

**Black Arroyo Bridge Scour Protection Project**  
**SSCAFCA IFB #: 2019-01**

**ADDENDUM #1 (February 14, 2019)**

Addendum #1 answers questions submitted by perspective bidders and provides clarifications for the Black Arroyo Bridge Scour Protection Project.

Written questions submitted:

*NOTE: Question text below is exactly as submitted by perspective bidder*

PERSPECTIVE BIDDER #1

**Question:** Is NM GF 4 license required for this project?

*Response: A GF-4 or GF-98 license would be appropriate for performing work on this project.*

PERSPECTIVE BIDDER #2

**Question:** The referenced project. accordance to the plans cross sections, it looks 99% of the material is to be fill. Can we use all this borrow from within Arroyo?

*Response: Borrow materials may be obtained from the bottom of the arroyo. It will not be permitted to use soils from the arroyo banks (aside from areas where construction activities are identified in the bidding documents).*

Clarification on Bid Form:

Line Item 2 will be paid per the NMDOT Standard Specifications for Highway and Bridge Construction Section 203.4.3 specific to measurement and payment of unclassified excavation. Contractor must have cross-sections for before and after, and a volume summary report is required for quantities. No additional compensation will be made for the required surveys. Please see attached NMDOT Section 203.

Conditions of Nationwide Permit #13 from the Corps of Engineers:

Please see attached

**Please remember to acknowledge this addendum on your bidding form.**

**END OF ADDENDUM**

**203.1 DESCRIPTION**

This Work consists of performing excavation, providing borrow, constructing Embankment, hauling, disposing, placing, and compacting Materials.

**203.2 MATERIALS**

The Department will provide geotechnical investigation and pavement investigation results (when available) in the Contract documents. Use the results for information only.

**203.2.1 Material Classifications**

**203.2.1.1 Rock Excavation**

Rock excavation is material that meets one (1) of the following field test criteria:

1. **Ripping Test.** Material that can not be broken down by one pass with a single tooth ripper mounted on a crawler-type tractor in low gear with a minimum net flywheel power rating of 255 hp;
2. **Seismic Test.** Material that has a seismic velocity greater than 6,000 ft/s. Submit the qualifications of the person performing and interpreting the seismic testing for Project Manager Approval at least 14 Days before testing. Perform the Ripping Test to resolve differences in material classification if seismic velocities fall below 6,000 ft/s;
3. **Handling Test.** Rock with a volume greater than 1 yd<sup>3</sup> that cannot be readily broken down with excavation Equipment.

**203.2.1.2 Unclassified Excavation**

Unclassified excavation is material other than rock excavation.

**203.2.1.3 Borrow**

Material from Contractor-provided sources required for Embankment, subexcavation replacement or other Work approved by the Department.

**203.2.1.4 Subexcavation**

Subexcavation is existing material that is unsuitable. Unsuitable material is that with an R-value less than the Contract R-value, or if Deleterious Material is present. Subexcavation shall consist of excavating unsuitable material below established Profile Grade or typical cross-section shown on the Plans, or as designated by the Project Manager. Voids created by subexcavation shall be backfilled with approved material meeting the R-value requirements shown in the Contract.

**203.2.1.5 Unstable Subgrade Stabilization**

Unstable Subgrade is defined as Subgrade that is soft, pumping, and/or displaces with applied loading when encountered in non-borrow sections such as cuts or existing grades, due to no fault or neglect of the Contractor.

**203.3 CONSTRUCTION REQUIREMENTS**

**203.3.1 General**

Finish excavation and Embankment for the Roadway, intersections, and entrances to reasonably smooth and uniform surfaces. Do not remove Materials from the Project limits without the approval of the Project Manager. Ensure the top 2 ft of the finished Subgrade contains material with the design R-value. Preserve the Materials below and beyond the lines

and grades while conducting excavation operations. Before beginning excavation, grading, and Embankment operations, perform the necessary clearing and grubbing in accordance with Section 201, "Clearing and Grubbing." Notify the Project Manager before opening excavation or borrow areas. Take cross section elevations of the ground surface before opening excavation or borrow areas.

Terminate operations in the immediate area of environmental or Cultural Resources not listed in the Contract, until the Department reviews and completes appropriate mitigation actions in accordance with Section 107.12, "Environmental and Cultural Resource Discoveries."

Place excess or unsuitable excavated material (including rock and boulders unsuitable for Embankments) in the toe of any fills, or use to flatten slopes of nearby fills. Place at least 2 ft of cover soil over the rocks and boulders. Dispose of excess or unsuitable material in accordance with environmental requirements and as approved by the Project Manager.

### **203.3.2 Excavation**

Within cut sections, remove excavated material from the limits of the cut section to the Subgrade elevation for the width of the Roadbed. Finish Roadbed cut sections to a smooth and uniform surface. Remove unsuitable or unstable material below finished Subgrade. Take cross-sectional measurements after the removal of unsuitable and unstable material.

### **203.3.3 Rock Cuts**

Perform proper drilling and blasting operations in accordance with the specified practices. When required, perform controlled blasting of rock excavation to produce a clean face on the excavated cut. Ensure subsequent blasting and excavation operations do not affect previously excavated faces. Do not excavate more than six (6) inches below the specified Subgrade elevation for Roadbed cuts in rock, unless directed otherwise. Do not leave undrained pockets on the Roadbed surface. Place and compact Base Course on the rock cut foundation in accordance with Section 304, "Base Course."

#### **203.3.3.1 Blasting Requirements**

Use controlled blasting to establish a specified backslope with minimal blast damage, and production blasting to facilitate excavation. Before the start of blasting, notify adjacent property owners and occupants.

##### **203.3.3.1.1 Definitions**

**Blasting Operations.** Activities related to blasting including, but not limited to the following:

1. Collaring and drilling blast holes;
2. Preparing, fixing, loading, and firing explosive charges;
3. Assessing the blast after detonation; and
4. Handling misfires.

**Buffer Row.** The first row of production blast holes immediately adjacent and drilled in a plane parallel to the controlled blast line. The explosive load in the buffer row should be reduced from standard production loads to minimize damage to the backslope of the final excavation.

**Controlled Blasting.** The controlled use of explosives and blasting accessories in carefully spaced and aligned blast holes to provide a free surface or shear plane in the rock along the specified backslope, and to limit fly rock, permanent ground displacement, air concussion, and overbreak. Controlled blasting methods include pre-splitting and cushion blasting.

**Cushion Blasting (Trim Blasting).** The simultaneous detonation of one (1) line of blast

holes along a specified excavation backslope after the main excavation is complete. This method is performed to trim the excavation to the final backslope.

**Final Line (Controlled Blast Line).** Refers to the row of controlled blast holes drilled in the plane of a specified excavation backslope. The controlled blast holes drilled in this plane constitute the basis for payment under the Controlled Blasting pay item. The Department considers the blast holes drilled in front of the final line blast holes to be production blast holes, which are Incidental to the Rock Excavation pay item.

**Pre-Splitting.** The simultaneous detonation of one (1) line of blast holes drilled along a specified excavation backslope before production blast holes are fired.

**Production Blasting.** Fragmentation blasting in the main excavation area.

#### **203.3.3.1.2 Submittals**

##### **203.3.3.1.2.1 Blaster in Charge**

Do not begin drilling or blasting Work until the Project Manager approves of the Blaster in Charge. Submit the name and qualifications of the proposed Blaster in Charge to the Project Manager for approval at least 30 Days before the delivery of explosive material to the Project. Provide the following information:

1. Proof of a license by the applicable State and/or local regulatory agencies to possess, transport, and use explosives;
2. A list of, and references, for at least three (3) blasting Projects, of similar complexity, successfully completed within the previous five (5) years.

The Blaster in Charge must be on site during blasting operations.

##### **203.3.3.1.2.2 Blasting Plans**

Submit a General Blasting Plan to the Project Manager for each cut that requires blasting, at least two (2) weeks before the start of drilling and blasting operations on a specified cut. Provide the following information in the General Blasting Plan:

1. Description of the proposed blasting operation;
2. Preliminary design criteria for production and controlled blasting, including blast hole depths and patterns; and
3. Details regarding the proposed explosives and blasting accessories;

Submit a Detailed Blasting Plan at least 48 h before an individual blast. Provide the following information in the Detailed Blasting Plan:

4. Station limits of the proposed location of the blast, including the bench elevation, if applicable;
5. Date and time the blasting will occur;
6. Required removal of overburden, if applicable;
7. Plan and cross section diagrams of proposed drill pattern for controlled and production blast holes, including buffer rows, free face, burden, blast hole spacing, blast hole diameters, blast hole angles, lift height, and subdrill depth. Draw these Plans and cross sections to scale;
8. Loading diagram showing the type and amount of explosives, primers, and initiators; and the location, depth, and type of stemming;
9. Initiation sequence of controlled and production blast holes, including delay times and the delay system;
10. Manufacturer's data sheets for the explosives, primers, and initiators to be used.

Submit the blasting Plans to the Project Manager for review and approval. The Project Manager will review and provide comments to the Contractor. Submit revisions to the blasting Plans for final review and approval. Do not proceed with drilling and blasting operations

related to a General Blasting Plan or loading of blast holes associated with a Detailed Blasting Plan without written approval.

Cease blasting operations and submit revised blasting Plans if the Department determines that the blasting operations under the employed methods are causing property damage in and beyond the Right of Way.

#### **203.3.3.1.2.3 Blasting Records**

Prepare and submit to the Department a Blasting Record for each blast, on the Day of the blast. Provide the following information in a Blasting Record:

1. Actual dimensions of the shot, including blast hole diameters and depths, burden, spacing, subdrilling depths, stemming, powder loads, powder factors, and timing;
2. A drawing or sketch showing the direction of the face and the physical shot layout;
3. The location of the blast in relation to Project stationing and elevation;
4. The date and time of loading and detonation;
5. The name and signature of the person responsible for loading and firing;
6. Comments by Blaster in Charge regarding misfires, fly rock occurrences, unusual results or effects; and damage to existing facilities, adjacent property, or completed Work;
7. Vibration and blast monitoring results; and
8. Any complaints received due to the blasting.

#### **203.3.3.1.3 Explosives**

Transport, store, handle, and use explosives in accordance with applicable federal, State, and local laws and regulations. Purchase explosives and accessory devices from industry recognized Suppliers and manufactures. Use explosives and accessory devices in accordance with manufacturer instructions. Do not use expired products.

The CFR specifies responsibility for the following federal agencies regarding the administration of regulations involving explosive Materials:

1. Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). Storage and accountability of record keeping and security in accordance with 27 CFR part 555;
2. OSHA. Transportation, worker safety, and health in accordance with title 29 CFR; storage and safe blasting practices in handling and use in accordance with 29 CFR part 1926.900 et seq;
3. Federal Department of Transportation (USDOT). Transportation and public safety, 49 CFR.

The fire marshal, sheriff, or other local officials, may have additional regulations for explosive Materials.

#### **203.3.3.1.4 Safety**

Follow safe practices, including the following:

1. Federal, State, and local regulations pertaining to the transportation, storage, and use of explosives must be strictly followed;
2. When required, the Blaster in Charge must obtain a blasting permit from the local regulatory agency before blasting;
3. Only persons authorized and qualified based on training and experience will handle and use explosives;
4. No person will smoke; carry matches or other flame producing devices; or carry firearms or loaded cartridges while in or near a motor vehicle that is transporting explosives;
5. Keep track of explosives at all times. Explosives must be stored and locked in an approved magazine facility in accordance with the applicable provisions of the

- Department, ATF, and OSHA until used in blasting;
6. Post appropriate signs in the required areas and vehicles in accordance with federal regulations;
  7. Safely station the necessary guards or flag persons on Highways during blasting to control Highway traffic;
  8. Before starting Work in the cut, observe the entire blast area for at least five (5) minutes after each blast. Remove potentially dangerous rocks or other material located beyond the excavation limits. Cease blasting operations if the required slopes are not stable, or if the safety and convenience of the public are being jeopardized.

#### **203.3.3.1.5 Vibration Risk Survey**

For each cut that requires blasting, perform a vibration risk survey of nearby buildings, Structures, utilities, water supplies, or environmentally sensitive areas that may be at risk of blasting or construction damage. Perform the vibration risk survey in accordance with Section 617, "Vibration Monitoring." Obtain written approval for the vibration risk survey from the Project Manager before drilling blast holes.

#### **203.3.3.1.6 Blasting Test Sections**

Demonstrate the adequacy of proposed Blasting Plan with a blasting test section(s) for material of different geologic characteristics. For Projects involving multiple cuts in similar geologic Materials, the Project Manager may reduce the requirement for a blasting test section in each cut. Blasting test sections include drilling, blasting, and excavating cut sections approximately 100 ft long to determine the optimal combination of method, blast hole spacing, and charge. When field conditions warrant, the Project Manager may direct the Contractor to use test section lengths less than 100 ft long.

Blasting test section requirements include the following:

1. Perform the blasting test section in accordance with Section 203.3.3.1, "Blasting Requirements." Prepare and submit a Detailed Blasting Plan for the test section to the Project Manager at least 48 h before the planned time of the blast. Do not start blasting the test section until the Project Manager approves the Detailed Blasting Plan;
2. Unless the Contractor's Detailed Blasting Plan indicates otherwise, begin the tests with the controlled blast holes spaced at 30 inches;
3. After blasting, remove a sufficient amount of material from the test section to determine if the blast hole diameter, blast hole spacing, and amount of explosives are adequate to provide the required backslope. Do not continue drilling of the test section area until the test section is excavated and the Department evaluates the results.

If, at any time during the progress of the main blasting operation, the methods of drilling and blasting do not produce the desired results, revise and retest the blasting techniques until a technique produces the required results. The Department will consider the results to be unsatisfactory if:

1. There is an excessive amount of breakage beyond the indicated lines and grade;
2. There is excessive flyrock;
3. The final backslope within the specified tolerances is not uniform;
4. Ground vibration and air blast levels exceed limits as stated in Section 617, "Vibration Monitoring;"
5. There are violations of other requirements of the Specifications;
6. The slopes are unstable;
7. The safety of the public is jeopardized;
8. Property or natural features are endangered.

### **203.3.3.1.7 Blasting Execution**

#### **203.3.3.1.7.1 Notification and Schedule**

The following requirements will apply to the notification and scheduling of blasting procedures:

1. Coordinate blasting operations with the Project Manager and notify the Project Manager a minimum of 1.5 h before the blast. Provide a one-hour timeframe for the blast. For example, if the Contactor notifies the Project Manager by 9:00 a.m. the blast may occur between 10:30 a.m. and 11:30 a.m.;
2. Provide notice to the required federal, State, and local agencies before each blast, as required by the blasting permits;
3. Notify occupants of buildings and owners of Structures and utilities of the blast time and location at least 48 h before the start of drilling or blasting;
4. Detonate blasts at the planned time, unless approved otherwise by the Project Manager.

#### **203.3.3.1.7.2 General Requirements**

Cover the blast area with blasting mats, soil, or another equally serviceable material, before firing blasts in areas where flying rock may result in personal injury or damage to property or the Work.

#### **203.3.3.1.7.3 Controlled Blasting Requirements**

Perform controlled blasting in accordance with the Detailed Blasting Plans that produced acceptable results in blasting test sections. Perform control blasting using either pre-splitting or cushion blasting in accordance with the following requirements:

1. If the overburden does not support the drill holes, completely remove the overburden soil and loose rock along the top of the cut to expose the rock surface before drilling the controlled blast holes;
2. Mechanically monitor the blast hole angles;
3. Drill and space blast holes with a nominal diameter from two (2) inch to three (3) inch, in accordance with the blasting test sections or the results achieved in similar geologic Materials. Do not exceed three (3) ft;
4. Use proper Equipment and technique to ensure that no blast holes deviate from the plane of the backslope shown in the Plans by more than eight (8) inches, parallel or normal to the slope. The Department will not pay for blast holes exceeding these limits unless the Project Manager approves the obtained slopes;
5. Drill the controlled blast holes at the required slope inclination, to the full depth of the cut, or to a pre-determined stage elevation. The maximum drill depth is 30 ft. Use shallower holes if the directional control is inadequate. If more than five percent (5%) of the controlled blast holes are misaligned in any one (1) lift, reduce the height of the lifts until the eight (8) inch tolerance is met. The length of controlled blast holes may be incrementally increased once satisfactory directional control and blast results are demonstrated;
6. Drill unloaded and un-stemmed guide holes to the same diameter, in the same plane, and to the same tolerance as the controlled blast holes;
7. The Department will allow a maximum offset of 24 inches from the bottom of each lift to allow for drill Equipment clearances, when the cut requires more than one (1) lift. Begin drilling the control blast hole at a point that allows the necessary offsets, and adjust at the start of lower lifts as necessary to compensate for drift in the upper lifts;
8. Do not use horizontal blast holes for controlled blasting;
9. Use explosive charges, detonating cord, and other items necessary for the blasting operation in accordance with the manufacturer's recommendations and instructions;

10. Before placing charges, ensure the hole is free of obstructions. Use casing if necessary to prevent the walls of the hole from collapsing;
11. Use only standard explosives manufactured especially for the type of controlled blasting (cushion or pre-splitting). Do not load ammonium nitrate and fuel oil in the controlled blast holes. Use explosives and blasting accessories appropriate for the conditions of the blast hole (including water in the holes) and necessary to achieve satisfactory results;
12. Assemble and affix continuous column cartridge-type explosives to the detonating cord in accordance with the explosive manufacturer's instructions;
13. The bottom charge in a blast hole may be larger than the charges above, but not large enough to cause overbreak. Place the top charge far enough below the collar and sufficiently reduced in size to avoid overbreaking or heaving;
14. Use a dry, angular, and granular material that passes a 3/8 inch sieve to stem the controlled blast holes, from the top charge to the hole collar.

#### **203.3.3.1.7.4 Pre-Split Blasting**

Perform pre-split blasting in accordance with Section 203.3.3.1.7.3, "Controlled Blasting Requirements," and the following requirements:

1. Detonate the pre-split blast holes before drilling for production blasting; or fire the pre-split blast holes at least 75 ms before the production holes if detonated in the same blast;
2. Fire pre-split blast holes simultaneously, unless ground vibrations, noise, or air blast are excessive. Fire pre-split holes in delayed sections and reduce the charge weight per delay to mitigate excessive effects;
3. The line of pre-split blast holes will extend beyond the limits of the production blast holes to be detonated. The minimum length of this extension will be 30 ft or to the end of the cut, but will not be greater than one-half of the distance of the expected blast advance;
4. Do not perform pre-split blasting if the distance between the controlled blast line and free face is less than 20 ft or less than three (3) times the blast hole depth, whichever is greater.

#### **203.3.3.1.7.5 Cushion Blasting**

Perform cushion blasting in accordance with item No. 3 of Section 203.3.3.1.7.3, "Controlled Blasting Requirements," and the following requirements:

1. Perform cushion blasting as part of the final shot after other blasting is finished;
2. If the final shot includes production blast holes, detonate the cushion blast no more than 75 ms or less than 25 ms after the production blast;
3. Fire cushion blast holes simultaneously, unless ground vibrations, noise, or air blast are excessive. Fire cushion blast holes in delayed sections and reduce the charge weight per delay to mitigate excessive effects.

#### **203.3.3.1.7.6 Production Blasting**

Perform production blasting in accordance with the Blasting Plan that produced acceptable results in blasting test sections and the following requirements:

1. Minimize blast damage to the final excavation backslope;
2. Drill buffer rows of production blast holes on a plane approximately parallel to the controlled blast line;
3. Place the buffer row of production blast holes no closer than 6 ft to the controlled blast line unless the Contractor can prove the final excavation backslope will not be damaged by the production blast;
4. Where necessary to minimize damage to the excavation backslope, load blast holes in the buffer row lighter than other production holes;

5. Ensure the bottoms of production blast holes are not lower than the bottom of controlled blast holes, except in the lowest lift;
6. Ensure the diameter of production blast holes does not exceed six (6) inches, unless approved by the Project Manager;
7. Before placing charges, ensure the hole is free of obstructions. Use casing, if necessary, to prevent the walls of the hole from collapsing;
8. Use a dry, angular, and granular material that passes a 3/8 inch sieve to stem the holes, from the top charge to the hole collar;
9. Detonate production blast holes in a controlled delay sequence toward a free face;
10. Do not use horizontal holes for production blasting, except for Equipment access;
11. Use explosives and blasting accessories appropriate for wet or dry blast hole conditions as necessary to achieve satisfactory results.

#### **203.3.3.1.7.7 Scaling and Stabilization of Slopes Established by Controlled Blasting**

Perform scaling and stabilization of slopes established by controlled blasting in accordance with the following requirements:

1. Observe the entire blast area following a blast before starting Work in the cut. If any rocks are loose, hanging, or potentially dangerous within a blast area, the Contractor shall remove them. Scale slopes by hand using a standard steel mine scaling rod. Use other methods to supplement or in lieu of hand scaling, such as, machine scaling, hydraulic splitters, or light blasting, if approved by the Project Manager;
2. Slopes shall be scaled and stabilized before further construction activities take place. Scale slopes throughout the span of the Contract and as often as necessary to keep the slopes free of hazardous loose rock or overhangs;
3. Cease blasting operations if the following conditions exist:
  - 3.1. There is an excessive amount of breakage beyond the specified lines and grade;
  - 3.2. There is excessive flyrock;
  - 3.3. The final backslope within the specified tolerances is not uniform;
  - 3.4. Ground vibration and air blast levels exceed limits specified in Section 617, "Vibration Monitoring;"
  - 3.5. There are violations of other requirements of the Specifications;
  - 3.6. The slopes are unstable;
  - 3.7. The safety of the public is jeopardized;
  - 3.8. Property or natural features are endangered.

#### **203.3.4 Borrow**

Obtain the borrow source, unless otherwise specified. Use Roadbed excavated Material for Embankment before using borrow Material, unless approved by the Project Manager. If the Contractor places more than the specified amount of borrow and causes a waste of excavation, the Department will deduct the wasted amount from the borrow volume, as measured in the borrow area. After excavation is complete, blade the borrow areas and leave in a condition to allow accurate payment measurements by cross sectioning. Restore Right of Way fencing removed for borrow operations to its original condition or better. Prevent livestock from entering Right of Way.

#### **203.3.5 Embankments**

Do not place Embankment Material on frozen earth, or incorporate frozen soils in Embankments. Suspend Embankment construction if Embankment Materials become frozen. Do not resume until the Materials are thawed and suitable for compaction. Before beginning Embankment construction, perform scalping in accordance with Section 201, "Clearing and

Grubbing.” Bench new Embankments into the following:

1. Natural slopes including rock;
2. Existing Embankments; or
3. Phased Embankment construction.

Ensure benches are wide enough to allow operation and placement of compacting Equipment. Re-compact new Embankment Material and Material that is cut out at no additional cost to the Department. Do not place rock, broken concrete, or other solid Materials in Embankment areas where driven pilings, drilled caissons, utility lines, or other Structures are specified in the Plans.

#### **203.3.5.1 Roadbed Embankments**

Break up the original ground surface to at least six (6) inches by plowing, scarifying, or stepping up. Compact this area to 95% of maximum density in accordance with Section 203.3.8, “Moisture and Density Control.” Place Material for Roadbed Embankment in horizontal layers not exceeding eight (8) inches thick and compact in accordance with Section 203.3.8, “Moisture and Density Control.”

The Department will allow rocks no larger than three (3) ft (in any dimension) as long as the Contractor distributes and fills the interstices to form a dense mass. If the interstices between the rock fragments cannot be completely filled and compacted, use bridging geotextile over the top of the rock fragments to prevent the overlying Embankment Material from filling the interstices. Do not use rock fragments that may degrade with time or may be water sensitive (such as shale or gypsum) as rock fill in Roadbed Embankments. The Department considers this material to be unsuitable.

Place large rocks in the toe of the slope in accordance with the following requirements:

1. No rock is larger than one-half the Embankment height or ten (10) ft;
2. No rock is placed in fill height less than eight (8) ft, measured at the edge of the Roadway Shoulder;
3. Place rocks inside a line six (6) inches from the slope stake, space a minimum of three (3) ft from edge to edge, and cover with approved Embankment Material.

Construct rock Embankments to a maximum of six (6) inches below Subgrade elevation. Consolidate rock fills by using the appropriate Equipment and methods approved by the Project Manager.

#### **203.3.5.2 Non-Roadbed Embankment**

Construct non-roadbed Embankments in accordance with Section 203.3.5.1, “Roadbed Embankments,” except, if the Embankment Material consists of rock, place the rock in layers of sufficient depth to contain the largest rock in the Material, and carefully distribute and fill the interstices to form a dense mass.

#### **203.3.6 Subexcavation**

Remove unsuitable Materials from the Subgrade unless an alternative treatment is agreed upon by the Project Manager.

#### **203.3.7 Unstable Subgrade Stabilization**

Areas that have been proof rolled and lack sufficient stability in the opinion of the Project Manager shall be treated as unstable Subgrade.

Prior to placement of the base material, the stabilized Subgrade shall be proof rolled with a roller having a minimum weight of 30 tons and shall exhibit no displacement when proof rolled.

The Contractor shall stabilize unstable Subgrade using acceptable chemical or mechanical methods meeting an equivalent R-value as approved by the State Pavement Design Engineer.

### **203.3.8 Moisture and Density Control**

Maximum dry density of all soil types encountered or used will be determined in accordance with AASHTO T 180 (Modified Proctor), Method D (TTCP Modified) and AASHTO T 224.

Construct Roadbed, Roadbed Embankment, non-roadbed Embankment, and Roadway Median excavation or Embankment, with moisture and density control. Compact each layer of Embankment to at least 95% of maximum density. Ensure the moisture content of the soil, at the time of compaction, is not greater than or five percent (5%) less than the optimum level. For soils with a plasticity index of 15 or greater, ensure the moisture content of the soil at the time of compaction is from optimum moisture to optimum moisture plus four percent (4%). If the moisture content at the time of compaction is not within the specified range, moisten or dry the Material, then thoroughly mix the Material to the full lift depth before re-compacting. Roadbed Embankments that contain mostly rock or coarse-grained Material (65% or greater retained on the No. 4 sieve) does not require moisture and density control, except the top six (6) inches of the Embankment; construct in accordance with Section 207.3, "Construction Requirements." Non-roadbed Embankments of rock Material will not require moisture and density control unless otherwise specified.

Ensure field densities are in accordance with AASHTO T 310 or other approved methods. Measure densities at each lift before the next subsequent lift is placed in accordance with Material Testing Requirements.

## **203.4 METHOD OF MEASUREMENT**

### **203.4.1 Rock Excavation**

The Department will measure Rock Excavation based on the estimated percentages if shown in the Contract, unless otherwise requested by the Contractor.

If the Contractor requests, the Department will measure Rock Excavation in its original position for material classified as Rock Excavation in accordance with Section 203.2.1.1, "Rock Excavation." Before excavation, the Contractor and Project Manager must agree on the limits of material classified as rock excavation. Calculate volumes in accordance with Section 203.4.3, "Unclassified Excavation, Borrow, and Subexcavation." Include in measurements the overbreakage in rock excavation a maximum of ten (10) inches beyond the backslope specified in the Plans or directed by the Project Manager. The Department will use the blaster's drill-hole log cards to determine the quantities of rock excavation covered by soil or overburden. Provide these log cards as part of the surveying records.

### **203.4.2 Controlled Blasting**

The Department will measure Controlled Blasting by the blast holes drilled along the final line, whether loaded or not; and will measure the lengths from the top of the rock surface to the elevation of the Roadway ditch or to a bench elevation set by the Project Manager. The Department based the quantities for Controlled Blasting shown in the Plans on assumed blast hole spacing; the actual quantities depend on field conditions and the results from test sections.

### **203.4.3 Unclassified Excavation, Borrow, and Subexcavation**

Measure unclassified excavation, borrow, and subexcavation in its original position. The measurements for subexcavation will include approved excavation of rock, shale, muck, or other unsuitable material, and its placement in the required Embankment or disposal as directed by the Project Manager. Cross-sectional measurements for subexcavation shall be taken before backfill is placed.

Within cut sections, excavated material removed from the limits of the cut section to the Subgrade elevation for the width of the Roadbed shall be paid as Unclassified Excavation.

Submit the original ground surface and final surface data for each phase of construction using an electronic XML-compatible format approved by the Project Manager. Submit volume summary reports to the Project Manager based on this electronic data for each phase of construction including a report that summarizes the basis for the final volumes. Use a licensed New Mexico professional Engineer or professional surveyor to certify these volumes.

For borrow from commercial sources, use weight converted to cubic yards at minimum specified density.

#### 203.4.4 Unstable Subgrade Stabilization

Unstable Subgrade stabilization shall be measured by the square yard.

### 203.5 BASIS OF PAYMENT

<b>Pay Item</b>	<b>Pay Unit</b>
<i>Rock Excavation</i>	Cubic Yard
<i>Unclassified Excavation</i>	Cubic Yard
<i>Borrow</i>	Cubic Yard
<i>Subexcavation</i>	Cubic Yard
<i>Unstable Subgrade Stabilization</i>	Square Yard
<i>Controlled Blasting</i>	Linear Foot

#### 203.5.1 Extra Work

The Department will pay for stabilization necessitated by existing geological conditions and for Base Course (and geotextile if necessary) as required to backfill rock Subgrade conditions.

The Department will pay for excavated Materials that require more than one (1) handling as identified within the Contract before final placement, including fertile topsoil required to be stockpiled and reserved for later use in the Work:

1. At the Bid Item Unit Price for unclassified excavation, for each handling approved by the Project Manager; or
2. As another item of Work for the second handling if specified in the Contract.

However, if the Contractor handles excavated and borrow Materials more than once, at the Contractor's request or at the convenience of the Contractor, there will be no additional cost to the Department.

#### 203.5.2 Work Included in Payment for Excavation, Backfill, and Embankments

The Department will consider as included in the payment for the pay item(s) listed in this section and will not measure or pay separately for the following Work:

1. Controlled blasting drill holes through overburden;
2. Production blasting;
3. Scaling within the limits of a final backslope established by controlled blasting;
4. Mobilization of any Equipment and testing of rock in accordance with Section 203.2.1.1, "Rock Excavation;"
5. Time Delays to perform testing of rock in accordance with Section 203.2.1.1, "Rock Excavation;"
6. Material required to fill the voids and irregularities in the Subgrade below the tolerance limit from the specified elevation, except where the Project Manager

- requires removal of unsuitable Materials designated as subexcavation;
7. Surveying, for the purpose of payment, is considered Incidental to the excavation Work and is the Contractor's responsibility;
  8. Hauling related to Rock Excavation, Unclassified Excavation, Borrow, and Subexcavation;
  9. Fence removal and replacement;
  10. Damage resulting from blasting.
  11. Suitable backfill Material for subexcavation.
  12. The removed Materials shall be hauled and disposed of at the site(s) designated in the Contract or as determined by the Project Manager.
  13. Proof rolling for Unstable Subgrade Stabilization shall be considered Incidental to the Contract and will not be measured or paid for separately.



**US Army Corps  
of Engineers®**  
Albuquerque District

# Nationwide Permit Summary

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## NATIONWIDE PERMIT 13

### Bank Stabilization

Effective Date: March 19, 2017

Expiration Date: March 18, 2022

(NWP Final Notice, 82 FR 1860, para. 3)

**Bank Stabilization.** Bank stabilization activities necessary for erosion control or prevention, such as vegetative stabilization, bioengineering, sills, rip rap, revetment, gabion baskets, stream barbs, and bulkheads, or combinations of bank stabilization techniques, provided the activity meets all of the following criteria:

- (a) No material is placed in excess of the minimum needed for erosion protection;
- (b) The activity is no more than 500 feet in length along the bank, unless the district engineer waives this criterion by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects (an exception is for bulkheads – the district engineer cannot issue a waiver for a bulkhead that is greater than 1,000 feet in length along the bank);
- (c) The activity will not exceed an average of one cubic yard per running foot, as measured along the length of the treated bank, below the plane of the ordinary high water mark or the high tide line, unless the district engineer waives this criterion by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects;
- (d) The activity does not involve discharges of dredged or fill material into special aquatic sites, unless the district engineer waives this criterion by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects;
- (e) No material is of a type, or is placed in any location, or in any manner, that will impair surface water flow into or out of any waters of the United States;
- (f) No material is placed in a manner that will be eroded by normal or expected high flows (properly anchored native trees and treetops may be used in low energy areas);
- (g) Native plants appropriate for current site conditions, including salinity, must be used for bio-engineering or vegetative bank stabilization;
- (h) The activity is not a stream channelization activity; and
- (i) The activity must be properly maintained, which may require repairing it after severe storms or erosion events. This NWP authorizes those maintenance and repair activities if they require authorization.

This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to construct the bank stabilization activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. After construction,

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

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if the bank stabilization activity: (1) involves discharges into special aquatic sites; or (2) is in excess of 500 feet in length; or (3) will involve the discharge of greater than an average of one cubic yard per running foot as measured along the length of the treated bank, below the plane of the ordinary high water mark or the high tide line. (See general condition 32.)  
(Authorities: Sections 10 and 404)

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

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 NWP 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 NWP.

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

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

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

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

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

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

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

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

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

circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

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

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

(a) Discharges of dredged or fill material into waters of the United States are not authorized by 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 NWP 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 NWP. 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 NWP.

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

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

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

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

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

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

**28. Use of Multiple Nationwide Permits.** The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWP 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.”

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(Transferee)

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

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

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

### **District Engineer's Decision**

1. In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If a project proponent requests authorization by a specific NWP, the district engineer should issue the NWP verification for that activity if it meets the terms and conditions of that NWP, unless he or she determines, after considering

mitigation, that the proposed activity will result in more than minimal individual and cumulative adverse effects on the aquatic environment and other aspects of the public interest and exercises discretionary authority to require an individual permit for the proposed activity. For a linear project, this determination will include an evaluation of the individual crossings of waters of the United States to determine whether they individually satisfy the terms and conditions of the NWP(s), as well as the cumulative effects caused by all of the crossings authorized by NWP. If an applicant requests a waiver of the 300 linear foot limit on impacts to streams or of an otherwise applicable limit, as provided for in NWPs 13, 21, 29, 36, 39, 40, 42, 43, 44, 50, 51, 52, or 54, the district engineer will only grant the waiver upon a written determination that the NWP activity will result in only minimal individual and cumulative adverse environmental effects. For those NWPs that have a waivable 300 linear foot limit for losses of intermittent and ephemeral stream bed and a 1/2-acre limit (i.e., NWPs 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52), the loss of intermittent and ephemeral stream bed, plus any other losses of jurisdictional waters and wetlands, cannot exceed 1/2-acre.

2. When making minimal adverse environmental effects determinations the district engineer will consider the direct and indirect effects caused by the NWP activity. He or she will also consider the cumulative adverse environmental effects caused by activities authorized by NWP and whether those cumulative adverse environmental effects are no more than minimal. The district engineer will also consider site specific factors, such as the environmental setting in the vicinity of the NWP activity, the type of resource that will be affected by the NWP activity, the functions provided by the aquatic resources that will be affected by the NWP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the NWP activity (e.g., partial or complete loss), the duration of the adverse effects (temporary or permanent), the importance of the aquatic resource functions to the region (e.g., watershed or ecoregion), and mitigation required by the district engineer. If an appropriate functional or condition assessment method is available and practicable to use, that assessment method may be used by the district engineer to assist in the minimal adverse environmental effects determination. The district engineer may add case-specific special conditions to the NWP authorization to address site-specific environmental concerns.

3. If the proposed activity requires a PCN and will result in a loss of greater than 1/10-acre of wetlands, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for NWP activities with smaller impacts, or for impacts to other types of waters (e.g., streams). The district engineer will consider any proposed compensatory mitigation or other mitigation measures the applicant has included in the proposal in determining whether the net adverse environmental effects of the proposed activity are no more than minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse environmental effects are no more than minimal, after considering mitigation, the district engineer will notify the permittee and include any activity-specific conditions in the NWP verification the district engineer deems necessary. Conditions for compensatory mitigation requirements must comply with the appropriate provisions at 33 CFR 332.3(k). The district engineer must approve the final mitigation plan before the permittee commences 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. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the proposed compensatory mitigation plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure the NWP activity results in no more than minimal adverse environmental effects. If the net adverse environmental effects of the NWP activity (after

consideration of the mitigation proposal) are determined by the district engineer to be no more than minimal, the district engineer will provide a timely written response to the applicant. The response will state that the NWP activity can proceed under the terms and conditions of the NWP, including any activity-specific conditions added to the NWP authorization by the district engineer.

4. If the district engineer determines that the adverse environmental effects of the proposed activity are more than minimal, then the district engineer will notify the applicant either: (a) that the activity does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (b) that the activity is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal; or (c) that the activity is authorized under the NWP with specific modifications or conditions. Where the district engineer determines that mitigation is required to ensure no more than minimal adverse environmental effects, the activity will be authorized within the 45-day PCN period (unless additional time is required to comply with general conditions 18, 20, and/or 31, or to evaluate PCNs for activities authorized by NWPs 21, 49, and 50), with activity-specific conditions that state the mitigation requirements. The authorization will include the necessary conceptual or detailed mitigation plan or a requirement that the applicant submit a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal. When compensatory mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan or has determined that prior approval of a final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation.

### **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).

### **Definitions**

**Best management practices (BMPs):** Policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural.

**Compensatory mitigation:** The restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

**Currently serviceable:** Useable as is or with some maintenance, but not so degraded as to essentially require reconstruction.

**Direct effects:** Effects that are caused by the activity and occur at the same time and place.

**Discharge:** The term "discharge" means any discharge of dredged or fill material into waters of the United States.

**Ecological reference:** A model used to plan and design an aquatic habitat and riparian area restoration, enhancement, or establishment activity under NWP 27. An ecological reference may be based on the structure, functions, and dynamics of an aquatic habitat type or a riparian area type that currently exists in the region where the proposed NWP 27 activity is located. Alternatively, an ecological reference may be based on a conceptual model for the aquatic habitat type or riparian area type to be restored, enhanced, or established as a result of the proposed NWP 27 activity. An ecological reference takes into account the range of variation of the aquatic habitat type or riparian area type in the region.

**Enhancement:** The manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

**Ephemeral stream:** An ephemeral stream has flowing water only during, and for a short duration after, precipitation events in a typical year. Ephemeral stream beds are located above the water table year-round. Groundwater is not a source of water for the stream. Runoff from rainfall is the primary source of water for stream flow.

**Establishment (creation):** The manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area.

**High Tide Line:** The line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

**Historic Property:** Any prehistoric or historic district, site (including archaeological site), building, structure, or other object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria (36 CFR part 60).

**Independent utility:** A test to determine what constitutes a single and complete non-linear project in the Corps Regulatory Program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.

**Indirect effects:** Effects that are caused by the activity and are later in time or farther removed in distance, but are still reasonably foreseeable.

**Intermittent stream:** An intermittent stream has flowing water during certain times of the year, when groundwater provides water for stream flow. During dry periods, intermittent streams may not have flowing water. Runoff from rainfall is a supplemental source of water for stream flow.

**Loss of waters of the United States:** Waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage

of loss of waters of the United States is a threshold measurement of the impact to jurisdictional waters for determining whether a project may qualify for an NWP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and services. The loss of stream bed includes the acres or linear feet of stream bed that are filled or excavated as a result of the regulated activity. Waters of the United States temporarily filled, flooded, excavated, or drained, but restored to pre-construction contours and elevations after construction, are not included in the measurement of loss of waters of the United States. Impacts resulting from activities that do not require Department of the Army authorization, such as activities eligible for exemptions under section 404(f) of the Clean Water Act, are not considered when calculating the loss of waters of the United States.

**Navigable waters:** Waters subject to section 10 of the Rivers and Harbors Act of 1899. These waters are defined at 33 CFR part 329.

**Non-tidal wetland:** A non-tidal wetland is a wetland that is not subject to the ebb and flow of tidal waters. Non-tidal wetlands contiguous to tidal waters are located landward of the high tide line (i.e., spring high tide line).

**Open water:** For purposes of the NWPs, an open water is any area that in a year with normal patterns of precipitation has water flowing or standing above ground to the extent that an ordinary high water mark can be determined. Aquatic vegetation within the area of flowing or standing water is either non-emergent, sparse, or absent. Vegetated shallows are considered to be open waters. Examples of “open waters” include rivers, streams, lakes, and ponds.

**Ordinary High Water Mark:** An ordinary high water mark is a line on the shore established by the fluctuations of water and indicated by physical characteristics, or by other appropriate means that consider the characteristics of the surrounding areas.

**Perennial stream:** A perennial stream has flowing water year-round during a typical year. The water table is located above the stream bed for most of the year. Groundwater is the primary source of water for stream flow. Runoff from rainfall is a supplemental source of water for stream flow.

**Practicable:** Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

**Pre-construction notification:** A request submitted by the project proponent to the Corps for confirmation that a particular activity is authorized by nationwide permit. The request may be a permit application, letter, or similar document that includes information about the proposed work and its anticipated environmental effects. Pre-construction notification may be required by the terms and conditions of a nationwide permit, or by regional conditions. A pre-construction notification may be voluntarily submitted in cases where pre-construction notification is not required and the project proponent wants confirmation that the activity is authorized by nationwide permit.

**Preservation:** The removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

**Protected tribal resources:** Those natural resources and properties of traditional or customary religious or cultural importance, either on or off Indian lands, retained by, or reserved by or for, Indian tribes through treaties, statutes, judicial decisions, or executive orders, including tribal trust resources.

**Re-establishment:** The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area and functions.

**Rehabilitation:** The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.

**Restoration:** The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: re-establishment and rehabilitation.

**Riffle and pool complex:** Riffle and pool complexes are special aquatic sites under the 404(b)(1) Guidelines. Riffle and pool complexes sometimes characterize steep gradient sections of streams. Such stream sections are recognizable by their hydraulic characteristics. The rapid movement of water over a coarse substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas associated with riffles. A slower stream velocity, a streaming flow, a smooth surface, and a finer substrate characterize pools.

**Riparian areas:** Riparian areas are lands next to streams, lakes, and estuarine-marine shorelines. Riparian areas are transitional between terrestrial and aquatic ecosystems, through which surface and subsurface hydrology connects riverine, lacustrine, estuarine, and marine waters with their adjacent wetlands, non-wetland waters, or uplands. Riparian areas provide a variety of ecological functions and services and help improve or maintain local water quality. (See general condition 23.)

**Shellfish seeding:** The placement of shellfish seed and/or suitable substrate to increase shellfish production. Shellfish seed consists of immature individual shellfish or individual shellfish attached to shells or shell fragments (i.e., spat on shell). Suitable substrate may consist of shellfish shells, shell fragments, or other appropriate materials placed into waters for shellfish habitat.

**Single and complete linear project:** A linear project is a project constructed for the purpose of getting people, goods, or services from a point of origin to a terminal point, which often involves multiple crossings of one or more waterbodies at separate and distant locations. The term “single and complete project” is defined as that portion of the total linear project proposed or accomplished by one owner/developer or partnership or other association of owners/developers that includes all crossings of a single water of the United States (i.e., a single waterbody) at a specific location. For linear projects crossing a single or multiple waterbodies several times at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately.

**Single and complete non-linear project:** For non-linear projects, the term “single and complete project” is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete non-linear project must have independent utility (see definition of “independent utility”). Single and complete non-linear projects may not be “piecemealed” to avoid the limits in an NWP authorization.

**Stormwater management:** Stormwater management is the mechanism for controlling stormwater runoff for the purposes of reducing downstream erosion, water quality degradation, and flooding and mitigating the adverse effects of changes in land use on the aquatic environment.

**Stormwater management facilities:** Stormwater management facilities are those facilities, including but not limited to, stormwater retention and detention ponds and best management practices, which retain water for a period of time to control runoff and/or improve the quality (i.e., by reducing the concentration of nutrients, sediments, hazardous substances and other pollutants) of stormwater runoff.

**Stream bed:** The substrate of the stream channel between the ordinary high water marks. The substrate may be bedrock or inorganic particles that range in size from clay to boulders. Wetlands contiguous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.

**Stream channelization:** The manipulation of a stream's course, condition, capacity, or location that causes more than minimal interruption of normal stream processes. A channelized stream remains a water of the United States.

**Structure:** An object that is arranged in a definite pattern of organization. Examples of structures include, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other manmade obstacle or obstruction.

**Tidal wetland:** A tidal wetland is a jurisdictional wetland that is inundated by tidal waters. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line.

**Tribal lands:** Any lands title to which is either: 1) held in trust by the United States for the benefit of any Indian tribe or individual; or 2) held by any Indian tribe or individual subject to restrictions by the United States against alienation.

**Tribal rights:** Those rights legally accruing to a tribe or tribes by virtue of inherent sovereign authority, unextinguished aboriginal title, treaty, statute, judicial decisions, executive order or agreement, and that give rise to legally enforceable remedies.

**Vegetated shallows:** Vegetated shallows are special aquatic sites under the 404(b)(1) Guidelines. They are areas that are permanently inundated and under normal circumstances have rooted aquatic vegetation, such as seagrasses in marine and estuarine systems and a variety of vascular rooted plants in freshwater systems.

**Waterbody:** For purposes of the NWP, a waterbody is a jurisdictional water of the United States. If a wetland is adjacent to a waterbody determined to be a water of the United States, that waterbody and any adjacent wetlands are considered together as a single aquatic unit (see 33 CFR 328.4(c)(2)). Examples of "waterbodies" include streams, rivers, lakes, ponds, and wetlands.

## ADDITIONAL INFORMATION

For additional information concerning the nationwide permits or for a written determination regarding a specific project, please contact the office below:

In New Mexico:

Chief, Regulatory Division  
Albuquerque District, US Army Corps of Engineers  
4101 Jefferson Plaza, NE  
Albuquerque, NM 87109-3435  
Telephone: (505) 342-3282

In Southeastern Colorado:

Southern Colorado Regulatory Office  
200 S. Santa Fe Avenue, Suite 301  
Pueblo, CO 81003  
Telephone: (719) 543-9459

In Southern New Mexico and Western Texas:

Las Cruces Regulatory Office

200 E. Griggs Ave.  
Las Cruces, NM 88001  
Telephone: (505) 554-7943

In Northwestern New Mexico and within the San Luis Valley of Colorado:

Durango Regulatory Office  
1970 E. 3rd Avenue, Suite 109  
Durango, CO 81301  
Telephone: (970) 259-1582

Information about the U.S. Army Corps of Engineers regulatory program, including nationwide permits, may also be accessed on our Internet page: <http://www.spa.usace.army.mil/reg/>

This nationwide permit is effective March 19, 2017, and expires on March 18, 2022.

Summary Version: March 19, 2017