wetland Mitigation Plan, I-29 Hunter Separation to North of Blanchard Interchange" submitted with the September 3, 2020 Permit Application package.

Within 30 days after completion of the authorized work, you must sign the enclosed Compliance Certification and return it to this office.

This verification will be valid until **March 18, 2022**. If the nationwide permit is modified, suspended, or revoked prior to this date, but is reissued without modification or the activity complies with any subsequent modification, this authorization remains valid until the expiration date. All of the existing nationwide permits are scheduled to be modified, reissued, or revoked prior to **March 18, 2022**. It is incumbent upon you to remain informed of changes to the nationwide permits. We will issue a public notice when the nationwide permits are reissued. Furthermore, if you commence or are under contract to commence this activity before the date that the relevant nationwide permit is modified or revoked, you will have twelve (12) months from the date of the modification or revocation to complete the activity under the present terms and conditions.

The Omaha District, North Dakota Regulatory Office is committed to providing quality and timely service to our customers. In an effort to improve customer service, please take a moment to complete our Customer Service Survey found on our website at [http://corpsmapu.usace.army.mil/cm\\_apex/f?p=regulatory\\_survey](http://corpsmapu.usace.army.mil/cm_apex/f?p=regulatory_survey). If you do not have Internet access, you may call and request a paper copy of the survey that you can complete and return to us by mail or fax.

Please refer to identification number NWO-2017-01711-BIS in any correspondence concerning this project. If you have any questions, please contact me at North Dakota Regulatory Office, 3319 University Drive, Bismarck, North Dakota 58504, by email at Patricia.L.McQueary@usace.army.mil, or telephone at (701) 255-0015.

Sincerely,

Patricia L. McQueary  
State Program Manager  
North Dakota

Enclosures

## COMPLIANCE CERTIFICATION

**Permit File Name:** NDDOT; I-29 Improvements; IM-8-029(135)088, PCN 18988; IM-8-029(173)088, PCN 21855; SIM-8-029(141)088, PCN 19017; Cass & Traill Counties

**Action ID:** NWO-2017-01711-BIS

**Nationwide Permit Number:** NWP 23 Approved Categorical Exclusions

**Permittee:** North Dakota Department of Transportation  
Attn: Mr. Matt Gangness  
608 East Boulevard Avenue  
Bismarck, North Dakota 58505

**County:** Cass and Traill County

**Date of Verification:** September 18, 2020

Within 30 days after completion of the activity authorized by this permit, sign this certification and return it to the following address:

U.S. Army Corps of Engineers, Omaha District  
North Dakota Regulatory Office  
3319 University Drive  
Bismarck, North Dakota 58504  
[CENWO-OD-RND@usace.army.mil](mailto:CENWO-OD-RND@usace.army.mil)

Please note that your permitted activity is subject to a compliance inspection by a U.S. Army Corps of Engineers representative. If you fail to comply with the terms and conditions of the permit your authorization may be suspended, modified, or revoked. If you have any questions about this certification, please contact the U.S. Army Corps of Engineers.

\* \* \* \* \*

***I hereby certify that the work authorized by the above-referenced permit, including all the required mitigation, was completed in accordance with the terms and conditions of the permit verification.***

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Permittee Signature

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Date

**FACT SHEET  
NATIONWIDE PERMIT 23  
(2017)**

**APPROVED CATEGORICAL EXCLUSIONS**

Activities undertaken, assisted, authorized, regulated, funded, or financed, in whole or in part, by another Federal agency or department where:

(a) That agency or department has determined, pursuant to the Council on Environmental Quality's implementing regulations for the National Environmental Policy Act (40 CFR part 1500 et seq.), that the activity is categorically excluded from the requirement to prepare an environmental impact statement or environmental assessment analysis, because it is included within a category of actions which neither individually nor cumulatively have a significant effect on the human environment; and

(b) The Office of the Chief of Engineers (Attn: CECW-CO) has concurred with that agency's or department's determination that the activity is categorically excluded and approved the activity for authorization under NWP 23.

The Office of the Chief of Engineers may require additional conditions, including pre-construction notification, for authorization of an agency's categorical exclusions under this NWP.

Notification: Certain categorical exclusions approved for authorization under this NWP require the permittee to submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 32). The activities that require pre-construction notification are listed in the appropriate Regulatory Guidance Letters. (Sections 10 and 404)

Note: The agency or department may submit an application for an activity believed to be categorically excluded to the Office of the Chief of Engineers (Attn: CECW-CO).

Prior to approval for authorization under this NWP of any agency's activity, the Office of the Chief of Engineers will solicit public comment. As of the date of issuance of this NWP, agencies with approved categorical exclusions are: the Bureau of Reclamation, Federal Highway Administration, and U.S. Coast Guard. Activities approved for authorization under this NWP as of the date of this notice are found in Corps Regulatory Guidance Letter 05-07, which is available at: <http://www.usace.army.mil/Portals/2/docs/civilworks/RGLS/rgl05-07.pdf>. Any future approved categorical exclusions will be announced in Regulatory Guidance Letters and posted on this same Web site.

**Nationwide Permit General Conditions**

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

permit authorization under one or more NWP, or who is currently relying on an existing or prior permit authorization under one or more NWPs, has been and is on notice that all of the provisions of 33 CFR 330.1 through 330.6 apply to every NWP authorization. Note especially 33 CFR 330.5 relating to the modification, suspension, or revocation of any NWP authorization.

### **1. Navigation.**

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

### **2. Aquatic Life Movements.**

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

### **3. Spawning Areas.**

Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

### **4. Migratory Bird Breeding Areas.**

Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

### **5. Shellfish Beds.**

No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWPs 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.

#### **6. Suitable Material.**

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

#### **7. Water Supply Intakes.**

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

#### **8. Adverse Effects from Impoundments.**

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

#### **9. Management of Water Flows.**

To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization, storm water management activities, and temporary and permanent road crossings, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

#### **10. Fills Within 100-Year Floodplains.**

The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

#### **11. Equipment.**

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

#### **12. Soil Erosion and Sediment Controls.**

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

### **13. Removal of Temporary Fills.**

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

### **14. Proper Maintenance.**

Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.

### **15. Single and Complete Project.**

The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

### **16. Wild and Scenic Rivers.**

(a) No NWP activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status.

(b) If a proposed NWP activity will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, the permittee must submit a pre-construction notification (see general condition 32). The district engineer will coordinate the PCN with the Federal agency with direct management responsibility for that river. The permittee shall not begin the NWP activity until notified by the district engineer that the Federal agency with direct management responsibility for that river has determined in writing that the proposed NWP activity will not adversely affect the Wild and Scenic River designation or study status.

(c) Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service). Information on these rivers is also available at: <http://www.rivers.gov/>.

### **17. Tribal Rights.**



No NWP activity may cause more than minimal adverse effects on tribal rights (including treaty rights), protected tribal resources, or tribal lands.

## **18. Endangered Species.**

(a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which “may affect” a listed species or critical habitat, unless ESA section 7 consultation addressing the effects of the proposed activity has been completed. Direct effects are the immediate effects on listed species and critical habitat caused by the NWP activity. Indirect effects are those effects on listed species and critical habitat that are caused by the NWP activity and are later in time, but still are reasonably certain to occur.

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. If pre- construction notification is required for the proposed activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation has not been submitted, additional ESA section 7 consultation may be necessary for the activity and the respective federal agency would be responsible for fulfilling its obligation under section 7 of the ESA.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that might be affected by the proposed activity or that utilize the designated critical habitat that might be affected by the proposed activity. The district engineer will determine whether the proposed activity “may affect” or will have “no effect” to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps’ determination within 45 days of receipt of a complete 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 activity, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification that the proposed activity will have “no effect” on listed species or critical habitat, or until ESA section 7 consultation has been completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

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

(e) Authorization of an activity by an NWP does not authorize the “take” of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with “incidental take” provisions, etc.) from the FWS or the NMFS, the Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where “take” means to harass, harm, pursue, hunt,

shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word “harm” in the definition of “take” means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

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

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

## **19. Migratory Birds and Bald and Golden Eagles.**

The permittee is responsible for ensuring their action complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting appropriate local office of the U.S. Fish and Wildlife Service to determine applicable measures to reduce impacts to migratory birds or eagles, including whether “incidental take” permits are necessary and available under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for a particular activity.

## **20. Historic Properties.**

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

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

be necessary. The respective federal agency is responsible for fulfilling its obligation to comply with section 106.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the NWP activity might have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties might have the potential to be affected by the proposed NWP activity or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of, or potential for, the presence of historic properties can be sought from the State Historic Preservation Officer, Tribal Historic Preservation Officer, or designated tribal representative, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted in the PCN and these identification efforts, the district engineer shall determine whether the proposed NWP activity has the potential to cause effects on the historic properties. Section 106 consultation is not required when the district engineer determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). Section 106 consultation is required when the district engineer determines that the activity has the potential to cause effects on historic properties. The district engineer will conduct consultation with consulting parties identified under 36 CFR 800.2(c) when he or she makes any of the following effect determinations for the purposes of section 106 of the NHPA: no historic properties affected, no adverse effect, or adverse effect. Where the non-Federal applicant has identified historic properties on which the activity might have the potential to cause effects and so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects to historic properties or that NHPA section 106 consultation has been completed.

(d) For non-federal permittees, the district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA section 106 consultation is required. If NHPA section 106 consultation is required, the district engineer will notify the non-Federal applicant that he or she cannot begin the activity until section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(e) Prospective permittees should be aware that section 110k of the NHPA (54 U.S.C. 306113) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any

views obtained from the applicant, SHPO/ THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

## **21. Discovery of Previously Unknown Remains and Artifacts.**

If you discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by this permit, you must immediately notify the district engineer of what you have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

## **22. Designated Critical Resource Waters.**

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

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWP 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, and 52 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, 38, and 54, notification is required in accordance with general condition 32, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

## **23. Mitigation.**

The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal:

(a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require pre- construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally

appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require pre- construction notification, the district engineer may determine on a case-by- case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects.

(d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation to ensure that the activity results in no more than minimal adverse environmental effects. Compensatory mitigation for losses of streams should be provided, if practicable, through stream rehabilitation, enhancement, or preservation, since streams are difficult- to-replace resources (see 33 CFR 332.3(e)(3)).

(e) Compensatory mitigation plans for NWP activities in or near streams or other open waters will normally include a requirement for the restoration or enhancement, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, the restoration or maintenance/protection of riparian areas may be the only compensatory mitigation required. Restored riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns.

Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to restore or maintain/protect a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or maintaining/protecting a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of minimization or compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(f) Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.

(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in no more than minimal adverse environmental effects. For the NWPs, the preferred mechanism for providing compensatory mitigation is mitigation bank credits or in-lieu fee program credits (see 33 CFR 332.3(b)(2) and (3)). However, if an appropriate number and type of mitigation bank or in-lieu credits are not available at the time the PCN is submitted to the district engineer, the district engineer may approve the use of permittee-responsible mitigation.

(2) The amount of compensatory mitigation required by the district engineer must be sufficient to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see 33 CFR 330.1(e)(3)). (See also 33 CFR 332.3(f)).

(3) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, aquatic resource restoration should be the first compensatory mitigation option considered for permittee-responsible mitigation.

(4) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) through (14) must be approved by the district engineer before the permittee begins work in waters of the

United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)).

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

(6) Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan (see 33 CFR 332.4(c)(1)(ii)).

(g) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any NWP activity resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that an NWP activity already meeting the established acreage limits also satisfies the no more than minimal impact requirement for the NWPs.

(h) Permittees may propose the use of mitigation banks, in-lieu fee programs, or permittee-responsible mitigation. When developing a compensatory mitigation proposal, the permittee must consider appropriate and practicable options consistent with the framework at 33 CFR 332.3(b). For activities resulting in the loss of marine or estuarine resources, permittee-responsible mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.

(i) Where certain functions and services of waters of the United States are permanently adversely affected by a regulated activity, such as discharges of dredged or fill material into waters of the United States that will convert a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse environmental effects of the activity to the no more than minimal level.

## **24. Safety of Impoundment Structures.**

To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with established state dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

## **25. Water Quality.**

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

result in more than minimal degradation of water quality. *Specifically for North Dakota, the North Dakota Department of Health has denied water quality certification for all projects proposed to affect Class 1 and 1A rivers and streams, and classified lakes in Appendix I and II of the standards, and individual certification must be obtained. For projects proposed to affect any other waters, the North Dakota Department of Health has issued water quality certification provided the attached Construction and Environmental Disturbance Requirements are followed. The Standards may be found at <http://www.legis.nd.gov/information/acdata/pdf/33-16-02.1.pdf?2016031115632>*

*On Tribal Lands, Water Quality Certification is denied for all Nationwide Permits. Applicants must work with EPA to obtain individual water quality certification. Contact: USEPA, Region 8, 401 Certification Program – 8WP-AAP, 1595 Wynkoop Street, Denver, Colorado 80202-1129. (303-312-6909)*

## **26. Coastal Zone Management.**

In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). The district engineer or a State may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

## **27. Regional and Case-By-Case Conditions.**

The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

## **28. Use of Multiple Nationwide Permits.**

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

## **29. Transfer of Nationwide Permit Verifications.**

If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature:

When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

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

### **30. Compliance Certification.**

Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and implementation of any required compensatory mitigation. The success of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include:

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

### **31. Activities Affecting Structures or Works Built by the United States.**

If an NWP activity also requires permission from the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers (USACE) federally authorized Civil Works project (a “USACE project”), the prospective permittee must submit a pre- construction notification. See paragraph (b)(10) of general condition 32. An activity that requires section 408 permission is not authorized by NWP until the appropriate Corps office issues the section 408 permission to alter, occupy, or use the USACE project, and the district engineer issues a written NWP verification.

### **32. Pre-Construction Notification.**

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



receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:

(1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or

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

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

(1) Name, address and telephone numbers of the prospective permittee;

(2) Location of the proposed activity;

(3) Identify the specific NWP or NWP(s) the prospective permittee wants to use to authorize the proposed activity;

(4) A description of the proposed activity; the activity's purpose; direct and indirect adverse environmental effects the activity would cause, including the anticipated amount of loss of wetlands, other special aquatic sites, and other waters expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; a description of any proposed mitigation measures intended to reduce the adverse environmental effects caused by the proposed activity; and any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings for linear projects that require Department of the Army authorization but do not require pre-construction notification. The description of the proposed activity and any proposed mitigation measures should be sufficiently detailed to allow the district engineer to determine that the adverse environmental effects of the activity will be no

more than minimal and to determine the need for compensatory mitigation or other mitigation measures. For single and complete linear projects, the PCN must include the quantity of anticipated losses of wetlands, other special aquatic sites, and other waters for each single and complete crossing of those wetlands, other special aquatic sites, and other waters. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the activity and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);

(5) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial, intermittent, and ephemeral streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many wetlands, other special aquatic sites, and other waters. Furthermore, the 45 day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate;

(6) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse environmental effects are no more than minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(7) For non-Federal permittees, if any listed species or designated critical habitat might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat, the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed activity or utilize the designated critical habitat that might be affected by the proposed activity. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with the Endangered Species Act.

(8) For non-Federal permittees, if the NWP activity might have the potential to cause effects to a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, the PCN must state which historic property might have the potential to be affected by the proposed activity or include a vicinity map indicating the location of the historic property. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with section 106 of the National Historic Preservation Act;

(9) For an activity that will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, the PCN must identify the Wild and Scenic River or the “study river” (see general condition 16); and

(10) For an activity that requires permission from the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers federally authorized civil works project, the pre-construction notification must include a statement confirming that the project proponent has submitted a written request for section 408 permission from the Corps office having jurisdiction over that USACE project.

(c) Form of Pre-Construction Notification: The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it

is an NWP PCN and must include all of the applicable information required in paragraphs (b)(1) through (10) of this general condition. A letter containing the required information may also be used. Applicants may provide electronic files of PCNs and supporting materials if the district engineer has established tools and procedures for electronic submittals.

(d) Agency Coordination:

(1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the activity's adverse environmental effects so that they are no more than minimal.

(2) Agency coordination is required for: (i) All NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States; (ii) NWP 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 activities that require pre-construction notification and will result in the loss of greater than 300 linear feet of stream bed; (iii) NWP 13 activities in excess of 500 linear feet, fills greater than one cubic yard per running foot, or involve discharges of dredged or fill material into special aquatic sites; and (iv) NWP 54 activities in excess of 500 linear feet, or that extend into the waterbody more than 30 feet from the mean low water line in tidal waters or the ordinary high water mark in the Great Lakes.

(3) When agency coordination is required, the district engineer will immediately provide (e.g., via email, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (FWS, state natural resource or water quality agency, EPA, and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to notify the district engineer via telephone, facsimile transmission, or email that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse environmental effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure the net adverse environmental effects of the proposed activity are no more than minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

(4) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

5) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of pre-construction notifications to expedite agency coordination.

**Further Information**

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

**2017 NATIONWIDE PERMITS  
REGIONAL CONDITIONS  
OMAHA DISTRICT  
STATE OF NORTH DAKOTA**

The following Nationwide Permit Regional Conditions will be used in the State of North Dakota. Regional conditions are placed on Nationwide Permits to ensure projects result in no more than minimal adverse impacts to the aquatic environment and to address local resource concerns.

**1. Wetlands Classified as Peatlands – Revoked for use**

All Nationwide Permits, with the exception of 3, 5, 20, 32, 38 and 45, are revoked for use in peatlands. Peatlands are permanently or seasonally saturated and inundated wetlands where conditions inhibit organic matter decomposition and allow for the accumulation of peat. Under cool, anaerobic, and acidic conditions, the rate of organic matter accumulation exceeds organic decay.

**2. Wetlands Classified as Peatlands – Preconstruction Notification Requirement**

For Nationwide Permits 3, 5, 20, 32, 38 and 45 permittees must notify the Corps in accordance with General Condition 32 (Pre-Construction Notification) prior to initiating any regulated activity impacting peatlands.

**3. Waters Adjacent to Natural Springs – Preconstruction Notification Requirement**

For all Nationwide Permits permittees must notify the Corps in accordance with General Condition No. 32 (Pre-Construction Notification) for regulated activities located within 100 feet of the water source in natural spring areas. For purposes of this condition, a spring source is defined as any location where there is flow emanating from a distinct point at any time during the growing season. Springs do not include seeps and other groundwater discharge areas where there is no distinct point source.

**4. Missouri River, including Lake Sakakawea and Lake Oahe – Pre-construction Notification Requirement**

For all Nationwide Permits permittees must notify the Corps in accordance with General Condition No. 32 (Pre-Construction Notification) prior to initiating any regulated activity occurring in or under the Missouri River, including Lake Sakakawea and Lake Oahe. In addition, any activity occurring in an off channel area (marinas, bays, etc.) of any of these waterbodies, a preconstruction notification is required.

**5. Spawning Areas**

Spawning restrictions and important fish habitat areas, if applicable, can be accessed on the North Dakota Game & Fish Department's website at:

<http://gf.nd.gov/gnf/conservation/docs/spawning-restriction-exclusions.pdf>

No regulated activity within the Red River of the North shall occur between 15 April and 1 July. Spawning season restrictions do not apply to projects involving dredging or other discharges of less than 25 cubic yards of material in any jurisdictional water.

#### **6. Counter-Sinking Culverts and Associated Riprap – All Nationwide Permits**

In streams with intermittent or perennial flow and a stable stream bed, culvert stream crossings shall be installed with the culvert invert set below the natural streambed according to the table below. This regional condition does not apply in instances where the lowering of the culvert invert would allow a headcut to migrate upstream of the project into an unaffected stream reach or result in lowering the elevation of the stream reach.

Riprap inlet and outlet protection shall be placed to match the height of the culvert invert.

Culvert Type	Drainage Area	Minimum Distance Culvert Invert Shall Be Lowered Below Stream Flow Line
All culvert types	≤ 100 acres	Not required
Pipe diameter <8.0 ft	100 to 640 acres	0.5 ft
Pipe diameter <8.0 ft	>640 acres	1.0 ft
Pipe diameter ≥ 8.0 ft	All drainage sizes	1.0 ft
Box culvert	All drainage sizes	1.0 ft

### **REGIONAL CONDITIONS APPLICABLE TO SPECIFIC NATIONWIDE PERMITS**

#### **Nationwide Permit 7 – Outfall Structures and Associated Intake Structures and Nationwide Permit 12 – Utility Line Activities.**

**Intake Structures** – Intake screens with a maximum mesh opening of ¼-inch must be provided, inspected annually, and maintained. Wire, Johnson-like, screens must have a maximum distance between wires of 1/8-inch. Water velocity at the intake screen shall not exceed ½-foot per second.

Pumping plant sound levels will not exceed 75 dB at 50 feet.

Intakes located in Lake Sakakawea, above river mile 1519, and on the Yellowstone River, are subject to the following conditions:

- The intakes shall be floating.
- At the beginning of the pumping season, the intake shall be placed over water with a minimum depth of 20 feet.
- If the 20-foot depth is not attainable, then the intake shall be located over the deepest water available.

- If the water depth falls below six feet, the intake shall be moved to deeper water or the maximum intake velocity shall be limited to ¼ foot per second.

Intakes located in Lake Sakakawea, below river mile 1519, and the Missouri River below Garrison Dam are subject to the following conditions:

- The intakes shall be submerged.
- At the beginning of the pumping season, the intake will be placed at least 20 vertical feet below the existing water level.
- The intake shall be elevated 2 to 4 feet off the bottom of the river or reservoir bed.
- If the 20-foot depth is not attainable, then the intake velocity shall be limited to ¼-foot per second with intake placed at the maximum practicable attainable depth.

Intakes and associated utility lines that are proposed to cross sandbars in areas designated as piping plover critical habitat are prohibited.

### **Utility Lines**

- Any temporary open trench associated with utility lines are to be closed within 30 days of excavation. This time limit may be extended by notifying the North Dakota Regulatory Office and receiving a written response that the extension is acceptable.

### **Nationwide Permit 11 – Temporary Recreational Structures – Boat Docks**

To ensure that the work or structure shall not cause unreasonable obstruction to the free navigation of the navigable waters, the following conditions are required:

- No boat dock shall be located on a sandbar or barren sand feature. The farthest point riverward of a dock shall not exceed a total length of 30 feet from the ordinary high watermark. Information Note: Issuance of this permit does not supersede authorization required by the North Dakota State Engineer's Office.
- Any boat dock shall be anchored to the top of the high bank.
- Any boat dock located within an excavated bay or marina that is off the main river channel may be anchored to the bay or marina bottom with spuds.

Section 10 Waters located in the State of North Dakota are:

Bois de Sioux River  
James River  
Missouri River  
Red River of the North  
Upper Des Lacs Lake  
Yellowstone River

### **Nationwide Permit 13 – Bank Stabilization**

Permittees must notify the Corps in accordance with General Condition No. 32 (Pre-Construction Notification) prior to initiating any regulated activity. The notification must also include photo evidence of erosion in the area. Prohibited materials found at

<http://www.nwo.usace.army.mil/Media/FactSheets/FactSheetArticleView/tabid/2034/Article/487696/prohibited-restricted-materials.aspx> cannot be used in waters of the United States.

### **Nationwide Permit 23 – Approved Categorical Exclusions**

Permittees must notify the Corps in accordance with General Condition No. 32 (Pre-Construction Notification) prior to initiating any regulated activity. In addition to information required by General Condition 32 (Pre-Construction Notification), permittees must identify the approved categorical exclusion that applies and provide documentation that the project fits the categorical exclusion.

## **GENERAL CONDITIONS (REGIONAL ADDITIONS)**

### **General Condition 32 Notification– Pre-construction Notification**

Prospective permittees should be aware that a field aquatic resources delineation may be required for applications where notification is required in accordance with General Condition 32 (Pre-Construction Notification) and/or mitigation may be required. Specific guidelines outlining the aquatic resources delineation process in the State of North Dakota and the Corps 1987 Wetland Delineation Manual and applicable Regional supplements to the Manual can be accessed on the North Dakota Regulatory Office's website at:

<http://www.nwo.usace.army.mil/Missions/RegulatoryProgram/NorthDakota.aspx>





**NORTH DAKOTA**  
DEPARTMENT of HEALTH

ENVIRONMENTAL HEALTH SECTION  
Gold Seal Center, 918 E. Divide Ave.  
Bismarck, ND 58501-1947  
701.328.5200 (fax)  
www.ndhealth.gov



### **Construction and Environmental Disturbance Requirements**

These represent the minimum requirements of the North Dakota Department of Health. They ensure that minimal environmental degradation occurs as a result of construction or related work which has the potential to affect the waters of the State of North Dakota. All projects will be designed and implemented to restrict the losses or disturbances of soil, vegetative cover, and pollutants (chemical or biological) from a site.

#### **Soils**

Prevent the erosion of exposed soil surfaces and trapping sediments being transported. Examples include, but are not restricted to, sediment dams or berms, diversion dikes, hay bales as erosion checks, riprap, mesh or burlap blankets to hold soil during construction, and immediately establishing vegetative cover on disturbed areas after construction is completed. Fragile and sensitive areas such as wetlands, riparian zones, delicate flora, or land resources will be protected against compaction, vegetation loss, and unnecessary damage.

#### **Surface Waters**

All construction which directly or indirectly impacts aquatic systems will be managed to minimize impacts. All attempts will be made to prevent the contamination of water at construction sites from fuel spillage, lubricants, and chemicals, by following safe storage and handling procedures. Stream bank and stream bed disturbances will be controlled to minimize and/or prevent silt movement, nutrient upsurges, plant dislocation, and any physical, chemical, or biological disruption. The use of pesticides or herbicides in or near these systems is forbidden without approval from this Department.

#### **Fill Material**

Any fill material placed below the high water mark must be free of top soils, decomposable materials, and persistent synthetic organic compounds (in toxic concentrations). This includes, but is not limited to, asphalt, tires, treated lumber, and construction debris. The Department may require testing of fill materials. All temporary fills must be removed. Debris and solid wastes will be removed from the site and the impacted areas restored as nearly as possible to the original condition.

# National Flood Hazard Layer FIRMette



## Legend

SEE FIS REPORT FOR DETAILED LEGEND AND INDEX MAP FOR FIRM PANEL LAYOUT

SPECIAL FLOOD HAZARD AREAS		Without Base Flood Elevation (BFE) Zone A, V, A99
		With BFE or Depth Zone AE, AO, AH, VE, AR
		Regulatory Floodway
OTHER AREAS OF FLOOD HAZARD		0.2% Annual Chance Flood Hazard, Areas of 1% annual chance flood with average depth less than one foot or with drainage areas of less than one square mile Zone X
		Future Conditions 1% Annual Chance Flood Hazard Zone X
		Area with Reduced Flood Risk due to Levee. See Notes. Zone X
		Area with Flood Risk due to Levee Zone D
OTHER AREAS		NO SCREEN Area of Minimal Flood Hazard Zone X
		Effective LOMRs
GENERAL STRUCTURES		Area of Undetermined Flood Hazard Zone D
		Channel, Culvert, or Storm Sewer
		Levee, Dike, or Floodwall
OTHER FEATURES		20.2 Cross Sections with 1% Annual Chance Water Surface Elevation
		17.5 Coastal Transect
		Base Flood Elevation Line (BFE)
		Limit of Study
		Jurisdiction Boundary
		Coastal Transect Baseline
		Profile Baseline
MAP PANELS		Digital Data Available
		No Digital Data Available
		Unmapped



The pin displayed on the map is an approximate point selected by the user and does not represent an authoritative property location.

This map complies with FEMA's standards for the use of digital flood maps if it is not void as described below. The basemap shown complies with FEMA's basemap accuracy standards

The flood hazard information is derived directly from the authoritative NFHL web services provided by FEMA. This map was exported on **7/2/2018 at 11:44:53 AM** and does not reflect changes or amendments subsequent to this date and time. The NFHL and effective information may change or become superseded by new data over time.

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47°14'56.29"N



USGS The National Map: Orthoimagery. Data refreshed October 2017.

0 250 500 1,000 1,500 2,000 Feet 1:6,000

47°14'31.87"N

97°03'32.58"W



# FLOODPLAIN DEVELOPMENT PERMIT APPLICATION NON-BUILDING SITUATION

## GENERAL INFORMATION

PERMIT APPLICATION #

4

DATE:

Aug 13th 2020

Applicant/Contact: NDDOT/Steve Kessler

Telephone # (701) 328-3736

Address: North Dakota Department of Transportation  
Attn: Engineering and Environmental Services  
608 East Boulevard Avenue  
Bismarck, ND 58505-0700

Brief project description - location of proposed development - legal description:

Section 33, T145N, R50W

The project is located on I-29 northbound from the Hunter Separation to north of the Blanchard Interchange. Work will be within the Zone A 100 yr floodplain of the North Branch Elm River located at RP 98.519, located approximately between station 5201+00 and 5205+00. Work within the 100yr floodplain will include, roadway reconstruction, removing bridge and replacing it with a quad 16'x12'x98' reinforced concrete box culver, and riprap placement. This work will be done during the 2021 construction season. It is anticipated that a separate project will be prepared to remove the southbound bridge and replaced it with a box culvert in construction year 2022 a floodplain permit application will be submitted for that work after the plans have been prepared.

Contractor: Contract Not Yet Awarded

Telephone #

Address:

Estimated Cost of project: \$   

## FLOODPLAIN DETERMINATION :

(Complete the appropriate information)

Project is located: 100-year floodplain? (Flood Fringe) Yes  
Regulatory Floodway: No

Map information: FIRM Date: 4/16/2009  
FIRM Zone: Zone A  
BFE at Development Site: (MSL)  
Development will be elevated to: (MSL)

**DEVELOPMENT ACTIVITIES:** (check all that apply and explain the activity)

- ☒ Fill placement (fill brought in from outside the floodplain)
- ☐ Excavation (where subgrade fill is removed from the floodplain)
- ☒ Landscaping (cut and fill, fill borrow and placement)
- ☐ Construction or maintenance of a dike/levee/floodwall
- ☐ Removal of fill, embankment, or dikes
- ☒ Watercourse alterations (river, stream, lake - channel modifications, rip-rap)
- ☒ Road, street or bridge construction (new, repair or replacement, realignment)
- ☐ Drainage improvements (including culvert work)
- ☐ Mining (removal of gravel, rock, fill or other natural materials)
- ☐ Installation of utilities (water, sewer, pipeline, gas, electric, communications)
- ☐ Well drilling (water, oil, natural gas etc.)
- ☐ Subdivision (new or expansion)
- ☐ Other (please specify and describe)

**ADDITIONAL INFORMATION REQUIRED** (attach additional information):

- Wetlands - will the activity impact identified wetlands? *The project will have wetland impacts*
- Will the development aggravate flooding elsewhere? *Unknown*

**OTHER NOTIFICATION OR PERMITS NECESSARY:**

- U.S. Army Corps of Engineers? *Yes - 404 Permit is pending*
- ND State Water Commission? *No*

**ELEVATION INFORMATION:**

Attach information about the completed project elevations(s) with registered professional engineer or registered land surveyor certifications if part of the project:

**ACTION / APPROVAL:**

The proposed development is in conformance with applicable community floodplain standards subject to the following conditions with this approval.

**PERMIT APPLICATION IS APPROVED**

(Conditioned on the description provided. As-built information/certification will be available at the NDDOT District Office upon completion of construction.)

Signature (Floodplain  
Administrator):

Date:

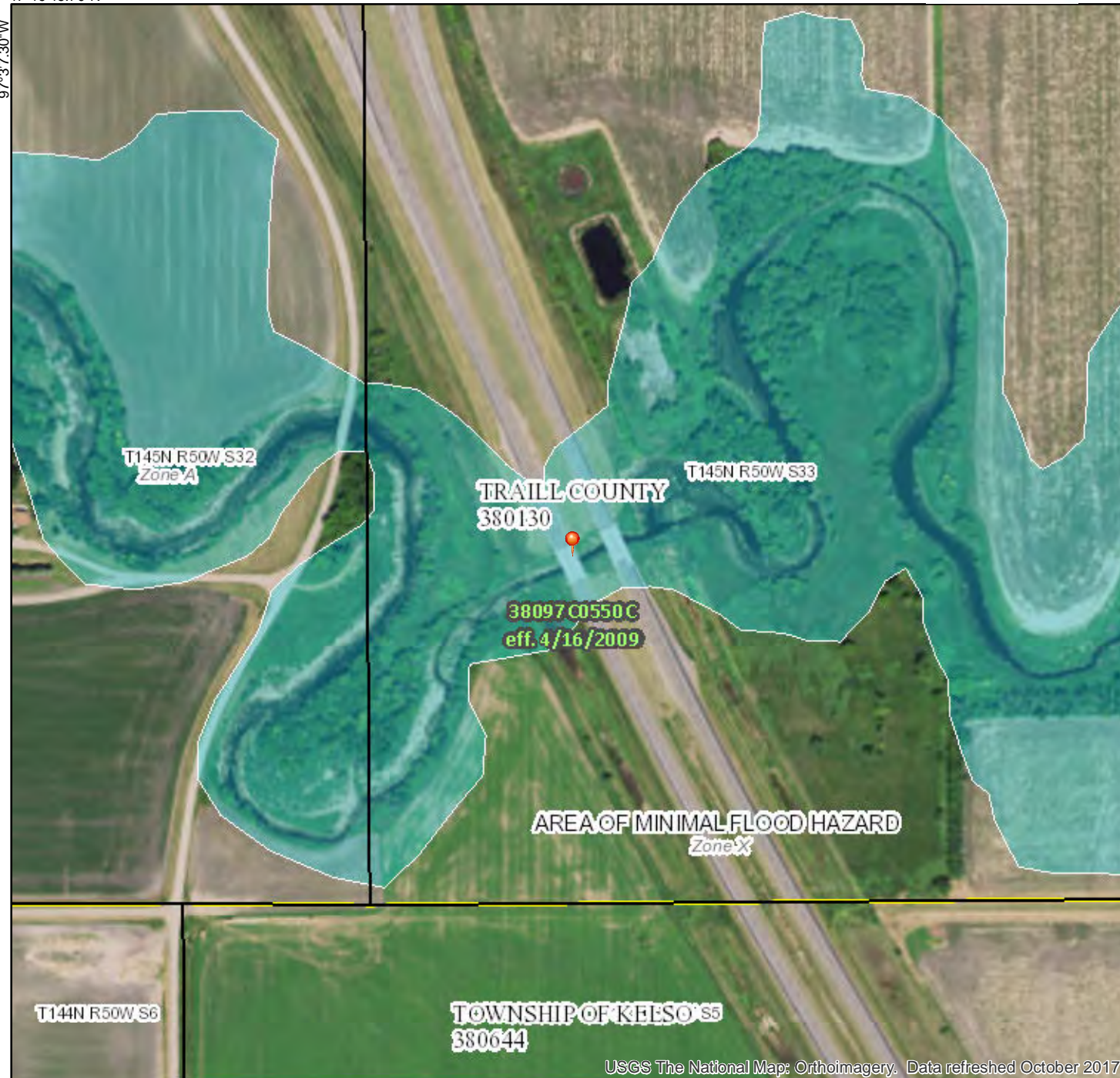
*John W. [Signature]* *Trail County*  
*Aug 13 - 2020*



# National Flood Hazard Layer FIRMette



47°19'46.70"N



USGS The National Map: Orthoimagery. Data refreshed October 2017.  
 0 250 500 1,000 1,500 2,000 Feet 1:6,000

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97°29'29.84"W